

INHERITANCE CODE

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

INHERITANCE CODE

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INHERITANCE CODE

SECTION 1.01. TITLE

This Code shall be known as the Inheritance Code of the Confederated Tribes of the Umatilla Indian Reservation ("Confederated Tribes").

SECTION 1.02. DECLARATION OF PURPOSE

The Confederated Tribes does hereby find and declare:

- A. The Umatilla Indian Reservation was established as the permanent homeland of the Confederated Tribes by the Treaty of 1855 between the United States and the Cayuse, Umatilla and Walla Walla Tribes;
- B. That the preservation of the land base of the Confederated Tribes is critical to the vitality of the economy and sovereignty of the Confederated Tribes;
- C. Because of the Federal Allotment Policy and the subsequent transfers of allotted lands, only one-third (1/3) of the lands within the original Reservation created by the Treaty of 1855 remains in trust status;
- D. The Confederated Tribes are dedicated to the policy of restoring lands within the Umatilla Indian Reservation to trust status and to insuring that those Reservation lands currently in trust status do not leave trust status upon the death of their current owners;
- E. A large portion of trust lands on the Umatilla Indian Reservation are owned by non-member Indians which deprives the Confederated Tribes from exercising control over its Reservation in a similar manner as neighboring treaty tribes;
- F. The transfer of trust lands by tribal members and other owners of trust lands upon their death either by devise or descent to persons who are not enrolled members of the Confederated Tribes is inconsistent with the economic well-being and future prosperity of the Confederated Tribes;
- G. The Confederated Tribes seeks to encourage and consolidate Tribal member ownership of trust lands on the Umatilla Indian Reservation;
- H. Pursuant to Article II of the Confederated Tribes Constitution and By-Laws "The purpose and powers of the Confederated Tribes shall be, within law, to exercise and protect all existing and future tribal rights arising from any source whether treaty, federal statute, state statute, common law, or otherwise; to achieve a maximum degree of self-government in all tribal affairs; and to protect and promote the interests of the Indians of the Umatilla Indian Reservation;
- I. Pursuant to Article VI, Section 1(b) of the Confederated Tribes' Constitution and By-Laws, the Board of Trustees has the power to "manage all affairs of the Confederated Tribes, including the administration of tribal lands, fund, timber and other resources . . .;"
- J. Pursuant to Article VI, Section 1(e) of the Confederated Tribes' Constitution and By-Laws, the Board of Trustees has the power to "exercise any rights and powers heretofore vested in the Confederated Tribes, but not expressly referred to in this Constitution, or any powers that may in the future be delegated by any agency of local, state or Federal government."

SECTION 1.03. EFFECTIVE DATE AND APPLICATION OF CODE

This Code shall become effective 180 days after the date of approval by the Secretary of the Interior or his designee pursuant to 25 U.S.C. § 2205(b)(3). The provisions of this Code shall apply to all estates of decedents whose deaths occur on or after the effective date of this Code.

SECTION 1.04. DEFINITIONS

- A. Ineligible Devisee – a person named in a will to receive trust lands within the Umatilla Indian Reservation who is not an enrolled member of the Confederated Tribes.
- B. Ineligible Heir – a person who is an heir at law to trust lands within the Umatilla Indian Reservation who is not an enrolled member of the Confederated Tribes.
- C. Lineal Descendant – a person who descends in a direct line from the decedent, such as a child or grandchild.
- D. Enrolled Member of the Confederated Tribes – a person who has been enrolled as a member of the Confederated Tribes by the Tribal Enrollment Officer pursuant to the Tribal Enrollment Code and the enrollment criteria set forth in Article IV of the Confederated Tribes Constitution, as amended.
- E. Indian – shall have the meaning as set forth in 25 U.S.C. § 2201(2).

SECTION 1.05. POLICY AGAINST TRANSFER OF TRUST LANDS TO NON-MEMBERS OF THE CONFEDERATED TRIBES

- A. Policy. The Confederated Tribes hereby declares its intent to exercise the full scope of its authority under the Indian Land Consolidation Act, Public Law 97-459, 25 U.S.C. § 2201 et seq., as amended. Accordingly, the Confederated Tribes hereby exercises its right to prevent the transfer of trust lands within the Umatilla Indian Reservation to Ineligible Devisees by devise and to Ineligible Heirs by descent as permitted by this Code and federal law.
- B. Report to Board of Trustees. Whenever a person owning trust lands within the Umatilla Indian Reservation dies and the probate of the decedent's trust estate implicates the rights of the Confederated Tribes under this Code, the Tribal Land Acquisition Coordinator, or such other Tribal official as the Board of Trustees may designate, shall prepare a report to the Board of Trustees setting forth the following information:
 - 1. Name and Tribal enrollment status, if any, of the decedent.
 - 2. Whether decedent left a will.
 - 3. The identity and tribal affiliation of persons named in decedent's will or heirs of the decedent.
 - 4. The extent, interest and nature of trust lands located within the Umatilla Indian Reservation owned by decedent at the time of his/her death.
 - 5. A concise economic summary of the value of the lands or any special treaty or cultural significance of such lands.

In the preparation of the report required by this subsection, the Tribal Land Acquisition Coordinator shall consult with and receive the assistance of the Tribal Planning, Enrollment and Economic and Community Development Programs.

- C. Board of Trustees' Determination.
 - 1. Authorization. Upon the death of any person owning an interest in trust lands located within the Umatilla Indian Reservation, this Code will govern the probate of such person's trust estate, subject to applicable Federal law.
 - 2. Ineligible Devisee Inheritance of Trust Land. If a decedent dies testate and the will provides for an Ineligible Devisee to inherit trust or restricted land within the Umatilla Indian Reservation, the Board of Trustees is hereby authorized to prevent the transfer

to the Ineligible Devisee only if it pays the fair market value to the Office of Special Trustee, or its successor agency, as determined by the Secretary as of the date of the decedent's death, on behalf of the Ineligible Devisee, as provided in paragraph 4 of this subsection, provided that:

- a. If the Ineligible Devisee is the surviving spouse of the decedent, the surviving spouse shall have the right to elect to take the provisions as made in the decedent's will or to take a life estate interest in one half of the decedent's interest(s) in trust lands as provided by Federal law at 92 Stat. 202; and
- b. If the Ineligible Devisee is an Indian and a lineal descendant of the decedent, such person can take a life estate without regard to waste in such trust lands.

To prevent the transfer, the Confederated Tribes must file a Notice to Purchase as provided in paragraph 5 of this subsection. Any Ineligible Devisee who is a surviving spouse or an Indian lineal descendant of such decedent electing to take a life estate in such interests shall be subject to paragraph 7.a of this subsection.

3. **Ineligible Heir Inheritance of Trust Land.** If a decedent dies intestate without a will governing the disposition of his/her interest in the trust or restricted land within the Umatilla Indian Reservation, the Board of Trustees is hereby authorized to prevent the transfer to the Ineligible Heir at law only if it pays fair market value to the Office of Special Trustee, or its successor agency, determined by the Secretary as of the date of the decedent's death, on behalf of the Ineligible Heir as provided in paragraph 4 of this subsection. To prevent the transfer, the Confederated Tribes must file a Notice of Purchase as provided in paragraph 5 of this subsection. Any Ineligible Heir who is a spouse of such decedent who would otherwise be an heir at law to such interests in trust or restricted land may retain, at his/her option, a life estate in one half of such interests.
4. **Payment of Fair Market Value.** Upon conclusion of the probate hearing on the decedent's estate, a transfer of trust lands to an Ineligible Devisee or Ineligible Heir may be prevented pursuant to this Code by the Confederated Tribes paying to the Office of Special Trustee, or its successor agency, on behalf of the heirs(s) or devisee(s), the fair market value of the interests in trust lands as determined by the Secretary as of the date of the decedent's death. The Confederated Tribes shall make this payment within sixty (60) days of the date of the Notice of Purchase filed under paragraph 5 of this subsection.
5. **Notice and Publication.** In order for the Confederated Tribes to exercise its option to prevent a transfer of trust lands to an Ineligible Devisee or Ineligible Heir, the Confederated Tribes shall file a written notice of purchase with the Superintendent of the Umatilla Agency, together with certification by the Confederated Tribes that copies of the Notice of Purchase have been mailed on the same date to the Administrative Law Judge presiding over the probate and the affected heir(s) or devisee(s). The Notice of Purchase may be filed in the probate hearing or within sixty (60) days after the date of the probate decision or within twenty (20) days from the date of the decision on rehearing or hearing, unless and until the filing deadlines set forth herein are superseded by applicable Federal regulation or by an order issued by a court of competent jurisdiction. Notice of the Board of Trustees' action to prevent a transfer of trust lands pursuant to this Code, the amount of fair market value paid and a legal description of the subject trust parcel shall be published in the Confederated Umatilla Journal as soon as practicable.
6. **Appeal of Fair Market Value Determination.** Any interested party may protest the fair market value determination of the Secretary pursuant to paragraph 4 of this section by filing a demand for a hearing in accordance with the procedures set forth in 43 C.F.R. § 4.305, which are hereby incorporated into this Code.

7. Protection of Decedent's Spouse or Indian Lineal Descendant.
 - a. Any Ineligible Devisee who is a spouse or an Indian lineal descendant of such decedent, who would have taken such interest in land under the decedent's will in the absence of this Code, may retain at his/her option, a life estate in such interest as set forth in paragraph 2 of this subsection. In the event a life estate is retained as provided therein, the fair market value paid by the Board of Trustees shall be reduced by the value of the life estate.
 - b. Any Ineligible Heir who is a spouse of such decedent, who would have taken such interest in land by intestacy in the absence of this Code, may retain at his/her option, a life estate in one half of such interests. In the event a life estate is retained as provided therein, the fair market value paid by the Board of Trustees shall be reduced by the value of the life estate.
- D. Use of Tribal Funds to Purchase Lands. The Board of Trustees shall use available and/or appropriated tribal funds to purchase trust lands pursuant to this Code as deemed appropriate by the Board.
- E. Tribal Member Right to Purchase.
 1. Eligibility Requirements. Any member of the Confederated Tribes owning an interest in a trust land parcel where the Confederated Tribes has filed a Notice of Purchase pursuant to Sections 1.05(D)(2), (3) and/or (5) of this Code may purchase such lands in the place of the Confederated Tribes if:
 - a. The member of the Confederated Tribes own an interest in the subject trust parcel on the date of death of the decedent;
 - b. The eligible member of the Confederated Tribes files his/her notice of intent to purchase the interest in the subject trust parcel with the Secretary of the Board of Trustees within 30 days after publication of the purchase by the Confederated Tribes in the Tribal newspaper; and
 - c. The eligible member of the Confederated Tribes' right to purchase under this subsection shall be subject to the requirement that the fair market value of the interest in trust lands as determined by the Secretary must be paid as set forth in Section 1.05(C)(4) of this Code, and shall be subject to the rights of the surviving spouse and Indian lineal descendant set forth in Section 1.05(C)(2), (3) and (7).
 - d. The eligible member of the Confederated Tribes deposits payment in the amount equal to the fair market value of the subject trust parcel, or interest therein, with the BIA Umatilla Agency Superintendent which payment shall be accompanied by the identification of the decedent, the probate case number and the trust parcel in question. The eligible member must make the full payment for the subject trust parcel, or interest therein, within 60 days of filing its notice of intent to purchase. In such an event, the eligible member shall be authorized to acquire the interest in the subject trust parcel in the place of the Confederated Tribes.
 2. Resolution of Multiple Claims. In the event that more than one eligible Tribal member file claims to acquire the interest of the Confederated Tribes pursuant to this subsection, the competing claims shall be resolved as follows:
 - a. The eligible Tribal member who is the closest relative to the decedent shall have the first right to acquire the interest in the subject parcel. For purposes of this subsection, the priority of relation to the decedent shall be determined in

accord with the applicable law of intestacy (i.e., spouse, offspring, parents, siblings, etc.).

- b. In the event that competing claims pursuant to this subsection are filed by eligible Tribal members possessing the same degree of relationship to the decedent, the Board of Trustees shall provide the competing claimants 30 days to resolve their competing claims as the claimants deem appropriate. In the event that claimants are unable to mutually agree on a resolution, the decision on the competing claims will be rendered by the Board of Trustees in its own discretion.

SECTION 1.06. RIGHT TO RENOUNCE

Any Ineligible Devisee or Ineligible Heir shall have the right to renounce his or her devise or descent of trust land within the Umatilla Indian Reservation in favor of a person or persons who are enrolled members of the Confederated Tribes, provided that, in the case of a devise or descent of an undivided interest in a trust parcel with multiple owners, the right to renounce may only be in favor of members of the Confederated Tribes who were co-owners of the subject trust parcel with the decedent.

SECTION 1.07. ESCHEAT TO TRIBE

- A. CTUIR Member. If a member of the Confederated Tribes dies intestate, and said person has no heirs, the real and personal property of the decedent located within the Umatilla Indian Reservation shall escheat to the Confederated Tribes.
- B. Owner of Trust Lands within Umatilla Indian Reservation. Any person who owns trust lands, or an interest therein, within the boundaries of the Umatilla Indian Reservation who dies intestate, and said person has no heirs, the trust lands, or interest therein, of the decedent located within the boundaries of the Umatilla Indian Reservation shall escheat to the Confederated Tribes.
- C. For purposes of this section, a person has no heirs if the decedent does not have a surviving parent, grandparent, great-grandparent, child, grandchild, great-grandchild, brother or sister.

SECTION 1.08. COORDINATION WITH OTHER LAW

Pursuant to the authority granted in the Indian Land Consolidation Act, 25 U.S.C. § 2205, this Code shall be applied in probates involving trust or restricted land located on the Umatilla Indian Reservation in addition to the Act of April 18, 1978, 92 Stat. 202.

SECTION 1.09. OTHER INTERESTS

Interests in trust or restricted land or trust personalty not covered by this Code shall be probated in accordance with state or federal law, as applicable, until such time as 25 U.S.C. § 2206 of ILCA becomes applicable. See 108 P.L. 374, Section 8(b)[25 U.S.C. § 2201 note].

APPENDIX A

LEGISLATIVE HISTORY

INHERITANCE CODE

LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Inheritance Code in Resolution No. 98-62 (December 16, 1998).

The Board enacted the Inheritance Code pursuant to the Indian Land Consolidation Act, 25 U.S.C. §2201 et seq. The Indian Land Consolidation Act, at 25 U.S.C. §2206(c), requires that tribal ordinances enacted pursuant to its provisions must be reviewed and approved by the Secretary of the Interior before they can take effect. The Inheritance Code was approved by the Bureau of Indian Affairs (on authority delegated by the Secretary of Interior) on March 5, 1999. A copy of the approval is attached as Appendix B.

The text of the Code as it appeared in the *Statutes of the Confederated Tribes of the Umatilla Indian Reservation, July 1999 Compilation* differed in Section 2(I), Section 4(E)(7) and Section 4(E)(9) from the text enacted by the Board of Trustees and approved by the Bureau of Indian Affairs. Board Resolution 99-63 (July 28, 1999), which approved the *July 1999 Compilation*, stated that "the official text of each Tribal statute shall be the text of that statute as it appears in the . . . *July 1999 Compilation*, until the Board, by resolution, approves a subsequent amendment to that statute." In order to restore the text of the Code to its original enacted and approved form, the Board enacted Resolution No. 01-04 (January 8, 2001), which corrected the errors in the published text.

The Board amended the Inheritance Code in Resolution No. 02-056 (June 3, 2002), by deleting Section 4(D) and Section 4(E)(4) of the Code. The subsections and paragraphs of Section 4 that follow the deleted portions were renumbered to reflect these deletions.

Pursuant to its authority under Resolution No. 99-63 (July 28, 1999), the Office of Legal Counsel has renumbered the sections of the Inheritance Code to make their numbering style consistent with that of other Tribal statutes. Internal citations were also updated to reflect this change.

Pursuant to the Indian Land Consolidation Act, 25 U.S.C. § 2206(c), the changes enacted in Resolution No. 02-056 (June 3, 2002) and the renumbering of the Code were submitted to the BIA for approval. The amended Code failed to receive BIA approval because of amendments to the Indian Land Consolidation Act in 2000.

The Board of Trustees amended the Inheritance Code in Resolutions 04-035 (June 2, 2004) and 06-013 (January 23, 2006). Both amendments failed to receive secretarial approval due to Congressional amendments to the Indian Land Consolidation Act in 2000 and 2004.

In Resolution 08-028 (April 7, 2008), the Board of Trustees adopted an amended version of the Inheritance Code, which was approved by the Secretary of the Interior on May 16, 2008. A copy of the approval is attached as Appendix B.

APPENDIX B

BUREAU OF INDIAN AFFAIRS APPROVAL



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



MAY 16 2008

Memorandum

To: Regional Director, Northwest Region

From: Carl J. Artman, Assistant Secretary - Indian Affairs

Subject: Inheritance Code of the Confederated Tribes of the Umatilla Indian Reservation

Pursuant to 25 U.S.C. §2205(b)(2), we have reviewed and approve the submitted Inheritance Code of the Confederated Tribes of the Umatilla Indian Reservation, a copy of which is attached. If you have any questions, please contact Amanda Preller at (202) 208-6384.

Attachment.