



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 13 2014

The Honorable Llevando Fisher
President, Northern Cheyenne Tribe
Post Office Box 128
Lame Deer, Montana 59043

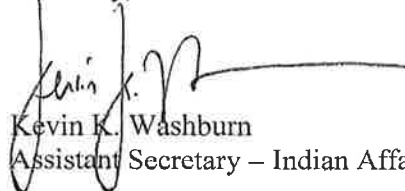
Dear President Fisher:

Thank you for your letter of August 27, 2014, requesting formal review and approval of the Northern Cheyenne Tribe's Probate Code.

I am pleased to inform you that my office and the Bureau of Indian Affairs reviewed and hereby approve, pursuant to 25 U.S.C. §2205(b)(2), the Northern Cheyenne Probate Code received on September 4, 2014. The Northern Cheyenne Tribal Probate Code will now be used by the Department of the Interior's Office of Hearings and Appeals when probating trust or restricted lands within the Northern Cheyenne Reservation in Montana. Thank you for your work on this historic achievement, which will be an example for other tribes who wish to determine how trust or restricted land within their reservations will pass in probate.

If you have additional questions, please contact Ms. Charlene Toledo at (505) 563-3371.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs

cc: Acting Regional Director, Rocky Mountain Region
Division Chief, Probate Division, Bureau of Indian Affairs
Chief Judge, Office of Hearings and Appeals, Probate Hearings Division

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-128 (2014)

**RESOLUTION APPROVING NEW NORTHERN CHEYENNE
PROBATE CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, the rules governing descent and distribution of trust and restricted land and trust personalty (Individual Indian Money accounts) is governed by the American Indian Probate Reform Act (AIPRA);

WHEREAS, the rules governing descent and distribution of property not covered by AIPRA is in Title IX of the Northern Cheyenne Law Order Code;

WHEREAS, AIPRA provides that a tribe may adopt its own probate code governing descent and distribution and, under Article IV, Section 1(o) of the Amended Constitution, the Tribal Council has the authority to regulate the inheritance of property, real and personal, of the Northern Cheyenne Reservation;

WHEREAS, the Tribe has engaged in a lengthy process to develop a draft probate code that governs descent and distribution of property covered by AIPRA and Title IX;

WHEREAS, working with representatives of the Bureau of Indian Affairs and the Northern Cheyenne Tribal Court, and with the Tribal Attorney, a committee of the Northern Cheyenne Tribal Council has prepared a draft probate code for consideration by the full Tribal Council;

WHEREAS, draft probate code is designed to: (1) to encourage estate planning; (2) to discover and effectuate the intent of the deceased; (3) to promote a speedy and efficient probate process that is as simple as possible; (4) to prescribe the manner of descent and distribution in the event there is no will; (5) to avoid land ownership fractionation; (6) to consolidate fractionated land; and (7) to enhance Tribal self-sufficiency, self-determination, and sovereignty.

WHEREAS, the draft probate code has been vetted at public meetings in each of the five Reservation districts in June 2014;

WHEREAS, as a result of the feedback received at district meetings, the draft probate code was modified in several ways;

WHEREAS, the draft probate code has been reviewed and informally approved by representatives of the Solicitor's Office of the United States Department of the Interior;

WHEREAS, the only provision that was not informally reviewed by the Solicitor's Office is the recently-added provision by which the definition of a "spouse" includes a party married by "common law marriage;"

WHEREAS, attached to this Resolution is the July 30, 2014 Northern Cheyenne Probate Code which is intended to be consistent with AIPRA and replace Title IX in its entirety; and

WHEREAS, in order for the Code to be effective, it must be approved by the Secretary of the Interior.

THEREFORE BE IT RESOLVED, the Tribal Council hereby:

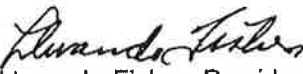
approves the attached July 30, 2014 Northern Cheyenne Probate Code

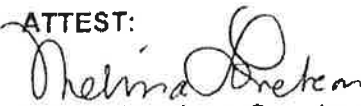
declares that the Code will replace Title IX of the Law and Order Code in its entirety; and

directs the Tribal President to submit the Code for formal approval under AIPRA by the Secretary of the Interior;

CERTIFICATION

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 30th day of July 2014.


Llevando Fisher, President
Northern Cheyenne Tribe

ATTEST:

Melissa Lonebear, Secretary
Northern Cheyenne Tribe

TITLE IX

PROBATE CODE

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TITLE IX
PROBATE CODE

I. LEGISLATIVE FINDINGS AND PURPOSE

This Code shall be known as the "Northern Cheyenne Probate Code."

9-1-1. Legislative Findings.

The Tribe finds and declares that:

- A. It is of paramount importance to encourage the preparation of wills or other estate plans for the transfer of property upon death, to carry out the intent of the decedent, and to provide a speedy, efficient and user-friendly system for the administration of all aspects of decedent estates, including all types of real and personal property;
- B. It is also important to provide the opportunity to prepare for catastrophic and end of life events by creating health care directives and durable powers of attorney;
- C. Preservation of the land base of the Tribe is critical to the vitality of the sovereignty, environment, and economy of the Tribe;
- D. It is of paramount importance to encourage and consolidate Tribal and Tribal member ownership of lands on the Reservation;
- E. Because of the federal allotment policy that began in the late nineteenth century and the subsequent transfers of allotted lands, a significant portion of the Reservation is fractionated or owned by non-members;
- F. The transfer or devise of interests in Reservation trust land upon the death of any individual owner could lead to further fractionation or non-member ownership of Reservation land; and
- G. By establishing a probate code that covers all types of real estate and personal property, including trust and restricted land and personalty, and making estate planning forms available, the Tribe intends to foster a uniform system to facilitate the probate process in a cost efficient manner and to maintain and enhance its self-sufficiency, self-determination, and sovereignty.

II. DEFINITIONS

9-2-1. Definitions.

When used in this Title, unless otherwise required from the context:

- A. "Child" and "Children" mean the lineal descendants of the decedent including all lawfully adopted children, as provided in Sections 9-5-5 and 9-8-3, and all children born after death of decedent, as provided in Sections 9-5-6 and 9-8-4.
- B. "Codicil" means a will that modifies or partially revokes an existing earlier will.
- C. "Common law marriage" means (1) the parties are competent to enter into the marriage; (2) the parties entered into the marital arrangement by mutual consent; and (3) the parties confirmed their marriage by cohabitation of at least 6 months and present themselves as husband and wife openly and conspicuously.
- D. "Court" means the Northern Cheyenne Tribal Court.
- E. "Decedent" means a deceased person.
- F. "Estate" means all of the assets and liabilities of a deceased person.
- G. "Heirs" means those persons who are entitled by a will or under the rules of intestate succession to the real or personal property or trust land of a decedent.
- H. "Indian" means:
 - 1. Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of trust land;
 - 2. Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. § 479) and the regulations promulgated thereunder; or
 - 3. With respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to 25 U.S.C. § 2206, any person described in subparagraph (1) or (2) or any person who owns trust land in that State.
- I. "Intestate" means that a person has died without making a valid will as to some or all of the estate assets. Such property will pass to other persons under the intestate succession rules of this Title.
- J. "Land" means any real property.
- K. "Lawfully adopted child" means a child adopted lawfully in accordance with 25 U.S.C. § 372a.

- L. "Letters of Administration" means the document referred to in Section 9-10-9.
- M. "Net estate" means the real and personal property of a decedent except exempt property, non-probate assets, and allowable claims against and debts of the decedent or the estate.
- N. "Parent" means the biological or lawful adoptive mother or father of a child, as defined by Subsection 9-2-1(J). It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
- O. "Personal property" means any property that is not included in the definition of real property.
- P. "Personal representative" means that person appointed by the court to carry out the powers and duties conferred by this Title on behalf of the estate.
- Q. "Real property" means all interests and estates in land, including leasehold interests and improvements to land, such as houses or other buildings, which have been affixed to the land. A mobile or modular home located on individual trust property and subject to a security interest, mortgage, promissory note, or other financing agreement or which is located on tribal fee or trust property shall be considered personal property for purposes of this Title. All other mobile and modular homes shall be considered real property for purposes of this Title.
- R. "Reservation" means the Northern Cheyenne Indian Reservation.
- S. "Shall" means an act that is required and is not permissive.
- T. "Special administrator" means that person appointed by the court to administer decedent's estate when it is necessary to probate or preserve the estate.
- U. "Spouse" means a party to a marriage recognized by any jurisdiction or a party to a common law marriage.
- V. "Testator" means a person who has created a valid will.
- W. "Title" means this Title and includes all amendments hereafter made to this Title.
- X. "Tribal Court" means the court of the Northern Cheyenne Tribe.
- Y. "Tribe" means the Northern Cheyenne Indian Tribe.

- Z. "Trust land" means any real property, title to which is held in trust or restricted fee status by the United States for the benefit of the Tribe, a member of a federally-recognized tribe, or a person eligible to be a member of a federally-recognized tribe. Improvements attached to trust land are not trust land or trust personalty.
- AA. "Trust Personalty" shall mean all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.
- BB. "Will" means an instrument validly executed as required by this Title that disposes of all or part of an individual's estate at death.
- CC. "Without regard to waste" means, with respect to a life estate interest in trust land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

III. PERSONS AND PROPERTY SUBJECT TO TITLE

9-3-1. Persons and Property Subject to Title — Domicile Presumed.

- A. This Title applies to enrolled members of the Tribe, all enrolled members of a federally recognized Indian tribe, and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of "Indian" under this Title, who have an interest in real or personal property or trust land subject to this Title.
- B. For purposes of this Section, an enrolled member of the Tribe shall be presumed to be domiciled within the Reservation in absence of proof of domicile in another location.
- C. Except to the extent the descent and distribution of real or personal property is governed by federal law, this Title governs the descent and distribution of real property that is within the Reservation and personal property of any person domiciled on the Reservation.

9-3-2. Jurisdiction of Tribal Court – Non-Trust Property.

- A. The Tribal Court shall have all authority necessary to take evidence and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent's estate under this Title. The court shall have the broadest possible authority to execute its duties and responsibilities under this Title. It shall have authority to probate all estate interests subject to this Title which do not come within the exclusive jurisdiction of the United States,

including over all real or personal property except trust and restricted land and trust personalty.

- B. Unless the American Indian Probate Reform Act is amended to allow Tribes to carry out probate of trust and restricted land and trust personalty, the United States shall carry out the probate of such property, as currently set forth in 25 CFR 15 and other applicable law.

9-3-3. Application to Probate of Trust and Restricted Property by the United States Department of the Interior.

United States Department of the Interior Administrative Law Judges or other Department of the Interior probate tribunals of trust and restricted property shall apply the provisions of this Title to the maximum extent permitted by law.

9-3-4. Indian Custom and Tradition — Distribution of Cultural Patrimony.

- A. Notwithstanding the provisions of this Title relating to descent and distribution, Cultural Patrimony possessed by the decedent shall be distributed in accordance with the customs and traditions of the Tribe.
- B. "Cultural Patrimony" means an object that, according to the customs and traditions of the Tribe, has (1) historical, traditional, or cultural importance central to the Tribe, and (2) cannot be owned, conveyed, or appropriated by any individual.

9-3-5. Non-Probate Assets.

- A. Non-Probate Assets are not covered by this Title.
- B. "Non-Probate Assets" means those rights or interests of a person having beneficial ownership of an asset that passes on the person's death under a written instrument or arrangement existing at the time of decedent's death other than the person's will or by descent and distribution under this Title. "Non-Probate Asset" includes, without limitation, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death bank account, transfer on death security or security account, a conveyance that has been postponed until the death of the person, or a trust that becomes effective or irrevocable only upon the person's death.

IV. TRUST PROPERTY

9-4-1. Applicability.

Chapters V, VI and VII, IX, XII, XIII apply to trust or restricted land within the Reservation and trust personalty. The United States Department of the Interior Office of

Hearings and Appeals shall follow these rules when exercising jurisdiction over estates that include such land and personalty.

V. INTESTATE SUCCESSION OF TRUST PROPERTY

9-5-1. Intestate Succession of Interests in Trust Land of 5% or Greater.

- A. **Surviving Spouse.** If the decedent owns 5% or more in any parcel of trust land and leaves a surviving spouse, the surviving spouse shall receive a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir listed in Subsection 9-5-1(B) below.
- B. **No Surviving Spouse.** If the decedent leaves no surviving spouse, all parcels of trust land described in Subsection 9-5-1(A) are transferred to one or more eligible heirs in the following order:
 - 1. Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - 2. Grandchildren, in equal shares;
 - 3. Great-grandchildren, in equal shares;
 - 4. Parents, in equal shares;
 - 5. Siblings, in equal shares;
 - 6. Tribe, provided an Indian co-owner of a parcel of trust land may acquire an interest that would otherwise descend to the Tribe by paying into the estate of the decedent, before the close of the probate estate, the fair market value of the interest in land; if more than one Indian (including the Tribe) offers to pay for such interest, the highest bidder shall acquire such interest.
- C. **Eligible Heir.** To be eligible to receive trust land, an heir must qualify as one or more of the following:
 - 1. A member of a federally-recognized tribe;
 - 2. A person eligible to become a member of a federally-recognized tribe;
 - 3. A person meeting the definition of "Indian" under the American Indian Probate Reform Act, as amended;
 - 4. A person who owned trust land as of October 27, 2004;

5. A person who co-owns the trust land subject to probate; or
6. A lineal descendant within two generations of decedent.

9-5-2. Intestate Succession of Interests in Trust Land of Less Than 5%.

- A. **Surviving Spouses.** If the decedent owns less than 5% in any parcel of trust land and leaves a surviving spouse who was residing on the property at the time of decedent's death, the surviving spouse receives a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir listed in Subsection 9-5-2(B) below.
- B. **No Residing Surviving Spouse.** If there is no surviving spouse residing on the property at the time of decedent's death, all parcels of trust land in which the decedent owned less a 5% interest are transferred to an eligible heir in the following order:
 1. Oldest surviving child;
 2. Oldest surviving grandchild;
 3. Oldest surviving great-grandchild;
 4. Tribe.
- C. **Renouncement of Rights.** An heir of a trust land interest of less than 5% may agree to renounce that interest so that it instead goes to one of the following:
 1. Any other eligible heir or Indian related to the heir by blood;
 2. A co-owner of the land; or
 3. The Tribe.

9-5-3. Permanent Improvements on Trust Land.

- A. A permanent improvement on trust land shall descend to either:
 1. The eligible heirs who inherit the trust land; or
 2. A person or the Tribe who received the trust land pursuant to a renunciation.

- B. This provision applies even though the permanent improvement is not held in trust.
- C. This provision does not alter or otherwise affect the non-trust status of such improvement.

9-5-4. Trust Personalty.

Trust Personalty shall be distributed in accordance with the American Indian Probate Reform Act, as amended.¹

9-5-5. Inheritance by Adopted Child.

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not

¹ As of July 30, 2014, the American Indian Probate Reform Act provides:

- A. If the decedent leaves a surviving spouse and no eligible heirs, the surviving spouse receives all of the trust personalty.
- B. If the decedent leaves a surviving spouse and one or more eligible heirs, the surviving spouse receives one-third of the trust personalty and the eligible heirs two-thirds of the trust personalty.
- C. If there is no surviving spouse, the trust personalty is transferred in the following order, so long as the recipient is an eligible heir:
 - 1. Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - 2. Grandchildren, in equal shares;
 - 3. Great-grandchildren, in equal shares;
 - 4. Parents, in equal shares;
 - 5. Siblings, in equal shares;
 - 6. Tribe.
- D. If the surviving spouse or heir is an Indian, any trust personalty passing to a surviving spouse is maintained in an Individual Indian Money account by the Secretary. If not Indian, the trust personalty is distributed to the proper recipient.

prevent a biological family from giving or devising property or trust land to his or her biological child who has been adopted out of the family by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

9-5-6. Child Born After Death of Decedent.

A child of decedent born after the death of decedent is considered living at the time of death of decedent.

VI. DISTRIBUTION OF TRUST PROPERTY BY WILL

9-6-1. Distribution of Trust Land By Will.

A. An owner of an interest in trust land may devise trust land to any of the following:

1. Any lineal descendant;
2. Any person who owns an interest in the same parcel;
3. The Tribe; or
4. Any Indian, as defined by the American Indian Probate Reform Act, as amended.

B. The land shall remain in trust status.

C. If the land is devised to a person not eligible under Subsection 9-5-1(C) to hold the land in trust, that person shall hold a life estate without regard to waste and the remainder shall go to the first surviving person or entity on the following list that is an eligible heir as defined by Subsection 9-5-1(C), in the following order:

1. Spouse;
2. Children, in equal shares;
3. Grandchildren, in equal shares;
4. Great-grandchildren, in equal shares;
5. Parents, in equal shares;
6. Siblings, in equal shares;
7. Tribe.

9-6-2. Distribution of Trust Personalty By Will.

- A. Trust personalty may be devised to any person or entity in accordance with the American Indian Probate Reform Act, as amended.
- B. If devised to a Tribe or Indian, the trust personalty shall be managed by the Secretary of the Interior.
- C. If devised to any other person or entity, the trust personalty shall be distributed to that person or entity.

9-6-3. Joint Tenancy Right of Survivorship.

If a testator devises an interest in the same parcel of trust land to more than one person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests devised.

VII. OTHER TRUST PROPERTY RULES

9-7-1. Renunciation or Disclaimer of Interests.

- A. Any person 18 years of age or older may renounce or disclaim an inheritance of trust land or personalty, either in full or subject to the reservation of a life estate interest in land, in accordance with this Section 9-7-1, by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir, devisee or legatee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

- B. Interests in Land. A trust or restricted interest in land may be renounced or disclaimed only if the interest passes in trust status in favor of:

1. An eligible heir; or
2. The Tribe;

and the interest so renounced shall pass to its recipient in trust or restricted status.

- C. Trust Personalty. An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a receiver of such an interest.

- D. Unauthorized Renunciations and Disclaimers. If a renouncement or disclaimer is not made in compliance with this Section 9-7-1, the renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.
- E. Acceptance of Interest. A renunciation or disclaimer of an interest filed in accordance with this Section 9-7-1 shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest.
- F. A renunciation or disclaimer of an interest that is subject to the rules for intestate succession trust land interests of less than 5% may not be in favor of more than one person.

9-7-2. Right to Purchase Trust Land During Probate.

- A. The following may purchase trust land during probate for fair market value:
 - 1. Eligible heirs, as defined in Subsection 9-5-1(C);
 - 2. Any person who owns an interest in the land; or
 - 3. The Tribe, or the Secretary of the Interior on behalf of the Tribe.
- B. Prior to any purchase, there shall be:
 - 1. A bona fide appraisal of the trust land to determine fair market value;
 - 2. Reasonable advance written notice by first class mail of the proposed purchase to the United States Office of Hearings and Appeals, the Tribal President, and any eligible heir or purchaser, stating that the land is available for purchase;
 - 3. Written consent to the purchase from the surviving spouse and any heir who resides on the land;
 - 4. Written consent to the purchase from the surviving spouse and any eligible heir who does not reside on the land if the decedent's ownership interest in the land is 5% or more, there is a valid will addressing disposition of that land, and either the Tribe is the purchaser from a non-Tribal member or the Secretary is the purchaser; and

5. A written request by the purchaser prior to distribution of the interest in land stating the results of the appraisal and providing proof of any required notice and consent.

C. If more than one party requests to purchase the same interest in land, the land shall be sold by public auction or sealed bid after reasonable notice to the Tribal President and all eligible purchasers at no less than fair market value to the purchaser with the highest bid.

D. Proceeds from the sale of interests under this Section 9-7-2 shall be distributed to the devisee, surviving spouse, or eligible heir whose interest was sold in accordance with the amount of their respective interests. The proceeds may be deposited or held in an account as trust personalty if the interest sold would otherwise pass to:

1. The heir, by intestate succession; or

2. The devisee in trust or restricted status.

9-7-3. Tribal Purchase of Trust Land Intended for Non-Indian.

A. Trust land may not be devised to a person who is not a member of a federally-recognized Indian tribe or eligible to be such a member.

B. The Tribe shall acquire the land by paying fair market value for the land to the Secretary of the Interior before the close of the probate proceedings and the Secretary shall transfer the payment to the person or persons who would have received an interest in the land if the interest had not been acquired by the Tribe.

C. Fair market value shall be determined by bona fide appraisal.

D. This Section 9-7-3 shall not apply in the event the non-Indian devisee renounces the trust land interest in favor of an Indian.

E. A person who would have received the interest in the land may retain a life estate in the land without regard to waste.

9-7-4. Consolidation and Partition.

Nothing in this Title shall diminish the rights to enter into consolidation agreements or partition trust property as provided by federal law.

VIII. INTESTATE SUCCESSION OF NON-TRUST PROPERTY

9-8-1. Intestate Succession Rules.

Subject to the provisions of this Title, the portion of the estate of a person dying intestate not covered by Chapter 9-5 shall descend and be distributed as follows:

- A. If the decedent leaves a surviving spouse, the surviving spouse shall receive the entire net estate.
- B. If the decedent leaves children and no surviving spouse, the children shall each take an equal share of the entire net estate. If descendants of a deceased child survive the decedent, the share of that deceased child shall go to his or her descendants by representation.
- C. If the decedent leaves no surviving spouse or children, the entire net estate shall go to the first surviving relative(s) on the following list, in order of priority:
 - 1. Grandchildren, in equal shares;
 - 2. Great-grandchildren, in equal shares;
 - 3. Parents, in equal shares;
 - 4. Siblings, in equal shares;
 - 5. Grandparents, in equal shares;
 - 6. Children of the grandparents, in equal shares.
- D. If the decedent leaves no surviving relatives identified in Subsection 9-8-1(C), the entire net estate shall go to the Tribe.

9-8-2. Inheritance by Child.

For the purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

9-8-3. Inheritance by Adopted Child.

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property to his or her adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

9-8-4. Child Born After Death of Decedent.

A child born after the death of decedent is considered as living at time of the death of decedent.

9-8-5. "By Representation".

Distribution "by representation" in this Title shall be accomplished as follows:

- A. Determine the sum of the children of the decedent who (a) survived the decedent and (b) did not survive the decedent but had descendants who survived decedent;
- B. Divide the estate into equal shares by the sum derived in Subsection 9-8-5(A) above;
- C. The children of the decedent who survived decedent each take the share derived in Subsection 9-8-5(B) above;
- D. The children of the non-surviving child share take equal shares of the non-surviving child's portion of the estate.

IX. WILLS (TRUST AND NON-TRUST PROPERTY)

9-9-1. Who May Make A Will.

Any person of sound mind who is eighteen years of age or older may make a will.

9-9-2. Requirements of Wills.

- A. To be valid and effective, a will must be in writing, dated, and signed by the testator or some other person under the testator's authority and direction in the presence of the testator. The will shall be attested by two or more adult competent witnesses, not having an interest in the testator's estate or in the will, signing their names to the will in the presence of the testator by the testator's direction or request: provided, that a will executed outside the Reservation, in the mode prescribed by applicable law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Tribe.
- B. A will created prior to the date of adoption of this Section 9-9-2 shall not be declared invalid if one or more of the witnesses to the will have an interest in the testator's estate or in the will.

9-9-3. Self-Proven Will At Time of Execution and After Execution.

- A. A will may be simultaneously executed, attested, and made self-proved by acknowledgment by the testator and affidavits of the witnesses, each made

before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal in substantially the following form:

I, _____, swear or affirm under penalty of perjury that, on the ___ day of _____, 20___, I requested _____ and _____ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator

We, _____ and _____, swear or affirm under penalty of perjury that on the ___ day of _____, 20___, _____ of the State of _____, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 20___.

(SEAL.)

(Signed) _____
(Official capacity of officer)

- B. An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the jurisdiction in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

NORTHERN CHEYENNE INDIAN RESERVATION

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare that _____ requested ___ and ___ act as witnesses to testator's will; that testator declared to them that the document was testator's last will; that testator signed the will in the presence of both witnesses; that they signed the will as witnesses in testator's presence and in the presence of each other; that the will was read and explained to testator (or read by testator), after being prepared and before testator signed it, and it clearly and accurately expresses testator's wishes; and that testator willingly made and executed the will as testator's free and voluntary act for the purposes expressed in the will.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 20__.

(SEAL)

(Signed) _____
(Official capacity of officer)

9-9-4. Holographic Will.

A will which does not comply with Section 9-9-2 is valid as a holographic will if:

- A. The testator was 18 years or older and of sound mind at the time of the will's creation;
- B. The material provisions are in the handwriting of the testator;
- C. The will is signed by the testator; and
- D. The testator intended that the document will dispose of his or her property after death.

9-9-5. Codicil.

- A. A codicil may replace, in whole or in part, a prior will.
- B. A codicil need not refer to or be attached to the prior will.

9-9-6. Revocation of Will.

A will, or any part thereof, shall be revoked and of no effect by:

- A. A subsequent valid will that revokes the previous will, or part of that will, expressly or by inconsistency; or
- B. Destruction of the will with the intent of revoking the will, by the testator or by anyone in the presence and by the direction of the testator.

9-9-7. Subsequent Divorce of Testator.

Unless a will specifically provides otherwise, a lawful divorce, subsequent to the making of a will, shall render the will revoked as to the divorced spouse.

9-9-8. Spouse After Will Created.

- A. If the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in the testator's estate that the spouse would have received if the testator had died intestate unless:
 1. It appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;
 2. The will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or
 3. The testator provided for the spouse by a transfer of funds or property outside the will and an intent that the transfer be in lieu of a testamentary

provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

- B. This Section 9-9-8 shall not apply to an interest in trust land where the spouse of a testator is not an Indian as defined by 25 U.S.C. § 2201(2).

9-9-9. Omitted Spouse.

- A. If the surviving spouse is omitted from the will of the testator, the surviving spouse shall receive the intestate share in the testator's estate that the spouse would have received if the testator had died intestate if:

1. The testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;
2. The testator and surviving spouse have a surviving child who is the child of the testator;
3. The surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust land in such estate; or
4. The surviving spouse is under a binding obligation to continue making loan payments for the trust land for a substantial period of time.

- B. This Section 9-9-9 shall not apply if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of share of the estate outside of the will.

9-9-10. Death of Related Devisee or Legatee Before Testator.

Unless a will specifically provides otherwise, if an heir that is related to the testator is named in a will but predeceases the testator, then the descendants of that heir take that heir's interest by representation.

9-9-11. Omitted Children.

- A. Unless a will specifically provides otherwise, any children of the testator born or lawfully adopted after the execution of the will not named specifically or by reference to a class described as the children, descendants, or issue of the decedent or words of similar import, are referred to in this Section 9-9-11 as an "omitted child," and shall receive a share of the estate as provided in this Section 9-9-11 so long as such child lives 120 hours after its birth.
- B. If the testator had no living child when the testator executed the will, an omitted child shall receive a share of the estate equal to the value of the share

of the estate the omitted child would have received had the testator died intestate.

- C. If the testator had one or more children living when the testator executed the will and the will devised property to one or more of the then-living children, an omitted child is entitled to a share of equal value to the shares received by the children to whom devises were made under the will unless the testator provided for the omitted child by transfer outside the will and the testator's intent to omit the child is established by statements of the testator, based on the amount transferred to the omitted child, or other evidence.

9-9-12. Rules for Interpretation of Wills.

Unless there is clear evidence of contrary intent, wills shall be construed as follows:

- A. A will shall apply to all real and personal property and trust land which the testator owned at death;
- B. A transfer by will of a trust interest in land shall be presumed to include the interest of testator in any permanent improvements attached to that land;
- C. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships;
- D. A transfer by will of a trust interest in land or an interest in trust personally to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family" shall mean those persons, including the spouse, who would be entitled to take under the provisions of this Title for non-testamentary disposition as of the date of the testator's death;
- E. If a family cemetery plot owned by the testator in trust or restricted status at his or her death is not mentioned in the decedent's will, the ownership of the plot shall descend to his or her heirs as if he or she had died intestate.

9-9-13. Duty to Present Will for Probate.

A custodian of a will shall deliver the will to the Tribal Court within 30 days after receipt of information that the maker thereof is deceased. The custodian shall also deliver the will to the Northern Cheyenne Agency of the Bureau of Indian Affairs.

X. TRIBAL COURT PROBATE PROCEEDINGS (NON-TRUST PROPERTY)

9-10-1. Intent of Testator Controlling.

- A. During probate proceedings, the Tribal Court shall give effect to the intent of the testator as expressed in the will or other admissible evidence in all matters unless prohibited by law.
- B. Notwithstanding Subsection 9-10-1(A), a person who is related to the decedent through two lines of relationship is entitled to only a single share in the decedent's estate based on the relationship that would entitle such person to the larger share.

9-10-2. Initiation of Probate Proceedings — Personal Representative.

At any time after the death of a person subject to this Title, any person may initiate the probate of the decedent's estate by filing a petition for probate with the Tribal Court containing:

- A. The name of the decedent;
- B. The decedent's enrollment status with the Tribe or other tribe;
- C. The decedent's date of death;
- D. A certified copy of the decedent's death certificate;
- E. The names and addresses of the decedent's surviving family to the extent such information is known to the petitioner;
- F. The original or a true and correct copy of any will found or document alleged to be the last will of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence;
- G. If the decedent left a will, the names and addresses of the beneficiaries under the will;
- H. A general description of the decedent's estate subject to probate in Tribal Court, and a general description of those portions of the decedent's estate, if any, not subject to probate in the court, including, but not limited to any interests in trust or restricted property;
- I. Proof of service of the petition on the Tribal President;
- J. Any other information about the estate or other relevant information that may be necessary to establish that the court has jurisdiction over the probate proceedings;
- K. A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and case number of the other proceedings,

and the name and address of the personal representative or similar person appointed in such proceedings;

- L. A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative including, without limitation, relation to the decedent;
- M. If the will is available, a request for approval of the will of the decedent;
- N. If a will is not available, a request that the court find that the decedent died without a valid will; and
- O. A verification signed under penalty of perjury by the petitioner that the contents of the petition are true and correct.

Items D and F above may be provided at the time of filing the petition or as soon as practicable thereafter.

9-10-3. Purpose and Qualifications of Personal Representative and Special Administrator.

- A. The purpose of a personal representative is to vest one or more persons with the responsibility and authority to settle the decedent's estate in accord with the decedent's will, if any, and applicable law. In the event a personal representative is not available and the decedent's estate must be administered to avoid loss, waste, or depreciation of property of the decedent's estate, a special administrator may be appointed by the court.
- B. A personal representative must be at least 18 years old and legally competent. Persons who have been convicted of any felony or of a misdemeanor involving moral turpitude may not serve as personal representative or special administrator. A special administrator may not be an heir or named beneficiary of decedent's estate. More than one person may serve jointly as personal representative or special administrator.
- C. The provisions of this Title that apply to personal representatives apply equally to special administrators.

9-10-4. Appointment of Personal Representative.

- A. The personal representative shall be the person named to serve as personal representative in the decedent's will unless:
 - 1. The named person does not meet the requirements of Section 9-10-3; or
 - 2. The named person refuses to serve as personal representative.

B. If a personal representative is not qualified or not willing to serve as personal representative, then a personal representative should be appointed in the following order:

1. The surviving spouse of decedent or such person as the surviving spouse may request to be appointed;
2. A child or children of decedent;
3. A parent of decedent;
4. A sibling or siblings of decedent;
5. One or more of the beneficiaries or transferees of the decedent's probate or non-probate assets under the jurisdiction of the court or the United States Department of the Interior Office of Hearings and Appeals.

If none of the above is able or willing to serve as personal representative, the court shall appoint a person who meets the requirements of Section 9-10-3.

9-10-5. Removal After Appointment.

- A. If, at any time after the Letters of Administration have been issued, a personal representative does not meet the requirements of Section 9-10-3, the court shall revoke his or her Letters of Administration.
- B. The Letters of Administration may be revoked by the court for any good cause.

9-10-6. Powers and Duties of Personal Representative.

The personal representative shall have the following powers and duties:

- A. To act in a fiduciary capacity in the name of the estate, subject to applicable orders of the court, provide notice of creditors and settle any claim against the estate as provided in Chapter 9-11, collect any debts owed to the estate, initiate or defend any litigation involving the estate, and distribute the assets of the estate;
- B. To avoid any conflict of interest between the personal interests of the personal representative and the interests of the estate by always placing the interests of the estate ahead of such personal interests; provided, however, that no person shall be disqualified from serving as personal representative because the personal representative may be an heir or beneficiary of the estate;
- C. To take possession and control of all of decedent's assets subject to the probate jurisdiction of the court, and preserve such assets for the benefit of the estate;

- D. To give all notices to family members, heirs, beneficiaries, government agencies, or creditors as required or allowed by this Title;
- E. To request to receive reasonable compensation in an appropriate amount given the nature and amount of services required by the personal representative and size of the estate; and
- F. To exercise any power granted by the decedent's will or by order of the court.

9-10-7. Bond.

The personal representative shall serve without bond, unless a bond is required by the terms of decedent's will or the court. A bond shall be in the amount deemed reasonable by the court in relation to the value of the estate.

9-10-8. Initial Hearing; Order Initiating Probate; Appointment of Personal Representative and Letters of Administration.

- A. Within 30 days of the filing of a petition for probate, or as soon as practicable thereafter, the court shall hold a hearing to consider:
 - 1. Initiating probate proceedings;
 - 2. Appointing a personal representative;
 - 3. Issuing Letters of Administration; and
 - 4. Whether decedent left a valid will or died intestate.
- B. If the petition and other evidence before the court are sufficient to support the jurisdiction of the court, the court shall enter an order initiating probate of the decedent's estate. Such order shall either establish and initiate probate of decedent's will, or shall conclude that the decedent died intestate. In the absence of an original will, the court may permit a true and correct copy of a will to be probated if it finds that the will is valid by a preponderance of the evidence.
- C. Following the conclusion of the hearing and order initiating probate, the court shall issue Letters of Administration conferring the powers and duties of the personal representative on the petitioner or another person.

9-10-9. Form of Letters of Administration.

Letters of Administration shall be signed by the court under the seal of the court, and shall be substantially in the following form:

Whereas (name of decedent) of (address of decedent) died on or about the _____ day of _____, _____, leaving at the time of (his/her) death property in this jurisdiction subject to administration.

Now, therefore, this court hereby appoints _____ as personal representative of said estate, and whereas said personal representative is duly qualified, the court hereby authorizes the personal representative to administer the estate according to law. Witness my hand and the seal of said court this _____ day of _____ 20__.

Before Letters of Administration are issued, the appointed personal representative must take and subscribe an oath that the duties and responsibilities as personal representative will be performed according to law before a clerk of the court or some other person authorized to administer oaths.

9-10-10. Notice of Appointment as Personal Representative, Pendency of Probate — Proof by Affidavit.

- A. Within 20 days of appointment, the personal representative shall serve written notice of appointment and the pendency of probate proceedings to each heir, devisee, and legatee of the estate whose name and address are known to him or her. Such notice shall include a copy of the court's order determining whether the decedent died testate or intestate.
- B. Proof of such service shall be made by affidavit or declaration under penalty of perjury and filed with the court.

9-10-11. Inventory and Appraisalment.

- A. Within 90 days of appointment, the personal representative shall file with the court an inventory in the form of an affidavit listing all property of the estate passing under the will or by laws of intestacy which is in the possession or knowledge of the personal representative.
- B. The inventory shall provide the appraised value of each item as of the date of decedent's death, and all encumbrances, liens, or other secured charges against any item and all other debts. Such property and debts shall be classified as follows:
 - 1. Real property, by legal description;
 - 2. Leases, including without limitation leases of personal property on trust land not disposed of by the United States Department of the Interior Office of Hearings and Appeals;
 - 3. Stocks and bonds;

4. Bank accounts and money;
5. Furniture and household goods;
6. All other personal property, including without limitation the decedent's non-probate assets and any share in any business, but no inventory of the business property shall be required; and
7. Mortgages, liens, notes, and other written evidences of debt, which shall be listed with the property the debt is associated with, and otherwise listed separately.

- C. The appraised value may be an estimated value so long as there is a rational basis. A formal appraisal is not required, but may be ordered by the court.
- D. Notice of the filing of the inventory shall be served on each heir, devisee, legatee, creditor, and the Tribal President.
- E. If the personal representative obtains knowledge of any additional property of the estate, the inventory shall be amended and the procedures in this Section 9-10-11 shall be completed within 30 days of acquiring such knowledge.

9-10-12. Summary Probate of Small Estates.

- A. An estate with an appraised value which does not exceed \$10,000 and which is to be inherited through the rules of intestacy or by devise exclusively by a surviving spouse and/or minor children of the decedent shall be exempt from the claims of all general creditors and the probate thereof may be expeditiously processed as provided in this Section 9-10-12.
- B. Upon petition of the personal representative, the court shall enter an order stating that it appears, from the inventory and appraisal filed with the court, that the value of the estate does not exceed \$10,000 and that such estate is to be inherited exclusively by the surviving spouse and/or minor children of the decedent, and shall set a hearing to allow interested persons, if any, to object to declaring the estate exempt from the claims of all general creditors and distributing the estate to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given by posting a true and correct copy of such order in the Northern Cheyenne Tribal Building, and by sending a true and correct copy of such order by certified mail to all persons the personal representative has reason to believe is an heir, devisee, or legatee of the decedent or creditor of the estate. Such notice shall be posted or mailed not less than 10 days before the time set for such hearing. On or before the time set for such hearing, the personal representative shall file his or her affidavit with the court indicating compliance with this notice requirement.
- C. If, upon such hearing, the court finds that such estate is an exempt estate, the court shall enter an order directing: (1) the personal representative to

distribute such estate to the surviving spouse and/or minor children of the decedent as set forth in the order; (2) that no further proceedings are necessary; and (3) that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the court, the estate shall be closed and the personal representative discharged.

9-10-13. Sale of Estate Property.

- A. No sale of any property of an estate is valid unless made pursuant to an order of the court.
- B. After filing the inventory and appraisal and before full distribution of the estate, the personal representative may petition the court for authority to sell property of the estate for purposes of paying the expenses of last illness and burial of decedent, estate administration, claims against the estate, distribution, or any lawful purpose in the best interest of the estate, heirs, devisees, or legatees. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.
- C. The personal representative shall comply with the requirements with respect to the sale of trust land set forth in Sections 9-7-2 and 9-7-3.

9-10-14. Interim Reports of Personal Representative.

- A. Within 180 days of appointment, and each 180 days thereafter, and more frequently if necessary or required by the court, the personal representative shall file with the court a report on the estate signed under penalty of perjury. Such report shall contain:
 - 1. The claimant, amount, and nature of any claims filed against the estate;
 - 2. Whether such claims have been allowed or rejected;
 - 3. Whether any property of the estate has been sold, mortgaged, leased, or exchanged, and the purpose of such action, such as to pay debts or settle obligations against the estate, pay expenses of administration, or an allowance to an heir, devisee, or legatee;
 - 4. A detailed statement of the amount of property, real and personal, of the estate;
 - 5. A detailed statement of all sums collected, and of all sums paid out, on behalf of the estate, including documentation to support all sums paid out; and
 - 6. Any other information necessary to fully show the condition and affairs of the estate.

- B. The personal representative shall serve the report on all heirs, devisees, and legatees of the estate.

9-10-15. Final Report and Petition.

When the affairs of an estate have been fully administered, the personal representative shall file a final report and petition with the court, signed under penalty of perjury, which states:

- A. The information listed in Section 9-10-14 not included in a prior interim report;
- B. That all claims against the estate have been paid; or that all such claims have been paid except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay all such remaining claims;
- C. The amount and recipients of funds expended, with documentation supporting each such payment;
- D. That there is nothing further to be done in the administration of the estate except as shown in the final report;
- E. The remaining assets of the estate, including unexpended and unappropriated funds, at the time of filing the final report;
- F. The proposed determination of heirs, devisees, and legatees, indicating the names, ages, addresses, and relationship to the decedent of each distributee and the proposed share and value thereof which each is to receive;
- G. A request for reasonable compensation to be paid to the personal representative, if any, as provided in Subsection 9-10-6(E); and
- H. A request that the court set a hearing to approve the final report, to determine the heirs, devisees, and legatees of the decedent and the share each is to receive, if any.

9-10-16. Order Setting Hearing to Approve Final Report and Determine Distribution of the Estate.

Upon filing the final report and petition, the court shall set a hearing for objections to the approval of the personal representative's final report.

9-10-17. Notice of Hearing Final Report and to Determine the Distribution of the Estate.

The personal representative shall serve a true and correct copy of the order setting hearing to approve the final report, the final report, and the petition on the Tribal President and on each heir, devisee, and legatee of the decedent at their last known

address. On or before the time set for such hearing, the administrator shall file a certificate of service with the court.

9-10-18. Hearing on Final Report and Determining the Distribution of Estate.

On or before the time set for such hearing, any heir, devisee, or legatee, or other person having an interest in the distribution of the estate, may file an objection to the final report, or to the proposed determination of the heirs, devisees, or legatees, or to the proposed share each is to receive, stating the objections with specificity. The court shall consider all evidence relevant to the objection and shall make a determination.

9-10-19. Order Allowing Final Report and Order of Distribution.

After the hearing upon the final report, the court shall enter an order:

- A. Allowing the final report, either in whole or in part, as may be just and proper; and directing the personal representative to appropriate and expend funds to pay unpaid claims, charges, or allowances against the estate as shown in the final report which have been approved;
- B. Determining the decedent's heirs, devisees, and legatees, indicating the names, ages, and addresses of each, and the share of the remaining estate which each is to receive; and
- C. Directing the personal representative to distribute such share or shares to the distributees entitled thereto.

9-10-20. Petition to Close Estate.

When the estate is ready to be closed, the personal representative shall petition the court for an order closing the estate, discharging the administrator, and discharging the bond, if any. Such petition shall be accompanied by documentation supporting any sums paid since the order approving the final report and shall include a signed receipt for distributive share from each of the distributees named in the order of distribution.

9-10-21. Order Closing Estate.

Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and discharging the administrator and the bondsman, if any.

XI. TRIBAL COURT CLAIMS AGAINST ESTATE (NON-TRUST PROPERTY)

9-11-1. Notice to Creditors.

- A. Unless it is determined by the court that the estate is exempt from the claims of creditors, the personal representative shall promptly give notice to the

public, the Tribal President, and any known creditors of decedent for presentation of their claims against the decedent's estate which states:

1. The name, date of death, and resident address of the decedent at the time of his or her death;
 2. The dates upon which the first notice was published and posted;
 3. That all persons having claims against the estate are required to present such claims to the personal representative of the estate, at a stated address, and file the claim with the court within 90 days after the first notice is given;
 4. That a claim must include the name and address of the claimant, a statement of the facts or circumstances constituting the basis of the claim, any available documents evidencing the claim, and the amount of the claim; and
 5. That, in the event no such claim is presented, it will be forever barred.
- B. Such notice shall be given by:
1. Publishing the notice in two consecutive issues of a Tribal news publication, or if there is no Tribal news publication, a news publication of general circulation adjacent to the Reservation;
 2. Posting the notice in the Northern Cheyenne Tribal Building and public places in three communities of the Reservation for a period of not less than 30 days; and
 3. Delivering a copy of the notice to the Tribal President and any known creditor.

Each of the above notices must be initiated within 30 days of the appointment of the personal representative. Before the expiration of the 90-day period, the personal representative shall file with the court a declaration and the notice showing compliance with this Section 9-11-1.

9-11-2. Allowance or Rejection of Claims — Notice.

- A. The personal representative shall allow or reject, in whole or in part, all claims against the estate timely presented. Within 30 days of receipt of the claim, the personal representative shall provide notice to the claimant at the address stated on the claim setting forth whether the claim has been allowed or rejected.
- B. If the personal representative rejects the claim or fails to notify the claimant of the allowance or rejection of the claim within 30 days of the personal

representative's receipt of the claimant's notice, the claimant may petition the court as provided in Section 9-11-3.

- C. The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.
- D. Within 10 days of allowing or rejecting any claim, the personal representative shall file with the court and serve on any known heirs, devisees, legatees, and creditors a notice setting forth the claims allowed or rejected and stating that the claimant must bring a petition for allowance of the claim in the probate action within 30 days after notification of rejection or the claim will be forever barred.
- E. To the extent there are sufficient assets of the estate, allowed claims may be paid by the personal representative, without court order, in the order provided in Section 9-11-4 20 days after providing notice to any known heirs, devisees, legatees, and creditors, unless otherwise ordered by the court.

9-11-3. Challenging Rejection of Claims.

If the personal representative rejects a claim against the estate, in whole or in part, or fails to respond to a claim within 30 days of receipt of the claimant's notice, the claimant must bring a petition for allowance of the claim in the probate action within 30 days of notification of rejection or the claim is forever barred.

The court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected.

9-11-4. Order of Payment of Debts.

After payment of costs of estate administration, the claims against or debts of the estate shall be paid in the following order:

- A. Funeral expenses, including a reasonable amount for the cost of a monument;
- B. Claims of the Tribe; and
- C. All other claims.

9-11-5. Judgment Against Decedent — Execution Barred Upon Decedent's Death — Presentation.

If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a claim as provided in this Chapter 9-11.

9-11-6. Secured Claim — Creditor's Right.

If a creditor's claim is secured by any property of the decedent, the creditor may realize on the creditor's security, whether or not the creditor presented the claim as provided in this Chapter 9-11.

9-11-7. Miscellaneous Claim Provisions.

- A. The time limitations for presenting claims do not accrue to the benefit of any liability or casualty insurer.
- B. This Section 9-11-7 does not serve to extend any applicable statutes of limitations.

XII. HEIRSHIP BY KILLING (TRUST AND NON-TRUST PROPERTY)

9-12-1. No Acquisition of Property By Killing.

- A. An "heir by killing" means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.
- B. No heir by killing shall in any way acquire any interests in the decedent's property, but such property shall pass in accordance with this Chapter 9-12.
- C. The heir by killing shall be deemed to have predeceased the decedent as to the decedent's property which would have passed in any manner or form from the decedent or his or her estate to such heir.

9-12-2. Disposition of Joint Interests and Life Estates.

- A. Any property held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.
- B. Any property held jointly by 3 or more persons, including both the heir by killing and the decedent, and any income which would have accrued to the heir by killing as a result of the death of the decedent, shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.
- C. Notwithstanding any other provision of this Section 9-12-2, the decedent's property that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his or her estate. The remainder of the

interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

- D. If decedent's estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

9-12-3. Preadjudication Rule.

- A. If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any state, with voluntary manslaughter or homicide in connection with a decedent's death, then any real or personal property or trust land that would otherwise pass to that person from the decedent's estate shall not pass or be distributed until the charges have been resolved in accordance with the provisions of this Section 9-12-3.
- B. Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such real or personal property or trust land shall pass as if no charge had been filed or made.
- C. Upon conviction of such person, and the exhaustion of all appeals, if any, such real and personal property and trust land shall pass in accordance with this Section 9-12-3.
- D. This Section 9-12-3 shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his or her own wrong.

XIII. GENERAL PROVISIONS

9-13-1. Effective Date.

This code will be effective the earlier of either: (A) 180 days after it is approved by the Secretary of the Interior; or (B) if the Secretary of the Interior fails to approve or disapprove this code within 180 days, 181 days after it was submitted for such approval.

9-13-2. Applicability.

This code only applies to the estate of a decedent who dies on or after the effective date of this code.

9-13-3. Appeals.

Appeals from any order of the Tribal Court issued under this Title shall be made in accordance with the Appellate Procedures of the Northern Cheyenne Tribe.

9-13-4. Repealing Prior Inconsistent Enactments.

Any prior enactment by the Northern Cheyenne Tribal Council which is found to be inconsistent with this Title is hereby repealed.

9-13-5. Severability.

If any provision of this Title or its application to any person or circumstances is held invalid, the remainder of this Title or the application of the provision to other persons or circumstances is not affected.



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

AUG 18 2014

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Resolution No. DOI-128 (2014) enacted by the Council on July 30, 2014 and received in this office on August 13, 2014.

Resolution No. DOI-128 (2014) – approving new Northern Cheyenne Probate Code.

Resolution No. DOI-128 (2014) is hereby noted. The new probate code will be forwarded to the Secretary of Interior for review and action. When we receive a response we will return the documents to the tribe for their records.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Superintendent

Enclosure