PONCA TRIBE OF NEBRASKA
TITLE XXIII
PROBATE AND TRUSTS

CHAPTER 1
GENERAL PROVISIONS

Section 23-1-1. Definitions. In addition to the definitions in Chapter 1 of Title I of this Code, unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, a person who is authorized to make decisions concerning another person's health care, and a person who is authorized to make decisions for another person under a natural death act.

2. "Beneficiary":

a. As it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and includes the owner of an interest by assignment or other transfer;

b. As it relates to a charitable trust, beneficiary includes any person entitled to enforce the trust;

c. As it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form or a pension, profit sharing, retirement, or similar benefit plan, or any other nonprobate transfer at death; and

d. As it relates to a designation in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment and a person in whose favor a power of attorney or a power held in any person, fiduciary, or representative capacity is exercised.

3. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy; of an account with pay on death designation; of a security

registered in beneficiary form or a pension, profit sharing, retirement, or similar benefit plan; or any other nonprobate transfer at death.

4. "Child" includes a person who is entitled to take as a child under this Title by intestate succession from the parent whose relationship is involved, but excludes a person who is only a stepchild, foster child, grandchild or more remote descendant.

5. "Claims," in respect to estates of decedents, includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent, including funeral expenses and expenses of administration, but excludes estate or inheritance taxes or demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate.

6. "Descendant" means all of the decedent's descendants of all generations, with the relationship of parent and child at each generation.

7. "Devise" means:

a. When used as a noun, a testamentary disposition of real or personal property; and

b. When used as a verb, to dispose of real or personal property by will.

8. "Devisee" means a person designated in a will to receive a devise, provided that, in the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

9. "Distributee" means any person who has received property of a decedent other than as a creditor or purchaser, but includes a trustee to whom assets are transferred by will only to the extent of distributed assets or increment that remains in that person's hands.

10. "Electronic" means having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

11. "Electronic will" means a testamentary instrument that is executed and maintained on an electronic medium and that is executed in compliance with this Title.

12. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this Title as originally constituted and as it exists from time to time during administration.

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

14. "Fiduciary" means a personal representative, a guardian, a conservator, a trustee, an agent acting under a power of attorney or any other person who is authorized to act as a fiduciary with respect to the property or interests of another person.

15. "Formal probate" means probate proceedings that are conducted before a judge with notice to interested persons and hearings.

16. "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with pay on death designation; pension, profit sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.

17. "Heirs" means persons, including the surviving spouse and the Tribe, who are entitled under the laws of intestate succession in this Title to the property of a decedent.

18. "Incapacity" means inability of an individual to manage property or business affairs because the individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.

19. "Informal probate" means probate proceedings conducted by a judge or other officer of the Tribal Court without required hearings and without formal probate.

20. "Interested person" includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment, other person who has a property right in or claim against a trust estate or estate of a decedent, ward, or protected person, a person who has priority for appointment as personal

representative, and other fiduciaries representing interested persons.

21. "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

22. "Lands of the Tribe" means any interest in real property owned by the Tribe or held in trust for the Tribe or an individual by the United States or subject to a restriction against alienation by the United States, the Tribe, or other operation of law.

23. "Parent" includes any person who is entitled to take or, if the child died without a will, would be entitled to take as a parent under this Title by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

24. "Personal representative" means one or more persons with the responsibility and authority to settle the decedent's estate in accordance with the decedent's will, if any, and applicable law, and includes an executor, an administrator, a successor personal representative, a special administrator, and persons who perform substantially the same function under the law governing their status.

25. "Power of appointment" means a power that enables the holder of the power to designate a recipient of an interest in property and includes a power to designate the beneficiary of a beneficiary designation, but excludes a power of attorney.

26. "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

27. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

28. "Protected person" means a minor, an incapacitated person, or another individual for whom a guardian or conservator has been appointed or other protective order has been made.

29. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under that title or lease, collateral trust certificate, transferable share or voting trust certificate and, in general, includes any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities.

30. "Settlement" means, in reference to a decedent's estate, the full process of administration, distribution, and closing.

31. "Sign" means, with present intent to authenticate or adopt a writing, to:

a. Execute or adopt a tangible symbol; or

b. Attach to or logically associate with the writing an electronic symbol, sound, or process.

32. "Successors" means persons, other than creditors, who are entitled to property of a decedent under a will or this Title.

33. "Summary probate" means simplified and expedited probate proceedings for small estates meeting specific criteria without any involvement of the Tribal Court.

34. "Survive" means that a person has neither predeceased an event, including the death of another person, nor is deemed to have predeceased an event under this Title.

35. "Trust" includes an express trust, private or charitable, with any additions, wherever and however created, and a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust, but excludes:

a. Other constructive trusts and resulting trusts;

b. Conservatorship, personal representatives, trust accounts, custodial arrangements, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, and liquidation trusts;

c. Trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind;

d. Trusts created by a government for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self-insurance reserves, and similar programs administered by a government;

e. Legal defense trusts; and

f. Any arrangement under which a person is nominee or escrow agent for another.

36. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by the Tribal Court.

37. "Universal succession" means the process of distributing an intestate estate or the residuary of an estate under a will by transferring the deceased's assets, obligations, and liabilities to the heirs or residual devisees without any process to wind up the estate, with review and approval by the Tribal Court without required hearings and without formal probate.

38. "Will" includes a paper will, an electronic will, a codicil, and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 23-1-2. Territorial Application. Except as otherwise expressly provided in this Title, this Title applies to:

1. The affairs and estates of decedents, missing persons, and persons to be protected, residing or domiciled in the territory of the Tribe;

2. The property of nonresidents located in the territory of the Tribe or property coming into the control of a fiduciary who is subject to the laws of the Tribe; and

3. Trusts subject to administration in the territory of the Tribe.

Section 23-1-3. Rules of Construction.

1. This Title shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Title are to:

a. Simplify and clarify the law concerning the affairs of decedents;

b. Discover and make effective the intent of a decedent in distribution of the decedent's property;

c. Promote a speedy and efficient system for liquidating the estate of a decedent and making distribution to the decedent's successors; and

d. Facilitate use and enforcement of certain trusts.

Section 23-1-4. Representations.

1. Notice to a person who may represent and bind another person under this Title has the same effect as if notice were given directly to the other person.

2. The consent of a person who may represent and bind another person under this Title is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

3. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

a. A conservator may represent and bind the estate that the conservator controls;

b. A guardian may represent and bind the ward if a conservator or guardian of the estate has not been appointed for the ward;

c. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

d. A trustee may represent and bind the beneficiaries of the trust;

e. A personal representative of a decedent's estate may represent and bind persons interested in the estate; and

f. A parent may represent and bind the parent's minor or unborn child if a guardian or conservator for the child has not been appointed.

4. Unless otherwise represented, a protected person or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

5. If the Tribal Court determines that an interest is not represented under this Title, or that the otherwise available representation might be inadequate, the Tribal Court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a protected person or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

Section 23-1-5. Effect of Fraud.

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

2. Any proceeding for relief under this Section must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against a person not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud.

3. This Section has no bearing on remedies relating to fraud practiced on a decedent during his or her lifetime which affects the succession of his or her estate.

Section 23-1-6. Determination of Death. In addition to the rules of evidence in the Tribal Court, the following rules relating to a determination of death and status apply:

1. A determination of death must be made in accordance with accepted medical standards;

2. 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 evidence of the fact, place, date, and time of death and the identity of the decedent;

3. A certified or authenticated copy of any record or report of a governmental agency of another federally recognized Indian tribe, a state, territory, possession, or the federal government of the United States, or another foreign jurisdiction 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;

4. In the absence of prima facie evidence of death under this Section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence;

5. A person whose death is not otherwise established under this Section, who is absent for a continuous period of five (5) years, during which time that person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead and the person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier; and

6. In the absence of evidence disputing the time of death stated in a document described in this Section, a document described in this Section that states a time of death one hundred twenty (120) hours or more after the time of death of another person, however the time of death of the other person is determined, establishes by clear and convincing evidence that the person survived the other person by one hundred twenty (120) hours.

Section 23-1-7. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 23-1-8. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
TRIBAL COURT

Section 23-2-1. Subject Matter Jurisdiction.

1. Subject to any limitations on the Tribal Court's general subject matter jurisdiction in the laws of the Tribe, the Tribal Court shall have original subject matter jurisdiction over all matters arising under this Title.

2. In any matter arising under this Title, if a prior action on the same matter was already commenced in the court of another jurisdiction involving the same individuals, the Tribal Court shall decline to assert original subject matter jurisdiction:

a. Unless the Tribal Court has exclusive jurisdiction over the action; or

b. Unless and until the prior action is dismissed.

Section 23-2-2. Personal Jurisdiction. The Tribal Court shall have jurisdiction over all persons under this Title to the fullest extent provided or permitted under the laws of the Tribe, including:

1. Any individual who consents to the jurisdiction of the Tribal Court, provided that such consent, once given, may be revoked only with the permission of the Tribal Court;

2. Where the Tribal Court asserts jurisdiction over a decedent or the estate of a decedent, the decedent's heirs, devisees, and immediate and extended family whenever the Tribal Court deems it necessary or appropriate for the purpose of the proceedings; and

3. Where the Tribal Court asserts jurisdiction over a trust, trustee, or beneficiary, the trust, all trustees, all beneficiaries, and immediate and extended family whenever the

Tribal Court deems it necessary or appropriate for the purpose of the proceedings.

Section 23-2-3. Procedure. Proceedings brought pursuant to or requesting relief permitted under this Title shall be brought by and governed by the rules of procedure for the Court which are not in conflict with this Title.

Section 23-2-4. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:

a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Tribal Court compel the attendance of a witness on his or her behalf as permitted in this Chapter; and

e. To examine witnesses.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Tribal Court.

Section 23-2-5. Conduct of Hearings. All hearings involving proceedings under this Title shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. A verbatim record shall be taken of all hearings; and

6. A minor or incapacitated person may be temporarily excluded from any hearing if the Tribal Court finds it is in the best interests of the minor or incapacitated person and the interests of the minor or incapacitated person are otherwise appropriately represented while the minor or incapacitated person is excluded.

Section 23-2-6. Witness Lists and Subpoenas.

1. In a proceeding under this Title, each party shall provide to each other party in the proceeding or their respective legal counsel with a list of names of all witnesses that will be called at any hearing under this Title. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of a party or on the Tribal Court's own motion, the Tribal Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Title.

Section 23-2-7. Notices of Hearings.

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Title:

a. Any party to the proceedings, including the petitioner and their legal counsel or advocate;

b. Any interested person issued a summons who makes an appearance in the proceedings;

c. Any other interested person discovered by or known to the Court or who makes an appearance in the proceedings; and

d. Any other person the Court may direct to be notified.

2. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

3. In any proceeding involving a decedent or the estate of a decedent where it appears that no taker of the estate exists,

either at the commencement of or during proceedings on the decedent's estate under this Title, the Tribal Court shall notify the Tribal Attorney of such proceedings.

Section 23-2-8. Trial of Issues of Fact. When a proceeding under this Title involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court.

Section 23-2-9. Standard and Burden of Proof. Except as otherwise provided in this Title, the standard of proof required in a proceeding brought pursuant to this Title is the preponderance of evidence. Parties have the initial burden of proof as to any matter they proffer and the ultimate burden of proof as to matters with respect to which they have the initial burden of proof.

Section 23-2-10. Records and Certified Copies.

1. The Tribal Court Administrator shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the Tribal Court under this Title.

2. Upon payment of the fees required by the Tribal Court, the Tribal Court Administrator shall issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in the territory of the Tribe and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Section 23-2-11. Oath or Affirmation. Except as otherwise specifically provided in this Title, every document filed with the Tribal Court under this Title, including applications, petitions, and demands for notice, 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 penalties for perjury may follow for deliberate or knowing falsification therein.

Section 23-2-12. Appeal. Any order of the Tribal Court entered under or pursuant to this Title is subject to appeal in accordance with and subject to the laws of the Tribe governing civil appeals.

CHAPTER 3
WILLS

Section 23-3-1. Definitions. In addition to the definitions in Chapter 1 of this Title, unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Electronic record" means a record that is created, generated, sent, communicated, received, or stored by electronic means.

2. "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.

3. "Electronic signature" means an electronic method or process that does both of the following:

a. Is attached to or logically associated with an electronic record and that is executed or adopted by a person with the intent to sign the electronic record; and

b. Uses a security procedure that allows a determination that the electronic signature was all of the following:

i. Unique to the person using it;

ii. Capable of verification;

iii. Under the sole control of the person making the electronic signature; and

iv. Linked to the electronic record to which the electronic signature relates in a manner so that if the electronic record is changed the electronic signature is invalidated.

Section 23-3-2. Who May Make a Will. An individual the age of majority or older who is of sound mind may make a will.

Section 23-3-3. Tangible Wills.

1. Except as otherwise provided in this Chapter, a tangible will shall be:

a. In writing;

b. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

c. Either:

i. Signed by at least two individuals in the physical or electronic presence of the testator, each of whom signed within a reasonable time after the individual witnessed either the signing of the will described in this subsection or the testator's acknowledgment of that signature or the will; or

ii. Acknowledged by the testator before and in the physical or electronic presence of a notary public or other individual authorized by law to take acknowledgments or notarize records electronically.

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

Section 23-3-4. Electronic Wills.

1. An electronic will must meet all of the following requirements:

a. Be created and maintained in an electronic record that is readable as text at the time of signing;

b. Contain the electronic signature of the testator or the testator's electronic signature made by some other individual in the testator's physical or electronic presence and by the testator's direction;

c. Contain the electronic signatures of at least two individuals, each of whom met both of the following requirements:

i. Was in the physical or electronic presence of the testator when the testator electronically signed the will or acknowledged the testator's signature or the will; and

ii. Electronically signed the will within a reasonable time after the person witnessed the testator signing the will or acknowledging the testator's signature or the will;

d. State the date that the testator and each of the witnesses electronically signed the will; and

e. Contain a copy of a government-issued identification card of the testator that was current at the time of execution of the will.

Section 23-3-5. Intent and Harmless Error.

1. Intent that a tangible document or an electronic record constitutes the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

2. Although a tangible or electronic document or writing added upon a tangible or electronic document was not executed in compliance with this Chapter, the tangible or electronic document or writing is treated as if it had been executed in compliance with this Chapter if the proponent of the tangible or electronic document or writing establishes by clear and convincing evidence that the decedent intended the tangible or electronic 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 the decedent's formerly revoked will or of a formerly revoked portion of the will.

3. A tangible will or electronic will is valid if it is executed in compliance with this Chapter. Notwithstanding the foregoing, a tangible will or electronic will is valid if executed in compliance with the law of the jurisdiction where the testator is:

a. Physically located when the will is signed; or

b. Domiciled, resides, has a place of abode, or is a national when the will is signed or when the testator dies.

Section 23-3-6. Self-Proved Will.

1. A will may be simultaneously executed, attested, and made self-proved by its acknowledgment by the testator and by affidavits of the witnesses if the acknowledgment and affidavits are made before an officer authorized to administer oaths under the laws of the jurisdiction in which execution occurs and are evidenced by the officer's certificate, under official seal affixed to or logically associated with the will, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of _____, and being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in that document and that I am the age of majority or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____ and _____, the witnesses, sign our names to this instrument being first duly sworn and do declare to the undersigned authority that the testator signs and executes this instrument as her/his/their will and that she/he/they signs it willingly, or willingly directs another to sign for her/him/them, and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing and that to the best of our knowledge the testator is the age of majority or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

Jurisdiction/State of _____)

) ss.
Area/County of _____)

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____.

(Seal)

_____
(Signed)

_____
(Official capacity of officer)

2. An attested will may be made self-proved at any time after its execution by its acknowledgment by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the jurisdiction in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

Jurisdiction/State of _____)
) ss.
Area/County of _____)

We, _____, _____ and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument being first duly sworn do declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that she/he/they signed willingly, or willingly directed another to sign for her/him/them, and that she/he/they executed it as her/his/their free and voluntary act for the purposes expressed in that document, 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 her/his/their knowledge the testator was at that time the age of majority or older, 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 _____.

(Seal)

_____
(Signed)

_____
(Official capacity of officer)

3. A signature physically or electronically affixed to a self-proving affidavit attached to or logically associated with a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

4. In addition to the other requirements of this Section, to be self-proved, an electronic will must meet all of the following requirements:

a. Contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law;

b. Designate a qualified custodian to maintain custody of the electronic will; and

c. Before being offered for probate or being reduced to a certified paper original, be under the exclusive control of a qualified custodian at all times.

Section 23-3-7. Witnesses.

1. A person who is at least the age of majority and otherwise generally competent to be a witness may act as a witness to a will.

2. Unless the will is made self-proved as prescribed in this Chapter, a person may not act as a witness to a will if that

person is a devisee under the will, a beneficiary of a trust that is designated in the will to receive a devise, or is related by blood, marriage, or adoption to a devisee under the will.

Section 23-3-8. Revocation of Will.

1. A testator may revoke a will in whole or in part:

a. By executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

b. By performing a revocatory act on the will if the testator performs the act with this intent or if another person performs the act in the testator's conscious presence and by the testator's direction.

2. For the purposes of this Section, "revocatory act on the will" includes burning, tearing, canceling, obliterating, rendering unreadable, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will whether or not the burn, tear, or cancellation touched any of the words on the will.

3. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

4. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

5. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent the wills are not inconsistent.

6. Except for disqualification as provided in this Title, a change of circumstances does not revoke a will or any part of it.

Section 23-3-9. Revival of Will.

1. If a testator revokes a subsequent will that wholly revoked a previous will, 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 declarations that the testator intended the previous will to take effect as executed.

2. If a testator revokes a subsequent will that partly revoked a previous will, the revoked part of the previous will is revived unless 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 to take effect as executed.

3. If a testator revokes a subsequent will that revoked a previous will in whole or in part by another later will, the previous will remains revoked in whole or in part, unless the testator revives it or its revoked part. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

Section 23-3-10. Incorporation By Reference.

1. A testator may incorporate a written document into the testator's will by reference if the following requirements are met:

a. The document exists at the time the testator executes the will;

b. The will's language manifests the testator's intent to incorporate this document; and

c. The will's language describes the document with enough specificity to allow its identification.

2. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions 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 another individual's will is such an event.

3. Notwithstanding the provisions of this Chapter relating to holographic wills, a will may refer to a written statement or list to dispose of items of tangible personal property other than money and not otherwise specifically disposed of by the will. To be admissible as evidence of the intended disposition, the writing shall either be in the testator's handwriting or be signed by the testator and shall describe the items and the devisees with reasonable certainty. The writing may be:

a. Referred to as one to be in existence at the time of the testator's death;

b. Prepared before or after the execution of the will;

c. Altered by the testator after its preparation; or

d. A writing that has no significance apart from its effect on the dispositions made by the will.

Section 23-3-11. Testamentary Additions to Trusts.

1. A will may validly devise property to the trustee of a trust established or to be established:

a. During the testator's lifetime by the testator alone, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, even if the settlor has reserved any or all rights of ownership of the insurance contracts; or

b. At the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument other than a will executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or after the testator's death.

2. Unless the testator's will provides otherwise, property devised to a trust is not held under a testamentary trust of the testator but becomes a part of the trust to which it is devised

and must be administered and disposed of in accordance with the provisions of the governing instrument that states the terms of the trust, including any amendments made before or after the testator's death.

3. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

Section 23-3-12. Contracts Concerning Wills.

1. An individual may enter into a contract to make a will or devise, or not to revoke a will or devise, or to die intestate, only by:

a. Provisions of a will that state the material provisions of the contract;

b. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

c. A writing evidencing the contract and signed by the party alleged to have breached the contract.

2. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Section 23-3-13. Deposit of Will with Court.

1. A will may be deposited by the testator or the testator's agent with the Tribal Court for safekeeping, under rules of the Tribal Court.

2. A will deposited with the Tribal Court must be sealed and kept confidential.

3. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination.

4. Upon being informed of the testator's death, the Tribal Court shall notify any person designated to receive the will and

deliver it to that person on request or the Tribal Court may deliver the will to the appropriate court of another jurisdiction.

Section 23-3-14. Custodian of Electronic Will.

1. A qualified custodian of an electronic will:

a. May not be related to the testator by blood, marriage, or adoption;

b. May not be a devisee under the electronic will or related by blood, marriage, or adoption to a devisee under the electronic will;

c. Shall consistently employ and store electronic records of electronic wills in a system that protects electronic records from destruction, alteration, or unauthorized access and detects any change to an electronic record;

d. Shall store in the electronic record of an electronic will each of the following:

i. A photograph or other visual record of the testator and the attesting witnesses that was taken contemporaneously with the execution of the electronic will;

ii. A photocopy, photograph, facsimile, or other visual record of any documentation that was taken contemporaneously with the execution of the electronic will and provides satisfactory evidence of the identities of the testator and the attesting witnesses, including documentation of the methods of identification used; and

iii. An audio and video recording of the testator, attesting witnesses and notary public, as applicable, taken at the time the testator, each attesting witness and notary public, as applicable, placed the individual's electronic signature on the electronic will; and

e. Shall provide to any court that is hearing a matter involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualifications of

the qualified custodian and the policies and practices of the qualified custodian concerning the maintenance, storage, and production of electronic wills and may be called by an interested party to serve as a fact witness regarding the maintenance, storage, and production of electronic wills.

2. A person shall execute a written statement affirmatively agreeing to serve as the qualified custodian of an electronic will before the person may serve as a qualified custodian. Except for a person ceasing to serve as provided in this Section, a person may not cease serving as a qualified custodian until a successor qualified custodian executes the written statement prescribed by this subsection.

3. A person serving as a qualified custodian may cease serving as a qualified custodian:

a. If the person does not designate a successor qualified custodian, by providing the testator with both of the following:

i. A thirty (30) day written notice that the person will cease to serve as a qualified custodian; and

ii. The certified paper original of the electronic will and all records concerning the electronic will.

b. If the person designates a successor qualified custodian, by providing all of the following:

i. To the testator and the successor qualified custodian, a thirty (30) day written notice that the person will cease to serve as a qualified custodian; and

ii. To the successor qualified custodian, the electronic record of the electronic will and an affidavit that states all of the following:

(1) That the person is eligible to act as a qualified custodian and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian pursuant to this subsection;

(2) That an electronic record was created at the time the testator executed the electronic will;

(3) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created; and

(4) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

4. For the purposes of making the affidavit for a successor qualified custodian under this Section, the person may rely conclusively on any affidavits provided by a predecessor qualified custodian if all of these affidavits are provided to the successor qualified custodian.

5. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of the entity constitutes the affidavit of the qualified custodian.

6. A qualified custodian maintains an electronic will as a custodian, and the electronic will is the property of the testator and not the qualified custodian.

7. A qualified custodian shall provide access to or information concerning the electronic will in the electronic record or the certified paper original of the electronic will only to:

a. The testator or another person as directed by the written instructions of the testator; and

b. After the death of the testator, the nominated personal representative of the testator or any interested person.

8. A qualified custodian may destroy the electronic record at the earlier of:

a. One hundred (100) years after the testator's death; or

b. Five (5) years after the testator's estate is closed and all appellate opportunities have been exhausted.

9. A qualified custodian shall cancel, render unreadable, or obliterate the electronic record if the testator directs the

qualified custodian to do so in a writing executed with the same formalities required for the execution of an electronic will.

Section 23-3-15. Paper Copy of Electronic Will.

1. On the creation of a certified paper copy of an electronic will, if the electronic will has always been in the custody of a qualified custodian, the qualified custodian shall state in an affidavit all of the following:

a. That the qualified custodian is eligible to act as a qualified custodian and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian;

b. That an electronic record was created at the time the testator executed the electronic will;

c. That the electronic record has been under the exclusive control of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created;

d. The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will;

e. That the certified paper copy is a true, correct, and complete tangible manifestation of the electronic will; and

f. That the records described in this Chapter to be stored by a qualified custodian are under the exclusive control of the qualified custodian.

2. For the purposes of making the affidavit prescribed by this Section, the qualified custodian may rely conclusively on any affidavits provided by a predecessor qualified custodian.

3. On the creation of a certified paper copy of an electronic will, if the electronic will has not always been under the exclusive control of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to the certified tangible original shall each state in an affidavit all of the following to the best of each person's knowledge:

a. When the electronic will was created, if not indicated in the electronic will;

b. When, how, and by whom the electronic will was discovered;

c. The identity of each person who has had access to the electronic will;

d. The method in which the electronic will was stored and the safeguards in place to prevent alterations to the electronic will;

e. Whether the electronic will has been altered since its execution; and

f. That the certified paper copy is a true, correct, and complete tangible manifestation of the electronic will.

4. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving affidavits.

Section 23-3-16. Duties of Custodian of Will.

1. After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate or, if none is known, to an appropriate court.

2. A person, other than the Tribal Court, who wilfully fails to deliver a will as required by this Section is liable to any person aggrieved for any damages caused by this failure.

3. A person who wilfully refuses or fails to deliver a will after being ordered by the Tribal Court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court as provided in the laws of the Tribe.

Section 23-3-17. Penalty Clause for Will Contest. A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings or actions relating to the estate is unenforceable if reasonable cause exists for the contest, proceedings, or actions.

Section 23-3-18. Foreign Wills. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of a will complying with the requirements of:

1. This Chapter

2. The place where made; or

3. Where the testator resided or was domiciled at the time of making the will.

Section 23-3-19. Appointment of Guardian by Will.

1. A person may, by will or other signed writing, appoint a guardian, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the Tribal Court for the following persons:

a. A minor child of the person;

b. An unmarried adult child of the person who the person believes is incapacitated; or

c. A spouse of the person who the person believes is incapacitated.

2. An appointment by will or other signed writing under this Section may be made effective upon the death of the appointing person or the incapacity of the appointing person.

3. If an appointment under this Section is effective upon the death of the appointing person, the appointment of the guardian becomes effective upon the death of the appointing person. If an appointment under this Section is effective upon the incapacity of the appointing person, the appointment of the guardian becomes effective upon the adjudication of incapacity of the appointing person or a written determination by a physician who has examined the appointing person that the appointing person is no longer able to care for the person for whom the guardian is to be appointed.

4. Unless the appointment was previously confirmed by the Tribal Court, within thirty (30) days of a guardian's appointment becoming effective under this Section, the guardian shall:

a. File a petition in the Tribal Court for confirmation of the appointment in accordance with Title III of the Code, or subsequent enactment replacing Title III of the Code, and include a copy of the will or other appointing instrument as an exhibit; and

b. Give written notice of the effectiveness of the appointment to:

i. The appointing person if living;

ii. The ward of the guardian subject of the appointment;

iii. Any person having care or custody of the ward subject of the appointment, other than the appointing person; and

iv. The adult nearest in kinship to the ward subject of the appointment.

5. Any person entitled to notice of effectiveness of the appointment under this Section may object to the appointment by filing an appropriate pleading with the Tribal Court as provided in Title III of the Code or subsequent enactment replacing Title III of the Code. The notice of acceptance of appointment must include a statement of the right of those notified to object and seek termination of the appointment.

6. The Tribal Court shall hear and determine a petition filed for confirmation of appointment under this Section as it hears other petitions for guardianship under Title III of the Code, or subsequent enactment replacing Title III of the Code, provided that the Tribal Court may confirm the appointment without a hearing if no objection is timely filed and the appointment otherwise appears proper and valid based on the petition and the accompanying will or other appointing instrument.

7. The powers of a guardian who timely complies with the requirements of this Section relate back to give acts by the guardian which are of benefit to the ward and occurred on or after the date the appointment became effective the same effect as those that occurred after the Tribal Court's confirmation of appointment.

8. The appointment of a guardian under this Section is not a determination of incapacity.

CHAPTER 4
INTESTATE SUCCESSION

Section 23-4-1. Intestate Estate.

1. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this Chapter, except as modified by the decedent's will.

2. 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 the intestate share.

Section 23-4-2. Rules of Succession. The intestate estate of a decedent shall be distributed as follows:

1. The decedent's surviving spouse shall receive:

a. The entire intestate estate if:

i. The decedent has no surviving descendant; or

ii. All of the decedent's surviving descendants are also descendants of the surviving spouse;

b. One-half (1/2) of the intestate estate if the decedent has one (1) or more surviving descendants who are not descendants of the surviving spouse.

2. Any part of the intestate estate not passing to the surviving spouse passes as follows:

a. If a decedent is survived by one (1) or more descendants, to the decedent's surviving descendants by representation;

b. If a decedent is not survived by a descendant but is survived by one (1) or more parents, to the decedent's surviving parents in equal shares;

c. If a decedent is not survived by a descendant or parent but is survived by one (1) or more descendants of a parent, to the surviving descendants of the decedent's deceased parents by representation;

d. If a decedent is not survived by a descendant, parent, or descendant of a parent but is survived by one or more grandparents, to the decedent's surviving grandparents in equal shares; or

e. If a decedent is not survived by a descendant, parent, descendant of a parent, or grandparent but is survived by one or more descendants of a grandparent, to the surviving descendants of the decedent's deceased grandparents by representation.

Section 23-4-3. Representation.

1. If, under this Chapter, all or part of a decedent's intestate estate passes by representation to the decedent's surviving descendants, the estate or part is divided into as many equal shares as there are:

a. Surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and

b. Deceased descendants in the same generation who left surviving descendants, if any.

2. After dividing the estate into equal shares as provided in this Section, each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants.

3. If, under this Chapter, all or part of a decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased parents or grandparents, the estate or part passes to those descendants as if they were the decedent's surviving descendants under this Section.

Section 23-4-4. Requirement of Survival. An individual born before a decedent's death who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent

by one hundred twenty (120) hours, it is deemed that the individual failed to survive for the required period.

Section 23-4-5. Common Ancestors.

1. An heir inherits without regard to how many common ancestors in the same generation the heir shares with the decedent.

2. An individual who is related to a decedent through more than one line of relationship is entitled to only a single share based on one line of relationship. If the shares from the lines of relationship are unequal, the individual is entitled to the largest share. The individual and the individual's descendants are deemed to have predeceased the decedent with respect to the other line or lines of relationship.

Section 23-4-6. Advancements and Debts.

1. If an individual dies intestate as to all or a portion of the 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:

a. The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

b. 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.

2. For purposes of this Section, 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.

3. 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.

4. 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 23-4-7. Spouse. An individual is the spouse of a decedent under this Chapter if the individual is the spouse of the decedent under the laws of the Tribe governing marriage.

Section 23-4-8. Parent and Child.

1. A parent-child relationship exists between two individuals under this Chapter if one individual is the parent of the other individual under the laws of the Tribe governing parentage.

2. A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and not restored.

3. For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is deemed to have predeceased the child.

4. Except as otherwise expressly provided in the laws of the Tribe, the termination of a parent's parental rights to a child has no effect on the right of the child or a descendant of the child to inherit from or through the parent.

Section 23-4-9. Membership and Enrollment. Except as otherwise expressly provided in this Title, no individual is disqualified to take as an heir because the individual or an individual through whom the individual claims is not or has not been a member of the Tribe or enrolled as a member of the Tribe.

CHAPTER 5
RULES OF INHERITANCE

Section 23-5-1. Definitions. In addition to the definitions in Chapter 1 of this Title, unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Cultural heritage" means property which, according to the customs, traditions, or laws of the Tribe or another jurisdiction of which a person is a member or citizen:

a. Is cultural or religious property or otherwise has importance for tradition, culture, archaeology, prehistory,

history, literature, art, or science of or for the Tribe or the other implicated jurisdiction; and

b. Is considered owned by or property of the Tribe or the other implicated jurisdiction regardless of individual possession or otherwise cannot be owned, conveyed, or appropriated by any individual.

2. "Cultural or religious property" means property which, according to the customs, traditions, or laws of the Tribe or another religion, nation, group, or peoples of which a person is a member or practitioner may be individually owned or possessed and:

a. Has traditional, cultural, spiritual, or religious importance or significance to the Tribe or other implicated religion, nation, group, or peoples;

b. Is sacred by virtue of its established traditional, cultural, spiritual, or religious significance to, or ceremonial use by, the Tribe or other implicated religion, nation, group, or peoples; or

c. Otherwise has special traditional, cultural, spiritual, or religious significance to the Tribe or other implicated religion, nation, group, or peoples.

3. "Dependent child" means a minor child whom the decedent was obligated to support or a minor or adult child who was in fact being supported by the decedent at the time of the decedent's death.

4. "Specific devise" means specific property or a specified part of the estate of a testator that is so described as to be capable of identification and is to be given to a specific person in a will.

Section 23-5-2. Intent of Testator Controlling. The true intent and meaning of the testator of a will controls in all matters unless prohibited by applicable law and the rules of construction in this Chapter control in the absence of a finding of a contrary intention.

Section 23-5-3. Requirement of Survival.

1. For purposes of a provision of a governing instrument that relates to an individual surviving an event, including the

death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty (120) hours is deemed to have predeceased the event.

2. Survival by one hundred twenty (120) hours is not required if:

a. The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and the language is operable under the facts of the case;

b. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; or

c. The application of a one hundred twenty (120) hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition.

Section 23-5-4. Death Before Testator.

1. Unless the will expressly requires survivorship, when any relative who is a devisee of the testator under a will dies before the testator having lineal descendants who survive the testator, such lineal descendants shall take the devise as the original devisee would have done if he or she had survived the testator.

2. If the lineal descendants taking under this Section are all in the same degree of kinship to the predeceased devisee, they shall take equally.

3. If the lineal descendants taking under this Section are of unequal degree, those of more remote degree shall take by representation with respect to such predeceased devisee.

4. For the purposes of this Section, words of survivorship, such as "if he [she] survives me" or "my surviving children" are, in the absence of clear and convincing evidence to the contrary, a sufficient indication of an intent contrary to the application of this Section.

5. A spouse is not a relative under the provisions of this Section.

Section 23-5-5. Lapsed Devise. If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided in the will, the gift lapses and:

1. If the will has a residuary clause, falls into the residue of the estate to be distributed under the residuary clause; or

2. If the will has no residuary clause, passes by the rules of intestate succession in this Title.

Section 23-5-6. Renunciation of Inheritance.

1. Any person who is an heir, devisee, legatee, or beneficiary under a will or under the laws of intestate succession may renounce in whole or in part his or her inheritance or interest in writing verified under oath at any time prior to the distribution of the estate of the decedent.

2. Upon renouncement of an inheritance, the interest renounced passes as if the person renouncing it predeceased the decedent.

Section 23-5-7. Effect of Divorce.

1. Unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death:

a. A person who is divorced from the decedent, whose marriage to the decedent has been annulled, or whose marriage is invalid under the laws of the Tribe is not a surviving spouse; and

b. Unless the will expressly provides otherwise, a divorce, annulment of a marriage, or invalidity of a marriage under the laws of the Tribe subsequent to the making of a will revokes the will as to the former spouse, including any provision conferring a power of appointment and any nomination of the former spouse as personal representative, executor, trustee, conservator, or guardian.

2. Property prevented from passing to a former spouse under this Section passes as if the former spouse failed to survive the decedent.

3. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this Section.

Section 23-5-8. Effect of Homicide.

1. A person who intentionally kills the decedent forfeits all benefits under this Title with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a home allowance, spouse allowance, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed that person's intestate share.

2. The intentional killing of the decedent:

a. Revokes any revocable disposition of property to, power of appointment to, or nomination of the killer in any governing instrument; and

b. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common with no right of survivorship.

3. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this Section or, if appropriate, as if the killer predeceased the decedent.

4. A wrongful acquisition of property or interest by a killer not covered by this Section shall be treated in accordance with the principle that a killer cannot profit from that person's wrong.

5. After all right to appeal has been exhausted, a judgment of conviction or plea of guilt or no contest establishing criminal accountability for the intentional killing of the decedent conclusively establishes the convicted person as the decedent's killer for purposes of this Section. In the absence of a conviction, the Tribal Court, on the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the person would be found criminally accountable for the intentional killing of the decedent. If the

Tribal Court determines under that standard that the person would be found criminally accountable for the intentional killing of the decedent, the determination conclusively establishes that person as the decedent's killer for purposes of this Section.

6. A person who purchases property for value and without notice or who receives a payment or any other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this Section to return the payment, item of property, or benefit nor is liable under this Section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, an item of property, or any other benefit to which the person is not entitled under this Section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this Section.

Section 23-5-9. Omitted Spouse.

1. If a testator's surviving spouse married the testator after the testator executed the testator's will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child, unless:

a. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

b. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

c. 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 the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

2. If a will fails to provide for a spouse to whom the decedent was married at the time of the execution of a will, the spouse receives a share in the estate equal in value to that which the spouse would have received had the testator died intestate,

unless the decedent's will specifically and clearly states the intent to exclude the named spouse.

3. In satisfying the share provided by this Section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse, abate as provided in this Title.

Section 23-5-10. Omitted Child.

1. Except as provided in this Section, if a testator becomes a parent of a child after the execution of the testator's will and fails to provide in the will for the child, the omitted child receives a share in the estate as follows:

a. If the testator had no child living when the testator executed the will, the omitted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to another parent of the omitted child and that parent survives the testator and is entitled to take under the will.

b. If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, the omitted child is entitled to receive the share of the testator's estate that the child would have received had the testator included all omitted children with the children to whom devises were made under the will and had given an equal share of the estate to each child, provided, to the extent feasible, the interest granted the omitted child shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

2. If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted child under this Section.

3. If a will fails to provide for a child of the testator living at the time of the execution of the will, the child receives a share in the estate equal in value to that which the child would

have received had the testator died intestate, unless the testator's will specifically and clearly states the intent to exclude the named child.

4. In determining whether an omitted child has been named or provided for, the following rules apply:

a. A child identified in a will by name is considered named whether identified as a child or in any other manner; and

b. A reference in a will to a class described as the children, descendants, or issue of the testator, or words of similar import, constitutes a naming of a person who falls within the class.

5. This Section does not apply if:

a. It appears from the will that the omission was intentional; or

b. The testator provided for the omitted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

6. In the satisfaction of a share provided by this Section, devises made by the will abate as provided in this Title.

Section 23-5-11. Family Protections.

1. Notwithstanding any provision of a will or anything to the contrary in this Title, a decedent's surviving spouse is entitled to receive a home allowance which is the family residence free from any testamentary or other disposition to which the spouse has not consented in writing.

2. Unless specifically passed to another by will, in addition to the home allowance, a decedent's surviving spouse is entitled to receive a spouse allowance of:

a. The household furniture, furnishings, appliances, and personal effects of the decedent in a home which is the family residence; and

b. One automobile of the decedent, if any.

3. If a home which is the family residence passes by descent or will to the spouse or decedent's descendants or if any other property passes to the decedent's spouse pursuant to this Section, it is exempt from all debts which were not valid charges on it at the time of decedent's death. If the home or property passes to a person other than a spouse or the decedent's descendants, it is not exempt from expenses and claims by creditors.

4. In addition to the right to the home allowance and spouse allowance provided in this Section, the surviving spouse and dependent children are entitled to a reasonable family allowance in money out of the estate for their maintenance during the period of administration, which family allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The family allowance may be paid as a lump sum or in periodic installments. The family allowance is payable:

a. To the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children;

b. If the surviving spouse is not living, to the children or to persons having their care and custody; or

c. If any minor child or dependent child is not living with the surviving spouse, partially to the child or his or her guardian or other person having care and custody of the child and partially to the surviving spouse, as their needs may appear.

5. The rights under this Section 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.

6. The death of any individual entitled to an allowance under this Section terminates the individual's right to allowances not yet paid.

Section 23-5-12. After-Acquired Property. Any estate, right, or interest in property acquired by the testator after the making of his or her will passes as if title was vested in the testator at the time of making the will, unless the language of the will makes clear the testator's intent was otherwise.

Section 23-5-13. Specific Devise.

1. A specific devisee has a right to the specifically devised property in the testator's estate at death and to 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.

2. A specific devise passes subject to any mortgage interest existing at the date of death without the creditor having any right to payment of the mortgage from the estate regardless of a general directive in the will to pay debts.

Section 23-5-14. Residuary Devise.

1. A devise of "all of my estate," "the remainder of my estate," or of words of similar import constitutes a residuary devise.

2. Except as otherwise provided in this Chapter, if the residue of a testator's estate is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

Section 23-5-15. Satisfaction of Devise During Testator's Life.

1. Property a testator gave to a person while the testator was alive is treated as a satisfaction of a devise in whole or in part if any of the following requirements are met:

a. The will provides for deduction of the gift;

b. The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

c. The devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

2. For purposes of partial satisfaction, property given while the testator was alive is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

3. To satisfy the requirements of this Section if the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, unless the testator's contemporaneous writing provides otherwise.

Section 23-5-16. Contribution for Debts. When any testator in his last will shall give any personal property or real estate to any person and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Section 23-5-17. Failure of Devise. Except as otherwise provided in this Chapter, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue of the testator's estate.

Section 23-5-18. Restricted Interests.

1. Person who are not enrolled members of the Tribe shall not be entitled to take or receive by devise or descent any lands of the Tribe.

2. If a devise or descent fails as a result of the operation of this Section, the real property passes as if the person to whom the inheritance fails predeceased the decedent. If a devise fails as a result of the operation of this Section and becomes a part of the residue of the estate and the person entitled to the residue may not take pursuant to this Section, the real property passes in accordance with the rules of intestate succession in this Title.

3. Notwithstanding the provisions of this Section, a surviving spouse or child of the decedent who would have received real property of the decedent but for the operation of this Section

may elect to receive a lease, assignment, license, or other appropriate right to use and occupy the real property for the life of the spouse or child with title to the real property passing in accordance with this Section.

Section 23-5-19. Cultural Property and Heritage. Notwithstanding any provision of any will or other testamentary instrument, this Title, or law of any jurisdiction:

1. Cultural or religious property included in the residue of a testator's estate or the intestate estate of a decedent shall be distributed as follows:

a. In the case of cultural or religious property of the Tribe which the culture, tradition, or practice of the Tribe considers or requires to be possessed by a particular gender:

i. To the oldest adult descendant of the testator or decedent who is an enrolled member of the Tribe and of the particular gender; or

ii. If there is no adult descendant of the testator or decedent who is an enrolled member of the Tribe and of the particular gender, to the oldest descendant of the testator or decedent who is an enrolled member of the Tribe of a different gender, who shall serve as a keeper of the property until it can be passed to an adult descendant of the testator or decedent who is an enrolled member of the Tribe and the particular gender;

b. In the case of cultural or religious property of the Tribe which is not considered or required to be possessed by a particular gender, to the oldest adult descendant of the decedent who is an enrolled member of the Tribe; and

c. In the case of other cultural or religious property, in accordance with the customs, traditions, rules, or applicable law of the implicated religion, nation, group, or peoples; and

2. Cultural heritage possessed by a testator or decedent shall be distributed in accordance with the customs, traditions, or applicable law of the Tribe or other jurisdiction to whom the cultural heritage belongs.

Section 23-5-20. No Taker. If there is no taker available for all or any portion of a decedent's estate, the estate, or effected portion thereof, passes to the Tribe.

CHAPTER 6
PERSONAL REPRESENTATIVES

Section 23-6-1. Qualifications.

1. A personal representative must be at least the age of majority, legally competent, and willing and able to properly carry out the duties of the personal representative. More than one person may serve jointly as personal representative.

2. No person is qualified to serve as a personal representative who:

a. Has been convicted of or pled guilty or no contest to any felony or of a misdemeanor involving moral turpitude within the last ten (10) years; or

b. The Tribal Court finds unsuitable in a proceeding under this Title.

Section 23-6-2. Priority of Appointment. The following persons, if qualified, shall be entitled to serve as personal representative in the following order of priority:

1. The person named to serve as personal representative in the decedent's will;

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

3. Children over the age of majority in descending order of age;

4. Other adult blood relatives in order of the closeness of their relationship to the decedent and then in descending order of age;

5. A devisee of the decedent;

6. Any potential heir of the decedent; and

7. Any other adult member of the Tribe.

Section 23-6-3. Court Appointment of Personal Representative.

1. On petition of a person who appears to have an interest in the estate or motion of such a person in a pending proceeding under this Title, the Tribal Court may appoint a personal representative.

2. The Tribal Court may appoint a personal representative in accordance with the priorities and qualifications of personal representatives in this Chapter.

Section 23-6-4. Appointment of Special Administrator.

1. On petition of a person who appears to have an interest in the estate or motion of such a person in a pending proceeding under this Title, the Tribal Court may appoint a special administrator.

2. The Tribal Court may appoint a special administrator:

a. When a personal representative is not available;

b. When necessary to protect the estate of a decedent prior to the appointment of a personal representative;

c. If a prior appointment of a personal representative has been terminated; or

d. When otherwise necessary to secure the proper administration of the estate of a decedent.

3. If it appears to the Tribal Court that an emergency exists, appointment of a special administrator may be ordered without notice.

4. Any person at least the age of majority, legally competent, and willing and able to properly carry out the duties of the special administrator may be appointed, except that a special administrator may not be an heir or named beneficiary of the decedent's estate. More than one person may serve jointly as special administrator.

5. A special administrator has the duties, powers, and liabilities of a personal representative under this Title necessary to perform the special administrator's duties.

6. The Tribal Court may terminate the appointment of a special administrator at any time the same as it would terminate a personal representative.

Section 23-6-5. Acceptance of Appointment.

1. Upon appointment, a personal representative shall qualify by filing with the Tribal Court a statement of acceptance of the duties of the office and take an oath, in person or in writing, prescribed by the Tribal Court. Upon such filing, the Tribal Court Administrator shall issue letters of administration to the personal representative.

2. By accepting appointment, a personal representative submits personally to the jurisdiction of the Tribal Court in any proceeding relating to the estate, the appointment, or the acts taken as personal representative that may be instituted. Notice of any proceeding shall be served on the personal representative in accordance with the Rules of Civil Procedure or mailed to the personal representative by ordinary first class mail at the personal representative's address on file with the Tribal Court.

Section 23-6-6. Notice of Appointment.

1. Not later than thirty (30) days after appointment, every personal representative shall give information of the appointment to the heirs and devisees of the decedent.

2. The information provided pursuant to this Section shall include:

a. The name and address of the personal representative;

b. An indication that the information is being sent to persons who have or may have some interest in the estate being administered;

c. The name and address of the Tribal Court as where papers relating to the estate are on file;

d. A statement that the estate is being administered by the personal representative under this Title of the Code;

e. An indication of whether the estate is being administered formally or informally by the Tribal Court; and

f. A statement that recipients are entitled to information regarding the administration from the personal representative and can petition the Tribal Court in any matter relating to the estate, including distribution of assets and expenses of administration.

3. Information under this Section shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative.

4. This Section does not require information or notice to persons who have been adjudicated in a prior formal probate to have no interest in the estate.

5. A personal representative may inform other persons of the appointment by delivery or ordinary first class mail.

6. The personal representative's failure to give the information required under this Section is a breach of duty to the persons concerned but does not affect the validity of the appointment or the personal representative's powers or other duties.

Section 23-6-7. Multiple Representatives. If two or more persons are appointed jointly as personal representatives, unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate except when:

1. One of the personal representatives receives and receipts for property due the estate;

2. The concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

3. One of the personal representative has been delegated to act for the others.

Section 23-6-8. Competing Letters.

1. A person to whom general letters of administration are issued first has exclusive authority under the letters until the person's appointment is terminated or modified.

2. If, through error, general letters of administration are issued to a second personal representative, the first appointed

representative may recover any property of the estate in the hands of the subsequent personal representative, but the acts of the subsequent personal representative done in good faith before notice of the first letters are not void for want of validity of appointment.

Section 23-6-9. Bond.

1. No bond is required of a personal representative appointed in informal probate proceeding under this Title, except:

a. Upon the appointment of a special administrator in such informal probate proceedings;

b. When a personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

c. When bond is requested under this Section.

2. In formal probate proceedings, the Tribal Court may require a personal representative to provide a bond or other security in an amount equivalent to the value of the estate, except that bond is not required of a personal representative appointed in formal probate if the will relieves the personal representative of bond, unless bond is requested under this Section.

3. Any person apparently having an interest in the estate, or any creditor having a claim in excess of five thousand dollars ($5,000.00), may make a written demand that a personal representative give bond. The demand must be filed with the Tribal Court and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon such demand, a bond is required unless the Tribal Court determines it is not necessary. After receiving notice of a demand for bond and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty (30) days after receipt of notice is cause for the representative's removal and appointment of a successor personal representative.

4. A surety upon a bond provided under this Section submits itself to the jurisdiction of the Tribal Court and irrevocably appoints the Tribal Court Administrator as its agent upon whom any papers affecting its liability on the bond or undertaking may be

served. The surety's liability may be enforced on complaint or on motion in a pending proceeding and such notice of the complaint or motion may be served on the Tribal Court Administrator who shall forthwith mail copies to the persons giving the security, if their addresses are known.

Section 23-6-10. Determination of Qualification.

1. On petition of a person who appears to have an interest in the estate or motion of such a person in a pending proceeding under this Title, the Tribal Court may determine the priority or qualification of an applicant for appointment as a personal representative or of one who previously has been appointed personal representative in a formal probate or informal probate.

2. In addition to any other requirements of the laws of the Tribe, a petition or motion under this Section shall describe the question relating to priority or qualification of the personal representative which is to be resolved.

3. If a petition or motion under this Section precedes any appointment of a personal representative, it shall stay any pending appointment proceedings as well as any commenced thereafter. If the petition or motion is filed after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the Tribal Court orders otherwise.

4. After notice to interested persons, including all persons interested in the administration of the estate as successors, any previously appointed personal representative, and any person having or claiming priority for appointment as personal representative, the Tribal Court shall determine who is entitled to appointment, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper.

Section 23-6-11. Duties and Powers.

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under this Title.

2. Except as limited by order of the Tribal Court, a personal representative has the following duties and powers:

a. To avoid any conflict of interest between the personal interests of the personal representative and the interests of the estate by always placing the interests of the estate ahead of such personal interests;

b. To take possession and control of all of the decedent's assets subject to the jurisdiction of the Tribal Court and preserve such assets for the benefit of the estate;

c. To exercise, without notice, hearing, or order of any court, the same power over the title to property of the estate that an absolute owner would have, in trust for the benefit of the creditors and others interested in the estate;

d. To settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Title, and as expeditiously and efficiently as is consistent with the best interests of the estate;

e. To provide notices to family members, heirs, beneficiaries, interested persons, and the Tribe, as required or allowed by this Title;

f. To provide notice to creditors and settle any claim against the estate, collect any debts owed to the estate, and initiate or defend any suit involving the estate;

g. To use the authority conferred by this Title, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate; and

h. To exercise such other powers granted by the decedent's will or by order of the Tribal Court.

3. The duties and powers of a personal representative commence upon appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

4. Unless restricted by the Tribal Court, a personal representative in a formal probate has, without interim orders approving exercise of a power, all powers of personal representatives under this Title, but a personal representative in a formal probate shall not exercise the power to make any distribution of the estate without prior order of the Tribal Court. Any restriction on the power of a personal representative which may be ordered by the Tribal Court must be endorsed on the letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

5. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in a formal probate, do so without adjudication, order, or direction of the Tribal Court, but the personal representative may invoke the jurisdiction of the Tribal Court in accordance with this Title to resolve questions concerning the estate or its administration.

Section 23-6-12. Inventory and Appraisement.

1. Within three (3) months after appointment, a personal representative, who is not a successor to another personal representative who previously discharged the duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

2. The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items appraised.

3. The personal representative shall send a copy of the inventory to interested persons who request it.

4. The personal representative shall file the original of the inventory prepared with the Tribal Court in any informal probate or formal probate.

5. If any property not included in the original inventory comes to the knowledge of a personal representative or if the

personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any. The personal representative shall furnish copies of the supplementary information to persons interested in the new information and file it with the Tribal Court if the original inventory was filed.

Section 23-6-13. Compensation.

1. A personal representative is entitled to receive reasonable compensation for services in an appropriate amount given the nature and amount of services required and size of the estate.

2. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative may also renounce the right to all or any part of compensation. A written renunciation of fee may be filed with the Tribal Court.

3. If a personal representative or person nominated as a personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative or nominee is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred.

Section 23-6-14. Restraining Representative.

1. On petition of a person who appears to have an interest in the estate or motion of such a person in a pending proceeding under this Title, the Tribal Court may, by temporary order, restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of the personal representative's office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the Tribal Court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person.

2. Persons with whom the personal representative may transact business may be made parties to a proceeding under this Section.

3. Upon the filing of a petition or motion under this Section, the matter shall be set for hearing within ten (10) days unless the parties otherwise agree.

Section 23-6-15. Persons Dealing with Personal Administrator.

1. A person who in good faith who either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised the personal representative's power.

2. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise.

3. Except for restrictions on powers of personal representatives endorsed on letters issued by the Tribal Court, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

4. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

5. The protections under this Section extend to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive.

Section 23-6-16. Liability of Representative.

1. If the exercise of power concerning the estate is improper, a personal representative is liable to interested persons for damage or loss resulting from breach of the representative's fiduciary duty to the same extent as a trustee of an express trust.

2. Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the personal representative

fails to reveal the representative capacity and identify the estate in the contract.

3. A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if personally at fault.

4. Claims based on contracts entered into by a personal representative in a fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in a fiduciary capacity, whether or not the personal representative is individually liable therefor.

5. Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding.

Section 23-6-17. Removal of Representative.

1. On petition of a person who appears to have an interest in the estate or motion of such a person in a pending proceeding under this Title, the Tribal Court may remove a personal representative for cause at any time.

2. Cause for removal of a personal representative exists when:

a. Removal would be in the best interests of the estate;

b. It is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment;

c. The personal representative has disregarded an order of the Tribal Court;

d. The personal representative has become incapable of discharging the duties of the office;

e. The personal representative has mismanaged the estate; or

f. The personal representative has failed to perform any duty pertaining to the office.

3. Except as otherwise ordered by the Tribal Court, after a personal representative receives notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the Tribal Court shall also direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

4. Upon filing of a petition or motion under this Section, the Tribal Court shall fix a time and place for hearing.

Section 23-6-18. Termination of Appointment.

1. The appointment of a personal representative terminates upon the occurrence of any of the following:

a. The death of the personal representative;

b. The filing by the personal representative of a written resignation with the Tribal Court, provided:

i. The personal representative has given at least fifteen (15) days written notice to the persons known to be interested in the estate; and

ii. The resignation shall not be effective unless and until the appointment and qualification of a successor personal representative along with delivery of the assets to such successor;

c. Removal as provided in this Chapter;

d. Automatically one (1) year after the filing of a closing statement; or

e. Automatically upon the entry of an order closing the estate.

2. Termination of a personal representative ends the right and power pertaining to the office of personal representative as conferred by this Title or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by order of the Tribal Court, may perform

acts necessary to protect the estate and may deliver the assets to a successor representative.

3. Termination of a personal representative does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the personal representative of the duty to preserve assets subject to the personal representative's control, to account therefor and to deliver the assets.

4. Termination of a personal representative does not affect the jurisdiction of the Tribal Court over the personal representative, but terminates the personal representative's authority to represent the estate in any pending or future proceeding.

CHAPTER 7
CREDITORS' CLAIMS

Section 23-7-1. Notice to Creditors.

1. Unless notice has already been given under this Section, upon appointment, a personal representative shall notify creditors of the estate by:

a. Giving written notice by mail or other delivery to known creditors, notifying such creditors to present their claim within sixty (60) days after the mailing or delivery of the notice or be forever barred; and

b. Publishing a notice once a week for three (3) successive weeks in a newspaper of general circulation in the service area of the Tribe where the decedent resided or, if the decedent resided outside the territory of the Tribe, the local jurisdiction where the decedent resided, notifying creditors to present their claims within four (4) months after the date of the first publication of the notice or be forever barred.

2. The notices provided in this Section shall state the appointment and address of the personal representative.

3. A personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this Section.

Section 23-7-2. Manner of Presentation of Claims.

1. A claimant may make a claim against a decedent's estate by delivering or mailing to the personal representative a written statement of the claim or, if formal probate is pending in the Tribal Court, may file a written statement of the claim with the Tribal Court. The claim is deemed presented on the first to occur of either receipt of the written statement of claim by the personal representative or the filing of the claim with the Tribal Court.

2. A written statement of a claim shall state:

a. The basis of the claim;

b. The name and address of the claimant;

c. The amount claimed;

d. If the claim is not yet due, the date when it will become due;

e. If the claim is contingent or unliquidated, the nature of the uncertainty;

f. If the claim is secured, the security.

3. Failure to describe correctly a claim or any security, uncertainty, or due date of a claim does not, by itself, invalidate the presentation made.

Section 23-7-3. Classification of Claims.

1. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order of priority:

a. Wages due employees of the decedent for labor performed preceding the death of the decedent;

b. Payments due non-employee individuals for labor performed preceding the death of decedent;

c. Debts, other than taxes, due the Tribe;

d. Reasonable funeral expenses, including a reasonable amount for the cost of a monument;

e. Costs and expenses of administration;

f. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

g. Debts and taxes with preference under the federal laws of the United States;

h. Taxes due the Tribe;

i. Debts with preference under the laws of the Tribe;

j. Debts and taxes with preference under laws of another foreign jurisdiction; and

k. All other claims.

2. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Section 23-7-4. Allowance of Claims.

1. If a claim is presented in the manner described in this Chapter within the time limit prescribed, the personal representative may mail a notice to any claimant stating that the claim has been allowed or disallowed, in whole or in part.

2. After allowing or disallowing a claim, the personal representative may change the allowance or disallowance in accordance with the following:

a. The personal representative may, prior to payment, change an allowance to a disallowance in whole or in part, but not after allowance by Tribal Court judgment or order directing payment of the claim;

b. The personal representative may change a disallowance to an allowance, in whole or in part, but not after the time for the claimant to commence a proceeding to obtain payment on the disallowance has run; and

c. The personal representative shall notify a claimant of any change to allowance or disallowance.

3. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences a proceeding for allowance in the Tribal Court against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance. Such proceeding commenced more than sixty (60) days after the personal representative has provided the claimant notice of disallowance or partial allowance is barred. However, the personal representative may consent to an extension of such sixty (60) day period in the case of a claim which is not presently due or which is contingent or unliquidated and the Tribal Court, on motion or petition, may order an extension of the period to avoid injustice, but in no event shall any extension run beyond the applicable statute of limitations.

Section 23-7-5. Payment of Claims.

1. Upon the expiration of the time limitations provided in this Chapter for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority set forth in this Chapter, after making provision for:

a. Home, spouse, and family allowances permitted under this Title;

b. Claims already presented that have not yet been allowed or whose allowance has been appealed; and

c. Unbarred claims that may yet be presented, including costs and expenses of administration.

2. The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

a. Payment was made before the expiration of the time limit for presentation of claims; or

b. Payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.

Section 23-7-6. Secured Claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the

security; otherwise payment is upon the basis of one of the following:

1. If the creditor exhausts the security before receiving payment, upon the amount of the claim allowed less the fair value of the security; or

2. If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security.

Section 23-7-7. Claims Not Due.

1. If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

2. In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the Tribal Court may provide for payment as follows:

a. If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account; or

b. Arrangement for future payment, or possible payment, on the happening of the contingency.

Section 23-7-8. Offset of Counterclaims.

1. In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant.

2. In determining a claim against an estate, the Tribal Court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

3. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Section 23-7-9. Execution Prohibited.

1. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative.

2. This Section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding commenced prior to the death of the decedent.

Section 23-7-10. Compromise of Claims. When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Section 23-7-11. Encumbered Assets.

1. If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate.

2. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to have the encumbrance paid from the estate.

Section 23-7-12. Period of Limitations on Claims.

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the Tribe, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or time limit for making a claim, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following:

a. One (1) year after the decedent's death; or

b. The time provided in this Chapter for creditors who are given notice.

2. All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the Tribe, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

a. A claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due; or

b. Any other claim, within one (1) year after the decedent's death.

3. A claim, other than a claim of the Tribe, which is barred by the statute of limitations or other time limit for making a claim in the jurisdiction of the decedent's domicile or the jurisdiction where the claim arose is barred.

4. Nothing in this Section affects or prevents collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

Section 23-7-13. Effect of Statute of Limitations.

1. No claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.

2. The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four (4) months after the decedent's death, but resumes thereafter as to claims not otherwise barred.

3. For purposes of a statute of limitations, the presentation of a claim pursuant to this Chapter is equivalent to commencement of a proceeding on the claim.

CHAPTER 8
DISTRIBUTIONS

Section 23-8-1. Distributions Generally.

1. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed to the extent possible through application of the following rules:

a. A specific devisee is entitled to distribution of the thing devised to the devisee, and a spouse or child who has selected particular assets of an estate as provided in this Title shall receive the items selected;

b. Any home, spouse, or family allowance or devise of a stated sum of money may be satisfied with some other property of the estate provided:

i. The person entitled to the payment has not demanded payment in cash;

ii. The other property distributed is valued at fair market value as of the date of its distribution; and

iii. No residuary devisee has requested that the asset in question remain a part of the residue of the estate; and

c. The residuary estate shall be distributed in any equitable manner.

2. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within thirty (30) days after the mailing or delivery of the proposal.

Section 23-8-2. Distributions to Protected Persons. Unless an express provision of the will provides for the manner of a distribution to a protected person, distributions to protected persons shall be made in accordance with the following:

1. If the personal representative knows that a guardian of the estate or conservator has been appointed or that a proceeding for appointment of a guardian of the estate or conservator is pending, the personal representative is authorized to distribute only to the guardian of the estate or conservator;

2. If the heir or devisee is a minor without a guardian of the estate or conservator, the personal representative may:

a. Distribute to a person who has the care and custody of the minor and with whom the minor resides, including a general guardian;

b. Deposit any money in a United States insured bank account for the benefit of the minor subject to withdrawal only upon the order of the Tribal Court or upon the minor's attaining the age of majority; or

c. Request the Tribal Court appoint a guardian of the estate or conservator for the minor and distribute to such appointed guardian or conservator to hold on behalf of the minor until the minor attains the age of majority;

3. If the heir or devisee is incapacitated without a guardian of the estate or conservator, the personal representative may:

a. Distribute to an attorney in fact who has authority under a power of attorney to receive property for the person;

b. Distribute to the spouse, parent, or other close relative with whom the person resides; or

c. Request the Tribal Court appoint a guardian of the estate or conservator for the person and distribute to such appointed guardian or conservator to hold on behalf of the person until otherwise ordered by the Tribal Court;

4. Persons receiving money or property for a protected person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the protected person; and

5. The personal representative is not responsible for the proper application of money or property distributed pursuant to this Section.

Section 23-8-3. Distribution to Trustee.

1. Before distributing to a trustee, the personal representative may require that the trust be registered, if the jurisdiction in which the trust is to be administered provides for registration, and that the trustee inform the beneficiaries.

2. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the Tribal Court to require that the trustee post bond if the personal representative reasonably believes that distribution might jeopardize the interests of persons who are not able to protect themselves, and the trustee may withhold distribution until the Tribal Court has acted.

3. No inference of negligence on the part of the personal representative shall be drawn from the failure to exercise the authority conferred by this Section.

Section 23-8-4. Partition.

1. When two (2) 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 prior to the closing of the estate, to make partition.

2. After notice to the interested heirs or devisees of a petition under this Section, the Tribal Court shall partition the property. The Tribal Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

Section 23-8-5. Agreements Among Successors.

1. Subject to the rights of creditors and taxing authorities, competent heirs or devisees may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions.

2. A personal representative shall abide by the terms of an agreement made pursuant to this Section subject to the obligation to pay creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of the office for the benefit of any heirs or devisees of the decedent who are not parties.

3. Nothing in this Section relieves trustees of any duties owed to beneficiaries of trusts.

Section 23-8-6. Evidence of Distribution.

1. When a distribution of real or personal property is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

2. Proof that a distributee has received an instrument or deed of distribution of property or payment in distribution from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed property as against all persons interested in the estate, except that the personal representative may recover the property or its value if the distribution was improper.

Section 23-8-7. Administration in Multiple Jurisdictions.

1. All assets of estates being administered in the jurisdiction of the Tribe are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

2. Distribution of the estate of a decedent who was not a resident in the territory of the Tribe being administered by a personal representative appointed under the laws of the Tribe shall be made in accordance with this Title. However, the estate of such a decedent may, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

a. The decedent's will, if any, or applicable choice of law rules provides that the successors are identified pursuant to the laws of the Tribe without reference to the law of the decedent's domicile;

b. The personal representative appointed under this Title, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

c. The Tribal Court orders otherwise in a closing order issued pursuant to this Title.

Section 23-8-8. Successors' Rights If No Administration.

1. In the absence of administration, heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

2. Devisees may establish title by the probated will to devised property.

3. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, death, and their relationship to the decedent.

4. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Section 23-8-9. Improper Distribution. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if the distributee or claimant has the property. If the distributee or claimant does not have the property, the distributee or claimant is liable to return the value as of the date of disposition of the property improperly received and income and gain on the property.

Section 23-8-10. Purchasers Protected. If property distributed or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person. A purchaser or lender need not inquire whether a personal representative acted properly in making the distribution, even if the personal representative and

the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

Section 23-8-11. Property Discovered after Closure. An estate may be reopened whenever necessary to dispose of a decedent's property discovered after the decedent's estate has been closed. The property shall be distributed as though known at the time of distribution of the estate.

Section 23-8-12. Decedent Still Alive.

1. If an alleged decedent is not dead, the alleged decedent may recover estate assets in the hands of the personal representative.

2. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

CHAPTER 9
SUMMARY PROBATE

Section 23-9-1. Definitions. In addition to the definitions in Chapter 1 of this Title, unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Transferee" means a person to whom payment, delivery, or transfer of property is made under this Chapter.

2. "Transferred property" means property that is paid, delivered, or transferred pursuant to an affidavit or declaration executed pursuant to this Chapter.

3. "Unsecured debts" includes, but is not limited to, a decedent's funeral expenses, expenses of a decedent's last illness, and wage claims.

Section 23-9-2. Summary Probate Authorized.

1. If the gross value of the decedent's real and personal property, excluding the property described in this Section,

wherever located, does not exceed $250,000, as adjusted by the Law and Justice Committee pursuant to this Chapter, and if thirty (30) days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the estate or providing formal notice to creditors, do any of the following with respect to one or more particular items of property:

a. Collect any particular item of property that is money due the decedent;

b. Receive any particular item of property that is tangible personal property of the decedent; and

c. Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

2. For the purposes of this Section, the following property shall not be included in calculating the gross value of the decedent's estate:

a. Any property or interest or lien thereon that, at the time of the decedent's death, was held by the decedent as a joint tenant with rights of survivorship, or in which the decedent had a life or other interest terminable upon the decedent's death, or that was held by the decedent and passed to the decedent's surviving spouse pursuant to this Title;

b. A multiple-party account to which the decedent was a party at the time of the decedent's death to the extent that the sums on deposit belong after the death of the decedent to a surviving party, payee, or beneficiary;

c. Amounts from an employee benefit or retirement plan, annuity, or life insurance payable after the death of the decedent to a surviving party, payee, or beneficiary;

d. Any vehicle registered in the name of the decedent;

e. Any manufactured home, mobile home, commercial coach, truck camper, or floating home registered in the name of the decedent;

f. Any amounts due to the decedent for services in the armed forces of a nation state; and

g. The amount of wages, salary, or other compensation, including compensation for unused vacation or sick leave, owing to the decedent for personal services from any employment.

3. The procedure provided by this Chapter may be used only if one of the following requirements is satisfied:

a. No proceeding for the administration of the decedent's estate is pending or has been conducted in any court having jurisdiction; or

b. The decedent's personal representative, if any, consents in writing to the payment, transfer, or delivery of the property described in the affidavit or declaration pursuant to this Chapter.

Section 23-9-3. Collection by Affidavit.

1. To collect money; to receive tangible personal property; or to have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this Chapter, an affidavit or a declaration under penalty of perjury shall be furnished to the holder of the decedent's property stating all of the following:

a. The decedent's name;

b. The date and place of the decedent's death;

c. That at least thirty (30) days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to the affidavit or declaration;

d. Either of the following, as appropriate:

i. That no proceeding for the administration of the decedent's estate is pending or has been conducted in any court having jurisdiction; or

ii. That the decedent's personal representative, if any, has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration;

e. That the current gross fair market value of the decedent's real and personal property, excluding the property described in this Chapter, does not exceed the maximum value permitted for small probate under this Chapter;

f. A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant;

g. The name of the successor of the decedent to the described property;

h. Either of the following, as appropriate:

i. That the affiant or declarant is the successor of the decedent to the decedent's interest in the described property; or

ii. That the affiant or declarant is a person authorized under this Section to act on behalf of the successor of the decedent with respect to the decedent's interest in the described property;

i. That no other person has a superior right to the interest of the decedent in the described property; and

j. That the affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant.

2. Where more than one person executes the affidavit or declaration under this Section, the statements required by this Section shall be modified as appropriate to reflect that fact.

3. A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

4. If the decedent's personal representative has consented to the payment, transfer, or delivery of the described property to the affiant or declarant, a copy of the consent and of the personal representative's letters shall be attached to the affidavit or declaration.

5. If the decedent had evidence of ownership of the property described in the affidavit or declaration and the holder of the property would have had the right to require presentation of the evidence of ownership before the duty of the holder to pay,

deliver, or transfer the property to the decedent would have arisen, the evidence of ownership, if available, shall be presented with the affidavit or declaration to the holder of the decedent's property. If the evidence of ownership is not presented to the holder pursuant to this subsection, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the person presenting the affidavit or declaration either:

a. Provide the holder with a bond or undertaking in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property; or

b. Enter into an agreement satisfactory to the holder concerning the duty of the person presenting the affidavit or declaration to indemnify the holder.

6. If the estate of the decedent includes any real property, the affidavit or declaration shall be accompanied by an inventory and appraisal of the real property.

7. For the purposes of this Section, the following persons are authorized to act on behalf of the successor of the decedent with respect to the decedent's interest in the described property:

a. The guardian or conservator of the successor, and without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending;

b. The trustee of a trust in which the successor is a beneficiary, and without the need to obtain approval of the court in which any proceeding on the trust may be pending;

c. The personal representative appointed by a court with jurisdiction for a deceased successor;

d. A custodian authorized under the decedent's will to receive a devise to the successor who is a minor until such time as the custodianship terminates; or

e. An attorney in fact authorized under a durable power of attorney of the successor.

Section 23-9-4. Identification.

1. Reasonable proof of the identity of each person executing an affidavit or declaration under this Chapter shall be provided to the holder of the decedent's property.

2. Reasonable proof of identity is provided for the purposes of this Section if:

a. The person executing the affidavit or declaration is personally known to the holder and the person executes the affidavit or declaration in the presence of the holder;

b. The person executing the affidavit or declaration presents one of the following issued by the Tribe or a foreign government with authority that is current or was issued during the preceding five (5) years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

i. Enrollment card;

ii. Identification card;

iii. Driver's license; or

iv. Passport; or

c. A notary public's certificate of acknowledgment identifies the person executing the affidavit or declaration.

3. Unless the affidavit or declaration contains a notary public's certificate of acknowledgment of the identity of the person, the holder shall note on the affidavit or declaration either that the person executing the affidavit or declaration is personally known or a description of the identification provided by the person executing the affidavit or declaration.

Section 23-9-5. Effect of Affidavit.

1. If the requirements of this Chapter are satisfied:

a. The person or persons executing the affidavit or declaration as successor of the decedent are entitled to have the property described in the affidavit or declaration paid, delivered, or transferred to them; and

b. As appropriate, the person with authority shall change, or cause to be changed, the registered ownership on

any applicable books or records from the decedent to the person or persons executing the affidavit or declaration as successor of the decedent.

2. If the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof to the successor of the decedent or change registered ownership of property within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer or change in registered ownership in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this Section, the court shall award reasonable attorney's fees to the person or persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them or change registered ownership as required by this Section.

3. If the requirements of this Chapter are satisfied, receipt by the holder of the decedent's property of the affidavit or declaration constitutes sufficient acquittance for the payment of money, delivery of property, or changing registered ownership of property pursuant to this Section and releases and discharges the holder with respect to the money or property to the same extent as if the person dealt with a personal representative of the decedent. The holder may rely in good faith on the statements in the affidavit or declaration and has no duty to inquire into the truth of any statement in the affidavit or declaration.

Section 23-9-6. Liability of Transferee.

1. A transferee is personally liable for the unsecured debts of the decedent and any such debt may be enforced against the transferee in the same manner as it could have been enforced against the decedent if the decedent had not died, except that an estate having an appraised value which does not exceed $100,000, as adjusted by the Law and Justice Committee pursuant to this Chapter, and which is to be inherited, through the rules of intestacy or by devise, by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors.

2. A transferee is personally liable to any person having a superior right by testate or intestate succession from the decedent. If the decedent's personal representative determines that another person has a superior right to the property by testate or intestate succession from the decedent, the personal representative may request that the transferred property be

restored to the estate. If the transferred property is restored to the estate upon request or voluntarily for administration of the estate, the transferee is not personally liable under this subsection.

3. If proceedings for the administration of the decedent's estate are commenced, a transferee is personally liable to the estate for a share of the decedent's unsecured debts.

4. The personal liability of a transferee under this Section shall not exceed the fair market value of the transferred property at the time the affidavit or declaration is presented under this Chapter, less the amount of any liens and encumbrances on the transferred property at that time, and less the amount of any payment made for unsecured debts. If the liability is to a person with a superior right by testate or intestate succession, the personal liability of a transferee shall also include any income received by the transferee from the property if that income would have accrued to the estate had the property not been transferred to the transferee.

Section 23-9-7. Subsequent Proceedings.

1. Payment, delivery, or transfer of a decedent's property pursuant to this Chapter does not preclude later proceedings for administration of the decedent's estate.

2. If proceedings for the administration of a decedent's estate are commenced, a transferee may voluntarily return transferred property to the decedent's estate for administration.

Section 23-9-8. Fraudulent Affidavit.

1. In addition to any other liability the person has under this Chapter or other law of the Tribe, if a person fraudulently secures the payment, delivery, or transfer of the decedent's property under this Chapter, the person is liable for restitution to any person having a superior right by testate or intestate succession or the decedent's estate for an amount three (3) times the fair market value of the property.

2. For the purposes of this Section, the "fair market value of the property" is the fair market value of the property paid, delivered, or transferred to the person liable under this Section valued as of the time the person liable presented the affidavit or declaration to the holder of the decedent's property, less any liens and encumbrances on the property at that time.

3. An action to impose liability under this Section shall be commenced no later than three (3) years after the affidavit or declaration is presented to the holder of the decedent's property or three (3) years after the discovery of the fraud, whichever is later, and shall not be not tolled for any reason.

Section 23-9-9. Adjustment of Dollar Amounts.

1. On April 1 every three (3) years after enactment of this Title or any amendment thereof, the dollar amounts specified in this Chapter in effect immediately before that date shall be reviewed and, if required, increased as provided in this Section.

2. The Law and Justice Committee shall determine the amount of any increase based on the change in the United States city average of the "Consumer Price Index for All Urban Consumers," as published by the United States Bureau of Labor Statistics, from the December immediately preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars ($25). The Law and Justice Committee shall not decrease any dollar amount less than the amount in effect at the time of review.

3. Adjustments made under this Section do not apply when the decedent's death preceded the date of adjustment.

CHAPTER 10
INFORMAL PROBATE

Section 23-10-1. Informal Probate Authorized.

1. A decedent's estate may be probated without formal probate if the requirements of this Chapter are met.

2. Informal probate is not available and an application for informal probate shall be denied if:

a. The application indicates that a personal representative who has not resigned has been appointed in any jurisdiction;

b. If it appears that the will in the application or another will of the decedent has been the subject of a previous probate order;

c. If the application relates to one or more of a known series of wills or other testamentary instruments the latest of which does not expressly revoke the earlier, except that a series consisting of a will with its codicils may be informally probated; or

d. Other requirements of this Chapter have not been met.

3. No hearing with the Tribal Court is required for informal probate except as expressly required in this Title or if the Tribal Court otherwise determines a hearing is necessary to resolve a matter related to the probate or administration of the estate.

Section 23-10-2. Who May File. Informal probate may be made only by application of one of the following:

1. The surviving spouse of the decedent;

2. An adult child, parent, or sibling of the decedent;

3. A person who is an heir of the decedent;

4. A person nominated as a personal representative by the decedent's will or pursuant to a power of appointment conferred by the will;

5. If no person is qualified and willing to serve as personal representative under this Section, in its sole discretion, the Department of Human Services.

Section 23-10-3. Application.

1. Applications for informal probate shall be filed with the Tribal Court and include the following:

a. A statement of the qualifications of the applicant under this Chapter to apply for informal probate;

b. The name and date of death of the decedent, whether the decedent was a member of the Tribe, the decedent's age, the location of the decedent's domicile at the time of death, the names and addresses of the spouse, children, heirs, and devisees, and the ages of any who are minors, as far as each is known or ascertainable with reasonable diligence by the applicant;

c. If the decedent was not a member of the Tribe domiciled in the territory of the Tribe at the time of the decedent's death, a statement showing jurisdiction in the Tribal Court;

d. A statement identifying and indicating the address of any personal representative of the decedent who is appointed in any jurisdiction and whose appointment has not been terminated;

e. A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice, of any probate or appointment proceeding concerning the decedent that may have been filed in any jurisdiction;

f. A statement that two (2) years or less have passed since the decedent's death;

g. If the decedent had a will to be probated, statements:

i. That the original of the decedent's last will is in the possession of the Tribal Court or accompanies the application;

ii. That the applicant believes the will to have been validly executed; and

iii. That, after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;

h. If the decedent did not have a will in effect at the time of death, a statement that, after the exercise of reasonable diligence, the applicant is unaware of any unrevoked will or other testamentary instrument or a statement why any such instrument of which the applicant may be aware is not being probated; and

i. The name and address of the person proposed to be appointed as personal representative, the basis for such person being appointed, and the names of any other persons having a prior or equal right to the appointment under this Title.

2. Applications for informal probate shall be verified under oath or penalty of perjury by the applicant to be accurate and complete to the best of the applicant's knowledge and belief.

3. By submitting an application for informal probate, the applicant submits personally to the jurisdiction of the Tribal Court in any proceeding relating to the application that may be instituted against the applicant, including for relief from fraud relating to the application and for perjury.

Section 23-10-4. Review of Application.

1. Upon receipt of an application requesting informal probate, a judge of the Tribal Court shall determine whether:

a. The application is complete;

b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

c. The applicant appears from the application to be a person permitted to apply as provided in this Chapter;

d. The person proposed to be appointed as personal representative has priority entitling the person to be appointed under this Title;

e. On the basis of the statements in the application, jurisdiction of the Tribal Court is proper;

f. If the application seeks probate of a will, an original, duly executed, and apparently unrevoked will is in the Tribal Court's possession;

g. Informal probate is unavailable as provided in this Chapter; and

h. It appears from the application that the time limit for informal probate has not expired.

2. A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under this Title have been met shall be probated without further proof. In other cases, the Tribal Court may assume execution if the will appears to have been properly executed, or the Tribal Court may accept a sworn statement or affidavit of any

person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

Section 23-10-5. Determination of Court.

1. If the judge is not satisfied that an estate is entitled to be probated by informal probate for any reason, the Tribal Court may decline the application and shall state the reasons for declination. A declination of informal probate is not an adjudication and does not preclude formal probate or subsequent informal probate upon correction of the reasons for declining the application.

2. If the judge determines that informal probate is available and makes the findings required by this Chapter, the Tribal Court shall issue a written statement of informal probate, including the appointment of the person proposed as personal representative and issuance of letters of administration, if at least one hundred twenty (120) hours have elapsed since the decedent's death.

3. A declination or statement of informal probate issued under this Section has the effect of an order of the Tribal Court, including for purposes of appeal in accordance with the laws of the Tribe governing civil appeals.

Section 23-10-6. Notice.

1. On issuance of a written statement of informal probate, the applicant shall, within thirty (30) days, give written notice, information, and a copy of the will, if any, to:

a. All heirs and devisees of the decedent;

b. Any person who has demanded notice of any probate proceeding involving the decedent; and

c. To any personal representative of the decedent whose appointment has not been terminated.

2. The notice and information given by the applicant shall:

a. Provide contact information of the Tribal Court and state that papers relating to the estate are on file there; and

b. State that, if an heir or devisee wishes to contest the probate, the heir or devisee may do so by commencing formal probate under this Title no later than four (4) months from receipt of the notice and information.

3. The notice and information required by this Section shall be delivered or sent by mail to each person entitled to such notice and information whose address is reasonably available to the applicant. Any other person entitled to notice and information under this Section shall be served in the manner for service of a summons in the Rules of Civil Procedure.

4. The applicant shall file proof of providing notice under this Section with the Tribal Court. The proof of providing notice shall identify each person to whom notice was provided, the method of notice, and the date notice was sent.

5. An heir or devisee to whom the notice and information required by this Section is given is barred from commencing a formal probate to contest the probate of the decedent's estate after four (4) months have elapsed from receipt of the information, but an heir or devisee is not barred from commencing a formal probate on a later discovered will. An heir or devisee to whom the notice and information required by this Section is not given may contest the informal probate within the limitations period specified in this Title.

6. The applicant in informal probate shall be liable to any heir or devisee damaged by failure to comply with the notice and information provisions of this Section. An applicant's failure to give notice and information as required by this Section is a breach of the applicant's duty to the heirs and devisees but does not affect the validity of the probate.

Section 23-10-7. Successor Personal Representative.

1. If a personal representative appointed in an informal probate has tendered a resignation as provided in this Title or has had his or her appointment terminated by death or removal, another person eligible to apply under this Chapter may submit an application for appointment to succeed the former personal representative.

2. An application under this Section shall include:

a. A statement that the applicant adopts the statements in the application which led to the appointment of

the person being succeeded, except as specifically changed or corrected; and

b. The name and address of the person who seeks appointment as successor, the basis for such person being appointed, and the names of any other persons having a prior or equal right to the appointment under this Chapter.

Section 23-10-8. Probate and Closing of Estate.

1. On issuance of a written statement of informal probate and providing notice required by this Chapter, the personal representative shall proceed to administer the estate, including notifying creditors, paying debts of the estate, preparing an inventory, and distributing the estate in accordance with this Title.

2. When the estate has been fully distributed in accordance with this Title, the estate shall be closed, the personal representative dismissed, and any bond of the personal representative released.

3. Unless prohibited by order of the Tribal Court, a personal representative may close the estate and an informal probate proceeding by filing with the Tribal Court a report and receipts showing the distribution of the estate and a verified closing statement which includes the following:

a. A statement that the personal representative, or a previous personal representative, has determined that the time limited for presentation of creditors' claims has expired;

b. A statement that the personal representative, or a previous personal representative, has fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled;

c. If any claims remain undischarged:

i. A statement whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees; or

ii. The details of other arrangements that have been made to accommodate outstanding liabilities; and

d. A statement that the personal representative sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

4. If the Tribal Court is satisfied that the estate has been fully distributed in accordance with this Title, the Tribal Court shall approve the closing statement.

Section 23-10-9. Effect of Informal Probate.

1. Informal probate is conclusive as to all persons until superseded by an order of the Tribal Court in a formal probate.

2. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

CHAPTER 11
UNIVERSAL SUCCESSION

Section 23-11-1. Universal Succession Authorized.

1. A universal successor is a person who succeeds to the property and obligations of a decedent, and represents the decedent, pursuant to the procedure for universal succession in this Chapter.

2. The heirs of an intestate estate or the residuary devisees under a will, excluding protected or unascertained persons, may become universal successors to the decedent's estate in accordance with this Section by assuming personal liability for:

a. Taxes;

b. Debts of the decedent;

c. Claims against the decedent or the estate; and

d. Distributions due other heirs, devisees, and persons entitled to property of the decedent.

Section 23-11-2. Application.

1. To become universal successors, the heirs or residual devisees must file an application with the Tribal Court, signed by each applicant, and verified to be accurate and complete to the best of the applicant's knowledge and belief, and include the following:

a. A statement of the interest of the applicants;

b. The name and date of death of the decedent, the decedent's age, and the location of the decedent's domicile at the time of death;

c. The names and addresses of the spouse, children, heirs, and devisees of the decedent and the ages of any who are minors as far as known or ascertainable with reasonable diligence by the applicants;

d. If the decedent was not a member of the Tribe domiciled in the territory of the Tribe at the time of the decedent's death, a statement showing jurisdiction in the Tribal Court;

e. A statement identifying and indicating the address of any personal representative of the decedent who is appointed in any jurisdiction and whose appointment has not been terminated;

f. A statement indicating whether the applicants have received a demand for notice, or are aware of any demand for notice, of any probate or appointment proceeding concerning the decedent that may have been filed in any jurisdiction;

g. A statement that two (2) years or less have passed since the decedent's death;

h. If the application is by heirs of an intestate estate:

i. A statement that, after the exercise of reasonable diligence, the applicants are unaware of any unrevoked will, or, a statement why any such will of

which the applicants may be aware is not being probated; and

ii. A statement that the applicants constitute all the heirs other than protected or unascertained persons;

i. If the application is by residuary devisees under a will:

i. A statement that the original of the decedent's last will is in the possession of the Tribal Court or accompanies the application;

ii. A statement that the applicants believe the will to have been validly executed;

iii. A statement that, after the exercise of reasonable diligence, the applicants are unaware of any instrument revoking the will, and that the applicants believe that the instrument that is the subject of the application is the decedent's last will; and

iv. A statement that the applicants constitute the residuary devisees of the decedent other than any protected or unascertained persons;

j. A statement whether letters of administration are outstanding;

k. A statement whether a petition for appointment of a personal representative of the decedent is pending in the Tribal Court;

l. A statement that the applicants waive their right to seek appointment of a personal representative;

m. A description, which may be specific or in general terms, of the assets of the estate; and

n. A statement that the applicants accept responsibility for the estate and assume personal liability for taxes, debts of the decedent, claims against the decedent or the estate, and distributions due other heirs, devisees, and persons entitled to property of the decedent as provided in this Section.

2. If an application for universal succession is by residuary devisees under a will, it must be combined with a petition for informal probate under this Title if the will has not already been admitted to probate in the Tribal Court.

3. If the estate subject of an application for universal succession is partially intestate, all of the heirs other than protected or unascertained persons must join as applicants.

Section 23-11-3. Review of Application.

1. The Tribal Court shall grant an application for universal succession if:

a. The application is complete;

b. All necessary persons have joined and have verified that the statements contained in the application are true to the best of the knowledge and belief of each;

c. Any notice demanded by any person has been given or waived;

d. The applicants have each made oath or affirmation that the statements contained in the application are true to the best of each applicants' knowledge and belief;

e. The applicants appear from the application to be heirs or residual devisees;

f. On the basis of the statements in the application, jurisdiction of the Tribal Court is proper;

g. The time limit for original probate or appointment proceedings has not expired;

h. If the applicants claim to be residual devisees under a will:

i. The application requests, or accompanies an application for, informal probate of a will; and

ii. The application and findings otherwise conform with the requirements for informal probate so the will is admitted to probate; and

i. None of the applicants is a protected person.

2. The Tribal Court shall deny an application for universal succession if:

a. Letters of administration are outstanding;

b. Except as otherwise provided in this Chapter, any creditor, heir, or devisee who is qualified under this Title to demand bond files an objection; or

c. Other requirements of this Chapter have not been met.

Section 23-11-4. Determination by Court.

1. If the judge is not satisfied that an application meets the requirements for universal succession for any reason, the Tribal Court may decline the application and shall state the reasons for declination. A declination of universal succession is not an adjudication and does not preclude formal probate or informal probate or a subsequent application for universal succession upon correction of the reasons for declining the application.

2. Upon granting an application under this Chapter, if at least one hundred twenty (120) hours have elapsed since the decedent's death, the Tribal Court shall issue a written statement of universal succession describing the estate as set forth in the application and stating that the applicants:

a. Are the universal successors to the assets of the estate as provided in this Section;

b. Have assumed liability for the obligations of the decedent; and

c. Have acquired the powers and liabilities of universal successors.

3. A declination or statement of universal succession issued under this Section has the effect of an order of the Tribal Court, including for purposes of appeal in accordance with the laws of the Tribe governing civil appeals.

Section 23-11-5. Notice.

1. Not later than thirty (30) days after issuance of the statement of universal succession, each universal successor shall inform the heirs and devisees who did not join in the application of the universal succession.

2. The information provided under this Section must be delivered or be sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the universal successors.

3. The information provided under this Section must include:

a. The names and addresses of the universal successors;

b. Indicate that it is being sent to persons who have or may have some interest in the estate; and

c. Provide the address for the Tribal Court as where the application and statement of universal succession has been filed.

4. The notice and information required by this Section shall be delivered or sent by mail to each person entitled to such notice and information whose address is reasonably available to the applicant. Any other person entitled to notice and information under this Section shall be served in the manner for service of a summons in the Rules of Civil Procedure. A universal successor may inform other persons of the universal succession by delivery or by ordinary first class mail.

5. Each universal successor shall file proof of providing notice under this Section with the Tribal Court. The proof of providing notice shall identify each person to whom notice was provided, the method of notice, and the date notice was sent.

6. The failure of a universal successor to give the information required under this Section is a breach of duty to the persons concerned but does not affect the validity of the approval of universal succession or the powers or liabilities of the universal successors.

Section 23-11-6. Effect of Universal Succession.

1. A statement of universal succession is evidence of the universal successors' title to the assets of the estate.

2. Upon issuance of a statement of universal succession:

a. Administration of the estate under this Title is not required; and

b. The powers and liabilities of universal successors provided in this Chapter attach and are assumed by the applicants.

3. Upon becoming universal successors:

a. Universal successors have full power of ownership to deal with the assets of the estate subject to the limitations and liabilities in this Chapter;

b. The universal successors shall proceed expeditiously to settle and distribute the estate without adjudication, but if necessary may invoke the jurisdiction of the Tribal Court to resolve questions concerning the estate;

c. Universal successors have the same powers as distributees from a personal representative under this Title and third persons with whom they deal are protected as provided in this Title;

d. For purposes of collecting assets in another jurisdiction whose law does not provide for universal succession, universal successors have the same standing and power as personal representatives or distributees in the territory of the Tribe;

e. In the proportions and subject to the limits expressed in this Chapter, universal successors assume all liabilities of the decedent that were not discharged by reason of death and liability for all taxes, claims against the decedent or the estate, and charges properly incurred after death for the preservation of the estate, to the extent those items, if duly presented, would be valid claims against the decedent's estate;

f. In the proportions and subject to the limits expressed in this Chapter, universal successors are personally liable to other heirs, devisees, and persons entitled to property of the decedent for the assets or amounts that would be due those heirs, were the estate administered, but no allowance having priority over devisees may be claimed

for attorney's fees or charges for preservation of the estate in excess of reasonable amounts properly incurred;

g. Universal successors are entitled to their interests in the estate as heirs or devisees subject to priority, abatement, and agreement;

h. Other heirs, devisees, and persons to whom assets have been distributed have the same powers and liabilities as distributees under this Title;

i. Absent breach of fiduciary obligations or express undertaking, a fiduciary's liability is limited to the assets received by the fiduciary;

j. The universal successors become subject to the personal jurisdiction of the Tribal Court in any proceeding that may be instituted relating to the estate or to any liability assumed by them; and

k. Any heir or devisee who voluntarily joined in the application for universal succession may not subsequently seek appointment of a personal representative.

Section 23-11-7. Liability of Universal Successors.

1. If a personal representative is appointed after issuance of a statement of universal succession, universal successors are personally liable for restitution of any property of the estate to which they are not entitled as heirs or devisees of the decedent and their liability is the same as a distributee under this Title.

2. In addition to remedies otherwise provided by law, any creditor, heir, devisee, or person entitled to a decedent's property may demand bond of universal successors. If the demand for bond precedes the granting of an application for universal succession, it must be treated as an objection under this Chapter unless it is withdrawn, the claim satisfied, or the applicants post bond in an amount sufficient to protect the demandant. If the demand for bond follows the granting of an application for universal succession, the universal successors, within ten (10) days after notice of the demand, may satisfy the claim or post a bond sufficient to protect the demandant and thereby disqualify the demandant from seeking administration of the estate.

3. The liability of universal successors is subject to any defenses that would have been available to the decedent. Other

than liability arising from fraud, conversion, or other wrongful conduct of a universal successor, the personal liability of each universal successor to any creditor, claimant, other heir, devisee, or person entitled to a decedent's property may not exceed the proportion of the claim that the universal successor's share bears to the share of all heirs and residuary devisees.

CHAPTER 12
FORMAL PROCEEDINGS

Section 23-12-1. Formal Probate.

1. Formal probate is a proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the Tribal Court which extends until entry of an order closing the estate or other order terminating the proceeding.

2. In formal probate, a personal representative is supervised by and responsible to the Tribal Court as well as to interested parties, and is subject to directions concerning the estate made by the Tribal Court on its own motion or on the motion of any interested party.

3. If an estate is not or may not be distributed by summary or informal probate or universal succession under this Title, it must be probated in formal probate in the Tribal Court.

4. Any estate which is pending distribution by summary or informal probate or universal succession may be made into a formal probate by filing a petition in the Tribal Court.

5. Any application for informal probate or universal succession which is denied may be brought as a formal probate by filing a petition in the Tribal Court.

6. The filing of a petition for formal probate stays any summary or informal probate or universal succession, provided that an existing personal representative appointed may exercise his or her powers as a personal representative until receipt of notice of the formal probate.

Section 23-12-2. Initiation of Proceedings.

1. Proceedings in the Tribal Court for formal probate, appointment of a personal representative or special administrator,

or any other relief permitted under this Title shall be initiated by the filing of a petition, provided that a motion may be filed for action or relief in pending proceedings for formal probate.

2. Petitions may be filed by any interested person or a personal representative at any time after the death of a person subject to this Title.

3. Petitions filed pursuant to this Title shall be captioned: "In the Matter of the Estate of (decedent's name(s))".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The full names, age, place of residence, and tribal affiliation, if any, of the petitioner;

b. The full name, date of death, place of residence and place of domicile at the time of death, and tribal affiliation of the decedent;

c. The full name and address of any appointed personal representative under this Title;

d. The names, addresses, and tribal affiliation, if any, of the decedent's surviving family and any other interested persons so far as such information is known to the petitioner;

e. Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will;

f. A general description of the decedent's estate subject to probate in the Tribal Court;

g. A general description of any portion of the decedent's estate not subject to probate in the Tribal Court, including any interests in property held in trust for the decedent by the United States or subject to a restriction against alienation by the United States;

h. A statement of whether any summary probate proceedings have been conducted or are in the process of being conducted;

i. A statement of whether any informal probate or universal succession proceedings under this Title are pending and, if so, the name and address of the personal representative appointed in such proceedings;

j. A statement of whether any probate proceedings are pending in any other jurisdiction and, if so, the name and address of any personal representative or universal successors in such proceedings;

k. With respect to a personal representative or special administrator, as desired and appropriate:

i. A request to confirm a previous informal appointment of a personal representative;

ii. A request to appoint a personal representative or special administrator and a statement of the qualifications of any proposed personal representative or special administrator; and

iii. A request for an order restraining the acting personal representative from exercising any of the powers of office; and

l. As appropriate and applicable, a request that the Tribal Court:

i. Supervise the administration of the decedent's estate;

ii. Approve the decedent's will or find that the decedent died without a valid will;

iii. Determine the heirs and/or devisees of the decedent's estate;

iv. Determine distributions of the decedent's estate;

v. Resolve any disputes concerning the estate; and

vi. Provide such other specific or general relief the petitioner seeks.

5. The petitioner shall attach to the petition as exhibits or file with the Tribal Court as soon as such documents can be obtained:

a. A certified copy of the decedent's death certificate; and

b. The original or authenticated copy of any will found or document alleged to be a will of the decedent.

6. In the absence of a request, or if the request is denied, the filing of a petition under this Section or commencement of a formal probate has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 23-12-3. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Tribal Court to the following:

a. The surviving spouse, children, and other heirs of the decedent;

b. The devisees and executors named in any will or document alleged to be a will filed in the proceeding;

c. Any personal representative of the decedent whose appointment has not been terminated;

d. If the decedent was a member of the Tribe, to the Tribe;

e. Any other interested persons named in the petition.

2. The summons shall be served in accordance with the Rules of Civil Procedure and shall be made at least ten (10) days before any hearing on the petition.

Section 23-12-4. Responsive Pleading.

1. Any person issued a summons may file a responsive pleading, including stating any objections to the probate of a will and appointment or confirmation of a personal representative.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the Rules of Civil Procedure for answering or responding to a claim.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 23-12-5. Hearing on Petition.

1. Within thirty (30) days of the filing of a petition, the Tribal Court shall hold a hearing to review the sufficiency of the petition and examine the petitioner under oath and determine whether the decedent died having left a valid will or died intestate.

2. The Tribal Court shall take evidence as to the matters necessary to support any relief sought in the petition, including the validity of any will, whether the decedent died intestate, and the qualifications of the petitioner or other person to be the personal representative.

3. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

4. The Tribal Court shall enter an order initiating probate of the decedent's estate if it finds by a preponderance of the evidence that:

a. The petitioner or another person is qualified and entitled to be appointed personal representative;

b. That the decedent died having left a valid will or intestate; and

c. The petition and other evidence before the Tribal Court are sufficient to support the jurisdiction of the Tribal Court.

5. An order initiating probate shall either establish the decedent's will or conclude that the decedent died intestate and identify the decedent's heirs at law. Except in the event of a will contest pursuant to this Chapter and subject to appeal, such order shall be conclusive as to such matters, provided that if it becomes evident in the course of a formal probate that the decedent's estate is or may be partially intestate or that new heirs or devisees have been found, the Tribal Court shall enter an order to that effect.

6. Absent the findings required for an order in this Section, the petition shall be dismissed unless the Tribal Court finds good cause to continue the hearing in order to permit the petitioner to provide such information and evidence necessary for the Court to make the findings, including to ensure any document alleged to be a will is valid will.

7. The burden of proof as to any matter before the Tribal Court in a proceeding under this Chapter is preponderance of the evidence. A person who seeks to establish intestacy has the burden of establishing proof of death and heirship. Proponents of a will have the burden of establishing proof of death and due execution of the will. Persons contesting the validity of a will have the burden of establishing proof of lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, revocation, or other basis of invalidity.

8. An order initiating probate under this Section and an order dismissing a petition under this Section are final orders and subject to appeal in accordance with the laws of the Tribe governing civil appeals, provided that an appeal will not act to stay any proceedings before the Tribal Court on the petition which are not appealed and will not be impacted by an issue which is being appealed.

Section 23-12-6. Will Contests.

1. Any person interested in any will who wishes to contest the validity of or rejecting of the will, shall file an appropriate motion or response to a petition filed under this Chapter or, if no formal probate is pending, file a petition under this Chapter. If the Tribal Court has entered an order initiating probate which establishes, approves, rejects, or finds the decedent had no will, the person shall file a motion objecting to such order within thirty (30) days following notice of the order.

2. A petition or motion under this Section shall contain the objections and exceptions to the will or to the rejection thereof.

3. In determining the validity or invalidity of a will under this Section, the following rules apply:

a. If the will is self-proved pursuant to this Title, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit;

b. If the will is notarized in accordance with this Title, but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will; and

c. If the will is witnessed in accordance with this Title, but not notarized or self-proved:

i. If available, competent, and able to testify, the testimony of at least one of the attesting witnesses is required to establish proper execution;

ii. If no attesting witness is available, competent, and able to testify, proper execution may be established by other evidence, including an affidavit of an attesting witness; and

iii. An attestation clause that is signed by an attesting witness raises a rebuttable presumption that the events recited in the clause occurred.

4. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the Tribal Court.

Section 23-12-7. Foreign Order. A final order of a court of another jurisdiction determining testacy or the validity or construction of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons will be accepted as determinative by the Tribal Court if it includes, or is based

upon, a finding that the decedent was domiciled at death in the jurisdiction where the order was made.

Section 23-12-8. Interim Reports.

1. The personal representative shall make, under oath or affirmation, and file reports with the Tribal Court at least monthly or as required by the Tribal Court.

2. The personal representative's report shall contain:

a. A statement of the claims against the estate filed and all those allowed and all those rejected;

b. A statement whether it is necessary to sell, mortgage, lease, or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or of home, spouse, or family allowances; the facts showing such necessity; and a request for approval of such sale, mortgage, lease, or exchange;

c. A statement of the assets, monies, and other property which has come into the personal representative's possession;

d. A statement of all sums collected and paid out by the personal representative; and

e. Such other matters as may be proper or necessary to give the Tribal Court full information regarding any transactions by the personal representative done or which should be done.

3. A copy of the report of the personal representative shall be served on all heirs, legatees, devisees, and claimants of the estate and all other persons appearing in the proceeding in accordance with the Rules of Civil Procedure.

Section 23-12-9. Motion for Distribution.

1. When the personal representative has determined the estate is ready for distribution, the personal representative shall file a motion with the Tribal Court requesting approval of the distribution.

2. The personal representative's motion shall state:

a. All of the heirs and devisees of the decedent;

b. The name and address of each person proposed to receive a distribution with the particular distribution to be received;

c. A particular description of any property of the estate which would remain undisposed of;

d. The amounts to be paid to the personal representative as compensation for services allowed under this Title;

e. Such other matters necessary to inform the Tribal Court of the condition of the estate and the determination of heirs and devisees; and

f. Request the Tribal Court to approve the distribution of the estate as proposed.

3. The motion for distribution shall be served on all heirs, legatees, devisees, and claimants of the estate and all other persons appearing in the proceeding in accordance with the Rules of Civil Procedure.

4. Any interested person may file objections to the motion for distribution or appear at the hearing and present his or her objections thereto.

Section 23-12-10. Order of Distribution.

1. The Tribal Court shall set a hearing on a motion for distribution at least twenty (20) days after the deadline for filing objections to the motion unless the Tribal Court finds that the motion is uncontested and may be resolved without a hearing.

2. The Tribal Court may accept such evidence and testimony it deems proper or necessary to determine whether the estate is ready to be settled, whether the transactions of the personal representative should be approved, and to determine the heirs, devisees, and other persons entitled to have the property of the estate distributed to them.

3. If the Tribal Court finds the estate is ready to be distributed, it shall enter an order approving distribution and directing to whom the estate will be distributed. The order may adopt the proposed distribution of the personal representative and

make any modifications to the proposed distribution the Tribal Court finds necessary or required. The order may also include any necessary orders of partition, sale, and distribution necessary or required.

Section 23-12-11. Closing Estate.

1. On issuance of an order of distribution, the personal representative shall proceed to distribute the estate in accordance with such order and this Title. When the estate has been fully distributed, the estate shall be closed, the personal representative dismissed, and any bond of the personal representative released.

2. Unless prohibited by order of the Tribal Court, a personal representative may request to close the estate and a formal probate proceeding by filing with the Tribal Court a motion for the same along with a report and receipts showing the distribution of the estate. If the Tribal Court is satisfied that the estate has been fully distributed in accordance with the order of distribution and this Title, the Tribal Court shall enter an order closing the estate and the proceeding.

Section 23-12-12. Modifying or Vacating Order.

1. The Tribal Court shall entertain a petition for modification or vacation of an order under this Chapter probating a will of the decedent if it is shown that the proponents of modification have presented a later-offered will and were either:

a. Unaware of the later-offered will's existence at the time of the earlier proceeding; or

b. Unaware of the earlier proceeding and given no notice thereof, except by publication.

2. If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and the persons were:

a. Unaware of their relationship to the decedent;

b. Unaware of the decedent's death; or

c. Given no notice of any proceeding concerning the estate, except by publication.

3. A petition for modification or vacation under this Section must be filed prior to the earlier of the following time limits:

a. If the estate was distributed by informal probate proceedings, six (6) months after the filing of the closing statement;

b. If the estate was distributed by universal succession, six (6) months after the issuance of the statement of universal succession;

c. If the estate was subject to a formal probate, the time of entry of any order approving final distribution of the estate;

d. The time prescribed for when it is no longer possible to initiate an original proceeding under this Chapter; or

e. Twelve (12) months after the entry of the order sought to be modified or vacated.

Section 23-12-13. Limitations of Actions.

1. No informal probate or formal probate may be commenced more than three (3) years after the decedent's death, except:

a. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; and

b. A proceeding to contest an informal probate may be commenced within the later of twelve (12) months from the initiation of the informal probate or three (3) years from the decedent's death.

2. The limitations in this Section do not apply to proceedings to construe probated wills or determine heirs of an intestate.

CHAPTER 13
TRUSTS

Section 23-13-1. Definitions. In addition to the definitions in Chapter 1 of this Title, unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Action," with respect to an act of a trustee, includes a failure to act.

2. "Beneficiary" means a person that:

a. Has a present or future beneficial interest in a trust, vested or contingent; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property.

3. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose.

4. "Exculpatory term" means a term of a trust limiting the liability of the trustee.

5. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

6. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

7. "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

a. Is a distributee or permissible distributee of trust income or principal;

b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees terminated on that date; or

c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

8. "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

9. "Settlor" means a person, including a testator, who creates, or contributes property to, a trust, provided that if more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

10. "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

11. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a Tribal Court proceeding.

12. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

13. "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

Section 23-13-2. Construction of Trusts. The terms of a trust prevail over any provision of this Chapter except:

1. The requirements for creating a trust;

2. The duty of a trustee to act in good faith, in a fiduciary capacity, and in accordance with the purposes of the trust;

3. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

4. The power of the Tribal Court to modify or terminate a trust under the provisions of this Chapter;

5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in this Chapter;

6. The power of the Tribal Court to require, dispense with, or modify or terminate a bond;

7. The power of the Tribal Court to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

8. The duty to notify qualified beneficiaries of an irrevocable trust who have attained twenty-five (25) years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;

9. The duty to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

10. The effect of an exculpatory term;

11. The rights of a person other than a trustee or beneficiary;

12. Periods of limitation for commencing a judicial proceeding;

13. The power of the Tribal Court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

14. The applicability of this Chapter to the trust; and

15. The jurisdiction of the Tribal Court under the laws of the Tribe, provided the terms of the trust may provide for consent or agreement to the jurisdiction of the Tribal Court.

Section 23-13-3. Power of Tribal Court.

1. The Tribal Court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

2. A trust is not subject to continuing judicial supervision unless ordered by the Tribal Court.

3. A Tribal Court proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

Section 23-13-4. Jurisdiction of Tribal Court.

1. A trustee submits personally to the jurisdiction of the Tribal Court regarding any matter involving the trust:

a. By accepting the trusteeship of a trust with beneficiaries residing or domiciled in the territory of the Tribe;

b. By accepting the trusteeship of a trust having its principal place of administration in the territory of the Tribe; or

c. By moving the principal place of administration to the territory of the Tribe.

2. With respect to their interests in the trust, the beneficiaries of a trust are subject to the jurisdiction of the Tribal Court regarding any matter involving the trust:

a. By residing or being domiciled in the territory of the Tribe;

b. By the trust having its principal place of administration in the territory of the Tribe; or

c. By accepting a distribution from a trust having its principal place of administration in the territory of the Tribe.

3. A trust has its principal place of business in the territory of the Tribe if:

a. A trustee's principal place of business is located in or a trustee is a resident of or domiciled in the territory of the Tribe;

b. All or part of the administration of the trust occurs in the territory of the Tribe; or

c. The terms of the trust designate the territory of the Tribe as the principal place of administration, designate the Tribal Court as the court having jurisdiction over the trust, or otherwise provide for the trust to be subject to the Tribal Court, this Chapter, or the laws of the Tribe generally.

4. This Section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

Section 23-13-5. Representation. Except as otherwise provided in this Chapter, a person who under this Chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Section 23-13-6. Creation of Trust.

1. A trust may be created by:

a. Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

b. Declaration by the owner of property that the owner holds identifiable property as trustee; or

c. Exercise of a power of appointment in favor of a trustee.

2. A trust is created only if:

a. The settlor has capacity to create a trust;

b. The settlor indicates an intention to create the trust;

c. The trust has a definite beneficiary or is:

i. A charitable trust;

ii. A trust for the care of an animal; or

iii. A trust for a noncharitable purpose;

d. The trustee has duties to perform; and

e. The same person is not the sole trustee and sole beneficiary.

3. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities in this Title.

4. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

5. A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

6. Except as required by a law of the Tribe other than this Chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

7. A trust is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

a. The settlor resided, was domiciled, or was a national;

b. A trustee resided, was domiciled, or had a place of business; or

c. Any trust property was located.

Section 23-13-7. Purposes of Trust.

1. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

2. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental purposes, or other purposes the achievement of which is beneficial to the community and/or the Tribe, subject to the following:

a. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the Tribal Court may select one or more charitable purposes or beneficiaries, but the selection must be consistent with the settlor's intention to the extent it can be ascertained; and

b. The settlor of a charitable trust may maintain a proceeding to enforce the trust.

3. A trust may be created to provide for the care of an animal alive during the settlor's lifetime, subject to the following:

a. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal;

b. A trust authorized by this subsection may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the Tribal Court;

c. A person having an interest in the welfare of the animal may request the Tribal Court to appoint a person to enforce the trust or to remove a person appointed;

d. Property of a trust authorized by this subsection may be applied only to its intended use, except to the extent the Tribal Court determines that the value of the trust property exceeds the amount required for the intended use; and

e. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

4. Except as otherwise provided in this Chapter or by another law of the Tribe, a trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee, subject to the following:

a. The trust may not be enforced for more than twenty-one (21) years;

b. A trust authorized by this subsection may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the Tribal Court;

c. Property of a trust authorized by this subsection may be applied only to its intended use, except to the extent the Tribal Court determines that the value of the trust property exceeds the amount required for the intended use; and

d. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Section 23-13-8. Modification or Termination of Trust.

1. In addition to the other methods of termination in this Section, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

2. A proceeding to approve or disapprove a proposed modification or termination of a trust, or trust combination or division, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination may be commenced by the settlor.

3. A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust or by the settlor's guardian or conservator with the approval of the Tribal Court supervising the guardianship or conservatorship.

4. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the Tribal Court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the Tribal Court concludes that modification is not inconsistent with a material purpose of the trust.

5. A spendthrift provision in the terms of a noncharitable trust is not presumed to constitute a material purpose of the trust.

6. Upon termination of a noncharitable trust, the trustee shall distribute the trust property as agreed by the beneficiaries. If not all of the beneficiaries consent to a proposed modification or termination of the trust, the modification or termination may be approved by the Tribal Court if the Tribal Court is satisfied that:

a. If all of the beneficiaries had consented, the trust could have been modified or terminated under this Section; and

b. The interests of any beneficiary who does not consent will be adequately protected.

7. The Tribal Court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention. The Tribal Court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration. Upon termination of a trust under this subsection, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

8. If a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

a. The trust does not fail, in whole or in part;

b. The trust property does not revert to the settlor or the settlor's successors in interest; and

c. The Tribal Court may modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes, provided that a provision in the terms of the charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the Tribal Court to modify or terminate the trust only if, when the provision takes effect:

i. The trust property is to revert to the settlor and the settlor is still living; or

ii. Fewer than twenty-one (21) years have elapsed since the date of the trust's creation.

9. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one thousand dollars ($1,000) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The Tribal Court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration. Upon termination of a trust under this subsection, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. This subsection does not apply to an easement for conservation or preservation.

10. The Tribal Court may reform the terms of a trust, even if unambiguous, to conform to the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Section 23-13-9. Combination or Division of Trusts. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

Section 23-13-10. Rights of Creditors.

1. To the extent a beneficiary's interest is not protected by a spendthrift provision, the Tribal Court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The Tribal Court may limit the award to such relief as is appropriate under the circumstances.

2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

3. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Section 23-13-11. Spendthrift Provisions.

1. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

2. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

3. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this Chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

4. Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from the Tribal Court an order attaching present or future distributions to or for the benefit of the beneficiary.

5. A spendthrift provision is unenforceable against a claim of the Tribe and, to the extent a statute of the United States so provides, a claim of the United States.

Section 23-13-12. Discretionary Trusts.

1. Except as otherwise provided in this Section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

a. The discretion is expressed in the form of a standard of distribution; or

b. The trustee has abused the discretion.

2. To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

a. A distribution may be ordered by the Tribal Court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

b. The Tribal Court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

3. This Section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

Section 23-13-13. Claims Against Settlor. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors;

2. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit, provided that if a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and allowances under this Title to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

Section 23-13-14. Revocable Trusts.

1. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

2. If a revocable trust is created or funded by more than one settlor:

a. To the extent the trust consists of property jointly owned by the settlors, the trust may be revoked or amended only by joint action of both settlors;

b. To the extent the trust consists of property other than jointly owned property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

c. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

3. The settlor may revoke or amend a revocable trust:

a. By substantial compliance with a method provided in the terms of the trust; or

b. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

i. A later will, codicil, or other writing that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

ii. Any other method manifesting clear and convincing evidence of the settlor's intent.

4. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

5. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

6. A guardian or conservator of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

7. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

8. While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

9. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this Section to the extent of the property subject to the power.

10. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

a. Three (3) years after the settlor's death; or

b. One hundred twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and that a proceeding must be commenced within one hundred twenty (120) days of the notice.

11. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

a. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

b. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty (60) days after the contestant sent the notification.

12. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Section 23-13-15. Trustees.

1. Except as otherwise provided in this Section, a person designated as trustee accepts the trusteeship:

a. By substantially complying with a method of acceptance provided in the terms of the trust; or

b. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

2. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

3. A person designated as trustee, without accepting the trusteeship, may:

a. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

b. Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

4. A trustee shall give bond to secure performance of the trustee's duties only if the Tribal Court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the Tribal Court has not dispensed with the requirement. The Tribal Court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The Tribal Court may modify or terminate a bond at any time.

Section 23-13-16. Cotrustees.

1. Cotrustees who are unable to reach a unanimous decision may act by majority decision.

2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under

other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

5. A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

6. Except as otherwise provided in this Section, a trustee who does not join in an action of another trustee is not liable for the action.

7. Each trustee shall exercise reasonable care to:

a. Prevent a cotrustee from committing a serious breach of trust; and

b. Compel a cotrustee to redress a serious breach of trust.

8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Section 23-13-17. Resignation of Trustee.

1. A trustee may resign:

a. Upon at least thirty (30) days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

b. With the approval of the Tribal Court.

2. In approving a resignation, the Tribal Court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

3. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Section 23-13-18. Removal of Trustee.

1. The settlor, a cotrustee, or a beneficiary may request the Tribal Court to remove a trustee, or a trustee may be removed by the Tribal Court on its own initiative.

2. The Tribal Court may remove a trustee if:

a. The trustee has committed a serious breach of trust;

b. Lack of cooperation among cotrustees substantially impairs the administration of the trust;

c. Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the Tribal Court determines that removal of the trustee best serves the interests of the beneficiaries; or

d. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the Tribal Court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

3. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the Tribal Court may order such appropriate relief under this Chapter as may be necessary to protect the trust property or the interests of the beneficiaries.

Section 23-13-19. Vacancy of Trustee.

1. A vacancy in a trusteeship occurs if:

a. A person designated as trustee rejects the trusteeship;

b. A person designated as trustee cannot be identified or does not exist;

c. A trustee resigns;

d. A trustee is disqualified or removed;

e. A trustee dies; or

f. A guardian or conservator is appointed for an individual serving as trustee.

2. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled.

Section 23-13-20. Successor Trustee.

1. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

2. A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

a. By a person designated in the terms of the trust to act as successor trustee;

b. By a person appointed by unanimous agreement of the qualified beneficiaries; or

c. By a person appointed by the Tribal Court.

3. A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

a. By a person designated in the terms of the trust to act as successor trustee;

b. By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Tribal Court concurs in the selection; or

c. By a person appointed by the Tribal Court.

4. Whether or not a vacancy in a trusteeship exists or is required to be filled, the Tribal Court may appoint an additional trustee or special fiduciary whenever the Tribal Court considers the appointment necessary for the administration of the trust.

Section 23-13-21. Delivery of Property to Successor.

1. Unless a cotrustee remains in office or the Tribal Court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

2. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

Section 23-13-22. Compensation of Trustee.

1. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

2. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the Tribal Court may allow more or less compensation if:

a. The duties of the trustee are substantially different from those contemplated when the trust was created; or

b. The compensation specified by the terms of the trust would be unreasonably low or high.

3. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

a. Expenses that were properly incurred in the administration of the trust; and

b. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

4. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Section 23-13-23. Duties of Trustee.

1. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this Chapter and any other laws of the Tribe applicable to the trust or trustee.

2. A trustee shall administer the trust solely in the interests of the beneficiaries.

3. Subject to the rights of persons dealing with or assisting the trustee as provided in this Chapter, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

a. The transaction was authorized by the terms of the trust;

b. The transaction was approved by the Tribal Court;

c. The beneficiary did not commence a judicial proceeding within the time allowed under this Chapter;

d. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with this Chapter; or

e. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

4. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

a. The trustee's spouse;

b. The trustee's descendants, siblings, parents, or their spouses;

c. An agent or attorney of the trustee; or

d. A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

5. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

6. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

7. This Section does not preclude the following transactions, if fair to the beneficiaries:

a. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

b. Payment of reasonable compensation to the trustee;

c. A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest; or

d. An advance by the trustee of money for the protection of the trust.

8. The Tribal Court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this Section if entered into by the trustee.

9. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

10. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

11. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

12. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

13. A trustee shall take reasonable steps to take control of and protect the trust property.

14. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

15. A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

16. A trustee shall keep the beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

17. A trustee shall:

a. Upon request of a beneficiary, promptly furnish to the beneficiary a copy of the trust instrument;

b. Within sixty (60) days after accepting a trusteeship, notify the beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

c. Within sixty (60) days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to a trustee's report as provided in this Section; and

d. Notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

18. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the beneficiaries a report on behalf of a deceased or incapacitated trustee.

19. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this Section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

Section 23-13-24. General Powers.

1. A trustee, without authorization by a court, may exercise:

a. Powers conferred by the terms of the trust; and

b. Except as limited by the terms of the trust:

i. All powers over the trust property which an unmarried competent owner has over individually owned property;

ii. Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

iii. Any other powers conferred by this Chapter.

2. Without limiting the authority conferred by this Section, a trustee may:

a. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

b. Acquire or sell property, for cash or on credit, at public or private sale;

c. Exchange, partition, or otherwise change the character of trust property;

d. Deposit trust money in an account in a regulated financial institution;

e. Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

f. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

g. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

i. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

ii. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

iii. Pay assessments and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

iv. Deposit the securities with a depositary or other regulated financial institution;

h. With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate

land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

i. Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

j. Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

k. Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

l. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

m. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

n. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

o. Exercise elections with respect to taxes;

p. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

q. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

r. Pledge trust property to guarantee loans made by others to the beneficiary;

s. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

t. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

i. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

ii. Paying it to the beneficiary's custodian or custodial trustee and, for that purpose, creating a custodianship or custodial trust;

iii. If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

iv. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

u. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

v. Resolve a dispute concerning the interpretation of the trust or its administration by negotiation, mediation, arbitration, or other procedure for dispute resolution;

w. Prosecute or defend an action, claim, or court proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

x. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

y. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

3. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith, in accordance with fiduciary duties, and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

4. Unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance; and

b. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

5. The exercise of a power is subject to the fiduciary duties prescribed by this Chapter.

Section 23-13-25. Delegation by Trustee.

1. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

a. Selecting an agent;

b. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. A trustee who complies with this Section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

3. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

4. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the laws of the Tribe, an agent submits to the jurisdiction of the Tribe and the Tribal Court.

Section 23-13-26. Direction of Trustee.

1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

2. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

3. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Section 23-13-27. Recordkeeping.

1. A trustee shall keep adequate records of the administration of the trust.

2. A trustee shall keep trust property separate from the trustee's own property.

3. A trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary, provided that if the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Section 23-13-28. Certification of Trust.

1. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

a. That the trust exists and the date the trust instrument was executed;

b. The identity of the settlor;

c. The identity and address of the currently acting trustee;

d. The powers of the trustee;

e. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

f. The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

g. The trust's taxpayer identification number; and

h. The manner of taking title to trust property.

2. A certification of trust may be signed or otherwise authenticated by any trustee.

3. A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

4. A certification of trust need not contain the dispositive terms of a trust.

5. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

6. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

7. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

8. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the Tribal Court determines that the person did not act in good faith in demanding the trust instrument.

9. This Section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Section 23-13-29. Distribution on Termination.

1. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

2. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,

subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

3. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

a. It was induced by improper conduct of the trustee; or

b. The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Section 23-13-30. Personal Liability.

1. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

2. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

3. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Section 23-13-31. Persons Dealing with Trustee.

1. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

2. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

3. A person who in good faith delivers assets to a trustee need not ensure their proper application.

4. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

Section 23-13-32. Breach of Trust.

1. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

2. To remedy a breach of trust that has occurred or may occur, the Tribal Court may:

a. Compel the trustee to perform the trustee's duties;

b. Enjoin the trustee from committing a breach of trust;

c. Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

d. Order a trustee to account;

e. Appoint a special fiduciary to take possession of the trust property and administer the trust;

f. Suspend the trustee;

g. Remove the trustee as provided in this Chapter;

h. Reduce or deny compensation to the trustee;

i. Void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

j. Order any other appropriate relief.

3. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

a. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

b. The profit the trustee made by reason of the breach.

4. If more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees, except:

a. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; and

b. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

5. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

6. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

7. In a judicial proceeding involving the administration of a trust, the Tribal Court may, if justice and equity requires, award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Section 23-13-33. Defenses.

1. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

2. If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

3. A trustee is not liable to a beneficiary for breach of trust if the beneficiary, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

a. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

b. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

4. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

a. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

b. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

5. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

Section 23-13-34. Limitations of Actions.

1. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

2. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

3. If subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five (5) years after the first to occur of:

a. The removal, resignation, or death of the trustee;

b. The termination of the beneficiary's interest in the trust; or

c. The termination of the trust.

CHAPTER 14
POWERS OF ATTORNEY

Section 23-14-1. Definitions. In addition to the definitions in Chapter 1 of this Title, unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Advance medical directive" means any written instructions concerning the making of medical treatment decisions on behalf of the person who has provided the instructions.

2. "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise and includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

3. "Artificial nourishment and hydration" means any medical procedure whereby nourishment or hydration is supplied through a tube inserted into a person's nose, mouth, stomach, or intestines or nutrients or fluids are injected intravenously into a person's bloodstream.

4. "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment or the ability to make an informed decision or action related to the application, enrollment, disenrollment, appeal, or other function necessary for private or public health care benefits.

5. "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity or unavailability.

6. "Health care provider" has the meaning provided in Title XVIII of the Code or subsequent enactment replacing Title XVIII of the Code.

7. "Medical treatment" means the provision, withholding, or withdrawal of any health care, medical procedure, including artificially provided nourishment and hydration, surgery, cardiopulmonary resuscitation, or service to maintain, diagnose, treat, or provide for a patient's physical or mental health or personal care.

8. "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate and includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period, but does not include a power exercisable in a fiduciary capacity or only by will.

9. "Principal" means an individual who grants authority to an agent in a power of attorney.

10. "Unavailability" means inability of an individual to manage property or business affairs because the individual is:

a. Missing; or

b. Detained, including incarcerated in a penal system.

Section 23-14-2. Law Applicable. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed, provided that any power of attorney executed within the territory of the Tribe shall be deemed executed in the jurisdiction of the Tribe.

Section 23-14-3. Durability. A power of attorney created under or subject to this Chapter is durable unless it expressly provides that it is terminated by the incapacity or unavailability of the principal.

Section 23-14-4. Signing.

1. A power of attorney must be signed:

a. By the principal; or

b. In the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney.

2. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

Section 23-14-5. Validity.

1. A power of attorney executed in the territory of the Tribe is valid if its execution complies with this Chapter.

2. A power of attorney executed other than in the territory of the Tribe is valid in the territory of the Tribe if, when the power of attorney was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to this Chapter.

3. A photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Section 23-14-6. Effectiveness.

1. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

2. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

3. If a power of attorney becomes effective upon the principal's incapacity or unavailability and the principal has not authorized a person to determine whether the principal is incapacitated or unavailable, or the person authorized is unable or unwilling to make the determination, the power of attorney

becomes effective upon a determination in a writing or other record by:

a. A physician or licensed psychiatrist or psychologist that the principal is incapacitated; or

b. An attorney at law, a judge, or an appropriate governmental official that the principal is unavailable.

4. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated or unavailable may act as the principal's personal representative to obtain access to the principal's health care information and communicate with the principal's health care provider.

Section 23-14-7. Nomination of Conservator or Guardian.

1. In a power of attorney, a principal may nominate a conservator, a guardian of the principal's estate, or a guardian of the principal's person for consideration by a court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

2. If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal.

Section 23-14-8. Termination.

1. A power of attorney terminates when:

a. The principal dies;

b. If the power of attorney is not durable, the principal becomes incapacitated or unavailable;

c. The principal revokes the power of attorney;

d. The power of attorney provides that it terminates;

e. The purpose of the power of attorney is accomplished; or

f. The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

2. An agent's authority terminates when:

a. The principal revokes the authority;

b. The agent dies, becomes incapacitated, or resigns;

c. An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

d. The power of attorney terminates.

3. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under this Section, notwithstanding a lapse of time since the execution of the power of attorney.

4. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

5. Incapacity or unavailability of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity or unavailability, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

6. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

Section 23-14-9. Agents Generally.

1. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

2. Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Section 23-14-10. Grant of General Authority.

1. Subject to the requirements in this Chapter for matters requiring specific grants of authority:

a. If a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in this Chapter; and

b. If the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

2. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in the territory of the Tribe and whether or not the authority is exercised or the power of attorney is executed in the territory of the Tribe.

3. An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Section 23-14-11. Powers Requiring Specific Authority.

1. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

a. Create, amend, revoke, or terminate a trust which becomes effective during the settlor's lifetime;

b. Make a gift;

c. Create or change rights of survivorship;

d. Create or change a beneficiary designation;

e. Delegate authority granted under the power of attorney;

f. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

g. Exercise fiduciary powers that the principal has authority to delegate;

h. Disclaim property, including a power of appointment; or

i. Consenting to or refusing medical treatment, including artificial nourishment and hydration, or otherwise making medical or health care decisions.

2. Notwithstanding a grant of authority to do an act described in this Section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

Section 23-14-12. Real Property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

1. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to

partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

3. Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted; and

5. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

e. Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

f. Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to other property received in a plan of reorganization;

g. Change the form of title of an interest in or right incident to real property; and

h. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Section 23-14-13. Personal Property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal property authorizes the agent to:

1. Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of personal property or an interest in personal property;

2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of personal property or an interest in personal property;

3. Grant a security interest in personal property or an interest in personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to personal property or an interest in personal property;

5. Manage or conserve personal property or an interest in personal property on behalf of the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

d. Moving the property from place to place;

e. Storing the property; and

f. Using and making repairs, alterations, or improvements to the property; and

6. Change the form of title of an interest in personal property.

Section 23-14-14. Bank Accounts. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

1. Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

2. Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

3. Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

4. Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

5. Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

6. Enter a safe deposit box or vault and withdraw or add to the contents;

7. Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

8. Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable instruments of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

9. Receive for the principal and act upon a warehouse receipt or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

10. Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

11. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Section 23-14-15. Entities and Businesses. Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

1. Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

2. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

3. Enforce the terms of an ownership agreement;

4. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

5. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

6. With respect to an entity or business owned solely by the principal:

   a. Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

b. Determine:

i. The location of its operation;

ii. The nature and extent of its business;

iii. The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

iv. The amount and types of insurance carried; and

v. The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

c. Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

d. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

7. Put additional capital into an entity or business in which the principal has an interest;

8. Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

9. Sell or liquidate all or part of an entity or business;

10. Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

11. Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Section 23-14-16. Insurance. Unless the power of attorney otherwise provides, language in a power of attorney granting

general authority with respect to insurance and annuities authorizes the agent to:

1. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

2. Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;

3. Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

4. Apply for and receive a loan secured by a contract of insurance or annuity;

5. Surrender and receive the cash surrender value on a contract of insurance or annuity;

6. Exercise an election;

7. Exercise investment powers available under a contract of insurance or annuity;

8. Change the manner of paying premiums on a contract of insurance or annuity;

9. Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this Section;

10. Apply for and procure a benefit or assistance to guarantee or pay premiums of a contract of insurance on the life of the principal;

11. Collect, sell, assign, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

12. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

13. Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Section 23-14-17. Trusts.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

a. Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

b. Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

c. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

d. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

e. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

f. Conserve, invest, disburse, or use anything received for an authorized purpose;

g. Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and

h. Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

2. In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

Section 23-14-18. Claims and Litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

1. Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

2. Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

3. Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

4. Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

5. Submit to traditional or alternative dispute resolution, settle, and propose or accept a compromise;

6. Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other

instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

7. Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

8. Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

9. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Section 23-14-19. Personal and Family Maintenance.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

a. Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

i. The principal's children;

ii. Other individuals legally entitled to be supported by the principal; and

iii. The individuals whom the principal has customarily supported or indicated the intent to support;

b. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

c. Provide living quarters for the individuals described in this subsection by:

i. Purchase, lease, or other contract; or

ii. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

d. Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in this subsection;

e. Pay expenses for necessary health care and custodial care on behalf of the individuals described in this subsection;

f. Act as the principal's personal representative pursuant to applicable law in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the laws of the Tribe to consent to health care on behalf of the principal;

g. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in this subsection;

h. Maintain credit and debit accounts for the convenience of the individuals described in this subsection and open new accounts; and

i. Continue payments incidental to the membership or affiliation of the principal in a club, society, order, or other organization or to continue contributions to those organizations.

2. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Chapter.

Section 23-14-20. Government Benefits.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

a. Execute vouchers in the name of the principal for allowances and reimbursements payable by a government to the principal, including allowances and reimbursements for transportation of the individuals who may receive family maintenance under this Chapter and for shipment of their household effects;

b. Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

c. Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

d. Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a law of the Tribe or statute or regulation of another government;

e. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a law of the Tribe or statute or regulation of another government; and

f. Receive the financial proceeds of a claim described in this Section and conserve, invest, disburse, or use for a lawful purpose anything so received.

2. In this Section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a law of the Tribe or statute or regulation of another government.

Section 23-14-21. Retirement Plans.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

a. Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

b. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

c. Establish a retirement plan in the principal's name;

d. Make contributions to a retirement plan;

e. Exercise investment powers available under a retirement plan; and

f. Borrow from, sell assets to, or purchase assets from a retirement plan.

2. In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner.

Section 23-14-22. Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

1. Prepare, sign, and file income, gift, payroll, property, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, closing agreements, and any power of attorney required by a taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five (25) tax years;

2. Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by a taxing authority;

3. Exercise any election available to the principal under tax law; and

4. Act for the principal in all tax matters for all periods before a taxing authority.

Section 23-14-23. Gifts. Unless the power of attorney otherwise provides, a grant of authority to make a gift authorizes the agent only to make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

1. The value and nature of the principal's property;

2. The principal's foreseeable obligations and need for maintenance;

3. Minimization of taxes;

4. Eligibility for a benefit, a program, or assistance under a statute or regulation; and

5. The principal's personal history of making or joining in making gifts.

Section 23-14-24. Medical Decisions.

1. The authority of an agent to act on behalf of the principal in consenting to or refusing medical treatment, including artificial nourishment and hydration, may be set forth in a power of attorney. A power of attorney may include any directive, condition, or limitation of an agent's authority.

2. The agent shall act in accordance with the terms, directives, conditions, or limitations stated in the power of attorney with respect to medical decisions, and in conformance with the principal's wishes that are known to the agent. If the power of attorney contains no directives, conditions, or limitations relating to the principal's medical condition, or if the principal's wishes are not otherwise known to the agent, the agent shall act in accordance with the best interests of the principal as determined by the agent.

3. An agent appointed in a power of attorney to make medical decisions may provide informed consent to or refusal of medical treatment on behalf of a principal who lacks decisional capacity and shall have the same power to make medical treatment decisions the principal would have if the principal did not lack such decisional capacity. An agent appointed in a medical durable power of attorney shall be considered a designated representative of the patient and shall have the same rights of access to the principal's

medical records as the principal. In making medical treatment decisions on behalf of the principal, and subject to the terms of the power of attorney, the agent shall confer with the principal's attending physician concerning the principal's medical condition.

4. Any power of attorney may also have a document with a written statement indicating a decision regarding organ and tissue donation. The written statement may be in the following form:

> I hereby make an anatomical gift, to be effective upon my death, of:
> ____ Any needed organs/tissues
> ____ The following organs/tissues:
> _____
> Donor signature: _____

5. Nothing in this Section or in a power of attorney shall be construed to abrogate or limit any rights of the principal, including the right to revoke an agent's authority or the right to consent to or refuse any proposed medical treatment, and no agent may consent to or refuse medical treatment for a principal over the principal's objection.

6. Nothing in this Section shall have the effect of modifying or changing the standards of the practice of medicine or medical ethics or protocols.

7. Nothing in this Section or in a power of attorney shall be construed to compel or authorize a health care provider to administer medical treatment that is otherwise illegal, medically inappropriate, or contrary to any applicable law.

8. Unless otherwise expressly provided in the power of attorney with respect to medical decisions under which the principal appointed the principal's spouse as the agent, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the principal and spouse appointed as agent automatically revokes such appointment, but not any remaining provisions of the power of attorney.

9. Unless otherwise specified in the power of attorney with respect to medical decisions, if a principal revokes the appointment of an agent or the agent is unable or unwilling to serve, the appointment of the agent shall be revoked, but not any remaining provisions of the medical durable power of attorney.

10. A health care provider shall provide notice to a principal and an agent of any policies of the health care provider relative to the withholding or withdrawal of medical treatment. Notice shall be provided, when reasonably possible, prior to the provision of medical treatment or prior to or upon the admission of the principal to the facility, or as soon as possible thereafter. A health care provider shall provide for the prompt transfer of the principal to another health care provider if such health care provider wishes not to comply with an agent's medical treatment decision on the basis of policies based on moral convictions or religious beliefs.

11. An agent may transfer the principal to the care of another health care provider if an attending physician or facility does not wish to comply with an agent's decision.

12. The transfer of a principal to another health care provider in accordance with the provisions of this Section shall not constitute a violation of any law regarding the transfer of patients.

13. Nothing in this section shall relieve or exonerate a health care provider from the duty to provide for the care and comfort of the principal pending transfer pursuant to this Section.

14. An agent who acts in good faith in making medical treatment decisions on behalf of a principal pursuant to the terms of a power of attorney with respect to medical decisions shall not be subject to civil or criminal liability therefor.

15. Each health care provider shall, in good faith, comply, in respective order, with:

a. The wishes of the principal;

b. The terms of an advance medical directive; and

c. The decision of an agent acting pursuant to an advance medical directive.

16. A health care provider which, in good faith, complies with the medical treatment decision of an agent acting in accordance with an advance medical directive shall not be subject to civil or criminal liability or regulatory sanction therefor.

17. Good faith actions by any health care provider in complying with a power of attorney with respect to medical

decisions or at the direction of an agent of the principal with health care authority which result in the death of the principal following trauma caused by a criminal act or conduct, shall not affect the criminal prosecution of any person charged with the commission of a criminal act or conduct.

18. Neither a power of attorney with respect to medical decisions nor the failure of a person to execute one shall affect, impair, or modify any contract of life or health insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life or health insurance or any increase of a premium therefor.

Section 23-14-25. Authority by Reference.

1. Except where a specific grant of authority is required by this Chapter, an agent has authority described in this Chapter if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in this Chapter or cites the section and subsection in which the authority is described.

2. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in this Chapter or a citation to a section of this Chapter incorporates the entire section as if it were set out in full in the power of attorney.

3. A principal may modify authority incorporated by reference.

4. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in this Chapter or that grants to an agent authority to do all acts that a principal could do, a principal authorizes the agent, with respect to that subject, to:

a. Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

b. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

c. Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

d. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

e. Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

f. Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

g. Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

h. Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

i. Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

j. Do any lawful act with respect to the subject and all property related to the subject.

Section 23-14-26. Duties of Agent.

1. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

a. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

b. Act in good faith; and

c. Act only within the scope of authority granted in the power of attorney.

2. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

a. Act loyally for the principal's benefit;

b. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

c. Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

d. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

e. Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

f. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

i. The value and nature of the principal's property;

ii. The principal's foreseeable obligations and need for maintenance;

iii. Minimization of taxes; and

iv. Eligibility for a benefit, a program, or assistance under a statute or regulation.

3. An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

4. An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because

the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

5. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

6. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

7. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

8. Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty (30) days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty (30) days.

Section 23-14-27. Liability of Agent.

1. An agent that violates this Chapter is liable to the principal or the principal's successors in interest for the amount required to:

a. Restore the value of the principal's property to what it would have been had the violation not occurred; and

b. Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

2. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

a. Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

b. Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Section 23-14-28. Coagents and Successor Agents.

1. A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

2. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

a. Has the same authority as that granted to the original agent; and

b. May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

3. Except as otherwise provided in the power of attorney and this Section, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

4. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated or unavailable, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages

that could have been avoided if the agent had notified the principal or taken such action.

Section 23-14-29. Resignation of Agent. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated or unavailable:

1. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

2. If there is no such person, to:

a. The principal's caregiver;

b. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

c. The Department of Social Services or other governmental agency having authority to protect the welfare of the principal.

Section 23-14-30. Acceptance and Reliance on Power of Attorney.

1. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under this Chapter that the signature is genuine.

2. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

3. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

a. An agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

b. A translation of the power of attorney to the preferred language of the person if the power of attorney contains, in whole or in part, language other than the preferred language of the person; and

c. An opinion of legal counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

4. A translation or an opinion of legal counsel requested under this Section must be provided at the principal's expense unless the request is made more than seven (7) business days after the power of attorney is presented for acceptance.

5. Except as otherwise provided in this Section:

a. A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of legal counsel under no later than seven (7) business days after presentation of the power of attorney for acceptance;

b. If a person requests a certification, a translation, or an opinion of legal counsel, the person shall accept the power of attorney no later than five (5) business days after receipt of the certification, translation, or opinion of legal counsel; and

c. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

6. A person is not required to accept an acknowledged power of attorney if:

a. The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

b. Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with the laws of the Tribe or other applicable law;

c. The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

d. A request for a certification, a translation, or an opinion of legal counsel is refused;

e. The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of legal counsel has been requested or provided; or

f. The person makes, or has actual knowledge that another person has made, a report to the Department of Social Services, Domestic Violence Department, or other local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

7. A person that refuses in violation of this Section to accept an acknowledged power of attorney is subject to:

a. A court order mandating acceptance of the power of attorney; and

b. If not the Tribe, liability for reasonable legal counsel's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

8. For purposes of this Section, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

9. For purposes of this Section, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

Section 23-14-31. Judicial Relief.

1. The following persons may petition the Tribal Court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

a. The principal or the agent;

b. A guardian, conservator, or other fiduciary acting for the principal;

c. A person authorized to make health care decisions for the principal;

d. The principal's spouse, parent, or descendant;

e. An individual who would qualify as a presumptive heir of the principal;

f. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

g. The Department of Social Services or other governmental agency having regulatory authority to protect the welfare of the principal;

h. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

i. A person asked to accept the power of attorney.

2. Upon motion by the principal, the Tribal Court shall dismiss a petition filed under this Section, unless the Tribal Court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

CHAPTER 15
INTERESTS

Section 23-15-1. Definitions. In addition to the definitions in Chapter 1 of this Title, unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

2. "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

3. "Disclaimer" means the refusal to accept an interest in or power over property.

4. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

5. "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

6. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

Section 23-15-2. Rule Against Perpetuities.

1. A nonvested property interest is invalid unless:

a. When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive; or

b. The interest either vests or terminates within ninety (90) years after its creation.

2. This Section does not apply to:

a. A nonvested property interest arising out of any of the following:

i. A premarital or postmarital agreement;

ii. A separation or divorce settlement;

iii. A spouse's election under this Title;

iv. A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

v. A contract to make or not to revoke a will or trust;

vi. A contract to exercise or not to exercise a power of appointment;

vii. A transfer in satisfaction of a duty of support; or

viii. A reciprocal transfer;

b. A fiduciary's power relating to the administration or management of assets and to determine principal and income;

c. A power to appoint a fiduciary;

d. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary who has an indefeasibly vested interest in the income and principal;

e. A nonvested property interest held by the Tribe, a charity, or another government or governmental agency or subdivision thereof;

f. A nonvested interest in lands of the Tribe or other property held in trust for the Tribe or an individual by the United States or subject to a restriction against alienation by the United States, the Tribe, or other operation of law; or

g. A nonvested property interest in or a power of appointment with respect to a trust or any other property arrangement forming part of any pension, profit sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan.

3. If a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for twenty-one (21) years but no longer, whether or not the terms of the trust contemplate a longer duration.

4. Notwithstanding this Section, a trust for the care of a designated domestic or pet animal is valid as provided in this Title.

Section 23-15-3. Power to Disclaim Interest.

1. A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. A

person may disclaim the interest or power even if its creator imposed a restriction on transfer or a restriction or limitation on the right to disclaim.

2. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another law of the Tribe or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a restriction on transfer or restriction or limitation on the right to disclaim, or if an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. To be effective, a disclaimer must be in a writing, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in this Chapter.

4. A partial disclaimer may be expressed as a fraction, a percentage, a monetary amount, a term of years, a limitation of a power, or any other interest or estate in the property.

5. A disclaimer becomes irrevocable when it is delivered or filed pursuant to this Chapter or when it becomes effective as provided in this Chapter, whichever occurs later.

6. A disclaimer made under this Chapter is not a transfer, assignment, or release.

Section 23-15-4. Disclaimer in Property Interest. Except for a disclaimer governed by another section of this Chapter, the following rules apply to a disclaimer of an interest in property:

1. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the laws of intestate succession, as of the time of the intestate's death;

2. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general;

3. If the instrument does not contain a provision for the passing of a disclaimed interest:

a. If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution, provided that if the descendants of the disclaimant would share in the disclaimed interest by any method of representation, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution; and

b. If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; and

4. On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Section 23-15-5. Disclaimer of Rights of Survivorship.

1. On the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the greater of either:

a. A fractional share of the property determined by dividing the number one (1) by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

b. All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. A disclaimer under this Section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Section 23-15-6. Disclaimer by Trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Section 23-15-7. Disclaimer of Power of Appointment.

1. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

a. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

b. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power; and

c. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

2. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

3. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

4. If a fiduciary disclaims a power held in a fiduciary capacity, the following rules apply:

a. If the power has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

b. If the power has been exercised, the disclaimer takes effect immediately after the last exercise of the power; and

c. The disclaimer is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Section 23-15-8. Limited or Barred Disclaimer.

1. A disclaimer is barred by a written waiver of the right to disclaim.

2. A disclaimer of an interest in property is barred if any of the following events occurs before the disclaimer becomes effective:

a. The disclaimant accepts the interest sought to be disclaimed;

b. The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

c. A judicial sale of the interest sought to be disclaimed occurs.

3. A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

4. A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

5. A disclaimer is barred or limited if so provided by the laws of the Tribe other than this Chapter.

6. A disclaimer of a power over property that is barred by this Section is ineffective. A disclaimer of an interest in property that is barred by this Section takes effect as a transfer of the interest disclaimed to the person who would have taken the interest had the disclaimer not been barred.

Section 23-15-9. Delivery of Disclaimer.

1. Subject to the provisions of this Section, delivery of a disclaimer may be effected by personal delivery, first class mail, electronic mail, or any other method likely to result in its receipt.

2. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

a. A disclaimer must be delivered to the personal representative of the decedent's estate; or

b. If no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

3. In the case of an interest in a testamentary trust:

a. A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

b. If no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

4. In the case of an interest in a trust which becomes effective during the settlor's lifetime:

a. A disclaimer must be delivered to the trustee then surviving;

b. If no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

c. If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

5. In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

6. In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

7. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

8. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

a. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

b. If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

9. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

a. The disclaimer must be delivered to the holder, to the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power; or

b. If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

10. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in this Section as if the power disclaimed were an interest in property.

11. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Section 23-15-10. Filing of Disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by applicable law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and person to whom the property interest or power passes by reason of the disclaimer.

CHAPTER 16
CHANGE OF NAME

Section 23-16-1. Power of Court.

1. The Tribal Court may issue orders changing an individual's name in accordance with this Chapter.

2. Nothing in this Chapter limits the authority of the Tribal Court to change the name of a child as part of an adoption proceeding under the laws of the Tribe.

Section 23-16-2. Recognition of Traditional Name.

1. A person may petition the Tribal Court under this Chapter to recognize an individual's name given under the customs and traditions of the Tribe or another federally recognized tribe as an additional legal name of the individual.

2. An individual may seek recognition of a traditional name as an additional legal name without publication of notice.

3. An order recognizing a traditional name as an additional name of an individual shall not change any other legal names of the individual, but shall be another current name of the individual in addition to any other legal name of the individual and used and recognized as such the same as any other legal name of the individual.

4. Nothing in this Section prevents an individual from changing the individual's name to a name given under the customs and traditions of the Tribe or another federally recognized tribe as the individual's sole legal name in the same manner as any other name change obtained under this Chapter.

Section 23-16-3. Initiation of Proceedings.

1. Proceedings in the Tribal Court to change an individual's name and to adopt another name shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. The individual who desires to change his or her name; or

b. In the case of a protected person, the parent, guardian, custodian, guardian ad litem, or next friend of the protected person.

3. Petitions to change an individuals' name shall be captioned: "In the Matter of: (name of individual)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The current name, address, and tribal affiliation, if any, of the individual whose name is to be changed;

b. The basis for the Tribal Court's jurisdiction;

c. If different from the individual's current name, the birth name of the individual whose name is to be changed;

d. Any other current or prior names, including aliases, of the individual whose name is to be changed;

e. The new name desired;

f. If the individual whose name is to be changed is a minor, the caption of any proceeding in which any court has ordered child support, custody, allocation of parental responsibilities, or parenting time regarding the individual;

g. If the individual whose name is to be changed is a protected persons, the consent of at least one (1) parent or legal guardian of the minor, except that no consent is required from a parent or legal guardian who:

i. Has committed an act of domestic or family abuse, child abuse, or other crime against the protected person; or

ii. Is the subject of an order for protection or injunction in favor of the protected person when such order or injunction is against domestic or family abuse, assault, harassment, intimidation, stalking, or a credible threat of violence;

h. Whether the individual whose name is to be changed has been convicted of a crime or civil offense in any jurisdiction during the five (5) years immediately preceding filing of the petition;

i. Whether criminal or civil offense charges are pending against the individual whose name is to be changed in any jurisdiction;

j. Whether the individual is listed on, or has been required to register with, any sex offender registry under any name in any jurisdiction and, if so, the jurisdiction of such registry and the name under which the individual is registered;

k. Whether the individual whose name is to be changed is knowingly changing the individual's name to that of another individual for the purpose of committing or furthering the commission of any criminal or civil offense or any purpose involving false statements;

l. A statement that the petitioner is making the application solely for the best interest of the individual whose name is to be changed;

m. That the petitioner acknowledges the change of name will not release the individual from any obligations incurred or harm any rights of property or actions in the original name; and

n. A request that the Tribal Court enter an order of name change.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 23-16-4. Summons and Service of Process.

1. Upon the filing of a petition in a proceeding under this Chapter, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Tribal Court to the following:

a. If the individual whose name is to be changed is a protected person, such individual's parent, guardian, custodian, or guardian ad litem who is not a petitioner, except for parents whose parental rights to the child have been terminated;

b. If criminal or civil offense charges are pending against the individual whose name is to be changed, the prosecutor or other attorney pursuing such criminal or civil offense charges; and

c. All known interested persons listed in the petition.

2. Notwithstanding anything to the contrary in this Chapter, a summons shall not be issued to or served upon any person who:

a. Has committed an act of domestic or family abuse, child abuse, or other crime against the individual whose name is to be changed; or

b. Is the subject of an order for protection or injunction in favor of the individual whose name is to be changed when such order or injunction is against domestic or family abuse, assault, harassment, intimidation, stalking, or a credible threat of violence.

3. Any summons issued under this Section shall be served in accordance with the Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition, if a hearing is scheduled.

Section 23-16-5. Publication of Notice.

1. Except as otherwise provided in this Section, upon the filing of a petition for name change, the Tribal Court shall order the petitioner to publish notice of the petition at least three (3) times within twenty-one (21) days and file proof of the publication with the Tribal Court.

2. The published notice required under this Section shall be made in a newspaper published in the service area of the territory of the Tribe in which the individual whose name to be changed resides or, if the individual resides outside the territory of the Tribe, the county or similar jurisdiction in which the individual resides.

3. Published notice of a name change shall not be required if the individual whose name is to be changed:

a. Is protected under an order of protection or injunction against domestic or family abuse or against assault, harassment, intimidation, stalking, or a credible threat of violence;

b. Has been the victim of domestic or family abuse, child abuse, or a crime, the underlying factual basis of which

has been found by the Tribal Court to include an act of domestic or family abuse, assault, harassment, intimidation, stalking, or a credible threat of violence;

c. Is changing the individual's name to conform with the individual's gender identity;

d. Qualifies for the simplified process under this Chapter; or

e. The petitioner shows other good cause why publication should not be made.

Section 23-16-6. Responsive Pleading.

1. A responsive pleading may be filed by:

a. A parent, guardian, custodian, or guardian ad litem of an individual who is not a petitioner;

b. A prosecutor or other attorney pursuing criminal or civil offense charges against the individual whose name is to be changed; or

c. Another person interested in the matter upon intervention in the proceedings in accordance with the rules of procedure of the Tribal Court.

2. Any responsive pleading shall be filed with the Tribal Court and served on all parties within the time period provided in the Rules of Civil Procedure for answering or responding to a claim.

Section 23-16-7. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Tribal Court may schedule and conduct a hearing on the petition as the Tribal Court deems necessary to consider the requested name change.

2. A hearing shall be required to enter an order of name change if:

a. The individual whose name is to be change is a protected person and all parents or, if there are no parents, all legal guardians of the protected person do not agree;

b. There is a dispute over or objection to the name change asserted in a responsive pleading; or

c. There are other issues required to be resolved in order to grant the name change.

3. In any hearing conducted under this Section, the individual whose name is to be changed, any parent or legal guardian of a protected person whose name is to be changed, and any other person who has filed a responsive pleading shall have the opportunity to present their position at the hearing.

4. If all parents or, if there are no parents, all legal guardians of a protected person whose name is to be changed cannot agree on the name change, the Tribal Court shall determine whether to grant the name change according to the best interests of the protected person, provided that:

a. If the protected person is a minor who is twelve (12) years of age or older or an incapacitated person the Tribal Court determines sufficiently capable of making the decision, the Tribal Court shall follow the wishes of the protected person in the absence of good cause to the contrary;

b. The Tribal Court need not seek or obtain the consent, agreement, or input of any parent or legal guardian who:

i. Has committed an act of domestic or family abuse, child abuse, or other crime against the protected person; or

ii. Is the subject of an order for protection or injunction in favor of the protected person when such order or injunction is against domestic or family abuse, assault, harassment, intimidation, stalking, or a credible threat of violence; and

c. The Tribal Court will consider any order of custody or allocation of parental rights or responsibilities in weighing any objections to the name change.

Section 23-16-8. Order of Name Change.

1. Upon filing of proof of publication or entry of an order of the Tribal Court that publication is not required, the Tribal Court, except as otherwise provided in this Section, shall order

the name change to be made and placed upon the records of the Tribal Court in proper form if the Tribal Court is satisfied that the desired change would be proper and not detrimental to the interests of any other person.

2. If the individual is subject to a pending charge for which there is no disposition, the Tribal Court may grant the name change after affirmation in open court or submission of a signed affidavit by the individual whose name is to be changed stating he or she has not been convicted or adjudicated of any felony or offense as provided in this Section.

3. Notwithstanding the provisions of this Section, the Tribal Court may grant a petition for name change of an individual who was previously convicted or adjudicated of a felony or offense as provided in this Section if the Tribal Court finds that the individual must have a legal name change in order to be issued in that name a driver's license or identification card or for other legitimate purpose and:

a. The proposed new name is a name under which the individual was convicted or adjudicated, provided that, for good cause shown, the Tribal Court may allow a change to a name other than a name under which the individual was convicted or adjudicated;

b. The petitioner or individual submits a written request to appropriate jurisdictions to add his or her proposed new name as an alias to the individual's criminal history record and provides the Tribal Court with a copy of his or her criminal history record from such jurisdictions showing the addition of the proposed new name as an alias;

c. The Tribal Court finds that the name change is not for the purpose of fraud, to avoid the consequences of a criminal conviction or civil offense adjudication, or to facilitate any activity that would be criminal or constitute a civil offense; and

d. The petitioner and/or individual has met all other requirements of this Chapter to obtain a name change.

Section 23-16-9. Simplified Name Change. An individual may seek a simplified name change under this Chapter without publication of notice if:

1. The individual married another individual, the proposed new name is to adopt the surname of the individual's spouse, and a certified copy of the marriage certificate is included as an exhibit to the petition;

2. The individual has become unmarried due to dissolution, annulment, legal separation, or similar cause, the proposed new name is a restoration of the individual's name prior to marriage, and a certified copy of the decree or order resulting in the end of marriage is included as an exhibit to the petition;

3. The individual has been adopted or his or her natural parent's parental rights have been restored, the proposed new name is to adopt the surname of adoptive parents or restored natural parents, and a certified copy of the decree of adoption or order restoring parental rights is included as an exhibit to the petition; or

4. The parental rights of one of the parents of the individual has been terminated or relinquished, the proposed new name is to adopt the surname of a parent whose parental right remain in tact, and a certified copy of the order terminating parental rights of the parent is included as an exhibit to the petition.

Section 23-16-10. Sealing of Record.

1. On request of a petitioner, the Tribal Court may seal the petition for name change, record of proceedings on the same, and order of name change if the individual whose name is to be or was changed:

a. Is protected under an order of protection or injunction against domestic or family abuse or against assault, harassment, intimidation, stalking, or a credible threat of violence;

b. Is the victim of domestic or family abuse, child abuse, or a crime, the underlying factual basis of which has been found by the Tribal Court to include an act of domestic or family abuse, assault, harassment, intimidation, stalking, or a credible threat of violence; or

c. The petitioner shows other good cause why the record should be sealed.

2. If a record is sealed under this Section, the information in the record, including the order of name change, is not a public record and shall not be disclosed except to:

a. The petitioner or individual whose name was changed; or

b. To the person designated in a written consent of the petitioner or individual whose name was changed.

APPROVED: 8/26/25
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