

PROBATE CODE

*Addressing decedent estate property not addressed in
the CTUIR Inheritance Code*

CONFEDERATED TRIBES

OF THE

UMATILLA INDIAN RESERVATION

PROBATE CODE

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CHAPTER 1. PROVISIONS OF GENERAL APPLICABILITY

PART 1. GENERALLY

SECTION 1.1.1 TITLE

- A. This Code shall be cited in full form as the “Tribal Probate Code of the Confederated Tribes of the Umatilla Indian Reservation,” and in short form as the “Probate Code.”

SECTION 1.1.2 DECLARATION OF PURPOSE

- A. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Board of Trustees (Board) encourages CTUIR Tribal members (Tribal members) and their families to prepare for transfer of property upon their death.
- B. The Board encourages Tribal members to execute wills, for which the Board of Trustees has provided resources, and to consider non-probate date-of-death property transfers pursuant to operation of law or operation of contract. Examples of such transfers include but are not limited to:
1. Transfer of titled or deeded property through joint ownership with right of survivorship, gift deeds, or transfer on death deeds; or
 2. Designating pay-on-death beneficiaries for bank accounts, retirement accounts, Tribal employee and Tribal entity employee final paychecks, life insurance policies, and the like.
- C. To avoid potential conflict or loss of cultural heritage items, the Board also encourages Tribal members and Tribal government employees to consider, if and when appropriate, to participate in:
1. *Inter-vivos* (while still living) transfer to the Tribe’s Cultural Resources Protection Program or Tamástslikt Cultural Institute of any inalienable items of cultural patrimony, as defined by this Code.
 2. *Inter-vivos* (while still living) transfers to intended beneficiaries of familial cultural property or other personal property, but only when such transfers can be completed without undue influence or duress, and without compromising a resource necessary for wellbeing.
- D. In Resolution 08-028 (April 7, 2008), the Board amended the CTUIR Inheritance Code. The Inheritance Code applies solely to the probate of property within the exclusive jurisdiction of the Department of the Interior under the Indian Land Consolidation Act; specifically, the American Indian Probate Reform Act of 2004, 25 U.S.C. §2201, et seq.
- E. In recognition of Tribal sovereignty and to advance self-sufficiency and self-determination, the Board now seeks to adopt a comprehensive probate code, including for real property and personal property, to the fullest extent that such property is properly within the CTUIR Tribal Court’s (Tribal Court) jurisdiction.

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- F. Probate law impacts many diverse aspects of law and adopting a comprehensive probate code requires that the Office of Legal Counsel (OLC) analyze, review and amend several previously adopted tribal codes.
- G. To advance Tribal sovereignty, the Board is in the process of securing civil retrocession of Public Law 280 (PL-280), and a probate code is necessary for this effort.
- H. The Board hereby adopts this Probate Code to govern probate matters within the jurisdiction of the Tribal Court.
- I. Furthermore, the Board authorizes the Tribal Court, pursuant to its rule-making authority at CTUIR Court Code Section 3.02, to promulgate and adopt procedural rules for efficient probate administration.
- J. Furthermore, the Board assigns OLC to work with the Tribal Court to create forms for use in non-probate transfers within the Tribal Court's jurisdiction, and for use in probate matters by self-represented individuals in uncontested probate matters.

SECTION 1.1.3 FORM OF CODE

- A. Each Chapter carries equal weight as part of the Probate Code, and all Chapters shall be read together for purposes of interpretation.

SECTION 1.1.4 DIFFERENTIATION FROM INHERITANCE CODE

- A. The Inheritance Code, which solely governs the probate of trust land and trust personalty within the exclusive jurisdiction of the Department of the Interior, is not intended to be replaced or altered by the Probate Code, until such time as any amendments for the Inheritance Code are approved and adopted by the Board and the amended Inheritance Code is approved by the Secretary of the Interior. Until such time, the Probate Code explicitly governs administration of property properly within the Court's jurisdiction as described by this Code.

SECTION 1.1.5 DEFINITION OF EXTERIOR BOUNDARIES

- A. Any reference to the exterior boundaries of the Umatilla Indian Reservation (the UIR's exterior boundaries) in the Probate Code means the UIR Reservation boundary as outlined on the CTUIR Map attached as Exhibit 1; and including any off-reservation lands owned by the CTUIR, whether in trust or fee.

PART 2. EFFECTIVE DATE AND APPLICATION OF PROBATE CODE

SECTION 1.2.1 EFFECTIVE DATE OF PROBATE CODE

- A. The Probate Code shall become effective 120 days from the date of adoption. The provisions of this Code will apply to all decedent estates whose deaths occur on or after the effective date of this Code.

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SECTION 1.2.2 APPLICATION OF PROBATE CODE

- A. To the fullest extent allowable, the Probate Code shall apply to decedent property within the exclusive jurisdiction or concurrent jurisdiction of the Umatilla Tribal Court, including:
1. Disposition of Tribal member property, whether such property is real or personal; incorporeal (such as an interest in a lease required under 25 C.F.R. § 162.005, as hereafter amended or replaced), or tangible or intangible; so long as the Tribal member is domiciled within the UIR's exterior boundaries, subject to the exceptions listed in Section 1.2.2(B).
 2. Disposition of permanent improvements, including houses, or any interest therein, situated on trust land within the UIR's exterior boundaries. Authority to probate these improvements lies exclusively with the Tribal Court, not the Secretary of the Interior, and the improvements will be probated pursuant to Tribal law.
 3. Disposition of any real property held in fee within the UIR's exterior boundaries, regardless of the decedent's Indian status or lack thereof, so long as the presumptive beneficiaries are each Tribal members or otherwise meet the definition of Indian as defined by this Code.
 4. Disposition of personal property held by the CTUIR or a Tribal entity as defined by this Code.
- B. The Probate Code does not apply to:
1. Administration of decedent property held in trust by the Department of the Interior for the benefit of individual Indians. Such property, wheresoever situated, is properly within the exclusive jurisdiction of the Department of the Interior Office of Hearings and Appeals Probate Hearings Division, until such time as federal law allows probate of such land to be compacted with the Tribe.
 2. Real property, or any interest in real property, that is held in fee and situated beyond the boundaries of the State of Oregon, including when the real property is within the exterior boundaries of another tribe's reservation. Such property is properly within the jurisdiction of that state or that tribe.
 3. Any interest in a permanent improvement that is situated on trust land within another tribe's jurisdiction.
- C. The Probate Code, as adopted, applies to all estate assets and liabilities of a decedent whose estate is properly within the jurisdiction of the Tribal Court.
- D. Estate assets that transfer ownership at the time of the decedent's death according to operation of law, such as through survivorship interests; or operation of contract, such as through validly executed documents that designate a beneficiary, are not subject to probate under this Code.
- E. Where estate property, such as cultural heritage items, does not pass through operation of law or operation of contract, but have been designated as non-probate assets by this Code, such

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assets are not subject to probate under this Code. However, the Court may accept a settlement agreement on the record where possession or ownership of such property is at issue.

SECTION 1.2.3 CUSTOMS AND TRADITIONS RECOGNIZED

- A. The customs and traditions of the CTUIR are hereby recognized and encouraged in the application and interpretation of this Code, and to Wills and Codicils that are executed under this Code, to the extent that such interpretation does not directly conflict with the explicitly stated written intent of the decedent.

SECTION 1.2.4 REVIEW AND AMENDMENTS

- A. Three years from the date of adoption, the Tribal Court Director, relevant Tribal Court judges and staff, the Office of Legal Counsel, and any other relevant CTUIR staff, including where Bureau of Indian Affairs duties have been compacted, shall review the Probate Code to determine what amendments could assist with judicial efficiency, procedural effectiveness, or make the Code more user-friendly without compromising due process considerations.
- B. Within ninety (90) days, any proposed amendments shall be presented to the Board, including recommendations for amendment to, and incorporation of, the Inheritance Code.
- C. All amendments must be approved by the Board of Trustees, unless the amendment solely affects a procedural rule, in which case the Tribal Court shall provide notice of the amendment to the Board and to the public pursuant to CTUIR Court Code Section 3.02.

SECTION 1.2.5 SEVERABILITY

- A. If any provision, in whole or in part, or its application thereof to any person or circumstance, is held to be unconstitutional or invalid, that shall not affect the validity of the other provisions of this Code.

PART 3. DEFINITIONS

SECTION 1.3.1 GENERALLY

- A. The following definitions are applicable to all parts of this Code:
1. “Abate” means to reduce a devise because the estate has insufficient assets to pay all claims, administration expenses and devises in full.
 2. “Administration,” when related to a decedent’s estate, means the process of accounting for the decedent’s assets; settling any claims and liabilities; and then distributing the estate assets. Administration occurs whether the decedent died testate, intestate or partially intestate.
 3. “Adopted” or “adoptive” means a person whose parentage has been altered pursuant to an adoption judgment or decree from a court of competent jurisdiction, wherein the legal rights, responsibilities and obligations of a biological parent and the biological parent’s kin are severed, and the adoptive parent and the adoptive parent’s kin assume those

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same legal rights, responsibilities and obligations as if the adoptive parent were the person's biological parent.

4. "Ancestor" means a decedent's lineal ancestors, such as a parent, grandparent or great-grandparent, who have survived the decedent.
5. "Assets" means a decedent's ownership interest in property.
6. A "beneficiary" is anyone who stands to benefit from the estate, such as an heir or devisee.
7. "Child" means a decedent's biological or adopted lineal descendant.
8. "Claim" means a liability of a decedent that was incurred during the decedent's lifetime. A claim does not include an expense of estate administration, which is a liability of the decedent's estate.
9. "Codicil" means a will that modifies or partially revokes an existing earlier will and that refers to that earlier will, and that is found with the earlier will which it incorporates by reference.
10. "Collateral heirs" are brothers, sisters, aunts, uncles, nieces, and nephews of a decedent.
11. "Confederated Tribes" or "CTUIR" or "Tribal" means the Confederated Tribes of the Umatilla Indian Reservation.
12. "Court" means the CTUIR Tribal Court.
13. "Court of Appeals" means the CTUIR Tribal Court of Appeals.
14. "Decedent" means a person who has deceased.
15. "Descendant" means an individual who is descended from a specific ancestor, including a lineal descendant, such as a child, grandchild or great-grandchild. When referenced in intestate succession under this Code, "descendant" does not include a descendant of a still living descendant.
16. "Devise," as a noun, means property disposed of by a will or, as a verb, to dispose of property by a will. "Devise" includes:
 - a. A "general devise" is a devise that is not distinguishable from other parts of the estate and does not constitute a specific devise.
 - b. A "specific devise" is a devise of a specific thing or specified part of the testator's estate and is described in such a way that it can be differentiated from all other parts of the estate.
17. "Devisee" means a person entitled under testate succession (designated in a will) to receive property according to the decedent's stated intent.

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18. “Domicile” means the place of abode of a person, where a person intends to remain and to which, if absent, the person intends to return.
19. “Estate” means the totality of the decedent’s assets, whether owned in whole or in part by the decedent. An estate may include both a non-probate estate, consisting of non-probate assets, and a probate estate. A probate estate is subject to administration, including the payment of debts, liabilities or claims determined to be the responsibility of the decedent before death, and distribution to intestate heirs or testate devisees, until full distribution is adjudged and the estate is closed. Any probate estate is subject to the provisions of this Code regarding summary distribution of exempt estates.
20. “Expense of administration” means a liability incurred during the process of administering a decedent’s estate. An expense of administration is different than a claim, which is a liability incurred during a decedent’s life.
21. “Funeral” includes the burial or other disposition of a decedent’s remains, any plot or tomb and other necessary incidents to the disposition of the remains, any memorial ceremony or other observance, and related expenses.
22. “Heir” means a person entitled by operation of law to an interest in a decedent’s property.
23. “Indian” means any person who is a member of the Confederated Tribes or any other federally recognized Indian tribe; or a member of an Alaska Native Village; or who meets the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder, as hereafter amended or replaced.
24. “Interested person” or “interested party” means any person or entity that may be affected by an estate’s administration or an action of the Tribal Court, and may include a decedent’s heir or devisee, or a creditor with a claim against the decedent’s estate. “Interested party” may also mean the CTUIR but only in the following instances:
 - a. When a Tribal government department or a Tribal entity holds an estate asset or the ability to distribute an estate asset, or
 - b. A Tribal entity holds a claim against the estate, or
 - c. The Tribe is a co-owner of an allotment which is affected by the disposition of a covered permanent improvement.
25. “Intestate” means a decedent who dies without leaving a valid will, or that dies leaving a will that does not effectively dispose of the decedent’s entire probate estate.
26. “Intestate succession” means the distribution of a decedent’s probate estate when the decedent dies without a valid will or where the will does not provide for distribution of the entire probate estate.
27. “Issue” means all the lineal descendants of a specific ancestor and includes all lawfully adopted children, except that:

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- a. Children for whom the parent-child relationship has been legally severed or terminated shall be considered issue only for purposes of inheriting familial cultural property or items of family significance; for instance, photographs.
 - b. In the case of a child in gestation who is born after the death of a parent, the afterborn child shall be considered issue who was alive at the time of death of the deceased parent.
- 28. “Joint tenancy with a right of survivorship” is defined as two or more owners holding an undivided interest in property, who each have a right of survivorship in the whole property. Because of this, the property passes through an automatic transfer at the time of a decedent’s death, until there is only one owner remaining, who then owns the whole of the property.
- 29. “Life estate” means a beneficial interest held only for the duration of the life of a specified person, usually the possessor, and for which any remainder interest transfers automatically to another when the specified person dies.
- 30. “Lineal descendant” means a descendent in a direct line from the decedent, such as a child, grandchild or great-grandchild. When referenced in intestate succession under this Code, “descendant” does not include a descendant of a still living descendant.
- 31. “Minor” means any individual who has not yet reached 18 years of age and who is not otherwise emancipated by a court of competent jurisdiction.
- 32. “Non-probate asset” means those rights and interests of a decedent that extinguish or transfer through operation of law or operation of contract at the moment of a decedent’s death. Examples include but are not limited to:
 - a. Property titled as a joint tenancy with right of survivorship, including fee property subject to a tenancy by the entirety as established under ORS 91.010, 91.030 and 93.180(1)(b), as hereafter amended or replaced.
 - b. A joint account at a financial institution that includes a right of survivorship, or an account at a financial institution when there is a designated pay-on-death designee.
 - c. Assets in a trust-titled bank account.
 - d. Deed or conveyance if possession has been postponed until the death of the person, such as a transfer on death deed.
 - e. An individual retirement account or bond, life insurance, or similar document when there is a designated beneficiary.
 - f. Items of cultural patrimony, as defined by this Code.

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- 33. “Parent” means the biological or lawfully adoptive mother or father of a person. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
- 34. “Personal representative” means an individual who is appointed by the Tribal Court to act in a fiduciary capacity to administer an estate pursuant to the powers and duties conferred by this Code.
- 35. “Property” includes:
 - a. “Personal property” means any property that is not real property, and including either material items, or an immaterial or intangible benefit that also effects a right in a material or tangible item.
 - b. “Real property” means any interest in land that is held in fee and any improvements thereon; provided, however, that a covered permanent improvement, such as a house, which is located on individually held trust property and subject to a security interest, mortgage, promissory note or other financing agreement is considered personal property for purposes of this Code.
- 36. “Probate” is the procedural process of administering a decedent’s estate until all claims are paid or resolved, all assets are distributed, and the estate is closed.
- 37. “Remainder” means a future interest tied to a life estate interest that transfers automatically when at the death of the life that is designated for the life estate.
- 38. “Right of representation” is the method of determining which heirs will inherit from an intestate estate, and the particular share that each heir will inherit, whether in cash or in kind.
- 39. “Spouse” means a party to a marriage or registered domestic partnership recognized under the CTUIR Family Code or by a court of competent jurisdiction. It shall not include a party to a common-law marriage unless the marriage is recognized by the jurisdiction in which the arrangement was entered.
- 40. “Tenants in common” means that two or more owners own an interest, whether equal or unequal in the same property, with each having an equal right to possess the whole property and each with a right to assign an ownership interest in their respective share, whether through inheritance or otherwise.
- 41. “Testate succession” is defined as the transfer of property pursuant to a valid will and may include a partially testate estate.
- 42. “Testator” means a decedent who died leaving a valid will.
- 43. “Tribal entity” means a business entity in which the Tribe owns an interest or a non-profit corporation created pursuant to Tribal law, such as:
 - a. Arrowhead Travel Plaza;

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- b. Birch Creek Golf Course;
 - c. Cayuse Holdings;
 - d. Golf Course at Birch Creek;
 - e. Hamley & Co.;
 - f. Mission Market;
 - g. Nixyáawii Community Financial Services;
 - h. Tamástslíkt Cultural Institute;
 - i. Wildhorse Resort and Casino;
 - j. Yellowhawk Health Clinic; and
 - k. Any other Tribally-owned business or non-profit corporation incorporated under Tribal law that is created after adoption of the Probate Code.
44. “Tribal member” means an enrolled member of the Confederated Tribes of the Umatilla Indian Reservation, enrolled pursuant to the Tribal Enrollment Code and the enrollment criteria set forth in Article IV of the CTUIR Constitution, as amended, or a non-enrolled infant age two years or younger who is otherwise eligible for enrollment with the CTUIR.
45. "Ward" means a minor who is a ward of the Court under the CTUIR Juvenile Code.
46. “Will” means a testamentary instrument, including a codicil, that is validly executed as required by this Code. A will instructs the Probate judge as to the testator’s intent for distribution of property and for estate administration, such as nominating a personal representative for court appointment or a special administrator to secure, protect, and distribute cultural items.
47. “Without regard to waste” means, with respect to a life estate interest, that the holder of the life estate is entitled to the receipt of all benefit, incomes, etc. from the property without any benefit going to the person holding the future remainder interest.

CHAPTER 2. JURISDICTION AND POWERS OF UMATILLA TRIBAL COURT AS TO PROBATE

PART 1. JURISDICTION

SECTION 2.1.1 JURISDICTION OF UMATILLA TRIBAL COURT

- A. With this Code, the Court asserts its full jurisdiction as to all probate administration, causes of action, and proceedings.

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- B. The Court retains probate jurisdiction to the fullest extent allowable, including authority, powers, functions and duties to administer in probate decedent estates, including but not limited to:
1. Determination as to appointment of personal representative,
 2. Payment of administrative expenses and claims, and
 3. Distribution of assets pertaining to decedents and decedents' estates within the Court's jurisdiction, so long as the property is not otherwise within the probate jurisdiction of the Department of the Interior.
- C. The Court shall promulgate procedural rules for probate administration and proceedings, and contested probate matters.

SECTION 2.1.2 PERSONAL JURISDICTION OF UMATILLA TRIBAL COURT

- A. Personal jurisdiction. The Court has personal jurisdiction as follows:
1. Any person with interests in a decedent estate subject to the jurisdiction of the Court may consent to the full jurisdiction of the Court.
 2. Any person who participates in a probate or probate-related action or proceeding will be considered to have consented to continuing personal jurisdiction by the Court, except that a person who appears solely to challenge the jurisdiction of the Court may appear solely for that purpose without submitting to the continuing personal jurisdiction of the Court.
 3. By accepting a distribution from the estate, a beneficiary submits to the personal jurisdiction of the Court, regardless of whether the beneficiary is a CTUIR Tribal member, a Tribal member of another Tribe, or a non-Indian.
 4. Court determinations, orders, and judgments pertaining to any matter related to the administration, settlement and jurisdiction of an estate shall have the full force of power as any other determination, order, or judgment of the Court.
- B. Probate jurisdiction. The Court's jurisdiction over a decedent's estate includes:
1. Exclusive jurisdiction over Tribal funds, benefits, accounts, payments and other monies held or distributed to any CTUIR Tribal member, including Tribal general welfare distributions and per-capita payments; and wages owed to a decedent pursuant to employment at a Tribal entity, if the decedent is a CTUIR member or an Indian as defined by this Code.
 2. Exclusive jurisdiction over the disposition of all cultural heritage items.
 3. Exclusive jurisdiction over any covered permanent improvements situated on trust land, any portion of which is held in trust by the Department of the Interior.

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4. Concurrent jurisdiction to settle or decide intangible property interests, such as those subject to the lease requirements of 25 CFR §162.005, as hereafter amended or replaced, consistent with this Code, the CTUIR Land Leasing Code, or the CTUIR Landlord/Tenant Mortgage Code. In this instance, actual notice shall be provided to the BIA Umatilla Agency Superintendent, with proof of notice filed with the Court at least 14 days before any hearing.
 5. Concurrent jurisdiction over personal property and real property, that is situated within the UIR's exterior boundaries, of any CTUIR Tribal member decedent domiciled within the UIR's exterior boundaries, with the exception of property exclusively within the jurisdiction of the Department of the Interior.
 6. Concurrent jurisdiction to determine heirs for employee benefits received as a benefit of employment at a Tribal entity, that are not otherwise distributed pursuant to beneficiary designation.
- C. The Court shall have the broadest possible authority to execute its duties and responsibilities under this Code, including all authority necessary to take evidence and make determinations including, but not limited to:
1. Appointment, qualification, supervision and discipline of a personal representative or special administrator;
 2. Probate and contest of wills; and construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding.
 3. Determination of heirship;
 4. Determination of title to, rights in and possession of property claimed by or against personal representative or special administrator; and
 5. Administration, settlement and distribution of decedent estates.

SECTION 2.1.3 VENUE AND JURISDICTIONAL CONFLICTS

- A. The Court is the appropriate venue for probate, including proceedings seeking the appointment of a personal representative and to probate a will, if the decedent:
1. Was domiciled or maintained a place of abode within UIR at the time of death;
 2. Owned property interests at the time of death or, through accretion or inheritance, that is situated within the UIR's exterior boundaries and that is not otherwise subject to the CTUIR Inheritance Code at the time the proceeding commences;
 3. Was entitled to CTUIR Tribal member benefits or is owed wages by a Tribal entity and is a CTUIR Tribal member or a non-CTUIR Tribal member Indian as defined by this Code;

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4. Was litigating a matter involving personal injury or wrongful death in this Court at the time of death; or
 5. Was subject to the jurisdiction of Umatilla Tribal Juvenile Court at the time of death.
- B. Filing a proceeding in another court does not constitute a jurisdictional defect where there is concurrent jurisdiction over property within the estate; however, an ancillary probate in this Court may be required for any property within the estate over which the Court has exclusive jurisdiction.
- C. If proceedings seeking appointment of a personal representative of the same estate, or to probate a will for the same estate, is commenced in more than one court system and each court would otherwise have concurrent jurisdiction over the estate property inventoried, the matter shall be stayed except in the court where first commenced until there is a final determination as to venue. A proceeding is considered commenced by the filing of a petition.
- D. In determining venue, if the court finds that transfer to the second court where a proceeding has been commenced is in the best interest of the estate, the Court may order such a transfer.

SECTION 2.1.4 POWERS OF THE COURT AS TO PROBATE

- A. The powers of the Court as to probate estates include:
1. Compelling the attendance of any person, including a beneficiary, creditor, fiduciary or any other person who may have knowledge about the decedent's property.
 2. Exercising jurisdiction over any transaction entered into by a personal representative or special administrator to determine if a conflict of interest existed and entering an appropriate order or judgment with respect to the transaction.
 3. Imposing fines and penalties for any loss caused by failure of a fiduciary to perform a fiduciary duty or any other duty imposed by this Code or by order of the Court.
 4. Determining ownership of title for real or personal property, or covered permanent improvements, within the exterior boundaries of the UIR as defined at Section 1.1.5, not otherwise subject to the CTUIR Inheritance Code.
 5. Requiring delivery of possession of property, including cultural property, of the decedent, to the personal representative or special administrator.
 6. Requiring the personal representative or special administrator to produce any and all records that might provide information about the condition of the estate's property.
 7. Removing a personal representative or special administrator whenever that removal is in the best interests of the interested persons of an estate.
 8. Appointing a successor personal representative or special administrator when a personal representative or special administrator has died, become incapacitated, resigned or been removed.

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9. Imposing any conditions and limitations upon the personal representative or special administrator that the Court considers appropriate, including limitations on the duration of the appointment, and, at the Court's discretion, imposing mandatory mediation for interested parties in the event of conflict before scheduling a proceeding.
10. Without hearing or upon such hearing as the Court may hold, rule on any matter concerning the administration, settlement or distribution of the estate.

PART 2. INCORPORATION AND INTERPRETATION CONSISTENT WITH CTUIR LAW

SECTION 2.2.1 GENERALLY

- A. This Code will be interpreted as will be consistent with all other CTUIR laws, including but not limited to:
 1. CTUIR Cemeteries Code, where specific to disposition of remains.
 2. CTUIR Funeral Assistance Code, where specific to payment of claims for funeral and burial assistance; dinner assistance, and travel assistance.
 3. CTUIR Historic Preservation Code, regarding definitions related to inalienable Tribal cultural resources.
 4. CTUIR Inheritance Code and CTUIR Land Leasing Code, including where probate of a covered permanent improvement on Tribal trust land, on an individual trust allotment subject to co-ownership after probate, is considered.
 5. CTUIR Landlord/Tenant and Mortgage Code, when probate concerns abandoned property pursuant to death or a mortgage as defined under the Landlord/Tenant and Mortgage Code.
 6. CTUIR Land Development Code, where heirs or devisees may seek to partition an allotment pursuant to an in-kind distribution or settlement.
- B. If a provision of any other Code is determined by the Court to conflict with the provisions herein, the CTUIR Probate Code will govern in the probate matter.

CHAPTER 3. TESTATE SUCCESSION

PART 1. GENERALLY

SECTION 3.1.1 WHO MAY MAKE A WILL

- A. Any person of sound mind who is 18 years of age or older or emancipated, and is of sound mind, make a will.

SECTION 3.1.2 EXECUTION; WITNESSED WILL

- A. A will must be:

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1. In writing including, if a holographic will, in the testator's own handwriting;
2. Dated; and
3. Signed by two or more disinterested attesting adult witnesses, each of whom signs within the presence of each other and the testator after the testator has declared that the writing is the testator's will, that the will, as written, reflects the testator's wishes and that the testator has requested the witnesses to so serve.

SECTION 3.1.3 SELF-PROVED WILL

- A. A witnessed will or codicil may be made self-proved at any time at or 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 official seal, attached, annexed, or referring to the will or codicil, in substantially the following form:

"I, [testator], swear or affirm under penalty of perjury that on [date], I requested [Witness No. 1 and Witness No. 2] 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.

[Signed by Testator]

We, [Witness No. 1 and Witness No. 2] swear or affirm under penalty of perjury that on [date], [Testator] published and declared the attached document to be their 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 the Testator's request, signed the will as witnesses in the Testator's 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 the estate by will.

[Signed by Witness No. 1]

[Signed by Witness No. 2]

Subscribed and sworn to or affirmed before me this [date] by _____, the Testator, and by _____ and _____, witnesses.

(Seal)

[Signature and official seal of notary]"

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- B. A signature affixed to a self-proving affidavit attached or referring to a will is considered a signature affixed to the will, if necessary to prove the will's due execution. If so, however, the will is not to be considered self-proved.
- C. If a will is self-proved, it is not necessary that an attesting witness testify in Court or that other evidence of proper execution be presented as to the circumstances of its execution.

SECTION 3.1.4 WHO MAY WITNESS

- A. Any disinterested adult individual generally competent to be a witness in Court under Tribal law may act as a witness to a will.
- B. A witness who is a collateral heir of the decedent, as defined at Section 1.3.1(A)(10) is not considered interested unless that witness is also a beneficiary under the will.

SECTION 3.1.5 CHOICE OF LAW AS TO EXECUTION

- A. A will is valid if executed in compliance with the law of this jurisdiction; if at the time of execution or the time of death, its execution complies:
 - 1. With the law of the place where it was executed, or
 - 2. Where the testator is domiciled, or
 - 3. Where the testator has a place of abode, or
 - 4. If it complies with the federal law in effect at the time of the execution of the Will.
- B. A will executed in compliance with the law of this jurisdiction may include a will executed before the effective date of this code.

SECTION 3.1.6 HOLOGRAPHIC WILL

- A. A will that does not comply with Section 3.1.2 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are inked, in the testator's handwriting and it can be proved that the testator intended that document to dispose of the testator's property or otherwise affect the testator's estate at death. Such a will may also solely nominate a personal representative to serve as a fiduciary for the estate, nominate an individual to act as a special administrator, or otherwise.
- B. If such a will is presented, the Court shall hear evidence on the record and make a final determination as to the veracity of the will, so long as there is clear and convincing evidence that the will is in the testator's handwriting and was not written under undue influence exerted upon the testator.

SECTION 3.1.7 REVOCATION OF WILL

- A. A will, or any part thereof, is revoked by executing a later will that revokes the prior will either expressly or by inconsistency, subject to the following:

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1. A later will revokes a prior one by inconsistency if the testator intended the later will, or part of the will, to replace rather than supplement the prior will.
 2. A later will is presumed to replace a prior will if it distributes all of the decedent's property
- B. A will may be revoked in whole but not in part by the testator's performing a physical act on the will with the intent to revoke or by another performing a physical act on the will at the testator's request and in the testator's conscious presence. A physical act on the will includes burning, tearing, cancellation, obliteration, or other physical destruction of the will.
- C. If a will known to have been last in the possession or control of the testator before death is not found after the testator's death, it is presumed to have been revoked. This presumption is rebuttable by a preponderance of the evidence upon either direct proof of, or circumstances suggesting that, there was no revocatory intent.
- D. Except as provided by the terms of the will, court order, or a contract relating to property division, and unless the parties remarry before the testator's death, a will or any part thereof is revoked upon a final divorce decree or annulment to the extent that it benefitted the testator's former spouse or any of the former spouse's relatives who are not also relatives of the testator.

SECTION 3.1.8 WILL CHALLENGES

- A. A will or any part thereof offered for probate may be challenged or contested on the grounds of improper execution, lack of testamentary intent or capacity, undue influence, fraud, duress, or revocation.

PART 2. WILL CONSTRUCTION

SECTION 3.2.1 COMPOSITION OF A WILL; INCORPORATION BY REFERENCE

- A. A will comprises any written pages that are physically present at the execution of the will and which the testator intends to be part of the will. However, a will may incorporate a writing that is not physically present at the will's execution if:
1. The will reflects the intent to incorporate the writing; and
 2. The will describes the writing sufficiently to permit its identification.

SECTION 3.2.2 TANGIBLE PERSONAL PROPERTY LIST

- A. A will may refer to a written statement or list to dispose of items of tangible personal property, other than money, stocks, bonds, or the like, not otherwise specifically disposed of by the will.
- B. The statement or list is only valid and effective to dispose of the property if the testator signed writing and, in the writing, describes the items and the devisees with reasonable certainty.

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- C. If any such separate writing includes non-qualifying property other than cultural property, the list shall be given effect to the extent of the qualifying property only, and any non-qualifying property will pass into the residue of the will.
- D. Property determined to be an inalienable Tribal cultural resource under the Historic Preservation Code or the Cultural Property Companion Code shall not be distributed pursuant to this Section, despite being in the decedent's possession at the time of death.

SECTION 3.2.3 PRETERMITTED HEIRS: CHILDREN UNINTENTIONALLY NOT PROVIDED FOR IN WILL

- A. If a testator fails to provide in the testator's will for any child born or lawfully adopted after the execution of the will, including any codicil, then the omitted child shall receive a share of the estate as provided in this section.
- B. If the testator had no living child when the testator executed the will, the omitted child receives a share of the estate equal in value to an intestate share unless the testator devised substantially all of the estate to the other parent of the omitted child and that other parent survives the testator.
- 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 those then-living children, the omitted child shares in the amount received by the other children to whom devises were made under the will unless the testator devised substantially all of the estate to the other parent of the omitted child who is not a parent of the then-living children receiving a devise.
- D. If the testator had one or more children living when the testator executed the will, and the will did not devise property to any of the then-living children, the omitted child is not entitled to a share under the will.
- E. If at the time of execution of the will, the testator failed to provide for a child solely because the testator either did not know that the child existed or believed the child to be dead, the child is entitled to share as an omitted after-born or after-adopted child.
- F. In satisfying a share under this section, devises abate as under Section 6.1..1.

SECTION 3.2.4 WILL CONSTRUCTION REGARDING BENEFICIARIES

A. Death Of Beneficiary Before Testator

- 1. In the absence of a finding of a contrary intent, if a beneficiary under a will or transfer on death arrangement dies before the testator or owner, the interest that the predeceasing beneficiary would have taken had the beneficiary survived lapses unless the predeceasing beneficiary left descendants who survived the testator by at least 120 hours, in which case the interest passes to those descendants by representation:
 - a. A devise other than a residuary devise will lapse to the residue, if any; otherwise, to intestate succession.

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- b. A residuary devise will lapse to the other residuary taker or takers, if any; otherwise, to intestate succession.
 - c. A class gift will pass to the surviving class member or members, if any; otherwise, to the residue or if none, to intestate succession.
 - 2. This provision applies to beneficiaries regardless of age.
- B. **Ademption Of Specific Devises**
 - 1. For the purposes of this Section, “ademption” means that a specific devise was liquidated, converted or replaced by the decedent prior to death.
 - 2. Subject to creditors’ claims and other exemptions and allowances in this Code, a will beneficiary to whom a specific devise was to pass has a right to that specifically devised property if it remains a part of the testator’s estate at the testator’s death.
 - 3. If the specific devise is not part of the testator’s estate at the testator’s death, the beneficiary has a right to:
 - a. any balance of the purchase price, together with any security interest, that would have been owed to the testator at the time of death for disposition of the property;
 - b. any proceeds unpaid at the time of the testator’s death on fire or casualty insurance on or other recovery for damage to the property or owed pursuant to a lease or license;
 - c. any real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property.
- C. **SPECIFIC DEVISE SUBJECT TO MORTGAGE**
 - 1. Unless the will provides specifically to the contrary, a specific devise of any property passes subject to any mortgage or other security interest existing at the testator’s death, without right of the beneficiary of the devise to require that the indebtedness be paid from the estate’s other assets.
 - 2. A general directive in the will to pay the testator’s debts is not sufficient to indicate that this section does not apply.
- D. **CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION; EXCEPTIONS**
 - 1. In this section, “distribution date” means the date when an immediate or postponed class gift takes control, possession or enjoyment.
 - 2. Terms of Relationship.

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- a. A class gift that uses a term of relationship (for instance: children, grandchildren, etc.) to identify class members presumptively includes an afterborn child, and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, under the rules for intestate succession regarding parent-child relationships.
- b. Relatives by Blood and Marriage. Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are presumptively construed to exclude relatives by marriage.
3. A class gift assigned in a will shall apply to all real and personal property or interest therein that the testator owned at death and all property acquired by the estate after the death of the testator but before final distribution of the estate.

E. NO CONTEST CLAUSE

1. A provision in a will purporting to penalize an interested person for contesting the will is unenforceable if probable cause exists for commencing the contest proceeding.

CHAPTER 4. INTESTATE SUCCESSION

SECTION 4.1.1 APPLICATION

- A. These provisions shall be generally applied to all estate assets that are within the jurisdiction of the Court except for intestate succession of cultural heritage items, where specific provisions as to intestate succession are outlined in Chapter 12, and with specific considerations as applied to intestate succession of covered permanent improvements, including houses, as outlined in Chapter 13.

SECTION 4.1.2 RIGHT OF REPRESENTATION DEFINED

- A. “Right of representation” is defined as the method whereby each heirs’ share of the intestate estate is determined by dividing the intestate estate of a decedent as follows:
1. Into as many shares as there are surviving lineal descendants, and lineal descendants that predeceased the decedent but left issue. Where a lineal descendant predeceased the decedent but left issue, the issue shall take equal parts of the share that the deceased lineal descendant would have otherwise inherited.
 2. If there are no surviving lineal descendants, then a decedent’s surviving lineal ancestors.
 3. If there are no surviving descendants or ancestors, the decedent’s collateral heirs in the following order:
 - a. Surviving siblings and, if a sibling predeceased the decedent, any surviving niece or nephew, in a share proportional what the sibling would have inherited;
 - b. Surviving aunts or uncles; and

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- c. Surviving first cousins.
- 4. If no descendants, ancestors, or collateral heirs, then to the Tribe, subject to the provisions for escheatment outlined in this Code.

SECTION 4.1.3 INTESTATE ESTATE

- A. The estate of a person dying intestate, in whole or in part, shall be distributed as follows:
 - 1. Surviving Spouse and Issue who are joint issue of the Decedent. If the decedent leaves a surviving spouse and issue who is also issue of the decedent, the surviving spouse shall inherit the intestate estate, subject to other provisions of this Code.
 - 2. Surviving Spouse and Issue who is not issue of the Decedent. If the decedent leaves a surviving spouse and issue who is not also issue of the decedent:
 - a. The surviving spouse shall inherit one-half interest of the intestate estate, subject to other provisions of this Code, and
 - b. The non-joint issue shall inherit one-half interest in the estate, subject to other provisions of this Code.
 - 3. Surviving Spouse and No Issue. If the decedent leaves a surviving spouse and no issue, the intestate estate shall pass to the surviving spouse, subject to other provisions of this Code.
 - 4. Other Than Surviving Spouse. Where the decedent leaves no surviving spouse:
 - a. If the decedent leaves lineal descendants, the estate shall pass by right of representation in equal shares to the decedent's lineal descendants (i.e., children) who survive the decedent and, if a lineal descendant does not survive the decedent but leaves issue (grandchildren or great-grandchildren), to the issue in shares equal to what the lineal descendant would have taken, had they survived.
 - b. If the decedent leaves no surviving issue, the estate shall pass to the surviving immediate ancestor or ancestors of the decedent, (i.e., the decedent's parent or parents) in equal shares, subject to the other provisions in this Code regarding abandonment. If a parent did not survive but the next removed ancestor (grandparent) survived decedent, then to the next removed ancestor.
 - c. If the decedent leaves no surviving lineal descendants or ancestors, the estate shall pass by right of representation to the decedent's collateral heirs in this order: siblings, nephews, nieces, aunts, uncles, first cousins.
 - d. If no descendants, ancestors, or collateral heirs, then to the Tribe, subject to the provisions for escheatment outlined in this Code.

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SECTION 4.1.4 ESCHEAT

- A. Where property of a decedent estate is subject to the jurisdiction of the Court, but the decedent leaves no surviving lineal descendants, ancestors, or collateral heirs, the property will escheat to the Tribe; provided that, if the decedent had a known interest in a particular activity or event of the Tribe, the Court may direct that the Department of Economic Community Development, Tribal Enrollment, or Finance, in consultation with the Office of Legal Counsel, assess the feasibility of liquidating the property and providing the proceeds to advance the particular activity or event.

SECTION 4.1.5 INHERITANCE BY CHILD

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

SECTION 4.1.6 ADOPTED PERSONS

- A. For the purposes of intestate succession, legally adopted children shall be treated no differently than biological children.

CHAPTER 5. TITLE OF ESTATE

SECTION 5.1.1 DEVOLUTION OF TITLE

- A. Upon the death of a decedent, title to the property of the decedent vests:
1. In any joint owner, transferee, or remainderman where there is a provision for a survivorship or remainder interest.
 2. In the absence of a will, in the heirs of the decedent, subject to support of spouse and children, rights of creditors, administration and sale by the personal representative or simple estate affiant.
 3. In the case of a will, to the devisees named in the will, subject to support of surviving spouse and children, rights of creditors, and administration and sale by the personal representative or simple estate affiant.

CHAPTER 6. ABATEMENT; TITLE; DISTRIBUTIONS TO MINORS OR THOSE LACKING CAPACITY

SECTION 6.1.1 ABATEMENT

- A. Except as provided in the decedent's will, the shares of beneficiaries abate, without any preference or priority as between real and personal property but subject to other provisions of this Code, in the following order:
1. Property not disposed of by the will but included in the probate estate;
 2. Residuary devises;

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3. General devises; and
 4. Specific devises.
- B. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, if full distribution of the property had been made under the terms of the will.
- C. If the subject of a preferred devise is sold or spent incident to administration, abatement shall be achieved by appropriate adjustments in the distribution of the remaining assets.

SECTION 6.1.2 DISTRIBUTION IN KIND; EVIDENCE OF TITLE

- A. Unless a contrary intent is expressed in the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible.
- B. If distribution of the estate assets is made in kind, the personal representative shall execute a document of distribution transferring the assets to the beneficiary as evidence of the beneficiary's title or right to the property.
- C. Proof that a beneficiary has received a document of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the beneficiary has received the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the assets or their value may be recovered if the distribution was improper.
- D. Nothing in this section serves to limit the personal representative or the heirs entering into a distribution by settlement.

SECTION 6.1.3 DISTRIBUTION TO MINOR OR ADULT LACKING CAPACITY

- A. If so ordered by the Court, a personal representative may distribute the share of a minor or adult lacking capacity to the custodian of the minor or a guardian or conservator for the adult lacking capacity.
- B. If the personal representative or other fiduciary is aware that a proceeding for appointment of a guardian or conservator is pending in Umatilla Tribal Juvenile Court, or another court, the personal representative shall delay distribution until the proceeding is decided.

CHAPTER 7. SPECIAL PROVISIONS RELATING TO DISTRIBUTIONS, OTHER THAN CULTURAL HERITAGE ITEMS OR COVERED PERMANENT IMPROVEMENTS

PART 1. ESTATES OF MISSING PERSONS; DISTRIBUTIONS TO MISSING BENEFICIARIES

SECTION 7.1.1 APPLICATION

- A. This chapter shall be applied to estates for persons whose whereabouts are unknown, as well as to distribution of estate assets to beneficiaries whose whereabouts are unknown.

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SECTION 7.1.2 REBUTTABLE PRESUMPTION OF LIFE

- A. CTUIR Tribal members whose whereabouts are unknown are presumed to be living in the absence of a finding of death by the Court.
- B. A finding as to a presumption of death may be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

SECTION 7.1.3 STANDARD FOR FINDING OF PRESUMED DEATH

- A. When a missing person, whether a person for whom a petition for probate has been received by the Court, or a beneficiary of an estate currently before the Court, is missing but cannot be proven dead, and the sole reason such death is in doubt is a failure to find or identify the remains of the missing person, the Court may make findings as to a presumption of death and as to the date and time of death.
- B. Clear and convincing evidence must support the findings, and any finding as to the date and time of death shall follow from such evidence.

SECTION 7.1.4 DISTRIBUTION FOR BENEFIT OF MISSING BENEFICIARY

- A. When a beneficiary is missing and it has been finally adjudged that the beneficiary would otherwise receive a distribution from an estate, the Court may:
 - 1. Hear testimony and receive evidence from the personal representative or other fiduciary as to any efforts to locate the beneficiary.
 - 2. Make a finding as to whether the personal representative or other fiduciary has made diligent efforts, and, if applicable, instruct the personal representative or other fiduciary as to additional efforts consistent with those outlined below.
- B. On a finding that the personal representative or other fiduciary has made diligent efforts and the beneficiary cannot be located, and the estate is otherwise ready to close, the Court may order that the personal representative or other fiduciary pursue efforts to safekeep the distribution in a manner appropriate to the form of the property being distributed, including but not limited to: creation of a custodial account to hold funds; securely storing the item, such as with a Tribal department or Tamástslikt Cultural Institute; making distribution to the Oregon State Treasurer's Unclaimed Property, etc.
- C. Distributions for missing heirs shall be held for no less than ten years, except when a probate code for the missing beneficiary is pursued consistent with the other provisions of this Code.

SECTION 7.1.5 PETITION FOR FINDING OF PRESUMED DEATH

- A. A probate case for a missing tribal member may only be initiated by a surviving spouse, child, grandchild or parent of the missing person or, if assets that would otherwise be included in the missing person's estate are being held by Tribal Enrollment, Finance, or a Tribal entity, by CTUIR, but only upon approval by the Board of Trustees.

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- B. A petition for a finding of presumed death may be submitted to the Court. which petition shall include, in addition to the information otherwise required under this Code:
1. The address for the last-known residence of the missing person.
 2. Whether the missing person, when last seen or in contact, was domiciled within the exterior boundaries of the Umatilla Indian Reservation.
 3. The time, location and circumstance when the petitioner last had contact with the missing person;
 4. The length of time wherein the petitioner has not seen or otherwise had contact with the missing person;
 5. Whether the length of time is more than six years or less than six years;
 6. A statement that diligent efforts have been made to locate the missing person; and that
 7. After diligent search and attempts to contact, the missing person's whereabouts remain unknown.
- C. The petition may include a certified document or affidavit attached to the petition and offered as evidence of the presumption of death. Such document or affidavit may include:
1. A certified copy of an order from a court of competent jurisdiction, or an official report from an agency of the United States, a State, or Tribe, that a missing person is dead or presumed to be dead. The judge will use the date of death found in the order or report, if such a finding was made. If no such finding was made, unless other evidence is submitted showing an actual date of death, the judge will use the date and time of last contact as the date of death.
 2. When a person has been missing for 6 years or more, signed affidavits by at least two individuals who could reasonably be expected to have contact with the missing person and are in a position to know that the person has been absent from their residence for no apparent reason or that the missing person has no identifiable place of residence and cannot be located, and that the missing person has not been heard from for 6 years or more. If there is no evidence available that the person continued to live after the date of disappearance or the date of last contact, the judge will use the date the person disappeared or the date of last contact as the date of death.
 3. When a person has been missing for less than 6 years, but was last seen in the immediate vicinity of, or indicated via communications that they were in the immediate vicinity of, a drowning, fire, natural disaster as designated by an official proclamation, or an act of war or terrorism; signed affidavits or sworn testimony from at least two individuals who last saw or received communications from the missing person immediately before the person's disappearance. The best evidence includes statements from individuals who may have witnessed the missing person at the scene of the incident shortly before it happened. If there is no evidence available that the person continued to live after the

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date of the identified incident, the judge will use the date of the identified incident as the date of death.

4. When a person has been missing for less than 6 years, but was last seen participating in a hazardous or dangerous activity wherein the risk of death or serious bodily harm is an inherent risk, and after which it would be reasonable that the missing person's remains may not be found; signed affidavits or sworn testimony from at least two individuals who last saw or received communications from the missing person immediately before the person's disappearance. The best evidence includes statements from individuals who may have witnessed the missing person at the scene of the activity or participating in the activity shortly before the disappearance. If there is no evidence available that the person continued to live after the date of the activity, the judge will use the date of the activity as the date of death.
 5. If a missing person was born at least 100 years before the petition to probate, either a certified copy of the missing person's birth certificate or signed affidavits or sworn testimony by those in a position to know the approximate date of birth. If there is no evidence available that the person continued to live after reaching the age of 100, the judge will use the date that is 100 years after the date of birth as the date of death.
- D. Before issuing the finding, the Court may require any of the following, including through conferral with the BIA Umatilla Agency Superintendent:
1. Proof of searches of available electronic databases;
 2. Examination of BIA land title and lease records for activity in the last six years;
 3. Examination of the missing person's Individual Indian Money account letter for disbursements from the account in the last six years; or
 4. Any information as to whether a petition for a presumption of death has been filed in a separate court of competent jurisdiction, including filing in the Department of the Interior's Office of Hearings and Appeals Probate Hearings Division; the date of that filing and the outcome of that filing, if any.

PART 2. FORFEITURE OF PARENT'S SHARE BECAUSE OF TERMINATION OF PARENTAL RIGHTS OR DESERTION OR NEGLECT; PETITION

SECTION 7.2.1 TREATMENT OF PARENTAL SHARE

- A. Property that would pass by intestate succession under this Code to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if:
1. The parental rights of the parent with respect to the decedent were terminated and the parent-child relationship between the parent and the decedent was not judicially reestablished.
 2. The person who would be benefited by the forfeiture is a child or sibling of the decedent, the decedent was an adult when the decedent died and:

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- a. The parent of the decedent willfully deserted the decedent for the one-year period immediately preceding the date on which the decedent became an adult; or
 - b. The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the one-year period immediately preceding the date on which the decedent became an adult.
- 3. The person who would be benefited by the forfeiture is not a child or sibling of the decedent, the decedent was an adult when the decedent died and:
 - a. The parent of the decedent willfully deserted the decedent for the three-year period immediately preceding the date on which the decedent became an adult; or
 - b. The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the three-year period immediately preceding the date on which the decedent became an adult.
- 4. The person who would be benefited by the forfeiture is a child or sibling of the decedent, the decedent was a minor when the decedent died and:
 - a. The parent of the decedent willfully deserted the decedent for the life of the decedent or for the one-year period immediately preceding the date on which the decedent died; or
 - b. The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the one-year period immediately preceding the date on which the decedent died.
- 5. The person who would be benefited by the forfeiture is not a child or sibling of the decedent, the decedent was a minor when the decedent died and:
 - a. The parent of the decedent willfully deserted the decedent for the life of the decedent or for the three-year period immediately preceding the date on which the decedent died; or
 - b. The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the three-year period immediately preceding the date on which the decedent died.
- B. For the purposes of the previous section, the Court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent. The Court may also, in determining whether the parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the decedent and the parent whose intestate share would be forfeited under this section.

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- C. The intestate share of a parent of a decedent may be forfeited under this section only pursuant to an order of the Court entered after the filing of a petition by, or on behalf of, the person whom the forfeiture would benefit.

SECTION 7.2.2 PETITION FOR FORFEITURE

- A. A petition under this section must be filed not later than:
1. Four months after the date of delivery or mailing of the initial petition to probate is filed; or:
 - a. If the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative:
 - i. Four months after the date of publication of notice to interested persons; or
 - ii. If notice to interested persons was not published, one year after the decedent's date of death.
- B. The petitioner has the burden of proving the facts alleged in a petition filed under this section by:
1. A preponderance of evidence, if the petitioner is a child or sibling of the decedent; or
 2. Clear and convincing evidence, if the petitioner is not a child or sibling of the decedent.

PART 3. EFFECT OF ABUSE OR HOMICIDE ON INHERITANCE

SECTION 7.3.1 TREATMENT OF WRONGDOER

- A. An individual who feloniously and intentionally kills the decedent forfeits all benefits with respect to and interests that would otherwise be acquired under the decedent's estate or as provided by any provisions of survivorship arrangements authorized under this Code.
- B. The decedent's estate passes as if the wrongdoer predeceased the decedent.

SECTION 7.3.2 DETERMINATION

- A. A felonious and intentional killing is determined by the following:
1. If, after all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer.
 2. If, in the absence of a criminal conviction, the Court, upon the petition of an interested person, determines that, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the

decedent. If so, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

CHAPTER 8. ADDITIONAL GENERAL PROBATE SUCCESSION CONSIDERATIONS

SECTION 8.1.1 REQUIREMENT THAT BENEFICIARY SURVIVE DECEDENT BY 120 HOURS

- A. For the purposes of intestate succession, testate succession, and survivorship and except as provided in subsection (C), any individual who does not survive the decedent by 120 hours is deemed to have predeceased the decedent.
- B. An afterborn child who survives their own birth by 120 hours, shall be treated as if living at the time of the decedent's death.
- C. Survival by 120 hours is not required if the will or other governing instrument specifically provides for an alternate outcome.

SECTION 8.1.2 UNIFORM SIMULTANEOUS DEATH ACT

- A. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person shall be disposed of as if he or she had survived the other, except that:
 - 1. Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.
 - 2. Where the insured and the beneficiary in a life or accident insurance policy have died and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.
 - 3. Where two or more beneficiaries are designated to take successively or alternately because of survivorship under another person's disposition of property and there is no sufficient evidence that those beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he or she had survived all the other beneficiaries.
- B. If, in the case of simultaneous death, a will, living trust, deed, or contract of insurance provides for distribution of property differently from the provisions of this section, then this section shall not apply.

CHAPTER 9. CARE OF LIVESTOCK AND CUSTODY OF PETS

SECTION 9.1.1 LIVESTOCK AND CUSTODY OF PETS

- A. Upon the death of the decedent, the personal representative shall take steps to preserve and keep fed and safe any livestock or horses within the decedent's estate, subject to payment from the estate for this expense.
- B. Any animal, excluding livestock and horses, that belonged to the decedent and that was kept by the decedent as a pet need not be listed on the inventory of the estate.
- C. Any family member of the decedent, friend of the decedent or animal shelter may take custody of the animal immediately upon the death of the decedent.
- D. A family member, friend or animal shelter that takes custody of an animal immediately upon the death of the decedent is entitled to payment from the estate for the cost of caring for the animal.
- E. A family member, friend or animal shelter that takes custody of an animal immediately upon the death of the decedent shall deliver the animal to the personal representative for the decedent, or to any heir or devisee entitled to possession of the animal, upon request of the personal representative, heir or devisee.

CHAPTER 10. ITEMS OF CULTURAL HERITAGE

PART 1. GENERAL PROVISIONS

SECTION 10.1.1 DECLARATION OF PURPOSE

- A. Consistent with other provisions in this Code, the Board encourages Tribal members to prepare for safekeeping and transfer of possession of cultural heritage items without family conflict upon their death, including but not limited to:
 - 1. Prior to death, speaking directly with trusted kin about whom they wish to receive their cultural heritage items at the longhouse, in a family ceremony, or the like, or, if appropriate, gifting those items ahead of their death to the intended recipient.
 - 2. Naming verbally, or in writing in a will or Advance Directive, an individual with specific knowledge of the cultural heritage items to determine recipients of the items at the longhouse, in a family ceremony, or the like. who will distribute the items at the longhouse consistent with the decedent's stated directions, either written or verbal.
 - 3. Stating, in a will, who should receive the cultural heritage items, and also communicating the stated intentions directly with the nominated personal representative.
- B. This Chapter outlines specific provisions regarding cultural heritage items when such items are within a decedent's possession at the time of death or otherwise considered part of a decedent's estate.

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SECTION 10.1.2 DEFINITIONS

A. The following definitions are applicable to this Chapter:

1. “Cultural heritage items” is a general term that includes the following:
 - a. Individual or familial items of cultural property or inherited items considered to have cultural significance for a specific Tribal family, including but not limited to:
 - i. An object that is used primarily in ceremony, or for practice of traditional Tribal religious or spiritual practices, either individually or by a family or stewarded by a family for use in the community; or
 - ii. Individual or familial traditional jewelry or regalia; heirloom objects used for obtaining, carrying, or storing First Foods, such as a traditional kapin or berry basket; horse trappings or tack and livestock accoutrements; or
 - iii. Tangible intellectual property, and the intangible attributes of such intellectual property, created or held by a decedent, when such marks or branding utilize or memorialize cultural events or sacred places.
 - b. “Items of cultural patrimony” including any object having ongoing historical, traditional, or cultural importance central to the Tribes. Items of cultural patrimony cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Tribe and whether such object was separated from the Tribe, as is consistent with 25 USC. § 3001(3)(D), or as hereafter amended or replaced and including but not limited to:
 - i. Any material remains of past human activities that is at least 50 years of age, or as otherwise determined to be an archeological resource by the Tribes pursuant to the Historic Preservation Code.
 - ii. Written notes, recordings, manuscripts, archival documents, historic photographs, minutes of Tribal meetings, or any of the like, that contain confidential cultural resource information as defined by the Historic Preservation Code.
 - iii. Sacred objects, defined as ceremonial objects possessed by the Tribe for practice of traditional religious or spiritual practices.
2. “Employee Work Product” including documents, art, and the like, created by a Tribal government employee during work hours that reproduces or contains material of historical or archival value, or culturally relevant material, including but not limited to:

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- a. Cultural resource material created by a Tribal government employee for the Tribe's benefit.
- b. An employee's archival documents and pictures created while serving as an elected official, Committee member or Commissioner, or an employee.
- 3. "Interested person" or "interested party" means an heir or devisee that may be affected by the estate's administration or an action of the Court.
- 4. "Kin" means a decedent's surviving ancestors to the fourth degree of consanguinity (by blood) (great-great-grandparents); lineal descendants to the fourth degree of consanguinity (great-great-grandchildren); and collateral heirs to the eighth degree of consanguinity (extending to third cousins).

PART 2. EXCLUSIVE JURISDICTION OF THE COURT

SECTION 10.2.1 EXCLUSIVE JURISDICTION

A. To the broadest extent possible, the Court retains exclusive jurisdiction over disputes related to possession of cultural heritage items where the dispute is otherwise related to an estate administration properly before the Court.

SECTION 10.2.1 INTERVENTION IN OTHER JURISDICTIONS

- A. To the broadest extent possible, the Court will exercise jurisdiction over cultural heritage items that are subject to estate administration in a foreign jurisdiction.
- B. If the Tribe or a Tribal member discovers that cultural heritage items are currently being probated in another jurisdiction, regardless of whether the cultural heritage item is physically located within the UIR's exterior boundaries or off-reservation, and there is a determination that the cultural heritage item is rightly within the exclusive jurisdiction of the Court, the Tribal Court may request that the Board direct OLC to intervene in the matter, including but not limited to:
 - 1. If an item of cultural patrimony, demand for removal of the item from the probate and return of the item to the Tribe.
 - 2. If any other cultural heritage item, demand for removal from the probate of the foreign jurisdiction and for an ancillary probate to be conducted by the Court, consistent with the Court's exclusive jurisdiction over cultural heritage items.
 - 3. Any other legal measures that are consistent with federal and state cultural heritage laws, as may be determined by OLC.

SECTION 10.2.2 CUSTOM AND TRADITION IN SETTTLING DISPUTES WHERE OWNERSHIP OR POSSESSION OF CULTURAL HERITAGE ITEMS ARE AT ISSUE

- A. When settling probate disputes regarding cultural heritage items, the Court will consider Tribal customary law, including any longhouse decisions relevant to the dispute, recommendations from the Cultural Resources Panel, and the stated written intent of the decedent in deciding ownership or possession of the items.

PART 3. SPECIFIC TO ITEMS OF CULTURAL PATRIMONY

SECTION 10.3.1 NOT AN ESTATE ASSET

- A. Any item of cultural patrimony, whether tangible or intangible, that is incapable of alienation (private ownership) by any individual shall not be considered property of the estate regardless of possession by the decedent at the time of death.
- B. Items of cultural patrimony shall be returned to the Tribe or stewarded by the decedent's kin who is known in the community to be a traditional leader.
- C. A non-Tribal member, including a non-Native spouse, may not possess or steward an item of cultural patrimony. Any such item possessed by a Tribal member's surviving spouse who is not a Tribal member must be returned to the Tribe or presented to the decedent's kin for stewardship, with any Tribally enrolled joint children given preference to accept stewardship of the items.

PART 4. EXEMPTIONS FOR ALL CULTURAL HERITAGE ITEMS

SECTION 10.4.1 EXEMPTION FROM CREDITORS

- A. Cultural heritage items shall not be included in the estate inventory or annual accountings created by the personal representative.
- B. Cultural heritage items are exempt from all creditors' claims.

SECTION 10.4.2 EXEMPTION FROM TAXATION

- A. Cultural heritage items are not subject to inclusion in the value of the estate for purposes of taxation.

PART 5. DISTRIBUTION OF REPRODUCIBLE CULTURAL PROPERTY

- A. When the cultural heritage item is reproducible, an heir or devisee may request, in coordination with TCI, that the item be reproduced or scanned, subject to payment of reasonable costs by the estate through coordination with the personal representative.
- B. Once reproduced, the original cultural heritage item may be provided to TCI for safekeeping in perpetuity.
- C. Such a request may only be made upon agreement of all of the heirs and devisees.
- D. If the cultural heritage item contains culturally sensitive information, reproduction shall only proceed after consultation with CRPP and at TCI's discretion.
- E. Nothing in this Chapter vests a right in any party to demand that the item be reproduced, or to demand that any culturally sensitive information be revealed.

CHAPTER 11. SPECIFIC TO COVERED PERMANENT IMPROVEMENTS

PART 1. GENERALLY

SECTION 11.1.1 DECLARATION OF PURPOSE

- A. This Chapter governs the probate of covered permanent improvements, including residential dwellings, that are held in fee but situated on trust land.
- B. This Chapter does not apply to the probate of any interest in a permanent improvement situated on trust land within another tribe's jurisdiction.

SECTION 11.1.2 DEFINITIONS EXCLUSIVE TO PERMANENT IMPROVEMENTS

- A. The definitions below are intended to be applied specifically and solely in the probate of permanent improvements.

- 1. A "beneficiary" is exclusively defined in this Chapter as an heir or devisee to an interest in a covered permanent improvement.
- 2. "Covered permanent improvement" means a permanent improvement or interest in a permanent improvement, as defined by 25 U.S.C. 2206(a)(2)(A), as hereafter amended or repealed, erected upon or affixed to land such that moving the improvement would either damage the improvement to the extent that the improvement would be unusable or damage the land. "Covered permanent improvement" does not include a manufactured home that is not placed on a permanent foundation or otherwise connected permanently to the land. Additionally, covered permanent improvements shall be excluded from this Code if:
 - a. The improvement itself is held in trust by the Department of the Interior; or
 - b. The improvement itself is owned solely by the CTUIR.
- 3. "Devisee" means a person designated in a will to receive an interest in a decedent's covered permanent improvement. Any devise of a covered permanent improvement is subject to the following:
 - a. An "eligible devisee" is defined as an individual who is an enrolled CTUIR Tribal member at the time of the decedent's death to whom the decedent devised an interest in a covered permanent improvement and who also owns or will inherit an undivided interest of any amount in the underlying land.
 - b. An "ineligible devisee" is defined as a person who:
 - i. is not an enrolled CTUIR Tribal member at the time of the decedent's death but to whom the decedent devised an interest in a covered permanent improvement; or
 - ii. is an enrolled CTUIR Tribal member who does not own or will not inherit any interest in the underlying land.

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4. “Fee” or “held in fee” means any property that is not held in trust, whether for the Tribe or individual, by the Department of the Interior.
5. “Heir,” means a person who is entitled under the laws of intestate succession as set out in this Code to an interest in the decedent’s permanent improvement, subject to the following:
 - a. An “eligible heir” is defined as an individual who is an enrolled CTUIR Tribal member at the time of the decedent’s death who stands to inherit an interest in a covered permanent improvement and who also owns or will inherit an undivided interest of any amount in the underlying land.
 - b. An “ineligible heir” is defined as an heir who would otherwise stand to inherit an interest in a covered permanent improvement but who:
 - i. is not an enrolled CTUIR Tribal member at the time of the decedent’s death; or
 - ii. is an enrolled CTUIR Tribal member who does not own or will not inherit any interest in the underlying land.
6. “Personal property” includes:
 - a. The benefit previously held by a decedent under a leasehold interest pursuant to 25 CFR §162.005, as hereafter amended or replaced.
 - b. Any interest that a decedent may have in a covered permanent improvement situated on trust land.
7. “Real property” means any interest in land, and any improvements thereon; provided, however, that a covered permanent improvement which is located on trust land is considered to be personal property.
8. “Trust property” means any property whose title is held in trust status by the Department of the Interior for the benefit of a member of a federally recognized Indian tribe or for CTUIR. For the purposes of this Code, trust property does not include real property whose title is not held by the United States as trustee, but is included in a distinct and separate trust, including but not limited to an individual or family trust.

PART 2. JURISDICTION OF UMATILLA TRIBAL COURT AS TO COVERED PERMANENT IMPROVEMENTS

SECTION 11.2.1 PROBATE JURISDICTION

- A. The Court has exclusive jurisdiction to probate a decedent’s interests in any covered permanent improvements situated on trust land within UIR’s exterior boundaries, regardless of whether any portion of the underlying land is held in trust by the Department of the Interior.
- B. The Court has concurrent jurisdiction to decide intangible property interests, such as those subject to the lease requirements of 25 CFR §162.005, as hereafter amended or replaced,

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consistent with this Code, the CTUIR Land Leasing Code, or the CTUIR Landlord/Tenant Mortgage Code.

SECTION 11.2.2 PERSONAL JURISDICTION

1. The Court has personal jurisdiction over any person who occupies a permanent improvement that is subject to probate jurisdiction by this Court.
2. By accepting an interest in the permanent improvement from the estate, a beneficiary submits to the personal jurisdiction of the Court, regardless of whether the beneficiary is a CTUIR Tribal member, a Tribal member of another Tribe, or a non-Indian.

PART 3. NOTICE TO BUREAU OF INDIAN AFFAIRS UMATILLA AGENCY

- A. The Superintendent of the BIA Umatilla Agency, or any successor Agency office, shall receive actual notice of any probate that affects a residential lease pursuant to 25 CFR 162.005, as hereafter amended or replaced.
- B. The Superintendent or any successor Agency office shall be provided with the notice of any hearing where a residential lease is at issue at least 30 days before any hearing. Proof of such notice must be filed with the Court prior to the hearing.

PART 4. HOMESTEAD ACT; DISPOSITION OF COVERED PERMANENT IMPROVEMENTS

SECTION 11.4.1 HOMESTEAD ACT

- A. Where a decedent's probate estate includes a covered permanent improvement or a manufactured home situated on a trust allotment, whether the allotment is held in trust for the Tribe or an individual Tribal member, and the improvement or manufactured home was the decedent's family's home, and the surviving spouse, minor child or children of the decedent, or an adult child of the decedent who is a protected person in the care of the surviving spouse, who previously occupied the home with decedent while living, the Court may order that the surviving spouse and any minor children or protected persons may remain in the dwelling. .
- B. Pursuant to such an order, the Court may set aside the dwelling for the surviving spouse, minor children or protected person, as a homestead for a period of time not to exceed five years.
- C. Such a determination shall be based upon a finding by the Court that remaining in the dwelling is necessary for the welfare and protection of the surviving spouse, minor children, or protected person.
- D. Pursuant to the order, the Court may set aside funds from the estate as the Court deems necessary for maintenance and upkeep of the home, including for the fair market rental value of any rents due to landowners of the underlying land, unless waived by such landowners, or for lease payments required pursuant to a residential lease pursuant to 25 CFR 162.005, if so required.
- E. Other beneficiaries who stand to inherit an interest in the dwelling whose interest may be impacted by the Court's determination, and creditors with a secured interest in the dwelling, shall receive actual notice of the order.

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- F. A beneficiary or a creditor may object to the order within 60 days of the date that the order is issued.
- G. Upon objection, the Court must schedule a hearing to hear evidence contesting the order within 30 days.
- H. The Court may require that the parties make reasonable attempts to mediate any issues regarding the surviving spouse, minor children, or protected person's continued residence in the dwelling.
- I. Other parties entitled to notice of the order shall include the Bureau of Indian Affairs – Superintendent and, if CTUIR has any interest in the underlying allotment, the CTUIR Office of Legal Counsel.
- J. Nothing in this Section shall be interpreted as prohibiting the beneficiaries from coming to an agreement regarding who shall remain in the dwelling.

SECTION 11.4.2 DISPOSITION OF COVERED PERMANENT IMPROVEMENTS

- A. Privately-Owned Fee Land Excluded.
 - 1. Privately-owned fee land probated by the Court may be partitioned at probate, subject to the provisions of the CTUIR Land Development Code.
 - 2. Privately-owned fee land in the decedent's estate is otherwise excluded from the provisions outlined in this Part.
- B. Individual Trust Allotments. Land held in trust for an individual or multiple landowners within the UIR's exterior boundaries shall pass pursuant to the CTUIR Inheritance Code. Covered permanent improvements, as defined by this Code, situated on those allotments shall pass as follows:
 - 1. If devised in a valid will, to the devisee or devisees, so long as the devisee is an Eligible Devisee. If the devisee is not an Eligible Devisee, then the devisee may:
 - a. Disclaim the devise to an Eligible Devisee while retaining either a term of years or a life estate in the improvement, or
 - b. Exercise the option to take a distribution in-kind of some other asset of the intestate estate that is substantially equal to the value of the share that the devisee would have inherited, had they been eligible.
 - 2. If an intestate estate, to the intestate heirs as indicated in this Code, so long as the intestate heir is an Eligible Heir. If the intestate heir is not an Eligible Heir, then the Heir may:
 - a. Disclaim the intestate share to an Eligible Heir while retaining either a term of years or a life estate in the improvement; or
 - b. Exercise the option to take a distribution in-kind that is approximately equal to the value of the share that the heir would have inherited, had they been eligible.

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3. The beneficiaries may settle upon an alternative agreement regarding ownership of the covered permanent improvement, including subject to a consolidation agreement approved under 43 CFR 30 Subpart F, as hereafter amended, so long as the agreement does not conflict with other provisions of this Code or with other Tribal law.
4. Where federal regulations may apply, transfer of ownership of covered permanent improvements remains subject to federal leasing rules.

PART 5. VALUATION, IN-KIND DISTRIBUTIONS, DISCLAIMERS, AND SETTLEMENTS RELATED TO PERMANENT IMPROVEMENTS

SECTION 11.5.1 DATE OF DEATH VALUE BY AGREEMENT OR APPRAISAL

- A. Prior to the personal representative filing the inventory, the presumptive beneficiaries may agree upon the date of death value for any covered permanent improvement in which the decedent had an interest.
- B. Any beneficiary who will inherit a share in the covered permanent improvement may request that the personal representative order an appraisal to support the date of death value.

SECTION 11.5.2 DIRECTED DISCLAIMER, IN-KIND DISTRIBUTION, OR OTHER AGREEMENTS

- A. The Court may stay any pending probate proceedings for a period of no longer than 120 days while the beneficiaries work towards a settlement agreement to present to the Court.
- B. Any settlement agreement may also, so long as the heirs or devisees are eligible, may also include an agreement to a partition at probate of the underlying land, so long as any partition does not conflict with the provisions of the CTUIR Land Development Code and so long as under other applicable CTUIR law, including for any variance.
- C. Any disclaimer, in-kind distribution, consolidation agreement, or alternative settlement agreement must be filed with the Court as a formal written statement of the parties, which shall be signed by all parties in front of a notary. If a beneficiary is not able to sign the written statement, the beneficiary may make a formal statement on the record in open court.
- D. All disclaimers, in-kind distributions, consolidation, or alternative settlement arrangements are subject to the approval of the Court.
- E. Upon acceptance of an agreement, the Court may stay any pending probate proceedings for a period of time necessary for the Tribal Planning Office and Land Protection Planning Commission to review an application for partition or variance and, if necessary, for any relevant CTUIR Department or Committee or Commission to review, not to exceed 120 days.

PART 6. NOTICE TO BIA, INTENTION REGARDING APPROVAL OF LEASE

SECTION 11.6.3 NOTICE TO BIA

- A. When any arrangement would be subject to a valid execution of a lease as required by 25 CFR 162.005, the BIA shall receive notice of the disclaimer, in-kind distribution, consolidation, or alternative settlement arrangement at the time such arrangement is filed with the Court, as well as a

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copy of the Court's approval, such as a Final Judgment of Distribution with Receipt signed by the Ineligible Heir.

SECTION 11.6.4 INTENTION THAT BIA APPROVE LEASE

- A. When ownership or possession of a covered permanent improvement under this Chapter is agreed to by the parties or ordered by the Court, it is the Court's intention that approval of a lease with reasonable terms shall not be unreasonably withheld by the Superintendent.

CHAPTER 12. NON-PROBATE TRANSFERS

PART 1. GENERALLY

SECTION 12.1.1 DECLARATION OF PURPOSE

- A. In the interests of judicial economy, efficiency and cost effectiveness, Chapter 14 details several non-probate alternatives for small estates.

SECTION 12.1.2 LIMITATIONS

- A. Non-probate transfers may not be used in the following circumstances:
1. Where the estate assets are subject to probate include a covered permanent improvement, or an interest in a covered permanent improvement.
 2. Where ownership of cultural property is contested.
 3. Where a minor beneficiary is a ward of the Juvenile Court.

PART 2. SIMPLE ESTATE AFFIDAVIT

SECTION 12.2.1 DEFINITIONS

- A. The following definitions pertain to a simple estate affidavit:
1. "Affiant" means the person signing a simple estate affidavit.
 2. "Claiming successor" means:
 - a. If the decedent died intestate, an heir of the decedent.
 - b. If the decedent died testate, a devisee of the decedent.
 - c. A creditor of the estate entitled to payment or reimbursement, upon submitting a valid claim.
 - d. If the only asset of the estate are funds that are in the possession of the CTUIR or a Tribal entity, a Public Administrator designated for this purpose to release the funds.

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SECTION 12.2.2 LIMITATIONS OF SIMPLE ESTATE AFFIDAVIT DESCRIBED

- A. The combined value of the assets included in the simple estate affidavit probate estate do not exceed a combined fair market value of \$275,000, including:
 - 1. A total fair market value of not more than \$75,000 in personal property, wheresoever situated, and inclusive of wages owed to the decedent by a Tribal entity, or non-designated Tribal benefits.
 - 2. A total fair market value of any real property within the estate of not more than \$200,000.
- B. These combined fair market values may be evaluated and decreased or increased consistent with review and amendment of the Probate Code.
- C. All fair market values shall be determined as of the date of the death of the decedent, and shall include the entire interest of the property, without reduction for liens or other debts.

SECTION 12.2.3 WHO MAY FILE A SIMPLE ESTATE AFFIDAVIT; WHEN AMENDED

- A. A claiming successor may file a simple estate affidavit for an estate that would otherwise be subject to probate that does not exceed the combined value listed in this Code.
- B. A simple estate affidavit may be filed no sooner than thirty days after the death of a decedent, unless the affiant is a creditor or an appointed Public Administrator. If the claiming successor is a creditor or an appointed Public Administrator, a simple estate affidavit may be filed no sooner than sixty days after the death of a decedent.
- C. An individual may not file a simple estate affidavit if the individual has been convicted of a felony involving fraud or deceit of funds, in any jurisdiction, or who was previously restrained from the decedent for reasons related to domestic violence abuse, sex abuse, child abuse, elder abuse, or stalking.
- D. A simple estate affidavit may not be filed by a claiming successor for an individual who is otherwise missing or whereabouts unknown, without first petitioning the Court for a finding as to determination of death,
- E. An amended simple estate affidavit must be filed:
 - 1. To correct a material error or omission in a previous affidavit.
 - 2. To include property not described or included in the previous affidavit. If the additional property means that the value of the estate would increase beyond those described in 14.2.2(A)(2), the simple estate affidavit must be converted to a petition for probate.

SECTION 12.2.4 CONTENTS OF A SIMPLE ESTATE AFFIDAVIT; RULES

- A. A simple estate affidavit must include the following:

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1. Contain a notice in substantially the following form, printed in at least 14-point bold type immediately below the caption on the first page of the simple estate affidavit, stating the following:

NOTICE OF DUTY TO PAY DEBT OR TURN OVER PROPERTY

To: Any person to whom a copy of this simple estate affidavit is mailed or delivered.

Under the laws of the Confederated Tribes of the Umatilla Indian Reservation, if you owe a debt to the decedent or have personal property of the decedent, you must pay the debt or turn over the property to the affiant. If you refuse, the affiant may seek judicial remedies in Umatilla Tribal Court, asking the Court to compel you to pay the debt or turn over the property, and you could be responsible for the affiant's attorney fees. The affiant may also seek any other appropriate remedies in other jurisdictions, including the probate courts of the states of Oregon or Washington, seeking to compel compliance with this affidavit, and you could be responsible for the affiant's attorney fees.

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2. State the name and post-office address of the affiant.
 3. State in what capacity the affiant qualifies as a claiming successor.
 4. State that the simple estate affidavit is made pursuant to the provisions of Chapter 10 of the CTUIR Tribal Probate Code.
 5. State the name, age, domicile and post-office address of the decedent.
 6. State the date and place of the decedent's death.
 7. Describe and state the fair market value of all property in the estate, including an address and a legal description of any real property not otherwise within the exclusive jurisdiction of the Department of the Interior.
 8. State that, to the affiant's knowledge, with regards to the decedent's estate within the jurisdiction of the Court, no personal representative of the estate has been appointed in any jurisdiction, that there is no pending petition for appointment of a personal representative in any jurisdiction, and that the estate is not currently being administered in any jurisdiction.
 9. State whether the decedent died testate or intestate.
 10. List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and that a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address.

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11. If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address.
12. State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat to the Tribe.
13. State that reasonable efforts have been made to ascertain creditors of the estate.
14. List the claims against the estate that are undisputed by the affiant and that remain unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts of the claims and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address.
15. Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount of the claims disputed by the affiant and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address.
16. State the mailing address for presenting claims.
17. List anticipated administrative expenses and attorney fees, if any.
18. State that the affiant is not disqualified from acting as an affiant under Section 13.4.2(C) of the Tribal Probate Code.
19. State that undisputed claims against the estate will be paid as provided in the CTUIR Probate Code, subject to all applicable exemptions prescribed in the Code.
20. State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:
 - a. A claim is presented to the affiant within four months of the filing of the affidavit or amended affidavit at the address stated in the affidavit for presentation of claims; or
 - b. A petition for appointment of a personal representative of the estate is filed within four months.
21. If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:
 - a. A petition for summary determination is filed with the Court by the creditor within four months of the filing of the affidavit; or

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- b. A petition for appointment of a personal representative of the estate is filed within four months.
- 22. Include a statement that, upon acceptance by the Court, the affiant will deliver a copy of the simple estate affidavit to all creditors, non-affiant heirs, and non-affiant devisees within 30 days of the filing's acceptance.

Include a declaration under penalty of perjury that states in the same or similar form that:
 - a. The affiant has completed the simple estate affidavit based on personal knowledge, and has read and reviewed the information contained in the affidavit;
 - b. The statements and information contained therein are true and correct to the best of the affiant's knowledge; and
 - c. The statements are made under penalty of perjury.
- B. The affiant shall file a certified copy of the death record of the decedent as a confidential document.
- C. If the decedent died testate, the affiant shall file simultaneously with the simple estate affidavit:
 - 1. The original will; or
 - 2. If the original will was filed in an estate proceeding in another jurisdiction, a certified copy of the original will from that jurisdiction.

SECTION 12.2.5 ACCEPTANCE OF SIMPLE ESTATE AFFIDAVIT

- A. The Court shall review the simple estate affidavit for the relevant information, as outlined in Section 12.2.4.
- B. If the Court determines that the affiant is qualified to act as a claiming successor to file a simple estate affidavit and that the simple estate affidavit contains all relevant information, the Court shall accept the simple estate affidavit and any accompanying documents for filing.
- C. Once accepted, the Court shall assign a case number and stamp a copy of the simple estate affidavit as "Filed" and including the date and initials of the Probate Administrator, or with the Court's seal and including the date and initials of the Probate Administrator.
- D. Upon acceptance of the filing, the Court shall provide certified copies to the affiant for delivery to creditors, non-affiant heirs, or non-affiant devisees.
- E. The Court may charge a filing fee and costs for copying and certification of the stamped copies, pursuant to rules promulgated by the Chief Judge in consultation with the Court Director.

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- F. Upon acceptance of the copies, the affiant shall deliver a stamped copy of the filing by first class mail to each creditor, heir, or devisee, as listed in the simple estate affidavit. Upon completion, the affiant shall provide a written statement or Proof of Service to the Court.
- G. Upon receiving the written statement or Proof of Service, the Probate Administrator shall summarily close the estate.

PART 3. TRIBAL MEMBER BENEFITS

SECTION 12.3.1 DISTRIBUTION PURSUANT TO PAYABLE ON DEATH BENEFICIARY DESIGNATION

- A. A Tribal member may designate one or more “payable on death” beneficiaries to inherit outstanding Tribal monetary benefits upon the Tribal member’s death by filing a Payable on Death Beneficiary Designation Form with Tribal Enrollment.
- B. In the event a decedent has a properly executed and filed Form on file with Tribal Enrollment, the Tribal member benefits shall pass by operation of law and are not subject to inclusion in the probate estate.
- C. An heir may challenge the validity of the Form by filing a petition with the Tribal Court in any current probate matter or, if no probate, as a separate matter. Notice pursuant to 13.2.3 must be provided at the time of filing to all other heirs or devisees.

SECTION 12.3.2 WHEN NO PAYABLE ON DEATH BENEFICIARY HAS BEEN DESIGNATED

- A. Distribution Pursuant to Testate Probate.
 - 1. When a deceased Tribal member with unpaid Tribal monetary benefits did not designate any “payable on death” beneficiaries through use of the Tribal Enrollment Form, but did leave a valid will, the terms of the will shall govern distribution of the unpaid Tribal monetary benefits. Where the will does not specifically provide for distribution of the Tribal monetary benefits as a specific devise or a general devise, but includes a residue provision, the Tribal monetary benefits shall be distributed as part of the residue.
 - 2. If the amount of Tribal monetary benefit qualifies as a simple estate affidavit, Tribal Enrollment may file a simple estate affidavit or, if below the amount of an exempt estate, a petition for an exempt estate.
 - 3. If probate commences, Tribal Enrollment shall retain the funds throughout the pendency of the probate, separate from any estate account otherwise created and maintained for the estate by the personal representative.
 - 4. Upon order of the Court or a Final Judgment of Distribution, Tribal Enrollment shall distribute the Tribal Benefits as ordered or adjudged, including that Tribal Enrollment may transfer any such funds, if so appropriate, to an heir’s Minor’s Trust or Protected Person’s Trust account.

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5. If an heir who would otherwise inherit Tribal member benefits but does not currently maintain an address on file with Tribal Enrollment, Tribal Enrollment shall attempt to provide notice to the heir by posting notice at the Tribal Court and by publication in the CUJ for no less than 90 days.
6. If the heir or the heir's duly appointed agent does not contact Tribal Enrollment within 90 days from the date of posting, Tribal Enrollment shall transfer the funds to the Missing Persons' Trust.

B. Distribution Pursuant to Intestate Probate.

1. When a deceased Tribal member with unpaid Tribal monetary benefits did not designate any "payable on death" beneficiaries and died intestate, the Tribal monetary benefits shall be distributed according to the laws of intestate succession in this code.
2. If the amount of Tribal monetary benefit qualifies as a simple estate affidavit, Tribal Enrollment may file a simple estate affidavit or, if below the amount of an exempt estate, a petition for an exempt estate.
3. If probate commences, Tribal Enrollment shall retain the funds throughout the pendency of the probate, separate from any estate account otherwise created and maintained for the estate by the personal representative.
4. Upon order of the Court or a Final Judgment of Distribution, Tribal Enrollment shall distribute the Tribal Benefits as ordered or adjudged, including that Tribal Enrollment may transfer any such funds, if so appropriate, to an heir's Minor's Trust or Protected Person's Trust account.
5. If an heir who would otherwise inherit Tribal member benefits but does not currently maintain an address on file with Tribal Enrollment, Tribal Enrollment shall attempt to provide notice to the heir by posting notice at the Tribal Court and by publication in the CUJ for no less than 90 days.
6. If the heir or the heir's duly appointed agent does not contact Tribal Enrollment within 90 days from the date of posting, Tribal Enrollment shall transfer the funds to the Missing Persons' Trust.

SECTION 12.3.3 WHEN TRIBAL MONETARY BENEFITS ARE THE SOLE ESTATE ASSET OR THE SOLE ESTATE ASSET WITHIN THE COURT'S JURISDICTION

- A.** When the Tribal monetary benefits are not otherwise distributed by a "payable on death" designation, and no other estate assets are within the jurisdiction of the Court:
1. Where the decedent estate is going through probate in another jurisdiction, the personal representative in that jurisdiction may file a certified copy of a Judgment of Final Distribution with the Court.

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2. Upon examination of the Judgment, the Probate Administrator may direct Tribal Enrollment regarding appropriate distribution of the Tribal monetary benefits, and Tribal Enrollment will distribute the Tribal monetary benefits accordingly.
- B. Where the decedent's estate consists solely of a non-designated Tribal monetary benefit and there is no other probate in any jurisdiction, an individual who would otherwise qualify as a personal representative may present to the Probate Administrator:
1. A copy of the death certificate, if one is not already held by Tribal Enrollment;
 2. A copy of the decedent's will, if one exists;
 3. A copy of the claim, if a creditor;
 4. A list of all known heirs or, if a will, devisees to the decedent's estate; and
 5. Providing the known addresses and telephone numbers of those heirs and/or devisees; and
 6. Certifying upon penalty of perjury that the claiming successor knows of no other heirs or potential heirs or devisees.
- C. Upon receipt, the Probate Clerk shall verify with Tribal Enrollment that the decedent listed on the death certificate is the same person as the individual with the unclaimed Tribal monetary benefits.
- D. Upon identification by Tribal Enrollment of all heirs or devisees of the decedent, Tribal Enrollment shall send via U.S. Mail, return receipt requested, a notice that the individual is entitled to an identified portion of the Tribal member's unclaimed benefits; provided, that if Tribal Enrollment is unable to identify any heirs or devisees or cannot locate the current address of any of the heirs or devisees, then Tribal Enrollment shall also provide notice by posting in the Tribal Court and publication in the CUJ, stating:
1. Name of decedent;
 2. Date of death of decedent;
 3. Name of presumption heirs or devisee;
 4. Directing that anyone believing themselves to be an heir or with knowledge of a will to contact the Probate Administrator within 90 days; and
 5. A statement that if an heir or devisee has not claimed an interest in the outstanding Tribal monetary benefits before 90 days, such interest in those benefits will be forever barred.
- E. Known heirs and devisees shall have five years from the date of death of the Tribal member to claim outstanding Tribal monetary benefits, at which time those benefits shall be forfeited and escheat to the Tribe.

CHAPTER 13. RULES OF PROBATE PROCEDURE

PART 1. PROVISIONS OF GENERAL APPLICABILITY

SECTION 13.1.1 DECLARATION OF PURPOSE

- A. The Rules of Probate Procedure are hereby established as Tribal law and shall be abided in the administration of all probate estates, and contested matters related to the administration, and distribution of any estate, that are properly within the jurisdiction of the Court.
- B. Estates that are administered pursuant to the Rules of Probate Procedure foreclose continued claims and liabilities against the estate; ensure that estate property is efficiently transferred to estate beneficiaries; and that estates are closed with such finality that expectations are settled.

SECTION 13.1.2 APPLICATION

- A. This Chapter applies to all estate matters, including contested matters and matters specific to cultural heritage items, that are properly within the Court's jurisdiction.

SECTION 13.1.3 NOTICE

- A. This Chapter establishes specific notice requirements for administration of estates. These requirements are reasonably calculated to provide any interested party, known or unknown, with adequate notice of pending probate-related matters and non-probate transfers.

SECTION 13.1.4 GOVERNING RULES

- A. The CTUIR Rules of Court are hereby incorporated by reference. Where there is a conflict between the Rules of Court and the Rules of Probate Procedure, the Rules of Probate Procedure will govern.
- B. Where a matter is contested, the CTUIR Court Rules of Evidence shall govern admission of evidence by the Court.

SECTION 13.1.5 SEVERABILITY

- A. If any provision, in whole or in part, or its application thereof to any person or circumstance, is held to be unconstitutional or invalid, that shall not affect the validity of the other provisions of the Rules of Probate Procedure.

SECTION 13.1.6 DEFINITIONS

- A. The following definitions are applicable to the Rules of Probate Procedure:
 - 1. "Action" means any suit or legal proceeding filed with the Court. For example: appointment or removal of personal representative, determination of a will's validity, determination of heirs, etc.
 - 2. "Claim" means a liability of a decedent that was incurred during the decedent's lifetime. A claim does not include an expense of estate administration, which is a liability of the decedent's estate.

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3. “Custodial property” means any interest in property that is transferred to a custodian for the benefit of a minor beneficiary, and including any income generated from that property.
4. “Custodian” means an individual nominated in a Will and appointed by the Court or, if no Will, nominated and appointed at the Court’s discretion, to accept and receive property for safekeeping on behalf of a minor until the minor reaches the age of 18.
5. “Defendant” means, in a contested matter related to an estate:
 - a. Any party against whom a claim is asserted;
 - b. Any party objecting to a petition or motion; or
 - c. The party subject to a show cause order issued by the Court in a probate proceeding.
6. “Domicile” means the place of abode of a person, where a person intends to remain and to which, if absent, the person intends to return.
7. “Estate” means the totality of the decedent’s assets, whether owned in whole or in part by the decedent. An estate may include both a non-probate estate, consisting of non-probate assets, and a probate estate:
 - a. “Non-probate estate” means the total assets of a decedent’s estate that pass to the beneficiaries through operation of law or operation of contract.
 - b. “Probate estate” means the total assets of a decedent’s estate that do not otherwise pass to the beneficiaries through operation of law or operation of contract. A probate estate is subject to administration, including the payment of debts, liabilities or claims determined to be the responsibility of the decedent before death, and is subject to administration and distribution pursuant to the laws and procedures governing the probate estate.
8. “Estate administrator” means a Tribal employee or a Tribal entity’s Human Resources Plan Administrator. An estate administrator may be appointed by the Court to act as an affiant for a simple estate affidavit or to act in the capacity of a personal representative to administer a CTUIR Tribal member estate where appointment of another personal representative is not sought, or where removal of a personal representative is necessary, but only where:
 - a. No other suitable party is willing and qualified to serve; and
 - i. The CTUIR or a Tribal entity holds assets that are rightfully within the estate of a decedent; or
 - ii. The Tribal entity has a claim against the decedent’s estate.
9. "Guardian ad litem" means a person who is appointed by the Court at the motion of a party or at the Court’s discretion to act on the behalf of an incapacitated beneficiary or a minor, throughout the administration of the estate, including any actions filed during

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the administration. A guardian ad litem in an action may not be the same person as the personal representative.

10. “Plaintiff,” in a contested matter related to an estate, means any party asserting a claim for relief through filing a petition or motion with the Court.
11. A “probate administrator” is a Tribal Court employee who, pursuant to Court rule, is formally designated to act on behalf of the Court to accept and, if so empowered under this Code, to act upon, filings received for uncontested estate administration, including for small estates.
12. “Probate proceeding” means a proceeding under this Probate Code related to the administration of a decedent’s estate, and including any hearing related to a contest of the estate’s administration or distribution, such as where an interested party contests a will, a personal representative appointment, or the like.
13. “Protected person” means a minor as defined by this Code, or an individual who has been found to be incapacitated by a court of competent jurisdiction, as evidenced by judicial notice of a previous Tribal Court matter where such a determination was made, or as evidenced by registration of an order or judgment with the Court from a court of competent jurisdiction.
14. “Settlement” is:
 - a. The full process of administration, distribution and closing of a decedent’s estate; or
 - b. In the event of a contested matter, an agreement, deemed equitable and accepted on the record by the Court, that distributes the estate to the heirs or devisees differently than would have otherwise occurred.

PART 2. PROBATE PROCEDURE

SECTION 13.2.1 COMMENCEMENT OF PROBATE

A. When Commenced

1. At any time after the death of a person subject to the jurisdiction of the Probate Court, probate may be initiated by any person meeting the qualifications of a personal representative.
2. The probate proceeding commences by the filing of a petition to the Probate Court, subject to the notice requirements set out below.

SECTION 13.2.2 PLEADINGS

A. No particular pleadings or forms of pleadings are required for the Probate Court to exercise jurisdiction over the matter, although all petitions, inventories, reports and accountings in a probate proceeding must be in writing and must include the following:

1. A declaration under penalty of perjury that states in the same or similar form that:

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- a. The petitioner or personal representative has read and reviewed the information contained in the pleading, inventory, or report;
- b. The statements and information contained therein are true and correct to the best of the knowledge of the petitioner or personal representative; and
- c. The statements are made under penalty of perjury.

SECTION 13.2.3 NOTICE

- A. Notice of any petition must contain the following:
 1. The name, address telephone number, and email address, if available, of the person giving the notice and the nature of that person's interest in the estate;
 2. A statement where objections may be filed and the deadline for filing those objections, if any; and
 3. A statement that the objection must include a plain and concise statement of the basis for the objection.
- B. The notice must be accompanied by copies of any relevant documents filed or to be filed with the Court.
- C. The petitioner filing the document shall cause notice to be given to:
 1. The personal representative, unless the petitioner is nominating themselves; and
 2. Each interested party whose interests may be affected by the substance of the document or the grant or denial of the requested action or relief.
- D. If the person giving notice under this section knows that a person entitled to notice under Section 13.6.1 is represented by a guardian or guardian ad litem, the notice must also be given to the person's guardian or guardian ad litem. If a person who is entitled to notice under Section 13.6.1 of this subsection is a minor, the notice must be given to the minor's parent or legal guardian.
- E. Notice under this section must be given in one or more of the following ways:
 1. By first class mail to the person's place of residence or business.
 2. By personal delivery to the person's place of residence or business.
 3. By email, but only if the person has previously consented in writing to electronic notice.
 4. If the person has appeared by attorney, notice must be sent to the person's attorney, by mailing or personal delivery to the person's attorney or, if so consented, by email to the attorney. If notice is given to a person's attorney consistent with this paragraph, the person giving notice is not required to also send notice to the person.
 5. If the place of residence or business of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy of the notice in the Confederated Umatilla Journal (CUJ), and in a newspaper of general circulation in the county or state

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where the person was last known to have resided, except that publication in the CUJ will suffice if the last known residence was within the UIR.

6. Upon good cause shown, and only as allowed by order of the Probate Court, any other method determined by the Probate Court to be reasonably suitable under the circumstances and likely to result in receipt of the notice, including notice by email irrespective of whether the person has consented to electronic service, text, WhatsApp, etc.
- F. Notice must be given no later than 15 days before:
1. The earlier of the date to file objections to the petition or other pleading or the date set for the hearing or,
 2. If notice by publication, the final date of publication must be at least 15 days before the earlier of the date for the filing of objections to the petition or motion or the date set for the hearing.
- G. Proof of notice, including an attestation under penalty of perjury as to the method of notice, must be made at or before the hearing, if any, and filed in the proceeding.
- H. When any notice is required to be given, the person to whom notice must be given, or the person's guardian, a guardian ad litem, or parent may waive notice by a writing signed by the person, guardian, guardian ad litem, or parent. Waiver of notice must be filed in the proceeding.

PART 3. CONTESTED PROBATE PROCEEDINGS

SECTION 13.3.1 WHEN CONTESTED

- A. For the purposes of this section, an issue in a probate proceeding is contested if it is or arises from:
1. A petition or motion for declaratory judgment, including a will contest.
 2. A petition to remove a court-appointed fiduciary, including but not limited to a personal representative, special administrator, public administrator or guardian ad litem.
 3. A petition or motion for affirmative relief of any sort against a person; and
 4. If filed by a person other than a court-appointed fiduciary:
 - a. A motion to increase the amount of the bond, or require a new bond, of the court-appointed fiduciary.
 - b. A petition to restrict the powers of the court-appointed fiduciary.
 - c. A petition to determine heirship.
 - d. A petition for instructions.

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5. A petition to appoint a personal representative or special administrator other than the personal representative or special administrator nominated in the will admitted to probate.
 6. Any other petition or motion to which another person has filed an objection.
 7. Any other petition, motion or show cause order determined by the court to be a contested issue in a probate proceeding.
- B. Summary determination of a claim against the estate, including an order directing payment of a claim, or summary review of a simple estate affidavit shall not be considered contested unless such determination or review is appealed by an interested person to the Court pursuant to a motion for reconsideration or, if appeal of a motion for reconsideration, pursuant to Section 15.4.6.

SECTION 13.3.2 BURDEN OF PROOF

- A. Nothing in this section is intended to affect the burden of proof or standard of proof for evidence, which shall be:
1. Preponderance of the evidence in non-contested probates.
 2. Clear and convincing in contested probate proceedings.

SECTION 13.3.3 FILING OBJECTIONS TO PETITION OR MOTION

- A. Any interested person or the personal representative may file a written objection to a petition or motion previously filed. An objection filed under this section must:
1. Include a plain and concise statement of the basis for the objection;
 2. Be served on the person described in Section 13.2.3(C) and
 3. Be filed within 15 days.
- B. If no objections are filed before the final date for the filing of objections to the petition or motion, or if all filed objections are withdrawn, the court may sign the proposed order or judgment without further notice or hearing.
- C. The Court may require that a hearing be held on any petition or motion in a probate proceeding, however, a hearing must be held on a petition or a motion in a probate proceeding if an objection to the petition or motion is filed and the objection is not withdrawn before the hearing.

SECTION 13.3.4 PROOF OF DOCUMENTS; CERTIFICATION

- A. Proof of documents may be made as follows:
1. Of a will, by submitting an original will with affidavit or a certified copy of the will.

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2. When a will has been probated or established in a foreign jurisdiction, by a certified copy of the document entered in the foreign jurisdiction admitting the will to probate or recognizing the validity of the will.
3. Of letters testamentary or letters of administration, by a certified copy of the letters. The certification may include a statement that the letters have not been revoked.
4. A document filed or entered in a foreign jurisdiction may be proved by a copy of the document, certified by a clerk of the court in which the document was filed or entered or by any other official having legal custody of the original document.

SECTION 13.3.5 LIMITED JUDGMENTS

- A. The Court in a probate proceeding may enter a limited judgment or interlocutory order only for the following decisions of the Court:
 1. A decision on a petition for appointment or removal of a personal representative, including a successor personal representative.
 2. A decision in a will contest filed in the probate proceeding.
 3. A decision to require delivery of possession of property of the decedent to the personal representative, special administrator or, in the case of cultural property, any kin for safekeeping before appointment of a personal representative or special administrator.
 4. A decision to determine ownership of title for real property or a covered permanent improvement, consistent with quieting title to the real property or covered permanent improvement.
 5. A decision on a petition or motion for support of a surviving spouse or elective share.
 6. A decision on an objection to a final accounting.
 7. Any other decision that is a final determination of the rights of one or more persons.
- B. The Court may enter a limited judgment under this section only if the Court determines that there is no just reason for delay. The judgment document need not reflect the Court's determination that there is no just reason for delay.

SECTION 13.3.6 APPEALS

- A. Appeals related to matters properly within the Court's jurisdiction shall be heard by the Court of Appeals, pursuant to the Court of Appeals Rules of Appellate Procedure.

PART 4. ORDER OF PROBATE PROCEEDINGS

SECTION 13.4.1 INITIATION OF PROBATE PROCEEDINGS

- A. Filing Petition to Probate

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1. At any time after the death of a person subject to the Probate Code, any person meeting the qualifications required of the personal representative of the decedent's estate may initiate the probate of the decedent's estate.
2. Probate proceedings shall be initiated by a Petition for Probate filed with the Court containing:
 - a. The name of the decedent;
 - b. The decedent's enrollment status with the Tribe (enrolled, eligible for enrollment, enrolled in another federally recognized Indian tribe, non-Indian);
 - c. The date of death of the decedent;
 - d. The names and addresses of the decedent's surviving family so far as such information is known to the petitioner;
 - e. Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will;
 - f. A general description of the decedent's gross estate, including a description of those assets subject to probate in the Probate Court, and a general description of those portions of the decedent's estate, if any, that are not subject to probate in the Probate Court, including property or assets transferring ownership by non-probate transfer, and including a listing of any of decedent's interests in trust property, within the jurisdiction of Department of the Interior;
 - g. Any information, if known to the petitioner, regarding a point of contact designated by the decedent for disposition of remains, funeral, burial, etc.
 - h. A statement of whether any probate proceedings are pending in any other jurisdiction and, if so, the name and address of the personal representative appointed in such proceedings;
 - i. A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative;
 - j. A request for approval of the decedent's will, or a request that the court find that the decedent died without a valid will, if applicable; and
 - k. A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct.
- B. The petitioner shall file with the petition, or as soon after filing as such documents can be obtained:
 1. A certified copy of the decedent's death certificate; and
 2. The original or a true and correct copy of any will found or document alleged to be the decedent's will. 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.

SECTION 13.4.2 QUALIFICATIONS OF PERSONAL REPRESENTATIVE; PRIORITY

- A. Powers and responsibilities for estate administration shall be granted to the personal representative, respectively entitled to appointment in the following order:

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1. The person or persons named to serve as personal representative in the decedent's will.
 2. The surviving spouse or such person as the surviving spouse may request to have appointed.
 3. The decedent's next of kin in the following order:
 - a. An adult child;
 - b. A parent;
 - c. A sibling;
 - d. A grandchild, or
 - e. A nephew or niece.
 4. A Public Administrator, as defined by this Code.
- B. If the person so entitled shall fail for more than sixty (60) days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the Probate Court that there is no next of kin, or they waive their right, or if no suitable person is available and willing, then the court may appoint a Public Administrator to administer such estate.
- C. The following persons are not qualified to act as personal representatives:
1. Corporations;
 2. Minors;
 3. Incapacitated persons;
 4. Persons under the care and control of a guardian; or
 5. Persons who have been convicted of any felony or of a misdemeanor involving moral turpitude, including but not limited to, forgery, fraud, bribery, murder, or voluntary manslaughter.
- D. When any person to whom letters of administration have been issued becomes disqualified to act because of becoming incapacitated, coming under the care or control of a guardian, or being convicted of any felony or of a misdemeanor involving moral turpitude, the court shall revoke his or her letters, and appoint a successor.
- E. No person shall be disqualified from serving as a personal representative because he or she may be a beneficiary or devisee of the probate estate or a transferee of the non-probate estate, but such person shall always be mindful of the fact that they serve the estate in a fiduciary capacity and must put the interests of the estate ahead of their personal interest.
- F. If the person so entitled shall fail for more than sixty (60) days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the Probate

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Court that there is no next of kin, or they waive their right, or if no suitable person is available and willing, then the court may appoint a Public Administrator to administer such estate.

SECTION 13.4.3 JURISDICTION OVER PERSONAL REPRESENTATIVE

- A. By accepting appointment, a personal representative, whether a resident or nonresident within the Court's jurisdiction submits personally to the jurisdiction of the Court for any proceeding relating to the estate that may be instituted by any interested person.

PART 5. DUTIES AND POWERS OF PERSONAL REPRESENTATIVE

SECTION 13.5.1 GENERAL DUTIES OF PERSONAL REPRESENTATIVE; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE

- A. Upon appointment, the personal representative is a fiduciary who shall:
1. Observe the duties of loyalty and prudence,
 2. Shall keep the beneficiaries of the estate reasonably informed about administration,
 3. Shall otherwise act in the best interests of the estate, including refraining from self-dealing or co-mingling estate assets with personal assets.
- B. The personal representative shall settle and distribute the estate of the decedent under the terms of any probated will and this Code.
- C. A personal representative shall proceed expeditiously to administer and distribute the decedent's estate. Except as otherwise requested by the personal representative, specified or ordered by the court or as specified in this Code, the personal representative may act without order of the Court.
- D. A personal representative is not liable for acts of administration or distribution if the conduct in question was authorized at the time.
- E. This section does not affect the duty of the personal representative to administer and distribute the estate under the rights of claimants whose claims have been allowed, the rights of a surviving spouse, any minor or dependent child, and any omitted child as described elsewhere in this Code.
- F. Except as to proceedings that do not survive the death of a decedent, a personal representative of a decedent whose estate is being administered under this Code has standing to sue and be sued in the courts of this or any other jurisdiction as the decedent had immediately before death.

PART 6. NOTICE

SECTION 13.6.1 NOTICE TO HEIRS AND DEVISEES

- A. Not later than 15 days after appointment of a personal representative or special administrator, the appointee shall give notice of the appointment, including the petition and a copy of the will, to the heirs and devisees.

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- B. The notice shall include the name and address of the personal representative, state that it is being sent to the heirs and, if a will has been admitted to probate, to the devisees; and identify the name and location of the court where documents relating to the estate will be filed.
- C. The notice also must state that the estate is being administered by the personal representative pursuant to the CTUIR Tribal Probate Code and that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate.
- D. A beneficiary may contest the appointment within 15 days from the date of notice as stated in a proof of notice has passed. After that time, the beneficiary may only contest the actions of the appointee for cause.

**SECTION 13.6.2 NOTICE TO CTUIR TRIBAL ENROLLMENT AND NIXYAAWII
COMMUNITY FINANCIAL SERVICES**

- A. If the personal representative has personal knowledge that the decedent was employed by the Tribe or a Tribal entity as defined by this Code, the personal representative shall serve notice of the appointment to the Tribe by service copy to the Office of Legal Counsel.
- B. If the personal representative has personal knowledge that Nixyáawii Community Financial Services (NCFS) is a creditor, the personal representative shall serve NCFS with notice of the appointment.

**PART 7. HEARING; ORDER INITIATING PROBATE; LETTERS OF
ADMINISTRATION**

SECTION 13.7.1 HEARING; ORDER INITIATING PROBATE

- A. Within 5 business days of the filing of a petition for probate, the Court shall review the petition and determine the sufficiency of the petition. If the Court determines that the petition is insufficient or lacking information, or if the appropriate documents are not presented, the Court shall not accept the petition for filing, unless the only insufficiency is that it is unknown whether the decedent died having left a will or died intestate.
- B. If so required, within 30 days, the Court may hold a hearing during which the Court shall examine the petitioner under oath and determine whether the decedent died having left a valid will or died intestate.
- C. The Court shall take evidence as to the validity of any will, and as to the qualifications of the petitioner or other person to be the personal representative or special administrator. In the absence of an original, the Court may permit a true and correct copy of a will to be probated.
- D. The Court shall, either upon acceptance of the petition or after hearing, enter an order initiating probate of the decedent's estate upon the following findings:
- E. The petitioner or another person is qualified and entitled to be appointed personal representative;

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- F. The decedent died having left a valid will or intestate; and
- G. The petition and other evidence before the Court are sufficient to support the jurisdiction of the Court.
- H. The order initiating probate shall either establish, and initiate, probate of decedent's will or shall conclude that the decedent died intestate and identify the decedent's heirs of law. Except in the event of a will contest, such order shall be conclusive.

SECTION 13.7.2 LETTERS OF ADMINISTRATION AND OATH

- A. Upon an order initiating probate, the Probate Administrator shall issue letters of administration conferring the powers and duties on the petitioner or another person. The term "letters of administration" shall apply to the authority granted to a personal representative, public administrator or special administrator under the Probate Code, regardless of whether decedent died testate or intestate.
- B. Before letters of administration are issued, the appointed party must take and subscribe an oath, before the Probate Administrator, that the duties and responsibilities required by the appointment will be performed according to law. The oath must be filed with the Court and shall be in substantially the same form as the letters of administration, and as detailed below:
- C. The appointee shall, at all times, fulfill the appointee's fiduciary duty to:
 - 1. Safeguard and preserve the property of the decedent's estate.
 - 2. Avoid co-mingling of assets of the estate with the appointee's own assets.
 - 3. Avoid self-dealing regarding any assets that are would not otherwise be inherited by the appointee and receiving court approval before paying fees or distributing property to the appointee.
 - 4. Timely determinations of allowance or disallowance of creditors' claims, if presented.
 - 5. Keep all other heirs or devisees apprised in a timely manner of the marshaling, inventory and distribution of the estate's assets through actual notice of any filings.
 - 6. Distribute assets and wrap up the estate administration, in as timely a manner as possible.

SECTION 13.7.3 CANCELLATION OF LETTERS OF ADMINISTRATION

- A. The Tribal Court shall have authority, for any cause deemed sufficient, to cancel and annul letters of administration and appoint other personal representatives in the place of those removed. If, after letters of administration are granted, a will of the deceased is found and the Court grants probate thereof, the Court may revoke or amend the letters of administration.
- B. If a personal representative of an estate dies or resigns or the letters of administration are revoked before the settlement of the estate, successor letters of administration shall be granted

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to a person to whom the letters would have been granted if the original letters had not been obtained, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the Tribal Court orders otherwise.

PART 8. POSSESSION OF ESTATE

- A. A personal representative has the same power over the title to property of the estate that an absolute owner would have except this power is for the benefit of heirs, devisees, creditors and any others determined by the Court to have an interest in the estate.
- B. Except as otherwise provided by a decedent's will, a personal representative shall take possession or control of the property of the decedent to be administered in the decedent's estate, except that any cultural property shall be turned over to an appointed special administrator.
- C. The personal representative shall collect all debts due to the decedent or the estate.
- D. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in the personal representative's possession or control.
- E. The personal representative may take action to recover possession or control of property or to determine its title, including for covered permanent improvements.
- F. However, if it appears that a personal representative will take some action that would jeopardize unreasonably the interest of the heirs or devisees or of some other interested person, the Court may order the personal representative to refrain from performing these specific acts of administration, disbursement or distribution until such time as the Court may hear motions as to the matter.
- G. The Court may make any other order to secure proper performance of the personal representative's duty. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for breach of the fiduciary duty.

PART 9. DUTY OF PERSONAL REPRESENTATIVE REGARDING CULTURAL PROPERTY

SECTION 13.9.1 DUTY OF PERSONAL REPRESENTATIVE REGARDING CULTURAL PROPERTY

- A. Within 30 days of the appointment, the personal representative will segregate any cultural property, store the cultural property such that it is adequately preserved and protected, and shall communicate with any appointed special administrator regarding the items.
- B. If no special administrator has been nominated or appointed, the personal representative shall fulfill the duties of the special administrator.
- C. Any cultural property, as defined by this Code, shall remain segregated from other property and shall be exempt from listing in the inventory.

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- D. No cultural property, as defined by this Code, shall be included in items sold to pay creditors' claims.

PART 10. INVENTORY AND APPRAISEMENT

SECTION 13.10.1 INVENTORY

- A. Within three months after appointment, the personal representative shall prepare and file with the Court an inventory of property subject to administration in the decedent's estate. The inventory shall list each item of property with reasonable detail and specify its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance or lien to which the item is subject.
- B. A personal representative shall file an amended inventory with the court if the personal representative learns that property was not included in the original inventory or that the value or description of any item in the original inventory was erroneous or misleading.
- C. If property previously designated as cultural property was determined not to be cultural property by a cultural resources panel, the inventory shall be amended to include the property and fair market value of the property.
- D. The personal representative shall mail or deliver a copy of the supplemental inventory to the persons sent a copy of the original inventory and to any other interested persons that request it.

SECTION 13.10.2 APPRAISEMENT

- A. In preparing the inventory, a personal representative may employ appraisers. The personal representative shall mail or deliver a copy of the inventory to heirs, devisees, and any additional parties known to the personal representative to have an interest in the estate. A successor personal representative need not file an inventory if an inventory was previously filed.

PART 11. SALE AND PERMISSIONS; SUCCESSOR PERSONAL REPRESENTATIVES; COMPENSATION

SECTION 13.11.1 SALE OF PROPERTY; CONDITIONAL NOTICE REQUIREMENT

- A. At least 30 days before the sale of real property or personal property of the estate for which the fair market value is not readily ascertainable, the personal representative shall give written notice of the intent to sell to any beneficiaries of the estate whose interests might be affected by the sale.
- B. If the sale is made pursuant to a sales contract, the notice shall contain a description of the property to be sold, the name of the purchaser, the sale price, the terms of payment, and the nature of the security if the payment of any portion of the purchase price is to be deferred.
- C. If an objection to the sale is filed with the Court before the date set for the sale, the sale must be approved by the Court unless the sale was authorized by the will.

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**SECTION 13.11.2 TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVE;
EXCEPTIONS**

- A. Except as restricted or otherwise provided by the will or by an order of the Court, a personal representative may exercise the following powers with respect to property subject to administration in the decedent's estate, without prior authorization of court:
1. Retain assets owned by the decedent pending distribution or liquidation.
 2. Subject to other provisions set down in Tribal Code or federal law, or other restriction, acquire or dispose of an asset, including land not within the jurisdiction of the Department of the Interior, for cash or on credit, at public or private sale.
 3. Manage, exchange, partition, or abandon an estate asset when it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;
 4. Insure the assets of the estate against damage, loss and liability and the personal representative against liability as to third persons;
 5. Advance money for the protection of the estate;
 6. Pay taxes or other expenses incidental to the administration of the estate;
 7. Employ persons, including attorneys, appraisers, or agents to advise or assist the personal representative in the performance of the personal representative's administrative duties;
 8. Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the representative's duties;
 9. Continue or incorporate any unincorporated business or venture in which the decedent was engaged at the time of the decedent's death; and
 10. Satisfy and settle claims and distribute the estate as provided in this Code.

**SECTION 13.11.3 TRANSACTIONS AUTHORIZED FOR AUTHORIZED FOR PERSONAL
REPRESENTATIVE; EXCEPTIONS. POWERS AND DUTIES OF
SUCCESSOR PERSONAL REPRESENTATIVE**

- A. A successor personal representative has the same powers and duties as the original personal representative to complete the administration and distribution of the estate, but the successor personal representative may not exercise any power expressly made personal to the personal representative named in the will.
- B. A successor personal representative is not individually liable for the action or failure to act of a previous personal representative unless the successor has knowledge of a breach of fiduciary duty by the predecessor and fails to take reasonable corrective action.

SECTION 13.11.4 CO-REPRESENTATIVES; JOINT ACTION REQUIREMENT

- A. Unless the will provides otherwise, the concurrence of all co-representatives is required on all decisions connected with the administration and distribution of the estate.
- B. Concurrence is not required when such agreement cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate.
- C. A co-representative may delegate powers to the other co-representative so long as the delegation is in writing.

**SECTION 13.11.5 COMPENSATION OF PERSONAL REPRESENTATIVE;
REIMBURSEMENTS**

- A. A personal representative is entitled to reasonable compensation for services, not to exceed four percent of the combined value of the estate. Any compensation must be approved by the Court before distribution.
- B. Reasonable compensation also may include compensation for the services of appraisers or agents.
- C. A personal representative may be reimbursed for fees advanced related to administration or preservation of the estate, as supported by accounting or other filings on the record with the Court. Any reimbursement must be approved by the Court before distribution.
- D. A personal representative may fully waive compensation or only submit for reimbursement of fees and expenses of administration.

**CHAPTER 14. SUPPORT OF SPOUSE AND CHILDREN: NATURE OF SUPPORT;
PRIORITY OF SUPPORT**

SECTION 14.1.1 PETITION FOR SUPPORT OF SPOUSE AND CHILDREN

- A. Upon petition, the Court has broad discretion to award temporary support to a surviving spouse and any minor children or protected persons residing with, and supported by, the decedent at the time of the decedent's death. Temporary support may include periodic payments of money during the administration of the estate and may be awarded for up to two years.
- B. A petition for support shall include:
 - 1. A description of property subject to the jurisdiction as Court.
 - 2. Other resources available to the surviving spouse, minor children, or protected persons.
 - 3. An estimated amount of expenses anticipated for support of the surviving spouse, any minor children or protected persons.
 - 4. In determining an amount of periodic support, the Court shall also take into account:

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- a. The solvency of the estate. If it appears that any support ordered would alter the estate's solvency, the Court should consider this in its determination of amount and duration.
- b. Whether the surviving spouse, minor children, or protected persons inherited any property through non-probate avenues, or qualify for a homestead exemption pursuant to this Code.
- c. Any other property of the estate that is devised to, or stands to be inherited by, the surviving spouse, minor children, or protected persons.

SECTION 14.1.2 PRIORITY OF SUPPORT

- A. Any temporary support ordered by the Court has priority of payment over any claims or expenses of administration.
- B. Any petition for temporary support shall be served on the personal representative, unless the personal representative is the petitioner. Service on any person whose distribution will be diminished by the support is also required. Proof of service shall be filed with the Court subject to the notice provisions of this Code.
- C. The personal representative, if not also the petitioner, shall file an answer with the Court. The answer shall include, so far as is known to the personal representative, a statement of the nature and estimated value of the property within the estate and the estimated amount of any claims, taxes or expenses of administration.
- D. The Court may set a hearing, if necessary, to take evidence and determine an appropriate amount or duration of the temporary support.

CHAPTER 15. CREDITORS' CLAIMS

PART 1. NOTICE TO CREDITORS

SECTION 15.1.1 NOTICE TO KNOWN CREDITORS

- A. Within sixty days of appointment, unless notice has already been given by a previously appointed personal representative, a personal representative shall mail notice via certified first-class mail with return receipt, or provide personal service to, any known creditor of the decedent. The personal representative must file proof of service with the Court as to this action.
- B. Any known creditor must present a claim, substantiated by documentation within 60 days of service or the claim may be barred.
- C. Within 15 days of receipt of a claim, the personal representative will make a determination as whether the claim will be allowed or disallowed.
- D. A personal representative need not give written notice to a creditor if any of the following apply:
 - 1. The creditor has previously presented a claim against the estate;

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2. The creditor has been paid in full;
3. The creditor was neither known to nor reasonably ascertainable by the personal representative.

SECTION 15.1.2 NOTICE TO UNKNOWN CREDITORS

- A. Within sixty days of appointment, the personal representative shall publish notice to creditors once a week for no less than two successive weeks in a newspaper of general circulation in the area where the decedent resided.
- B. If the decedent resided within the UIR's exterior boundaries, this function may be served by one month of publication in the Confederated Umatilla Journal.
- C. The notice shall announce the appointment, state the personal representative's address, and notify creditors of the decedent to present their claims within four months after the date of the first publication of the notice or the claim may be barred.
- D. A personal representative is not personally liable for failure to give notice to a particular unknown creditor, or who was not otherwise reasonably ascertainable as a creditor of the estate. Liability, if any, for the failure shall attach to the estate.

PART 2. STATUTE OF LIMITATIONS; PRESENTATION AND PAYMENT OF CLAIMS

SECTION 15.2.1 STATUTE OF LIMITATIONS

- A. The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death, but resumes thereafter as to claims not otherwise barred.
- B. For purposes of a statute of limitations, the presentation of a claim pursuant to Section 15.2.3 is equivalent to commencement of a proceeding on the claim.

SECTION 15.2.2 LIMITATION ON PRESENTATION OF A CLAIM

- A. If not barred earlier by another statute of limitations or nonclaim statute, a claim against a decedent's estate which arose before the death of the decedent, is barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of:
 1. As to an unknown creditor not entitled to a written notice who is barred by publication alone, four months after the first publication of notice or one year after the decedent's death, whichever is earlier.
 2. As to a known creditor entitled to actual written notice, within sixty days of written notice or one year after the decedent's death, whichever is earlier.

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SECTION 15.2.3 MANNER OF PRESENTATION OF CLAIM

- A. A claim against a decedent's estate may be presented as follows:
1. By presentation directly to the personal representative or the personal representative's attorney.
 2. By filing the claim with the Court, where:
 - a. The statement of claim shall indicate its basis, the name and address of the claimant, and the amount claimed; whether the claim is due or the date when it will become due. If the claim is secured, the security shall be described.
 - b. The Probate Administrator shall send a copy of the claim to the personal representative or the personal representative's attorney for allowance for disallowance.
- B. If disallowed, the claimant may commence a proceeding against the personal representative in the Court to attempt to overturn the disallowance and obtain payment of the claim against the estate, but the commencement of the proceeding must occur within the time limit for presenting the claim.

SECTION 15.2.4 WHEN PAYMENT OF CLAIMS WILL BE MADE

- A. On the day on which all known claims will be barred pursuant to the provisions of this Code, the personal representative, after making adequate provisions for support of any surviving spouse and minor children as ordered by the Court, and for expenses of administration, the personal representative shall proceed to pay claims presented and allowed in the order in which they were received and in the order of priority listed below.

SECTION 15.2.5 PRIORITY OF PAYMENT OF CLAIMS

- A. If the estate assets are insufficient to pay all claims in full, a personal representative shall make payment in the following order:
1. Support of the surviving spouse and minor children for one year from the date of death.
 2. Expenses of administration.
 3. Reasonable expenses related to funeral and burial not otherwise covered by the Tribe.
 4. Debts with preference under Tribal law, including for loans administered by Nixyáawii Community Financial Services.
 5. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of medical personnel attending the decedent.
 6. Child support arrearages.
 7. Debts and taxes with preference under federal or Oregon state law.

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8. All other claims against the estate.
- B. If the assets of the estate are insufficient to pay all claims in full or insufficient to pay any one class, each claim of that class shall be paid only in proportion to the amount claimed thereof.

SECTION 15.2.6 PAYMENT OF CLAIM

- A. The personal representative shall pay the claims allowed against the estate in the order of priority prescribed.
- B. A claimant whose claim has been allowed but not paid may petition the court to secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.
- C. The personal representative at any time may pay any valid claim that has not been barred, with or without formal presentation, but is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:
1. The payment was made before the expiration of the time limitation provided in 15.2.5 for the presentation of claims; or
 2. The payment was made because of the negligence or willful fault of the personal representative.

CHAPTER 16. CLOSING ESTATES: SUMMARILY; JUDGMENT OF FINAL DISTRIBUTION; STATEMENT IN LIEU OF ACCOUNTING

PART 1. SUMMARY CLOSURE OF ESTATES

SECTION 16.1.1 SETTING ASIDE WHOLE ESTATE FOR SUPPORT

- A. If it appears, after the four month notice period required for creditors and interested persons, that the sum total of the reasonable periodic support ordered for the support of the surviving spouse, minor children, and any protected persons, would deplete the entire value of the estate, after payment of any claims, taxes, and expenses of administration, then the Court may order that the whole estate be set aside for this purpose. If so ordered, there shall be no further proceedings in the administration of the estate, and the estate shall be summarily closed.

SECTION 16.1.2 SUMMARY ADMINISTRATION OF EXEMPT ESTATE

- A. An estate having an appraised value which does not exceed \$5000.00, and which is to be inherited through the rules of intestacy or by devise by a surviving spouse and/or minor children of the deceased, the estate shall be exempt from the claims of all general creditors, and any probate may be summarily concluded as provided in this subsection.
- B. Pursuant to a petition by the personal representative, the Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Court, that the appraised value of the whole estate does not exceed \$5000.00 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any, why the whole estate should not be declared to be exempt

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from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent.

- C. Notice of such hearing shall be given by publication in the CUJ regarding the order for the hearing and posting a true copy of such order in the Court, and by sending a true copy of such order by certified mail to all persons known to the personal representative to be a beneficiary of such decedent.
- D. Such notice shall be posted or mailed no fewer than ten (10) days before the time set for such hearing.
- E. At or before the time set for such hearing, the personal representative shall file his or her affidavit with the Tribal Court indicating compliance with this requirement of giving notice.
- F. If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the personal representative to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the Tribal Court, the estate shall be closed, and the personal representative discharged.

SECTION 16.1.3 CLOSING ESTATE UPON JUDGMENT OF FINAL DISTRIBUTION

- A. The administration of an estate is concluded by:
 - 1. A final accounting of the personal representative to the Court, including receipts and documents showing final distribution to heirs or devisees;
 - 2. A General Judgment of Final Distribution; and
 - 3. An Order Closing the Estate and Discharging the Personal Representative and, if appropriate, Discharging the Special administrator, if the Special administrator was not previously discharged.
- B. The personal representative may submit a final accounting no earlier than four months from the appointment of the original personal representative.
- C. Any other interested person may petition no earlier than one year from the appointment of the original personal representative.
- D. The petition of the personal representative shall be heard as a matter of course, but other petitions shall be heard only if there is good cause.
- E. Any petition shall request the court to approve the final accounting, and to enter an order adjudicating that the estate has been fully administered, including that all presented claims, including any taxes, have been paid, settled, or otherwise provided for, and that final distribution has been made to the heirs and devisees.

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After notice to all interested persons and hearing, and the filing of proof that a copy of the accounting was mailed to the heirs and devisees entitled to distribution of the remaining assets of the estate, and to all known creditors and other claimants whose claims are neither paid nor barred, the court may enter the appropriate orders and judgment, and discharge personal representative and, if appropriate, the special administrator, from appointment.

SECTION 16.1.4 CLOSING ESTATE BY FILING STATEMENT IN LIEU OF FINAL ACCOUNTING

- A. Unless prohibited by order of the court, a personal representative may close an estate by filing with the court no earlier than six months after the date of the original appointment, a verified statement stating that the personal representative, or the original personal representative, has:
 - 1. Determined that the time for filing creditor claims has expired;
 - 2. Fully administered the estate by making payment, settlement or other disposition of all presented claims, expenses of administration have been paid, except as specified in the statement, and
 - 3. The assets of the estate have been distributed to the persons entitled to them.
- B. The personal representative shall send a copy of the statement to all beneficiaries of the estate; and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.
- C. If no proceedings are filed against the personal representative one year from the date of service of the statement in lieu, the personal representative shall be summarily discharged and the estate closed.

CHAPTER 17. SUBSEQUENT ADMINISTRATION

- A. If other property of the estate is discovered after an estate has been settled and the personal representative discharged, the Court, upon petition of any interested person and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered property.
- B. If a new appointment is made, unless the court orders otherwise, the provisions of this apply appropriately; but no claim previously barred may be asserted in the subsequent administration.

EXHIBIT 1

MAP OF EXTERIOR BOUNDARIES OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION



APPENDIX A

LEGISLATIVE HISTORY

PROBATE CODE

LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) adopted the Probate Code pursuant to Resolution No. 2026-029 (April 27, 2026). The Probate Code shall govern all probate and probate-related matters for any property within a decedent estate that is within the exclusive or concurrent jurisdiction of the Tribal Court pursuant to this Code, for decedent estates where the decedent deceases on or after August 25, 2026.

The Probate Code does not replace or otherwise alter the CTUIR Inheritance Code, amended by Resolution No. 08-028 (April 7, 2008) and approved through the Secretary of the Interior on May 16, 2008, which was adopted pursuant to the Indian Land Consolidation Act, 25 U.S.C. §2201 et seq. The Inheritance Code remains applicable to decedent estate assets that are within the exclusive jurisdiction of the Department of the Interior Office of Hearings and Appeals Probate Hearings Division (OHA)