

POTAWATOMI LAW AND ORDER CODE

**TITLE 8
PROBATE**

**CHAPTER 8-1
GENERAL**

Section 8-1-1. Jurisdiction.

Upon the death of a member of the Prairie Band of Potawatomi Tribe residing on the Prairie Band of Potawatomi Indian Reservation, the Tribal Court shall determine the heirs of the decedent, the claims of creditors and the distribution of property under this Title. The Court's jurisdiction in probate matters shall cover all of the decedent's tangible personal property, including that which is located outside the Reservation, and which are not restricted or held in trusteeship by the federal government.

Section 8-1-2. Procedure.

Administration of an estate shall be commenced by the filing of a petition in the Tribal Court. A petition shall be filed within sixty (60) days after the death of decedent by any administrator. If no petition is filed, then it shall be the duty of the Tribe to determine the extent of the estate, if any, and file a petition within six (6) months after the date of death of decedent. Upon the filing of the petition, the Court shall ascertain whether or not there are any heirs under the age of eighteen (18) years. If so, a guardian *ad litem* shall be immediately appointed to protect their interests and such guardian shall serve in that capacity until the estate is closed.

Section 8-1-3. Petition.

The petition shall be verified and shall contain the following information:

- (A) the name and place and date of death of decedent;
- (B) the name, age and relationship of all of the decedent's heirs, and the names of all beneficiaries under the Will, if applicable;
- (C) the nature, extent and location of decedent's property;
- (D) attachment of the original of the Will, if applicable;
- (E) copy of the death certificate or other proof of death; and
- (F) attachment of certificate of heirship signed by the keeper of the Tribal Enrollment Records including the decedent's tribal enrollment number, if any.

Section 8-1-4. Administrator.

The surviving spouse, an heir or a devisee shall be appointed as administrator of decedent's estate, except when a personal representative is named under the decedent's Will. If the above named person does not qualify or declines to serve, then the Tribe shall administer decedent's estate.

Section 8-1-5. Notice to Creditors.

Upon the issuance of letters of administration, the Court shall issue a notice to creditors which shall be published in a local newspaper of general circulation for two (2) consecutive publication dates and proof of publication shall be filed by the editor of such paper within ten (10) days after the last publication date. The last date for filing claims against the estate shall be contained in the published notice, which date shall be two (2) months from the date of first publication of notice to creditors. Untimely claims shall not be approved for payment from the estate.

Section 8-1-6. Inventory and Appraisal.

Within thirty (30) days after his appointment, the administrator shall prepare and file a complete inventory of all assets of the estate owned by the decedent at the time of death, listing it in reasonable detail. The inventory shall be amended if it appears at any time that it is incomplete or that property has been omitted.

The Court may, in its discretion, appoint an appraiser to determine the value of personal property which exists as an asset of the estate. The appraisal shall be filed within thirty (30) days of the filing of the inventory accompanied by a verification of the appraiser that the values stated thereon are the fair market values to the best of the appraiser's knowledge. The appraisal shall list any encumbrance that may exist with reference to any item and shall be filed in duplicate, the duplicate to be forwarded by the Court to the administrator.

Section 8-1-7. Claims of Creditors.

Claims shall be filed in duplicate on forms provided by the Court, shall be itemized correctly and in full, shall be signed under oath by the claimant, and shall make investigation of its validity. If he is satisfied that the claim is valid and is not barred by the statute of limitations he shall approve the same for payment, subject to the availability of funds.

Section 8-1-8. Priority of Claims.

Claims shall have the following order of priority:

- (A) Costs of publications.
- (B) Expenses of last illness and funeral.

- (C) Family allowance.
- (D) Tribal debts.
- (E) Government debts.
- (F) Other debts.

Section 8-1-9. Allowance.

In the event of death the Court shall make an allowance from the estate to the surviving spouse of the decedent for their maintenance and that of the minor children of the decedent. The maximum allowance shall be two hundred fifty dollars (\$250.00) per month for the surviving spouse and seventy-five dollars (\$75.00) per month for each child, payable monthly until the estate is closed.

Section 8-1-10. Payment of Claims.

Claims shall be payable after the time for filing claims has passed and after the Court has rendered a decision as to all contested claims. If there is sufficient cash in the estate to pay all expenses and all claims, the administrator shall immediately pay them.

Section 8-1-11. Sale of Personal Property.

The administrator shall petition the Court for authority to sell personal property of the decedent in an amount necessary to obtain funds to pay expenses and creditors. All sales shall be public unless otherwise authorized by Court order. Notice of sale specifying items to be sold, terms of sales, and time and place of the sale shall be posted in five (5) conspicuous places on the Prairie Band of Potawatomi Indian Reservation for at least seven (7) days immediately preceding the sale. Property shall not be sold for less than its fair market value as listed in the inventory or by a separate appraisal for sale purposes and a report of the sale shall be immediately filed with the Court.

Section 8-1-12. Exempt Property.

The following property is exempt from sale to pay claims and expenses:

- (A) Household goods, furnishings and appliances necessary for continuance of the household.
- (B) Clothing of the decedent.
- (C) Keepsakes, souvenirs, and jewelry.
- (D) Articles used for personal pleasure of decedent.

Section 8-1-13. Final Settlement.

No later than five (5) days before the final hearing the administrator shall file a final report which shall include amended or supplemental inventories, a statement of receipts and expenditures with exhibits of deposit slips, canceled checks and report of any business transacted on behalf of the estate.

At the hearing for final settlement and determination of heirship, the Court shall determine from the file and testimony presented that the administrator has fulfilled his duties. The Court shall order any errors and omissions to be corrected. At this time the Court shall determine the heirship of the decedent and distribution of the estate shall be directed pursuant to such determination unless otherwise dictated by valid terms of the decedent's Last Will and Testament.

Section 8-1-14. Dispute Concerning Heirship.

If, at any time during the administration of the estate the Court is made aware of a conflict concerning heirship, it may, after giving all parties involved ten (10) calendar days' written notice by registered mail, return receipt requested, hold a hearing to determine the heirship of the decedent even though the estate is not ready for final settlement.

Section 8-1-15. Final Decree.

No later than thirty (30) calendar days following hearing on the final settlement of the estate, the Court shall enter its order determining heirship, distributing the estate and discharging the administrator from his duties.

Section 8-1-16. Devolution of Estate at Death.

Upon the death of a person, his separate property and his share of community devolved as follows:

(A) Community Property. Upon the death of either spouse, one-half (1/2) of the community property belongs to the surviving spouse and the other one-half (1/2) of the community property is subject to disposal according to the terms of the Last Will and Testament of the decedent. If there is no Last Will and Testament, the decedent's one-half (1/2) interest in the community property shall pass to the surviving spouse.

(B) Separate Property. If there are no surviving children of the decedent, and the decedent left no Will, the entire separate estate shall pass to the surviving spouse. If there is surviving issue, the surviving spouse shall receive one-fourth (1/4) of the separate estate with the remaining three-fourths (3/4) to be divided equally among the surviving children. If there is no surviving spouse, the surviving children shall receive all of the separate estate which shall be divided equally among them.

(C) **Miscellaneous.** In application of the above rules to determine the heirs, the right of heirship shall first descend the full length of the bloodline and then ascend except in the case of a surviving spouse of the decedent. The Court shall resolve any questions of heirship not covered herein by referring to proven Prairie Band of Potawatomi Indian customs and traditions.

Section 8-1-17. Escheat.

In the event that a diligent search of records and other available sources of information fails to reveal persons eligible to receive inheritance from the estate for a period of two (2) years after the death of decedent, all of the unclaimed estate shall escheat to the Prairie Band of Potawatomi Indian Tribe.

**CHAPTER 8-2
ESTATE MATTERS**

Section 8-2-1. Notice.

Upon the filing of a petition for probate of Will, the Court shall set a date for the hearing on the petition which shall not be held more than forty-five (45) days after the date of filing. Such notice shall contain the place, time and date of the hearing and shall be published in a local newspaper of general circulation for two (2) consecutive publication dates with the hearing to be no sooner than ten (10) days after the last publication date. All heirs and beneficiaries of decedent residing on the Prairie Band of Potawatomi Indian Reservation may receive personal service of notice of hearing and any heirs or beneficiaries residing outside the Reservation shall be served by registered mail, return receipt requested. Such notice shall be served at least ten (10) days prior to the hearing.

Section 8-2-2. Proof of Will.

At the time set for hearing, a Will not self-proved must be properly proven by the testimony or an affidavit of one of the attesting witnesses. If the Will is so proved to the satisfaction of the Court then it shall be approved and an order shall be entered admitting the Will to probate.

Section 8-2-3. Further Proceedings.

After the Will has been proven and admitted to probate all further proceedings shall be pursuant to Section 8-1-1 *et seq.* until the estate is settled.

Section 8-2-4. Will Contest.

Any person desiring to contest a Will or object to the legality or validity of all or a portion of a Will must file his objections in writing on or before the time set for the hearing on the proof of the Will. These objections will be heard by the Court before the Will is

admitted to probate. The Court may admit the Will in whole or in part or refuse to admit it. If the Will is not admitted, the estate shall continue as though the decedent had died intestate. Where the Will is admitted to probate in part only, all property not covered by valid and admitted portions of the Will shall be dealt with as intestate property.

Section 8-2-5. Record of Hearing.

The Court shall cause a record to be made of the testimony given to the Court and the proceedings of any hearing to determine heirship or to determine the validity of a Will and shall render its decision in writing, a copy of which shall be delivered to all persons who claim heirship or are named as beneficiaries in a Will.

(Title 8 enacted by PBP TC No. _____, _____)

