FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #01/11, AMENDED

PROBATE CODE

Adopted by Resolution #1104/11 of the Fond du Lac Reservation Business Committee on April 12, 2011.
Amended by Resolution #1398/11 of the Fond du Lac Reservation Business Committee on December 6, 2011.
Amended by Resolution #1240/13 of the Fond du Lac Reservation Business Committee on August 7, 2013.
Amended by Resolution #1341/14 of the Fond du Lac Reservation Business Committee on September 10, 2014.
Amended by Resolution #1016/15 of the Fond du Lac Reservation Business Committee on January 21, 2015.

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FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

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CHAPTER 1
AUTHORITY, FINDINGS AND PURPOSES

Section 1.101 Authority

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; and under the common law of the United States.

Section 1.102 Findings and Purposes

The Fond du Lac Reservation Business Committee finds that the determination of how property is disposed upon a person's passing is an exercise of self-governance crucial to the Band's sovereignty and that a Probate Code will simplify the probate process for Band members. The purposes of this Ordinance are accordingly:

(a) To ensure that the property of decedents passes to the rightful heirs or beneficiaries;

(b) To comply with the decedent's wishes as much as possible;

(c) To comply with tribal custom and tradition;

(d) To provide a simple, efficient, and inexpensive method for probating the decedent's property;

(e) To prevent the transfer of land out of tribal ownership and control; and

(f) To ensure that the rights of creditors of decedents are protected to the extent possible and fair.

CHAPTER 2
DEFINITIONS

Section 2.101 Definitions

For the purposes of this Ordinance, the following definitions shall apply:

(a) **"Abatement"** means a reduction or decrease.

(b) **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.

(c) **"Band member"** means an enrolled member of the Fond du Lac Band of Lake Superior Chippewa.

(d) **"Beneficiary"** means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

(e) **"Bond"** means an obligation to pay a sum of money upon the happening of a stated event.

(f) **"Class gift"** means a devise or gift to a body of people, uncertain in number at the time of the gift, to be ascertained at a future time, who are all to take in equal, or other definite proportions, the share of each being dependent for its amount upon the ultimate number of people in the class.

(g) **"Child"** includes any natural child and any child formally adopted in accordance with 25 U.S.C. § 372a. An individual is the **"child"** of his or her natural parents regardless of their marital status. An adopted individual is the **"child"** of *both* his or her adopting parent or parents *and* of his or her natural parents.

(h) **"Covered permanent improvements"** means buildings, other structures, and associated infrastructure attached to trust or restricted land, as well as any interests in such improvements.

(i) **"Decedent"** means a person who is deceased.

(j) **"Devise"** means a gift of property by will or to give a gift of property by will.

(k) **"Devisee"** means a person or entity designated in a will to receive a devise.

(l) **"Escheat"** means reversion of property to the Band because no valid heir or person to inherit exists.

(m) **"Executor"** means a person designated by a testator to carry out the directions and requests in the testator's will and to dispose of the testator's property according to the provisions of his or her will.

(n) **"Heir"** means any person, including the surviving spouse, who is entitled under the law governing intestate succession to an interest in the property of a decedent.

(o) **"Indian"** means

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of an interest in trust or restricted land;

(2) Any person meeting the definition of Indian under 25 U.S.C. § 479 and the regulations promulgated thereunder; and

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. § 2206, any person described in subparagraphs (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel or land in that state.

(p) **"Intestate"** means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all of the estate.

(q) **"Intestate succession"** means succession to property of a decedent who dies intestate or partially intestate.

(r) **"Issue"** means children, grandchildren, lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term does include adopted children and non-marital children and their issue.

(s) **"Land"** means any real property.

(t) **"Life estate"** means an interest in property held for only the duration of a designated person's life.

(u) **"Personal property"** means all property other than real property.

(v) **"Personal representative"** means the person appointed by the Tribal Court to administer the estate of a decedent according to this Ordinance and may include an executor nominated by the decedent's will, appointed at the request of an interested party, or appointed by the Tribal Court.

(w) **"Probate"** means a general term for the entire process of administration of estates of deceased persons, including those without wills.

(x) **"Property"** means any interest, legal or equitable, in real or personal property, without distinction as to kind.

(y) **"Reservation"** means the Fond du Lac Indian Reservation.

(z) **"Remainder interest"** means the interest of an owner who does not have use of the property until the life estate terminates.

(aa) **"Spouse"** means a person who was married to the decedent or in a registered domestic partnership with the decedent under the Marriage, Domestic Partnership & Divorce Ordinance, FDL Ord. #04/10, or under the laws of another jurisdiction.

(bb) **"Testator"** means a decedent who dies leaving a valid will.

(cc) **"Tribal Court"** means the Fond du Lac Band of Lake Superior Chippewa Tribal Court.

(dd) **"Trust or restricted land"** means land, or an interest therein, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(ee) **"Will"** means a written document executed with the required formalities and intended to facilitate the passage of the testator's property upon death. The required formalities may be provided by Subchapter 4.3, federal law, or both Subchapter 4.3 and federal law.

(ff) **"Without regard to waste"** means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

CHAPTER 3
PROBATE OF TRUST OR RESTRICTED LAND

Section 3.101 Probate of Trust or Restricted Land

The provisions in Chapter 2 and in this Chapter shall apply to the probate of trust or restricted land on the Reservation.

Section 3.102 Devise of Trust or Restricted Land

Notwithstanding the provisions in chapter 4, the following provisions shall apply to a devise of trust or restricted land located on the Reservation:

(a) Creation, Execution, and Revocation of Wills Involving Trust or Restricted Land. For purposes of a devise of trust or restricted land, the creation, execution, and revocation of the will is governed by federal law.

(b) Presumption of Joint Tenancy. If a testator devises trust or restricted interests in the same parcel of land to more than 1 person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

(c) Permitted Devise of Trust or Restricted Land. The owner of trust or restricted land on the Reservation may only devise such trust or restricted land to a Band member, a person eligible for enrollment in the Band, or the Band.

(d) Devise Not Permitted. If a devise of trust or restricted land on the Reservation is made that is not permitted by paragraph (c), the following rules shall apply:

(1) The devisee has the right to renounce his or her devise to an eligible devisee;

(2) A devisee who is the spouse or lineal descendant of the testator has the right to reserve a life estate without regard to waste; and

(3) A devisee who is not a Band member, a person eligible for enrollment in the Band, or the Band, and who does not renounce his or her devise shall be entitled to just compensation in the form of payment of an amount equal to the fair market value of the interest in the land as determined by the Secretary of the Interior. If the Band pays compensation through the Secretary of the Interior, the land shall be taken into trust, on a uniform basis, for the benefit of the Band.

(e) Notice. In order for the Band to exercise its option to prevent a transfer of trust or restricted land through a devise not permitted by paragraph (c), the Band must file a written notice of

purchase with the Superintendent of the Minnesota Agency, together with certification by the Band that copies of the notice of purchase have been mailed on the same date to the Administrative Law Judge presiding over the probate and the affected devisee(s). The notice of purchase may be filed in the probate hearing or within forty-five (45) days after the date of the probate decision or within fifteen (15) days from the date of the decision on rehearing or hearing, unless and until the filing deadlines set forth herein are superseded by applicable federal regulation or an order issued by a court of competent jurisdiction.

Section 3.103 Intestate Succession of Trust or Restricted Land

Notwithstanding the provisions in chapter 4, the following provisions shall apply to the intestate succession of trust or restricted land in the intestate estate:

(a) Permitted Intestate Succession. Only a Band member or a person eligible for enrollment in the Band may receive trust or restricted land on the Reservation through intestate succession. Any person who is not a Band member or a person eligible for enrollment in the Band may not receive trust or restricted land on the Reservation through intestate succession.

(b) Intestate Succession Not Permitted. If intestate succession is not permitted under paragraph (a), but the individual would otherwise receive land pursuant to paragraphs (e) and (g) if he or she were a Band member or person eligible for membership in the Band, the following rules shall apply:

(1) The individual has the right to renounce his or her ability to take the land through intestate succession to a Band member or person eligible for enrollment in the Band;

(2) If the individual is a spouse or lineal descendant of the decedent, the individual has the right to reserve a life estate without regard to waste; and

(3) If the individual does not renounce his or her ability to take the land through intestate succession, the individual shall be entitled to just compensation in the form of payment of an amount equal to the fair market value of the interest in the land as determined by the Secretary of the Interior. If the Band pays compensation through the Secretary of the Interior, the land shall be taken into trust, on a uniform basis, for the benefit of the Band.

(c) Notice. In order for the Band to exercise its option to prevent a transfer of trust or restricted land through intestate succession not permitted by paragraph (a), the Band must file a written notice of purchase with the Superintendent of the Minnesota Agency, together with certification by the Band that copies of the notice of purchase have been mailed on the same date to the Administrative Law Judge presiding over the probate and the affected devisee(s). The notice of purchase may be filed in the probate hearing or within forty-five (45) days after the date of the probate decision or within fifteen (15) days from the date of the decision on rehearing or hearing, unless and until the filing deadlines set forth herein are superseded by applicable federal regulation or an order issued by a court of competent jurisdiction.

(d) Share of Surviving Spouse. If there is a surviving spouse of the decedent, the spouse shall receive a life estate without regard to waste in the trust or restricted land of the decedent. The remainder of the estate shall pass as set forth in paragraphs(e), (f), and (g) of this section.

(e) Share of Heirs Other Than Surviving Spouse. Where there is no surviving spouse of the decedent, or there is a remainder interest pursuant to paragraph (d) of this section, the trust or restricted land shall pass as follows:

(1) To those of the decedent's children who are Band members or persons eligible for enrollment in the Band, as a joint tenancy with the right of survivorship.

(2) If the property does not pass under subparagraph (2) above, to those of the decedent's surviving grandchildren who are Band members or persons eligible for enrollment in the Band, as a joint tenancy with the right of survivorship.

(3) If the property does not pass under subparagraphs (1) and (2) above, to those of the decedent's surviving great-grandchildren who are Band members or persons eligible for enrollment in the Band, as a joint tenancy with the right of survivorship.

(4) If the property does not pass under subparagraphs (1) to (3) above, to decedent's surviving parent who is a Band member or person eligible for enrollment in the Band, and if both parents survive the decedent and are both Band members or persons eligible for enrollment in the Band, to both parents as a joint tenancy with the right of survivorship.

(5) If the property does not pass under subparagraphs (1) to (4) above, to those of the decedent's surviving siblings who are Band members or persons eligible for enrollment in the Band, as a joint tenancy with the right of survivorship.

(f) No taker. If the trust or restricted land does not pass under paragraphs (a) to(e) of this section, then the trust or restricted land shall pass to the Band. Except that notwithstanding this paragraph, an Indian co-owner (including the Band) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under this paragraph by paying into the estate of the decedent, before the closing of the probate estate, the fair market value of the interest in the land; if more than one Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

(g) Intestate Descent of Small Fractional Interests in Land. Notwithstanding the provisions relating to intestacy and testamentary disposition, and subject to any applicable federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend as follows:

(1) Surviving spouse. If there is a surviving spouse, and such spouse was residing on a parcel of trust or restricted land representing less than 5 percent of the entire

undivided ownership of the parcel of land of which such interest is a part at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with the single heir rule.

(2) Single heir rule. Where there is no life estate created for a surviving spouse or there is a remainder interest under subparagraph (1), the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to:

(A) The decedent's surviving child, but only if such child is a Band member or person eligible for enrollment in the Band; and if two or more surviving children are Band members or person eligible for enrollment in the Band, then to the oldest of such children;

(B) If the interest does not pass under subparagraph (A), the decedent's surviving grandchild, but only if such grandchild is a Band member or person eligible for enrollment in the Band; and if two or more surviving grandchildren are Band members or person eligible for enrollment in the Band, then to the oldest of such grandchildren;

(C) If the interest does not pass under subparagraphs (A) or (B), the decedent's surviving great grandchild, but only if such great grandchild is a Band member or person eligible for enrollment in the Band; and if two or more surviving great grandchildren are Band members or person eligible for enrollment in the Band, then to the oldest of such great grandchildren;

(D) If the interest does not pass under subparagraphs (A), (B), or (C), then to the Band.

Section 3.104 Probate of Covered Permanent Improvements

The descent of covered permanent improvements shall be subject to Tribal Court jurisdiction and shall be determined in accordance with the provisions in chapter 4.

CHAPTER 4
TRIBAL COURT PROBATE

SUBCHAPTER 4.1
TRIBAL COURT PROBATE – GENERAL PROVISIONS

Section 4.101 Jurisdiction

The Tribal Court shall have jurisdiction to administer in probate a Band member's estate if the decedent was domiciled on the Reservation or had an interest in real property on the Reservation. If the decedent was a Band member domiciled on the Reservation, the Tribal Court shall have jurisdiction, to the extent that the property is not subject to the exclusive jurisdiction of the United States, over all interests in real property located on the Reservation and over all personal property. If the decedent was a Band member not domiciled on the Reservation, the Tribal Court shall have jurisdiction, to the extent that the property is not subject to the exclusive jurisdiction of the United States, over all interests in real property located on the Reservation.

Section 4.102 Effect of Fraud and Evasion

(a) Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Ordinance or if fraud is used to avoid or circumvent the provisions or purposes of this Ordinance, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud, including restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not.

(b) Any proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against anyone later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during their lifetime which affects the succession of the estate.

Section 4.103 Evidence as to Passing or Status

In proceedings under this Ordinance, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent;

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report; and

(c) A person who is absent for a continuous period of seven (7) years, during which they have not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. Their death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Section 4.104 Effect of Divorce, Annulment, and Decree of Separation

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, they are married to the decedent at the time of death. A decree of separation, which does not terminate the status of husband and wife, is not a divorce for purposes of this Ordinance.

Section 4.105 Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designation

(a) A surviving spouse, heir, or beneficiary who criminally and intentionally causes the death of the decedent is not entitled to any benefits passing under this Ordinance and the estate of the decedent passes as if the perpetrator had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the perpetrator passes as if the perpetrator had predeceased the decedent.

(b) Any joint tenant who criminally and intentionally causes the death of another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as their property and the perpetrator has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who criminally and intentionally causes the death of the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the perpetrator had predeceased the decedent.

(d) Any other acquisition of property or interest by the perpetrator shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of an offense containing the elements of criminal and intentional death is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional death, the Tribal Court may determine by a preponderance of evidence whether the death was criminal and intentional for purposes of this section.

Section 4.106 Simultaneous Death Provisions

(a) Where the title to property covered under this Ordinance or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise

than simultaneously, the property of each person shall be disposed of as if they had survived except where provided otherwise in this Ordinance.

(b) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed.

(c) Where there is not sufficient evidence that two joint tenants or tenants by the entirety 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.

(d) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(e) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed, contract, or insurance policy.

Section 4.107 <u>Family Heirlooms, Indian Finery, and Indian Artifacts</u>

Notwithstanding the provisions of this Ordinance relating to descent and distribution, the surviving spouse or other surviving next of kin may distribute any family heirlooms, Indian artifacts, and Indian finery belonging to the decedent in accordance with the customs and traditions of the Band prior to the initiation of the administration of the estate. The distribution shall be in accordance with directions left by the decedent, if any. The distribution shall be exempt from all creditors.

SUBCHAPTER 4.2
TRIBAL COURT PROBATE – INTESTATE SUCCESSION

Section 4.201 Intestate Estate

(a) The intestate estate of the decedent consists of any part of the decedent's estate not disposed of by will and not allowed to the decedent's spouse or descendants under subchapter 4.4. The intestate estate passes by intestate succession to the decedent's heirs as prescribed in chapter 3 and this subchapter, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

Section 4.202 Share of Surviving Spouse

If there is a surviving spouse of the decedent, the intestate share of the surviving spouse is, subject to the provisions in chapter 3 and subchapter 4.4, as follows:

(a) The entire estate if:

(1) No descendant of the decedent survives the decedent; or

(2) All of the decedent's surviving descendants are also descendant's of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

(b) The first $150,000, plus one half of any balance of the intestate estate, if all of the decedent's surviving descendant's are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent, or if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

Section 4.203 Share of Heirs Other Than Surviving Spouse

Any part of the intestate estate not passing to the surviving spouse under section 4.202, or the entire estate if there is no surviving spouse, shall pass, subject to the provisions in chapter 3 and subchapter 4.4, as follows:

(a) To the decedent's descendants by representation;

(b) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(c) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

Section 4.204 Requirement That Heir Survive Decedent for 120 Hours

An individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established that an individual who would otherwise be an heir survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period.

Section 4.205 No Taker

If there is no taker under the provisions of this Ordinance, the intestate estate passes to the Band.

Section 4.206 Representation

(a) Application. If representation is called for by this Ordinance, paragraphs (b) and (c) apply.

(b) Decedent's descendants. In the case of descendants of the decedent, the estate is divided into as many shares as there are surviving children of the decedent and deceased children who left descendants who survive the decedent, each surviving child receiving one share and the share of each deceased child being divided among its descendants in the same manner.

(c) Descendants of parents or grandparents. If a decedent's intestate estate or a part thereof passes by "representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided in the following manner:

(1) In the case of the descendants of the decedent's deceased parents or either of them, the estate or part thereof is divided into as many equal shares as there are (A) surviving descendants in the generation nearest the deceased parents or either of them, and (B) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share, and the surviving descendants of each deceased descendant in the same

generation are allocated one share, to be divided in the same manner as specified in paragraph (b).

(2) In the case of descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are surviving descendants in the generation nearest the deceased grandparents or either of them that contains one or more surviving descendants. Each surviving descendant in the nearest generation is allocated one share.

Section 4.207 Kindred Without Both Parents in Common

Relatives who have the same father or the same mother, but not both parents in common (i.e., a person who shares one parent in common with another person) inherit the same share they would inherit if they had both parents in common. But stepchildren and foster children do not inherit, unless adopted.

Section 4.208 After-Born Heirs

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Section 4.209 Advancement

(a) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (1) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (2) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of paragraph (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

Section 4.210 Debts to Decedent

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Section 4.211 <u>Individuals Related to Decedent Through Two Lines</u>

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

SUBCHAPTER 4.3
TRIBAL COURT PROBATE – WILLS

Section 4.301 Trust or Restricted Land and the Scope of this Subchapter

In determining the validity of a devise of property other than trust or restricted land, the rules contained in this subchapter governing the creation, execution, and revocation of wills shall apply. In determining the validity of a devise of trust or restricted land, the federal law governing the creation, execution, and revocation of wills shall apply.

The failure to follow the rules in this subchapter shall not invalidate a devise of trust or restricted land. The failure to follow federal law governing the creation, execution, and revocation of wills shall not invalidate a devise of property other than trust or restricted land.

Note: It is often desirable to create a single will that devises the testator's entire estate, including trust or restricted land *and* non-trust property. In order for all of the devises in a will devising both trust or restricted land and non-trust property to be valid, it would be necessary to comply with the rules contained in this subchapter *and* the federal law governing the creation, execution, and revocation of wills. The federal law governing the creation, execution, and revocation of wills may be significantly different than the rules contained in this Subchapter. At the time when this Ordinance was enacted, the federal rules governing the creation, execution, and revocation of wills were contained in 25 C.F.R. part 15.

Section 4.302 Who May Make a Will

Any person eighteen (18) or more years of age who is of sound mind and of testamentary capacity may make a will.

Section 4.303 Execution

A will must be (1) in writing, (2) signed and dated by the testator, and (3) attested to and signed by two disinterested adult witnesses.

Section 4.304 Harmless Error

Although a document or writing added upon a document was not executed in compliance with the requirements of Section 4.303, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute (a) the decedent's will, (b) a partial or complete revocation of the will, (c) an addition to or an alteration of the will, or (d) a partial or complete revival of his or her formerly revoked will or of a formerly revoked portion of the will.

Section 4.305 <u>Self-Proved Will</u>

(a) An attested will may be made self-proved by attaching affidavits, signed by the testator and the witnesses before a notary public, under official seal, certifying that they complied with the requirements for execution of the will.

(b) To create a self-proved will, the testator's affidavit must contain substantially the following content:

[Fond du Lac Reservation])
State of _____) ss.
County of _____)

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

_____
Testator

(c) To create a self-proved will, the attesting witnesses' affidavit must contain substantially the following content:

[Fond du Lac Reservation])
State of _____) ss.
County of _____)

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

_____
Witness

_____
Witness

Subscribed and sworn to or affirmed before me this __ day of ____, 20__, by ____ testator, and by ____ and ____, attesting witnesses.

_____
Notary Public

(seal)

My Commission Expires:_____

Section 4.306 <u>Revocation by Writing or Act</u>

A will or any part thereof is revoked by either of the following:

(a) By a subsequent valid will, codicil, or other instrument which revokes the prior will in whole or in part, expressly or by inconsistency; or

(b) By being burned, torn, cancelled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and at the testator's direction.

Section 4.307 <u>Revocation by Divorce; No Revocation by Other Changes of Circumstances</u>

(a) If, after executing a will, the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as personal representative, executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

(b) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse, a decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Section 4.308 <u>Revival of Revoked Will</u>

(a) If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act under section 4.306, the revoked part of the previous will is revived. This section does not apply if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part of the previous will to take effect as executed.

(b) If a subsequent will that wholly revoked a previous will is itself revoked by a revocatory act under section 4.306, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or

from the testator's contemporary or subsequent declaration that the testator intended the previous will to take effect as executed.

(c) If a subsequent will that wholly or partly revoked a previous will is itself revoked by another will, the previous will or its revoked part remains revoked, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent that it appears from the terms of the later will, or from the testator's contemporary or subsequent declarations, that the testator intended the previous will to take effect.

Section 4.309 Incorporation by Reference

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Section 4.310 Events of Independent Significance

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

Section 4.311 Rules of Construction and Intention

(a) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions;

(b) The following rules of construction apply unless a contrary intent is clear in the will:

(1) After-Acquired Property. A will is construed to pass all property which the testator owns at his or her death including property acquired after the execution of the testator's will.

(2) Anti-Lapse. If a devisee fails to survive the testator or is treated as if the devisee predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee. If they are all of the same degree of kinship to the devisee, they take equally. If they are of unequal degree, those of more remote degree take by representation. A person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee for purposes of this section, whether the death occurred before or after the execution of the will. Words of survivorship, such as, in a devise to an individual, "if he or she survives me," or, in a class gift, to "my surviving children," are a sufficient indication of an intent contrary to the application of this rule of construction.

(3) Failure of Testamentary Provision. If a devise other than a residuary devise fails for any reason, it becomes part of the residue. If the residue is devised to two or more persons and the share of one of the residuary beneficiaries fails for any reason, their

share passes to the other residuary beneficiaries, or to other residuary beneficiaries in proportion to their interest in the residue.

(4) Nonademption of Specific Devises. A specific devisee has a right to the specifically devised property in the testator's estate at death and the following:

(A) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;

(B) Any amount of a condemnation award for the taking of the property unpaid at death;

(C) Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and

(D) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(5) Nonexoneration. A specific devise passes subject to any mortgage or security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

(6) Exercise of Power of Appointment. A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment unless specific reference is made to that power.

(7) Ademption by Satisfaction. Property which a testator gave in their lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction. For the purpose of partial satisfaction, property given during the lifetime is valued as of the time the beneficiary came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

SUBCHAPTER 4.4
TRIBAL COURT PROBATE – FAMILY RIGHTS AND PROTECTIONS

Section 4.401 Omitted Spouse

(a) If a testator fails to provide by will for their surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate they would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided in this section, the devises made by the will abate as provided in section 4.508 of this Ordinance, which concerns "abatement."

Section 4.402 Pretermitted Children

(a) If a testator fails to provide in his or her will for any of their children living or born or adopted after the execution of the will, the omitted child receives a share in the estate equal in value to that which they would have received if the testator had died intestate unless:

(1) It appears from the will that the omission was intentional;

(2) When the will was executed the testator had one or more children and devised substantially all their estate to the other parent of the omitted child; or

(3) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will, the testator fails to provide in their will for a living child solely because they believe the child to be dead, the child receives a share in the estate equal in value to that which they would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 4.508 of this Ordinance, which concerns "abatement."

Section 4.403 Descent of Homestead

(a) If there is a surviving spouse, the homestead, including a manufactured home which is the family residence, descends free from any testamentary or other disposition of it to which the spouse has not consented in writing as follows:

(1) If there is no surviving descendant of decedent, to the spouse; or

(2) If there are surviving descendants of decedent, then to the spouse for the term of the spouse's natural life and the remainder in equal shares to the decedent's descendants by representation.

(b) If there is no surviving spouse and the homestead has not been disposed of by will it descends as other real estate.

(c) If the homestead passes by descent or will to the spouse or decedent's descendants, it is exempt from all debts which were not valid charges on it at the time of decedent's death. If the homestead passes to a person other than a spouse or decedent's descendants, it is not exempt from expenses and claims by creditors.

Section 4.404 <u>Exempt Property</u>

(a) In addition to the homestead exemption provided in section 4.403, the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to value not exceeding $10,000 therein in household furniture, automobiles, furnishings, appliances, and personal effects. The $10,000 in value of the aforementioned items shall be over and above any security interest in said items. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000 value.

(b) One automobile, if any, shall be exempt property, regardless of its value.

(c) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided or by intestate succession.

Section 4.405 <u>Family Allowance</u>

(a) In addition to the right to the homestead exemption and exempt property, if the decedent was domiciled on the Reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

(b) The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case of any minor child or dependent child that is not living with the

surviving spouse, the allowance may be made partially to the child or their guardian or other person having their care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead exemption.

(c) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates their right to allowances not yet paid.

Section 4.406 <u>Source, Determination, and Documentation</u>

(a) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as the homestead and exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children.

(b) The personal representative may determine the family allowance in a lump sum not exceeding $6,000 or periodic installments not exceeding $500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Tribal Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

SUBCHAPTER 4.5
TRIBAL COURT PROBATE – PROBATE PROCEDURE

Section 4.501 Commencement of Probate Proceedings

At any time after the death of a person subject to this Ordinance, an heir of the decedent, a beneficiary of the decedent's will, or a person designated to serve as Personal Representative by the decedent's will may file a Probate Petition with the Tribal Court for the probate of the will and the administration of the decedent's intestate estate.

Section 4.502 Probate Petition

(a) The Probate Petition shall contain:

(1) The name of the decedent;

(2) The date of death of the decedent;

(3) The decedent's enrollment status;

(4) The basis for the Tribal Court's jurisdiction;

(5) The names, relationship to decedent, and the mailing addresses of persons who are or would be heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors, so far as such information is known to the petitioner;

(6) Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will;

(7) A general description and an estimate of the value of the decedent's estate subject to probate in Tribal Court, and a general description of those portions of the decedent's estate, if any, that are not subject to probate in the Tribal Court, including, but not limited to, any interests in trust or restricted property;

(8) 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;

(9) A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative;

(10) A request for approval of the decedent's will, or a request that the Tribal Court find that the decedent died without a valid will; and

(11) 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 the filing as such documents can be obtained:

(1) A certified copy of the decedent's death certificate or other evidence, pursuant to section 4.103, of death; and

(2) The original or a true and correct copy of the decedent's will.

A $25 filing fee shall accompany the filing of the petition.

Section 4.503 Hearing on the Probate Petition

(a) Hearing Date. After receiving the Probate Petition, the Tribal Court shall schedule a hearing at which the Tribal Court shall determine whether the will shall be admitted to probate, shall appoint a personal representative, and shall determine whether summary probate procedures apply.

(b) Notice of Hearing. The Tribal Court shall provide notice by first class mail at least ten days before the hearing to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any known will, and all persons involved in any other probate proceeding involving the decedent. The notice shall include (1) the date, time, and location of the hearing, (2) the name of the proposed personal representative, and (3) a copy of the will, if any, that has been submitted for probate.

(c) Evidence About Admission of the Will to Probate. If a will is self-proved under section 4.304 and no objection is raised, the Tribal Court may admit the will to probate without a hearing. If the will is not self-proved, an objection is raised, or the Tribal Court determines that further evidence is required, the Tribal Court shall obtain testimony to determine whether the will shall be admitted to probate. Based on the evidence presented at the hearing, the Tribal Court shall decide, based on a preponderance of the evidence, whether the will is valid and should be admitted to probate.

(d) Evidence About Appointment of Personal Representative. At the initial hearing, the Tribal Court shall determine based on a preponderance of the evidence who should be appointed as personal representative of the estate pursuant to section 4.504.

(e) Evidence About Summary Probate. At the initial hearing, the Tribal Court shall determine based on a preponderance of the evidence whether summary probate procedures should be used pursuant to section 4.506.

(f) Continuances. Upon a showing of good cause, the Tribal Court may grant a continuance to provide more time to present or obtain evidence.

Section 4.504 Appointment of Personal Representative

(a) Qualifications. To be appointed as a personal representative, an individual must be of sound mind, must not be a minor, and must be willing and able to properly carry out the duties of the personal representative.

(b) Priority of Appointment. The following persons, if qualified, shall be afforded priority in order of their listing for appointment as personal representative:

(1) The person or persons named to serve as personal representative, executor, or administrator in the decedent's will;

(2) The surviving spouse or such person as the surviving spouse may request to have appointed;

(3) Children over 18 years of age in descending order of age;

(4) Other blood relatives in order of the closeness of their relationship and then in descending order of age;

(5) Any potential heir or person named in the decedent's will; and

(6) Any adult Band member.

(c) Oath. Upon their appointment as personal representative, the person appointed shall take an oath to be prescribed by the Tribal Court to the effect that they will faithfully and honestly administer the estate.

(d) Bond. The personal representative shall file a bond in an amount to be set by the Tribal Court to insure their faithful, honest performance of their duties as personal representative. The Tribal Court may determine that no bond is required. Unless otherwise made to appear necessary or desirable, no bond shall be required of a personal representative who is the spouse or child of a decedent.

(e) Letters Testamentary and Letters of Administration. The Tribal Court shall issue Letters Testamentary and Letters of Administration to the personal representative. The Letters Testamentary and Letters of Administration shall be in substantially the following form:

Letters Testamentary and Letters of Administration

_____, whose address is _____, having been appointed and qualified as Personal Representative of the estate of _____, deceased, who died on or about _____, is hereby authorized to act as Personal Representative for and in behalf of the estate and to take possession of the estate's property as authorized by law.

Issued this date: _____, _____.

By:_____ (Seal)
Tribal Court Clerk

(f) Termination. The appointment of the personal representative shall be terminated upon the following grounds:

(1) The death of the personal representative;

(2) Voluntary termination by the personal representative;

(3) Removal would be in the best interests of the estate;

(4) The personal representative has intentionally misrepresented material facts in the proceedings leading to his or her appointment;

(5) The personal representative has disregarded an order of the Tribal Court;

(6) The personal representative has become incapable of discharging his or her duties;

(7) The personal representative has mismanaged the estate; or

(8) The personal representative has failed to perform any duty pertaining to the office.

If the termination is involuntary, the personal representative shall be entitled to notice and hearing and the Tribal Court shall make the removal determination based on a preponderance of the evidence. If the personal representative's appointment is terminated, the Tribal Court shall also issue an order revoking the Letters Testamentary and Letters of Administration. After termination of the appointment, the Tribal Court shall appoint a new personal representative.

Section 4.505 Duties of Personal Representative

The duties of the of the personal representative shall be to:

(a) Take constructive or physical possession of all property of the decedent subject to this Ordinance as the Tribal Court shall order, taking into consideration the interests of the person or persons who may have occupied the homestead of the decedent at the time of his or her death;

(b) Within one month of appointment make an inventory and appraisement of such property and file it with the Tribal Court;

(c) Within one month of appointment, determine and file with the Tribal Court a list of all known relatives of the decedent, their ages, their relationship to the decedent, and their whereabouts if known;

(d) Subject to the approval of the Tribal Court, ascertain and pay all of the debts and legal obligations of the decedent;

(e) Prosecute and defend actions for or against the estate; and

(f) Distribute the estate in accordance with the order of the Tribal Court and file receipts with the Tribal Court showing distribution of the estate.

Section 4.506 Summary Probate

(a) If the decedent's entire estate is exempt from claims pursuant to sections 4.401 to 4.406, the Tribal Court shall apply the summary probate procedures in this section.

(b) In summary probate, the Creditor's Rights procedures in section 4.507 shall not be used.

(c) If summary probate procedures apply and the proper distribution of the estate can be easily determined, the Tribal Court may issue a Distribution Order following the initial hearing and the distribution procedures in section 4.508 need not be used. Based on the Distribution Order, the Personal Representative shall distribute the estate and the estate shall be closed pursuant to section 4.509.

(d) If summary probate procedures apply and the proper distribution of the estate cannot be easily determined, the Tribal Court shall order the personal representative to follow the distribution procedures in section 4.508.

Section 4.507 Creditor's Rights

If the decedent's entire estate is not exempt from claims pursuant to sections 4.401 to 4.406, the following procedures shall apply:

(a) General Notice to Creditors. The Tribal Court shall publish in a newspaper, such as the Band's "Nah gah chi wa nong • Di bah ji mowin nan" newspaper, a notice to creditors of the decedent. The notice shall provide a deadline, at least 90 after the date when the notice is first published, for the submission of claims against the estate. The notice shall inform creditors that probate proceedings involving the decedent are pending, shall provide the name and address of the Tribal Court and of the personal representative, and shall inform creditors that any claims not presented to the Tribal Court and the personal representative by the deadline shall be barred. The notice shall be published in at least two consecutive issues of the newspaper.

(b) Notice to Known Creditors. In addition to the notice given in paragraph (a), the Tribal Court shall provide notice to all known creditors by first class mail. The notice shall inform

creditors that probate proceedings involving the decedent are pending, shall provide the name and address of the Tribal Court and of the personal representative, and shall inform creditors that any claims not presented to the Tribal Court and the personal representative by the deadline shall be barred.

(c) Barred Claims. Any claim by a creditor not filed by the deadline set in paragraph (a) shall be barred.

(d) Allowance of Claims. The personal representative shall decide whether to allow or disallow any claims. If a claim is disallowed, the personal representative shall notify the creditor and the Tribal Court. The Tribal Court shall schedule a hearing on the disallowed claims and shall provide the personal representative and the effected creditors with notice of the claim by first class mail at least 10 days in advance.

(e) Hearing on Disallowed Claims. At the hearing on disallowed claims, the Tribal Court shall decide based on a preponderance of the evidence whether the disallowed claim is valid and should be allowed. The hearing on disallowed claims may, at the Tribal Court's discretion, be combined with the distribution hearing described in section 4.508(d).

(f) Priority of Claims Against the Estate. All just claims of creditors allowed by the Tribal Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance and the distribution of exempt property as provided herein.

(g) Secured Transactions. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in this chapter.

Section 4.508 Distribution

(a) Order of Distribution; Abatement. The personal representative shall determine the distribution of the estate based on the family protections in sections 4.401 to 4.406, the allowed claims against the estate, the decedent's will, and the rules of intestate succession. The following rules apply to abatement:

(1) Except as provided in subparagraph (2), below, and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority between real and personal property, in the following order:

(A) Property not disposed of by the will;
(B) Residuary devises;
(C) General devises;
(D) Specific devises.

(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged,

and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. 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 in accordance with the terms of the will.

(3) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subparagraph (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(b) Partition of Property. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the Tribal Court to make partition. After notice to the interested heirs or devisees, the Tribal Court shall partition the property in the same manner as provided by the common law for actions of partitions. The Tribal Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot be conveniently allotted to any one party.

(c) Proposed Distribution. Based on the provisions in paragraphs (a) and (b) of this section, the personal representative shall file with the Tribal Court a proposed distribution of the estate. The proposed distribution shall note any family allowances already distributed by the personal representative and any payments already made by the personal representative in the course of carrying out his or her duties. The proposed distribution shall include computation of any attorney's and/or personal representative's fees involved for which approval for payment is sought.

(d) Distribution Hearing. After receiving the proposed distribution of the estate, the Tribal Court shall schedule a Distribution Hearing. The Tribal Court shall provide notice at least 10 days before the hearing by first class mail to the following persons: the personal representative, the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any known will, all persons involved in any other probate proceeding involving the decedent, all persons who appeared at the initial hearing, and all known creditors. At the Distribution Hearing, the Tribal Court shall determine, based on a preponderance of the evidence, whether the proposed distribution is proper under this Ordinance or whether a different distribution should be ordered.

(e) Distribution Order by the Tribal Court. Following the Distribution Hearing, the Tribal Court shall issue a Distribution Order, which shall direct the personal representative to distribute the estate and shall provide the personal representative with instructions for the distribution.

Section 4.509 Closing of the Estate

(a) Affidavit by the Personal Representative. After the estate has been distributed, the personal representative shall file an affidavit with the Tribal Court stating that the estate has been distributed and is ready to be closed.

(b) Order Closing the Estate. After receiving the affidavit from the personal representative stating that the estate has been distributed, the Tribal Court shall issue an order closing the estate and revoking the letters testamentary and letters of administration. The Tribal Court shall release any bond that the personal representative was required to post.

(c) Property Discovered After Estate Closed. An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his or her estate has been closed. The Tribal Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

Section 4.510 Application of Foreign Law

The Tribal Court may apply foreign law, including laws of other tribes and states, federal law, common law and uniform or model laws, to resolve probate issues when an issue is not covered by this Ordinance.

CHAPTER 5
EFFECTIVE DATE, AMENDMENTS, SEVERABILITY

Section 5.101 Effective Date

The provisions of this Ordinance shall become effective thirty (30) days from adoption by the Reservation Business Committee. For purposes of provisions applicable to trust lands, the tribal probate code will become effective 180 days after approval from the Secretary of the Interior.

Section 5.102 Amendment

The Reservation Business Committee may amend this Ordinance by resolution as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. For purposes of provisions applicable to trust lands, amendments to this Ordinance shall be subject to approval from the Secretary of the Interior and will become effective 180 days after approval from the Secretary of the Interior.

Section 5.103 Rescission

The Reservation Business Committee may rescind this Ordinance by resolution as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. For purposes of provisions applicable to trust lands, rescission will become effective no sooner than 180 days after the Secretary of the Interior receives notification of the decision to rescind the Ordinance.

Section 5.104 Severability

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #01/11 was duly presented and adopted by Resolution #1104/11 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on April 12, 2011 on the Fond du Lac Reservation; and subsequently amended by Resolution #1398/11 on December 6, 2011; by Resolution #1240/13 on August 7, 2013; by Resolution #1341/14 on September 10, 2014, and by Resolution #1016/15 on January 21, 2015.

Karen R. Diver
Chairwoman

Ferdinand Martineau, Jr.
Secretary/Treasurer

LAWS:120.2011.01(041211;120611;080713;091014;012115)