

TITLE 5: HEIRSHIP AND PROBATE

Chapter 1: Jurisdiction

§5-1-101 Tribal Jurisdiction.

Except as to trust or restricted land subject to the jurisdiction of the United States, the Tribal Court shall have jurisdiction to determine heirs, to determine the validity of wills and to probate the estates and wills of any Indian with respect to personal property or real property located on the Spirit Lake Sioux Reservation.

Chapter 2: Determination of Heirs

When any member of the Tribe dies leaving property subject to the jurisdiction of the Tribal Court, the Tribe, or any person claiming to be an heir of the decedent may file a petition in the Tribal Court for a determination of the heirs of the decedent and for the distribution of such property.

§ 5-2-101 Public Notice of Hearing.

Promptly after the petition is filed, the clerk of court shall give public notice of the time and place of hearing to determine the heirs of the deceased Indian, calling on all persons interested to attend the hearing by posting a copy of the notice at least 20 days prior to the date of hearing in three or more conspicuous places in close proximity of the place of hearing.

§ 5-2-102 Service of Notice on Interested Parties.

A copy of the notice of hearing shall be served at least 10 days before the date of hearing, either personally, by first-class mail, by certified mail, or by registered mail, on each claimant or presumptive heir and on the Tribe. Service on the Tribe shall be made by delivering a copy of the notice to the Chairman and a copy to the secretary of the Tribal Council.

§5-2-103 Proof of Service of Notice of Hearing.

Proof of service of the notice of hearing required in §5-2-102 shall be filed in each case. Proof of service shall consist of one of the following:

- (1) acknowledgement of receipt of service by the endorsement of the person served a copy of the notice of hearing;
- (2) a certificate that service was made in person, signed by an adult person making service or by an affidavit of service by first class mail signed by the person that mailed the document; or
- (3) the return receipt where service was made by certified mail.

§ 5-2-104 Applicable Law.

(a) When an Indian dies without a valid will, the Indian's property which is subject to the Court's jurisdiction shall descend to the following persons:

- (1) One-half of the interest will descend to the surviving spouse and the other one-half shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;
- (2) If there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;
- (3) If there are no surviving children or issue of any child, the interest shall descend to the surviving spouse;
- (4) If there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent;
- (5) If there is no surviving spouse, and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent;
- (6) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent and no surviving brothers and sisters, the interest shall descend equally to surviving grandparents of the decedent;
- (7) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving

grandparents, the interest shall descend equally to surviving aunts and uncles of the decedent;

- (8) If there is no surviving spouse, no surviving children, or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, and no surviving aunts and uncles, the interest shall descend equally to surviving nieces and nephews of the decedent;
- (9) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, and no surviving nieces and nephews, the interest shall descend equally to surviving cousins of the first degree of the decedent;
- (10) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, and no surviving cousins of the first degree, the interest shall descend equally to surviving cousins of the second degree of the decedent;
- (11) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, no surviving cousins of the first degree, and no surviving cousins of the second degree, the interest shall descend equally to

surviving cousins of the third degree of the
decedent;

- (12) If there is no surviving heir as described in this section, the property shall escheat to the Spirit Lake Tribe.

(b) As used in this section, the words "children" and "issue" include adopted children and children of unwed parents where the Tribal Court determines that paternity has been acknowledged or established, except that (1) a child may not inherit by intestate succession from or through a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority unless the Termination Decree and the Adoption Decree indicate that the child's right to inherit from the parent has not been terminated and (2) a parent may not inherit by intestate succession from or through a child with respect to whom such parental rights have been so terminated.

(c) Heirs under this Title need not be Indians.

§5-2-105 Protection of the Estate.

The Tribal Court is empowered:

- (1) to appoint a temporary custodian or administrator to supervise and protect the assets of the estate;
- (2) to take all action, including the sale of the property at appraised value, necessary and appropriate to protect or conserve the property

or to satisfy claims, before distribution to the heirs; and

- (3) to require bond from the custodian or administrator for the fulfillment of his duties.

§ 5-2-106 Claims.

No claims shall be allowed against the estate of the decedent except claims of the Tribe. The claims of the Tribe can include but are not limited to claims for expenses of last sickness and funeral expenses incurred by the Tribe.

§ 5 -2-107 Distribution.

The Tribal Court shall distribute all property of the decedent over which the Tribal Court has jurisdiction.

Chapter 3: Wills

When any member of the Tribe dies, leaving a will disposing of property subject to the jurisdiction of the Tribal Court, the Tribal Court, at the request of any Indian named in the will or any other interested party, shall determine the validity of the will.

§ 5-3-101 Public Notice of Hearing.

Promptly after such request, the clerk of the court shall give public notice of the time and place of hearing to determine the validity of the will, calling on all persons interested to attend the hearing in accordance with the procedures of § 5-2-101.

§ 5-3-102 Service of Notice on Interested Parties.

Service of notice on interested parties shall be made in accordance with §5-2-102.

§ 5-3-103 Proof of Service of Notice of Hearing.

Proof of service of such notice shall be made in accordance with §5-2-103.

§ 5-3-104 Standards.

A will shall be deemed valid if it was made in writing and signed by the decedent in the presence of two witnesses who then and there signed the will as witnesses, and if, at the time the decedent made the will, the decedent was of sound and sane mind, understood what he was doing and was not subject to undue influence or duress of any kind from another person.

§ 5-3-105 Distribution.

If the Tribal Court determines the will to be valid, it shall distribute the property in accordance with the will. If the will is determined to be invalid, the Tribal Court shall determine the heirs as if the decedent had died without a will and shall distribute the property accordingly.

§ 5-3-106 Fees.

The Tribal Court shall fix probate fees in a sum of not less than Ten Dollars (\$10.00) and not more than a sum

equal to ten percent (10%) of the appraised value of the estate.

Chapter 4: Summary Distribution

§5-4-101 Value and Nature of Eligible Estates.

Estates of deceased persons, minors or incompetent persons, where the value of the entire estate does not exceed the sum of \$500.00 and the property of said estate consists wholly of personal property, may be settled and distributed without the need for a formal probate hearing according to this chapter.

§ 5-4-102 Application to Settle Estate.

Any person desiring to settle an estate under the provisions of this Title shall make and file with the Clerk of the Spirit Lake Tribal Court an application stating, under oath, that the person whose estate is sought to be administered is dead, and that and that the value of the estate does not exceed the sum of \$500.00, which application shall also contain the names, ages, relationships and addresses of the known heirs and the description and value of the property included in the estate.

§ 5-4-103 Appointment of Trustee; Bond.

Upon the presentment of such affidavit, the Tribal Judge may, without notice, appoint the affiant or some other qualified person to act as trustee of the estate by a written order and may, in the Judge's discretion, require

the trustee to post of bond of sufficient amount to ensure
~~the proper administration of the estate.~~

§ 5-4-104 Trustee's Rights; Rights of Creditors.

The trustee is entitled to the possession of all of the personal property of the decedent only if there is no real property belonging to the decedent. No formal appraisement shall be required nor shall notice to creditors be necessary, the rights of creditors is set forth in §5-2-106.

§ 5-4-105 Trustee Sale of Personal Property; Notice; Proceeds.

Whenever, in the discretion of the trustee it becomes necessary for any reason to sell all or part of the personal property of the estate, the trustee may sell all or any part of the personal property by public sale after at least 3 days notice of the time and place of the sale by posting the notice of sale in 3 public and conspicuous places within the exterior boundaries of the Spirit Lake Sioux Reservation. Property sold by the trustee shall no longer be a part of the estate and shall be deemed to have been replaced by the proceeds of the sale.

§ 5-4-106 Distribution of Estate.

Upon approval of the Tribal Court, the trustee shall make distribution of the balance of the estate remaining after payment of expenses and debts as set forth in § 5-2-106 and 5-2-107, in kind or in cash or partly in kind and cash, to the known heirs of the decedent according to § 5-2-104, and

present the receipts or receipts of such heirs in the
~~trustee's accounting to the Court.~~

§ 5-4-107 Trustee's Accounting.

Within 30 days after the order appointing the trustee, the trustee shall file with the Tribal Court a verified accounting setting forth all the property received and disbursed by the trustee with vouchers for payments, distribution and expenses.

§ 5-4-108 Examination of Accounting; Discharge of Trustee.

Upon the filing of such accounting, the Tribal Court shall examine the documents and, if approved by the Tribal Court, the trustee shall be discharged from further duties and liabilities. Any bond posted by the trustee shall be returned upon approval of the accounting and discharge of the trustee.