

WHITE EARTH BAND OF OJIBWE
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WHITE EARTH BAND OF OJIBWE

TITLE 14 : PROBATE CODE

CHAPTER 1. SHORT TITLE, PURPOSE AND DEFINITIONS

Section 1. Short Title

Title 14 shall be entitled "Probate Code"

Section 2. Findings

- (a) Probate procedure in the White Earth Band of Ojibwe Tribal Court is in the best interest of Tribal members in that probate may be concluded more economically and more expeditiously than in other jurisdictions.
- (b) The determination of how property is disposed upon a person's passing is an exercise of self-governance crucial to the Tribe's sovereignty.

Section 3. Purpose

The purpose of the White Earth Band of Ojibwe Probate Code is to provide for the exercise of the greatest possible Tribal jurisdiction over probate of the estate of decedents who were domiciled or owned real or personal property on the White Earth Reservation.

Section 4. Objectives

This Code shall be liberally construed and applied to meet the following objectives:

- (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 decedent's property.
- (e) To prevent the transfer of land out of tribal ownership and control.
- (f) To ensure that the rights of creditors of decedents are protected to the extent possible and fair.

Section 5. Definitions

As used in this Code, unless the context otherwise requires, the following terms shall have the meaning as indicated.

- (a) "Abatement" means a reduction or decrease.
- (b) "Administrator" means the person appointed by the Tribal Court to administer the estate of a decedent according to this Probate Code and may include an Executor nominated by the decedent's will, appointed at the request of an interested party, appointed by the Court.
- (c) "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.
- (d) "Bond" means an obligation to pay a sum of money upon the happening of a stated event.
- (e) "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.
- (f) "Decedent" means a person who has died leaving property that is subject to administration.
- (g) "Decedent's Estate" means all movable and immovable property and all rights and interest related thereto within which the decedent had an interest at the time of his or her death. Including decedent's interest in any property acquired during the marriage.
- (h) "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under their will or the laws governing intestate succession.
- (i) "Escheat" means reversion of property to the Tribe because no valid heir or person to inherit exists.
- (j) "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.
- (k) "Half-blood" means the degree of relationship which exists between those 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.
- (l) "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.

- (m) "Holographic Will" means a will that is entirely written and signed by the testator in his or her own handwriting.
- (n) "Indian" means a person who is a member or eligible to be a member of the White Earth Band of Ojibwe, or any other person of Indian blood who is a member or eligible to become a member of another federally recognized Indian Tribe.
- (o) "Interested Witness" means any of the following:
- (1) An heir of the decedent.
 - (2) A beneficiary named in any document offered for probate as the will of the decedent.
 - (3) A beneficiary of a trust created under any document offered for probate as the will of the decedent.
 - (4) A person named as Administrator or personal representative in any document offered for probate as the will of the decedent.
 - (5) Additional persons as the Tribal Court may order included.
- (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" used to refer to persons who take by intestate succession, 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) "Member" means an enrolled member of the White Earth Band of Ojibwe.
- (t) "Personal Property" means all property other than real property.
- (u) "Pretermitted Heir" means a child or other descendant omitted from the will of a testator.
- (v) "Probate" means a general term for the entire process of administration of estates of deceased person, including those without wills.
- (w) "Property" means any interest, legal or equitable in real or personal property, without distinction as to kind, except trust property.
- (x) "Real property" means all interest in land or in buildings or improvements permanently attached to land.
- (y) "Reservation" means the White Earth Reservation.

(z) "Take by Representation" means the principle upon which the issue of a decedent takes or inherits the share of an estate which their immediate ancestor would have taken or inherited, if living.

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

(bb) "Tribal Court" means the White Earth Band of Ojibwe Tribal Court.

(cc) "Tribe" means the White Earth Band of Ojibwe.

(dd) "Trust Lands" or "Trust Property" means all land or real property under the jurisdiction of the Tribe which is held for the White Earth Band of Ojibwe by the United States for the benefit of the Tribe and the members of the Tribe, and any additional lands acquired for the Tribe by the United States for the benefit of the Tribe or members of the Tribe.

CHAPTER 2. GENERAL PROVISIONS

Section 1. Jurisdiction

The Tribal Court shall have jurisdiction to administer in probate the estate of a decedent who, at the time of their death, was domiciled or owned real or personal property situated within the White Earth Indian Reservation to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

Section 2. Control of Funeral Arrangements

(a) Control of funeral arrangement and disposition of the remains of the decedent shall be based upon any wishes, instructions or directions of the decedent as expressed in the decedent's will.

(b) If the decedent dies intestate or the decedent's will is silent on the issue of funeral arrangements, the control of funeral arrangements and disposition of the remains of the decedent shall be based upon a decision of the decedent's family.

(c) If the decedent dies and the decedent's will is silent on the issue of funeral arrangements and the decedent has no family available to make a decision, control of the decedent's funeral arrangement and disposition of the remains shall be based on the customs of the Tribe.

Section 3. Distribution of Traditional and Cultural Items

Notwithstanding the provisions of this Probate Code relating to descent and distribution, the surviving spouse or other surviving next of kin may distribute any Indian artifacts and finery belonging to the decedent in accordance with the customs and traditions of the White Earth Band of Ojibwe prior to the initiation of the administration of the estate. Such distribution relating to this distribution shall be in accordance with directions left by the decedent, if any. The Tribal Court shall resolve any disputes relating to this distribution with the advice of traditional elders from the decedent's community when possible.

Section 4. Effect of Fraud and Evasion

(a) Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of this Probate Code, 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) benefiting 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 affect the succession of the estate.

Section 5. Evidence as to Passing or Status

In proceedings under this Probate Code, 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;

(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 6. Court Procedures

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provision, the White Earth Rules of Civil Procedure, including the rules concerning vacation of orders, and the White Earth Rules of Appellate Procedures govern under this Probate Code.

Section 7. Judicial Powers and Duties

(a) The judge of the Court may make orders for the sale of personal property at public or private sale for the compounding of debts, for the settlement of an estate as insolvent, for the approval of bonds and all other orders of an ex parte nature as may facilitate the settlement of estates. The orders shall be in writing, signed by the judge issuing the same, and shall be filed and recorded as an entry in the proper record.

(b) The Court shall examine the bonds filed by the personal representatives, with a view to ascertaining their sufficiency and may approve the same. The Court may examine any inventory, sale, bill, account current, final account and vouchers filed therewith, or examine into the condition of an estate generally. Bond may be waived for good cause shown.

(c) The Court shall have the authority to draft orders requesting property or funds outside the exterior boundaries of the Reservation to be delivered to the Court for probate in the Tribal Court.

Section 8. Records and Certified Copies

The clerk shall keep a file for each decedent of all documents filed with the Court under this Probate Code and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of a fee, the clerk shall issue certified copies of any document or paper so filed.

Section 9. Oath or Affirmation on Filed Documents

Except as specifically provided in this Probate Code, every document filed with the Court under this Probate Code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification therein.

Section 10. Trials

All trials under this Probate Code shall be by the White Earth Band of Ojibwe Tribal Court.

Section 11. Notice

(a) If notice of a hearing on any petition or other matter is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his or her advocate if they have appeared by advocate or requested that notice be sent to his or her advocate. Notice shall be given by any of the following methods:

(1) By mailing a copy thereof at least thirty (30) days before the time set for the hearing by certified or registered mail.

(2) If the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in at least three (3) conspicuous public places within the Reservation at least thirty (30) days before the time set for the hearing and publishing the notice in the Anishinaabeg Today.

(3) The Court for good cause shown may provide for a different method or time of serving notice for any hearing.

(b) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

(c) A person, including a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his or her attorney and filed in the proceeding.

Section 12. Renunciation of Succession

(a) A person (or their personal representative) who is an heir, beneficiary, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than six months after the decedent's passing or the time at which it is determined that the person is entitled to take property if such is not known at the time of death.

(b) The instrument shall conform to the following:

(1) It shall describe the property or part thereof or interest therein renounced;

(2) It shall be signed by the person renouncing;

(3) It shall declare the renunciation and the extent thereof; and

(4) It shall state that the renunciation is irrevocable.

(c) Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent or donee.

Section 13. 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 Probate Code.

Section 14. 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 Probate Code 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 Court may determine by a

preponderance of evidence whether the death was criminal and intentional for purposes of this section.

Section 15. Simultaneous Death Provisions

(a) Where the title to property covered under this Probate Code 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 Probate Code.

(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.

CHAPTER 3. WILLS

Section 1. Who May Make a Will

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

Section 2. Execution

Except as otherwise provided for oral wills or holographic wills, every will shall be put in writing signed by the testator, or in the testator's presence and at the testator's direction signed by another person, and shall be signed by at least two persons each of whom either witnessed the signing by the testator of the will or the testator's acknowledgment of the signature and direction to do so.

Section 3. Holographic Will

A will that does not comply with Section 2 of this Chapter is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 4. Oral Will

(a) A will that does not comply with Section 2 of this Chapter is valid as an oral will under custom, if all children, whether residing in testator's home or not, and testator's spouse, if alive, are present at the announcement of the oral will and agree that the testator orally made known the testator's last will before them.

(b) An oral will is also valid under custom if made in the presence of a competent disinterested adult person by a testator who declares at the time that it is his or her wish that his or her property descend in a specific manner upon the event of the testator's passing.

(c) The Court shall hear testimony from the disinterested person who heard such declaration and the Court shall decide the following: (1) Whether such testimony is credible; and (2) Whether the manner of disposition of testator's property is reasonable and customary. If the Court find that both of the forgoing conditions prevail, the testator's expressed intent shall be carried out as a valid will.

Section 5. Self-Proved Will

An attested will may, at the time of its existence or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public, authorized authority or a judge, under official seal, attached or annexed to the will in form and content and substantially as set out in Appendix Document A.

Section 6. Who May Witness

(a) Any person who, at the time of execution of the will, would be competent to testify as a witness in Court to the facts relating to execution may act as a witness to the will.

Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

(b) A will is not invalidated because signed by an interested witness; but, unless the will is also signed by two disinterested witnesses, any beneficial provisions of the will for a witness or the witness' spouse are invalid to the extent that such provisions in the aggregate exceed in value what the witness or spouse would have received had the testator died intestate.

Valuation is to be made as of testator's death.

Section 7. Choice of Law as to Execution

A written will is valid if executed in compliance with this Probate Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death of the testator is domiciled, has a place of abode or was a national.

Section 8. Revocation by Writing or by Act

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, canceled, 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 9. Revocation by Divorce, No Revocation by Other Changes of Circumstances

(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 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 10. Revival of Revoked Will

(a) If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act under Section 8, 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 8, 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 11. 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 12. 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 13. 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) All property; after-acquired property. A will is construed to pass all property which the testator owns at their death including property acquired after the execution of their will;

(2) Beneficiary must survive testator by 120 hours. A beneficiary who does not survive the testator by 120 hours is treated as if they predeceased the testator, unless the will of the decedent contains such language dealing explicitly with simultaneous deaths, including common disaster, or requiring that the beneficiary survive the testator or survive the testator for a stated period in order to take under the will;

(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) Class Gifts. One who would have been a beneficiary under a class gift if they had survived the testator is treated as a beneficiary for purposes of this section whether their death occurred before or after the execution of the will;

(5) 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;

(6) Generic Terms. Half-bloods, adopted persons and persons born out of wedlock are included in class gifts terminology and terms of relationships in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or unless paternity has been judicially determined during the life of the father.

(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.

CHAPTER 4. INTESTATE SUCCESSION

Section 1. Intestate Succession

Any part of the estate of a decedent not effectively disposed of by the decedent's will passes to the decedent's heir as prescribed in the following sections of this Probate Code.

Section 2. Share of the Spouse

The intestate share of the surviving spouse is:

- (a) If there are surviving issue, one-half of the intestate estate;
- (b) If there is no surviving issue of the decedent, the entire intestate estate.

Section 3. Share of Heirs Other Than Surviving Spouse

The part of the intestate estate not passing to the surviving spouse under Section 2 of this Chapter, or the entire estate if there is no surviving spouse passes as follows:

- (1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (2) if there is not surviving issue, to the decedent's parent or parents equally;
- (3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;
- (4) if there is no surviving issue, parent or issue of a parent but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there are no surviving grandparent or issue of grandparent on either the paternal or the maternal

side, the entire estate passes to the relatives on the other side in the same manner as the half.

Section 4. No Taker

If there is no taker under the provisions of this Chapter, the intestate estate passes to the White Earth Band of Ojibwe.

Section 5. Representation

If representation is called for by this Probate Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent. Each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among their issue in the same manner.

Section 6. Posthumous Persons

Person conceived before the decedent's passing but born thereafter inherit as if they had been born in the lifetime of the decedent.

Section 7. Kindred of Half-Blood; Stepchildren; Foster Children

Persons of the half blood inherit the same share they would inherit if they were of the whole blood, but stepchildren and foster children and their descendants do not inherit, unless adopted.

Section 8. Divorce

Divorces of husband and wife do not affect the right of children to inherit his or her property.

Section 9. Determination of Relationship of Parent and Child

For the purpose of intestate succession a relationship of parent and child shall be established to determine succession by, through or from a person:

- (a) An adopted person is the child of an adopting parent and of the natural parents for inheritance purposes only. The adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent;
- (b) An adopted person shall inherit from all other relatives of an adoptive parent as though the adopted person was the natural child of the adoptive parent and the

relatives shall inherit from the adoptive parent's estate as if they were the adoptive parent's relatives;

(c) In cases not covered by subsection (a), a person born out of wedlock is a child of the mother and is a child of the father, if the relationship of parent and child has been established in accordance with applicable law.

CHAPTER 5. FAMILY RIGHTS AND PROTECTIONS

Section 1. 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 Chapter 8, section 10 of this Probate Code, which concerns "abatement".

Section 2. Pretermitted Children

(a) If a testator fails to provide in their 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; or
 - (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 Chapter 8, section 10 of this Probate Code, which concerns "abatement".

Section 3. Homestead Allowance

A surviving spouse of a decedent who was domiciled on the reservation is entitled to a homestead allowance of \$5,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$5,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided by intestate succession.

Section 4. Exempt Property

(a) In addition to the homestead allowance, the surviving spouse of a decedent who was within the exterior boundaries of the White Earth Reservation or on trust or allotted land is entitled from the estate to a value not exceeding \$3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. The \$3,500 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 \$3,500, or if there is not \$3,500 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 \$3,500 value.

(b) 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 homestead allowance and 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, by intestate succession.

Section 5. Family Allowance

(a) In addition to the right to homestead allowance and exempt property, if the decedent was within the exterior boundaries of the White Earth Reservation or on trust or allotted land, 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 allowance.

(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 6. Source, Determination and Documentation

(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 homestead allowance 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. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property.

(b) The personal representative may determine the family allowance in a lump sum not exceeding \$6,000.00 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 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.

Section 7. Dwelling Exemption

Upon the appraisal of an estate and it appearing that a dwelling is personal property, due to being located on trust land, in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or the dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Court may, by order, set aside such dwelling for the benefit of said surviving spouse and/or children as a homestead for a period of not to exceed ten (10) years, provided that in case of special hardship or emergency, the Court may extend such term from year to year thereafter, provided that any heir or heirs or creditors of the deceased shall have the opportunity to appear before the Court and protest the extension of the original terms setting aside said homestead. The Court may also set aside such sums from the estate as the Court may deem necessary for maintenance and upkeep of the home. The Court shall hear evidence on any contest before making any order of extension.

Section 8. Summary Probate of Exempt Estates

(a) Exempt Estates. An estate having an appraised value which does not exceed \$5,000 and which is to be inherited by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this section.

(b) Notice of Hearing to Determine Whether the Estate is an Exempt Estate. Upon petition of the Administrator, the Court shall enter an order stating that it appears, from the appraised value of the whole estate does not exceed \$5,000 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of and interested persons, if any there be, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given to all persons known to the Administrator to be an heir, beneficiary, or creditor of the decedent, in accordance with this Code. On or before the time set for such hearing, the

Administrator shall file his affidavit with the Court indicating compliance with this requirement of giving notice.

(c) Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Administrator to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled thereto and filing receipts therefore, the estate shall be closed.

CHAPTER 6. INHERITANCE BY NON-INDIANS/FRACTURED HEIRSHIP

Section 1. Restrictions on Inheritance of Individual Trust/Restriction Lands by Non-Indians

(a) Non-Indians shall not be entitled to receive by devise or descent any interest in individual trust or restricted lands within the White Earth Reservation or otherwise subject to the jurisdiction of the White Earth Tribe provided the following:

- (1) if a person passes intestate, the surviving non-Tribal spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Tribal members who would have been heirs in the absence of a qualified person taking a life estate;
- (2) if an intestate Tribal member decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the Tribe, subject to any non-Tribal spouse and/or children's rights as described in paragraph (1) of this section;
- (3) if an Tribal decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of this Code, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Tribe acquires such interests by paying to the Secretary, on behalf of the beneficiaries, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: Provided, that any non-Indian and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests.

(b) Any ineligible beneficiary shall also have the right to renounce their devise in favor of a person or persons who are eligible to inherit in accordance with Chapter 2, section 11 (Renunciation of Succession) of this Probate Code.

(c) The right to receive a life estate under this section shall be limited to:

(1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per cent (10%) or more in the tract of land; or

(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

Section 2. Escheat of Certain Fractionated Interests

The following section is enacted under Section 2206(c) of Title 25 of the United States Code - The Indian Land Consolidation Act - to take precedence over the escheat provisions of Section 2206 of Title 25 of the United States Code.

(a) No undivided interest in any tract of trust or restricted land within the White Earth Reservation or otherwise subject to the Tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the tribe if such interests represents two (2) per cent or less of the total acreage in such tract and is incapable of earning to the respective heirs \$100 in any one of the five years from the date of decedent's death, and is otherwise without significantly greater future potential value, Provided, that

(1) in determining the future earning capacity of such interest and hearing examiner shall consider the presence of known or probable minerals and timber;

(2) in determining whether such interest is otherwise without significantly greater future potential value the hearing examiner shall consider, among other things, the geographic location of such property and its potential for commercial or other exploitation;

(3) where the fractional interest has earned to its owner less than \$100 in any one of the five (5) years before it is due to escheat, in absence of previously unexploited known or probable mineral reserves or standing timber, there shall be a rebuttable presumption that such interest is incapable of earning to the respective heirs \$100 in any one of the five years from the date of decedent's death, and that the property is otherwise without significantly greater future potential value.

(b) Nothing in this section shall prohibit the devise of such a fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

(c) Any beneficiary who, but for the provisions of this section, would have inherited such fractional interest, may assign such interest to any other owner of an undivided fractional interest in such trust or restricted land, such assignment to be made and filed with the hearing examiner within 60 days of the issuance of notice of intent to escheat the interest to the Tribe. The hearing examiner shall formally notify the beneficiary of their rights under this subsection at the time of the notice of intent to escheat and shall assist with the assignment process as needed.

(d) The Tribal Court Judge and the Federal Administrative Law Judge shall have the discretion to order any appropriate distribution of the decedent's estate as needed to reduce further fractionation so long as the distribution is fair and equitable.

CHAPTER 7. ADMINISTRATION OF INTESTATE ESTATES

Section 1. Petition

(a) When any person passes leaving an intestate estate subject to the jurisdiction of the Court under this Probate Code, any person claiming to be an heir of the decedent, or the Tribe, may petition the Court for a determination of the heirs of the decedent and for the distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioners who may be entitled to share in the distribution of the estate.

(b) Whenever there is a valid will probated by the Court which does not dispose of all the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

Section 2. Administration of Intestate Estate

(a) If an Executor is appointed over a decedent's property which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

(b) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Court may appoint an Administrator over the estate. It shall not be necessary to appoint an

administrator if the value of the decedent's property appears to be less than \$5,000 in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.

(c) The following persons, if legally competent, shall be afforded priority in order of their listing for appointment as Administrator: the surviving spouse, children over 18 years of age in descending order of age, other blood relatives in order of their closeness of relationship, any adult tribal member, any adult person.

(d) The duties of the Administrator shall be:

- (1) To take constructive or physical possession of all property of the decedent subject to this Probate Code as the Court shall order, taking into consideration the interest of the person or persons who may have occupied the homestead of the decedent at the time of his or her passing;
- (2) Within one month of appointment make an inventory and appraisal of such property and file it with the Court;
- (3) Within one month of appointment, determine and file with the Court a list of all known relatives of the decedent, their ages, their relationship to the decedent, and their whereabouts if known;
- (4) Subject to the approval of the Court, ascertain and pay all of the debts and legal obligations of the decedent;
- (5) Prosecute and defend actions for or against the estate;
- (6) Distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.

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

Section 3. Appointment of Administrator

(a) Upon receipt of a petition to administer an intestate estate, a hearing shall be scheduled, and notice provided to all parties as required.

(b) The Court shall determine who is the proper person to appoint as Administrator, and if such person manifests their willingness to serve, order their appointment as Administrator.

Section 4. Oath of Administrator; Letters of Administration

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

(b) Upon taking the oath and filing the bond, if any is required, the Administrator shall be granted letters of administration as proof of their appointment.

(c) The Court may waive the requirement that the Administrator file a bond if the Court finds good cause to do so.

Section 5. Notice to Creditors

If an Administration has been ordered by the Court, the clerk shall cause notice to creditors to be posted in at least three (3) conspicuous places on the White Earth Reservation, published once per week, for three consecutive weeks in a publication of general distribution on the reservation, and published in the earliest possible issue of Anishinaabeg Today. Said notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the Administrator or clerk and that only those claims so presented may be paid by the estate. The Court, upon Motion of the Administrator and heirs or beneficiaries, may waive the requirement for notice to creditors and be placed into possession, but in so doing, shall become personally liable for the debts of the estate if any.

Section 6. Payment of Creditors

(a) Payment to creditors of the decedent shall be made by the Administrator or by the clerk if no Administrator is appointed only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(b) All just claims of creditors allowed by the Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance and homestead allowances as provided herein.

Section 7. Accounting

Prior to the distribution of every estate for which an Administrator has been appointed, such Administrator shall render an accounting to the Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or Administrator's fees involved for which approval for payment is sought. In estates in which no Administrator is appointed, the clerk shall account to the Court for all transactions relating to the estate.

Section 8. No Taker/ Escheat to Tribe

If there is no taker of the intestate estate, the intestate estate passes or escheats to the White Earth Band of Ojibwe.

Section 9. Advancements

If a person dies intestate, property which they gave in their lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

Section 10. Debts to Decedent

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

Section 11. Distribution and Closing Estate

(a) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such according to the rules of intestate succession and this Probate Code.

(b) The estate shall be closed and the Administrator dismissed and their bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, is now ready to be closed.

CHAPTER 8. PROBATE OF WILLS

Section 1. Duty to Present Will for Probate

Every custodian of a will shall deliver the will to the Tribal Court within thirty (30) days after receipt of information that the testator has passed. Any will custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.

Section 2. Proving, Contesting and Admitting Will

(a) Proof of Will

(1) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Court. The will may be proven and admitted to probate by filing the affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be their last will.

(2) If the evidence of none of the attesting witnesses is available, the Court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

(b) Contest of Will.

(1) At any time within 90 days after a will has been admitted to probate, or within such time as the Court shall establish in the case of an exempt estate, any person having an interest in the decedent's estate may contest the validity of the will. Notice of such contest shall be made directly to the Court. In the event of a will contest, the Court shall take no further action with respect to the probate of the estate, but shall set a day and hour for hearing on the will contest.

(2) Relevant evidence shall be presented at the will hearing concerning the decedent's capacity to execute a valid will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

(c) Admission of Contested Will to Probate. Upon considering all relevant evidence concerning the will, the Tribal Court shall enter an order affirming the admission of the will to probate or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died without executing the will.

Section 3. Petition for Letters Testamentary

A petition for letters testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as Executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

Section 4. Qualification of Executor

The Court shall appoint the Executor as Administrator of the decedent's estate if found qualified and competent by the Court. If the executor is not found by the Court to be competent, it shall appoint an Administrator who shall be a competent adult and preference shall be given to the surviving spouse, child of the decedent over 18 years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship, any adult Tribal member, or any adult person.

Section 5. Appointment of Executor

- (a) Upon receipt of a petition for letters testamentary, a hearing shall be scheduled and Notice provided to all parties as required.
- (b) At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an Executor to administer the estate according to the terms of this Probate Code and the decedent's will.
- (c) Letters testamentary shall be granted to the person appointed as Executor upon their taking an oath, to be prescribed by the Court, to the effect that the Executor will faithfully and honestly administer the estate, and upon the Executor's filing of bond, if required.

Section 6. Duties of Executor; Bond

The duties of the Executor shall be the same as those prescribed in this Probate Code for the Administrator of an intestate estate, and the Executor shall file bond in a like manner and subject to the same exceptions.

Section 7. Creditors

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates . The Court upon Motion by the Executor and heirs or beneficiaries, may waive the requirement for notice to creditors and be placed into possession, but in so doing, shall become personally liable for the debts of the estate, if any.

Section 8. Accounting

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the Executor shall submit to the Court for approval an accounting of all receipts and disbursements from the estate, showing the present status of the estate and that it is

ready for distribution, and also showing the computation of any attorney's and/or Executor's fees involved for which approval for payment is sought.

Section 9. Distribution and Closing Estate

(a) When it is made to appear to the Court an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Probate Code.

(b) The estate shall be closed and the personal representative of the estate dismissed and his bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed. "Personal Representation" as used herein includes both Administrators and Executors.

Section 10. Distribution: Order in Which Assets Appropriated; Abatement

(a) Except as provided in subsection (b), 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:

- (1) Property not disposed of by the will;
- (2) Residuary devises;
- (3) General devises;
- (4) Specific devises.

(b) 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 will.

(c) 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 subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(d) 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.

Section 11. Property Discovered After Estate Closed

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after their estate has been closed. The 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.

Appendix Documents

Appendix Document A

The White Earth Reservation

White Earth Tribal Court

_____ County, Minnesota

We, _____, and _____ the testator and the witnesses, respectively, whose names are signed to the attached and foregoing instrument, being first duly sworn, do hereby declare to the foregoing authority that the testator signed and executed the instrument as the testator's last will and that the testator signed willingly or directed another to sign for the testator, and that the testator executed the instrument as their free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of their knowledge the testator was at the time 18 years or more of age, of sound mind and under no constraint or undue influence.

TESTATOR

WITNESS

WITNESS

Subscribed, sworn to and acknowledged before me by _____ the testator, and subscribed and sworn to before me by _____ and _____ witnesses, this

_____ day of _____ 20_____.

SIGNED BY JUDGE, AUTHORIZED AUTHORITY OR NOTARY