

**Title XIV
(14)**

Probate

Standing Rock Sioux Tribal Code of Justice



Standing Rock Sioux Tribal Council

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TITLE XIV. PROBATE

14-101. Jurisdiction.

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

14-102. Determination of Heirs.

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

14-103. Public Notice of Hearing.

Promptly after the petition is filed, the clerk of Court shall give notice of the time and place of hearing to determine the heirs of the deceased Indian, and calling on all persons interested to attend the hearing, by posting a copy of the notice for at least 20 days prior to the date of hearing in three or more conspicuous places in the vicinity of the place of hearing. Notice shall also be published in a newspaper of general circulation on the Reservation at least once per week for three successive weeks prior to the hearing.

14-104. Service of Notice on Interested Parties.

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

14-105. Proof of Service of Notice of Hearing.

Proof of service of the notice of hearing required in Section 14-104 shall be filed in each case. Proof of service shall consist of one of the following: (a) acknowledgement of receipt of service by the endorsement of the person served on a copy of the notice of hearing; (b) a certificate that service was made either in person or by first class mail, signed by an adult person making service; or (c) the return receipt where service was made by certified mail or registered mail.

14-106. Applicable Law.

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

(1) One-half of the interest shall descend to the surviving spouse and the other one-half shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

(2) If there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

- (3) If there are no surviving children or issue of any child, the interest shall descend to the surviving spouse;
- (4) If there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent;
- (5) If there is no surviving spouse, and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent;
- (6) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent and no surviving brothers and sisters, the interest shall descend equally to surviving grandparents;
- (7) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents, the interest shall descend equally to surviving aunts and uncles;
- (8) If there is no surviving spouse, no surviving children, or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, and no surviving aunts and uncles, the interest shall descend equally to surviving nieces and nephews;
- (9) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, and no surviving nieces and nephews, the interest shall descend equally to surviving cousins of the first degree;
- (10) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, and no surviving cousins of the first degree, the interest shall descend equally to surviving cousins of the second degree;
- (11) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, no surviving cousins of the first degree, and no surviving cousins of the second degree, the interest shall descend equally to surviving cousins of the third degree;
- (12) If there is no surviving heir as described in this section, the property shall escheat to the Tribe.

- (b) As used in this section, the words "children" and "issue" include adopted children and children of unwed parents where the Secretary of the Interior or the Tribal Court determines that paternity has been acknowledged or established, except that (1) a child may not inherit by intestate succession from or through a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority and (2) a parent may not inherit by intestate succession from or through a child with respect to which such parent's parental rights have been so terminated.
- (c) Notwithstanding the provisions of the Act of June 17, 1980, 94 Stat. 537, heirs under this Title need not be Indians.

14-107. Protection of the Estate.

The Court is empowered (a) to appoint a temporary custodian or administrator to supervise and protect the assets of the estate; (b) to take all action, including the sale of the property at appraised value, necessary and appropriate to protect or conserve the property or to satisfy claims, before distribution to the heirs; and (c) to require bond from the custodian or administrator for the fulfillment of his duties.

14-108. Claims.

No claim shall be allowed against the estate of the decedent, except claims of the Tribe, including claims for expenses of last sickness and funeral expenses incurred by the Tribe.

14-109. Distribution.

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

14-110. Wills.

When any Indian dies, leaving a will disposing of property subject to the jurisdiction of the Court, the Court, at the request of any person named in the will or any other interested party, shall determine the validity of the will after giving notice as provided by Section 14-104 hereof. A will shall be deemed valid if it was made in writing and signed by the decedent in the presence of two witnesses who then and there signed the will as witnesses, and if, at the time the decedent made the will, the decedent was of sound and sane mind, understood what he was doing and was not subject to undue influence or duress of any kind from another person. If the Court determines the will to be valid, it shall distribute the property in accordance with the will. Inheritance by will under this Title shall not be limited or restricted by the Act of June 17, 1980, 94 Stat. 537. If the will is determined to be invalid, the Court shall determine the heirs as if the decedent had died without a will, and shall distribute the property accordingly; provided that the determination that a will is invalid shall be a final order which may immediately be appealed under Title II of this Code.

14-111. Definition of Guardian.

A guardian is an adult Indian appointed to take care of the person or property of another. The guardian must exercise the highest standard of care for the ward, and is subject to regulation by the Tribal Court.

14-112. Persons to Whom Guardians may be Appointed.

- (a) Minors. A guardian may be appointed for any Indian subject to the jurisdiction of the Court who is under 18 years of age who has no living parent.
- (b) Mental Incompetents. A guardian may be appointed for any Indian subject to the jurisdiction of the Court who by reason of mental illness lacks capacity to manage his or her person or property, and who has no parent, or spouse.

14-113. How Guardians are Appointed.

- (a) By Will. The last surviving parent or spouse of a minor or mental incompetent may designate in a will the guardian for the minor or mental incompetent. Upon determination by the Court that the will is valid, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated.
- (b) By Court Appointment. Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian, to promote the best interests of the minor or mental incompetent.
- (c) Hearing. In each case where a guardian is to be appointed, either by will, or by Court appointment, a hearing shall be held following notice to all interested parties as provided in Sections 14-103—14-104 of this Title.

14-114. Duties of a Guardian.

A guardian of the person shall be responsible for the care and custody of the minor or mental incompetent. A guardian of the property shall, subject to conditions imposed by the Court, administer the assets of the minor or mental incompetent for their best interests and shall use such assets, and any proceeds from those assets, only for the needs of the minor or mental incompetent. Any other use of the assets of the minor or mental incompetent shall be grounds for immediate termination of the guardianship. The Court, in appointing a guardian shall specify if the guardian is to serve as guardian of the person, guardian of the property, or both.

14-115. Termination of Guardianship.

- (a) Upon motion of any person, or the Tribe, the Court may provide notice under Section 14-103 of this Title and a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, and the marriage of a minor ward.
- (b) Guardianship, including for guardians of the property the control over the ward's assets, shall terminate automatically upon a minor reaching age 18, or upon a mental incompetent being adjudged by the Court to have regained legal capacity.

14-116. Fees.

The Court shall fix probate fees in a sum not less than ten dollars (\$10.00) and not more than a sum equal to ten percent (10%) of the appraised value of the estate.