

**TITLE V
PROBATE COURT**

CHAPTER 1 GENERAL

Section 5-1-1 Creation

(1) The Shoshone and Arapaho Tribal Court, when exercising jurisdiction under this code, shall be known as the “Probate Court” and any duly appointed judge of the Shoshone and Arapaho Tribal Court shall be known as the “Probate Court Judge.”

(2) The Probate Court shall have original jurisdiction of matters relating to probate and contest of wills and testaments, the granting of letters testamentary and of administration, and the settlement and distribution of decedent’s estates where all real or personal property is involved, within or affecting the Wind River Reservation.

(3) The procedure herein prescribed shall govern all proceedings in probate brought after the effective date of this code. It shall govern further procedure in proceedings in probate then pending.

Section 5-1-2 Jurisdiction

When the property of the decedent is located both on and off the reservation at the time of his death, the court shall have jurisdiction of the settlement of the estate upon application by any party interested in such estate.

Section 5-1-3 Orders to be Written, Filed and Recorded

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

Section 5-1-4 Duties of Judges Generally

The Probate Judge shall examine the bonds filed by the personal representatives, with a view to ascertaining their sufficiency and may approve the same. He may examine any inventory, sale, bill, account current, final account and vouchers filed therewith, or examine into the condition of an estate generally. Bond may be waived for good cause shown. (Form V-1)

Section 5-1-5 Compelling Attendance of Witnesses, etc; Process

In order to make such examination, the judge is entitled to process to compel the personal representative and other witnesses to appear and testify before him on the hearing, and for the production of books, papers, monies or other things pertinent to the matter to be heard.

Section 5-1-6 Failure to Appear or Testify

Any person refusing to appear or testify may be cited for contempt and held to bail to answer the alleged contempt. The judge shall report his findings upon the matter in writing to the court for its action. Exception may be filed to the report which shall be heard and determined as in other cases.

Section 5-1-7 When Judge Disqualified

When the judge before whom probate matters are brought is interested as next of kin to the decedent, or as the legatee or devisee under the will, or has any other interest in the outcome of, or concerning the matter brought before him, he shall call another judge to hear and determine all such matters.

Section 5-1-8 Presumption After Ten Years' Notices Properly Given

In any estate wherein a decree of final settlement and distribution is or has been entered by the court, it shall be conclusively presumed, after ten (10) years from the date of the decree, that all notices required by law have been made and for the times and in the manner provided by law.

Section 5-1-9 Records Required to be Kept; Probate Docket; Reports to be Made by Judges

(1) The clerk of court shall keep a book for the recording of wills and probates containing:

- a) Proceedings of the guardianship of infants and incompetent persons;
- b) All letters testamentary and of administration;
- c) All inventories and records of sales of personal estates; and
- d) A general entry, claim and allowance docket.

(2) A separate set of files shall be kept for each decedent's estate recording all proceedings concerning the probate of each will, and showing the entry of the inventory

appraisal and all claims allowed, including cost of the final distribution of the estate, and showing the final settlement of the estate.

(3) The clerk of court shall prepare for the use of the court a probate docket (Form V-2) containing:

- a) All hearings scheduled; and
- b) All pending petitions.

Section 5-1-10 Preparation and Contents of Probate Docket; Distribution of Copies; Call of Docket

(1) The clerk of court shall make a docket of all estates of deceased persons pending which shall include:

- a) Title of the estate;
- b) Dates of letters testamentary or letters of administration;
- c) Name or names of the executors or administrators; and
- d) The names of the attorneys or advocates of record.

(2) As soon as the docket is made, one (1) copy shall be furnished to the judge, and one (1) copy shall be furnished upon request to each attorney, advocate or lay counselor of record in the estates.

(3) The judge, upon the call of the docket, shall read the probate docket in open court and shall make an order in each estate as he deems necessary to expedite the progress and closing thereof.

Section 5-1-11 Authority to Approve Bonds

All bonds required by this act may be approved by the clerk of the court.

Section 5-1-12 Contents of Orders and Decrees; Recording

Orders and decrees of the court in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but need only contain the matters ordered or adjudged. All orders, judgments and decrees of the court shall be entered at length in the proper journal of the court. When a judgment or decree is made setting apart a homestead, confirming a sale, making a distribution of property, or

determining any other matter affecting the title to real property, a certified copy shall be recorded in the office of the clerk of court.

Section 5-1-13 Notice Imparted from Date of Recording

When it is provided in this chapter that any order or decree of the court shall be recorded in the office of the clerk, notice is imparted to all persons from the time of recording.

Section 5-1-14 Citations; Requirements Generally; Contents

(1) Citations shall be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, (Form V-3) and shall contain:

- a) Title of the proceedings;
- b) A brief statement of the nature of the proceeding; and
- c) A direction that the person cited appear at a time and place specified.

Section 5-1-15 Same; Issuance

The citation may be issued by the clerk upon the application of any party, without an order of the judge, except in cases in which an order is expressly required by the provisions of the chapter.

Section 5-1-16 Same; Service

The citation shall be served in the same manner as a summons in a civil action.

Section 5-1-17 Same; Used to Give Personal Notice

When a personal notice is required, and no mode of giving it is prescribed in this act, it shall be given by citation.

Section 5-1-18 Same; When to be Served

When no other time is specially prescribed in this act, citations shall be served at least five (5) days before the return day thereof.

Section 5-1-19 Provisions of Rules of Civil Procedure Applicable; Parties

Except as otherwise provided in the Probate Code, the provisions of the Shoshone and Arapaho Rules of Civil Procedure are applicable to and constitute the rules of practice for all proceedings, new trials or appeals.

Section 5-1-20 Trial by Court or Jury

If no jury is demanded, the court shall try the issues joined. If a jury is called for by either party in a matter triable, one shall be had as in other civil cases.

Section 5-1-21 Appointment of Attorney for Minors or Non-residents; Compensation; Failure to Appoint of No Effect

At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration, for sale of real estate and confirmation thereof, settlements, partitions, and distribution of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified, the court may appoint an attorney to represent the devisees, legatees, heirs or creditors of the decedent who are minors and have no general guardian on the reservation, or who are non-residents of the reservation and those interested who, though they are neither minors nor non-residents, are unrepresented. The order shall specify the names of the parties, so far as known, for whom the attorney is appointed. The attorney may receive a fee, to be fixed by the court, for his services, which shall be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause, it becomes necessary, the court may substitute another attorney for the first one appointed, in which case the fee shall be proportionately divided. The failure to appoint an attorney will not affect the validity of any of the proceedings.

Section 5-1-22 Payment of Costs

When it is not otherwise prescribed in this act, the court or the court of appeals may order costs to be paid by any party to the proceedings, or out of the assets of the estate. Execution for the costs may issue out of the court.

Section 5-1-23 Service of Process on Guardian; Right of Guardian to Waive

Whenever an infant or incompetent person has a guardian of his estate residing on the reservation, personal service upon the guardian of any process, notice of an order of the court concerning the estate of a deceased person in which the ward is interested is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. The guardian may also appear for his ward and waive any process, notice or order to show cause which an adult or a person of sound mind might waive.

Section 5-1-24 Schedule

In all probate matters, a fee of \$50.00 is required for matters filed or commenced. This fee shall cover the general filing activity of the clerk's office and a certification of one (1) copy of any order, decree or judgment at the time of its filing for each party. Other copy charges and certification fees shall be assessed at the same amount as established for other business of the court. Additional fees or charges may be assessed for particular matters as ordered by the court.

Section 5-1-25 Responsibility of Clerk for Collection; Distribution

The clerk of court is responsible for the collection or payment of any fees in probate matters which are to be collected by him when the court orders fees to be paid to the clerk and to insure the prompt distribution of any assets so ordered.

Section 5-1-26 Allowance Where Not Specially Provided

When there are no fees specially provided for the performance of any duty under the Probate Code, reasonable fees may be ordered and allowed as the court may deem best.

Section 5-1-27 Evidence; Death or Status

In proceedings under this Probate Code, the rules of evidence in the trial court are applicable unless specifically displaced by this Probate Code. In addition, the following rules relating to the determination of death or status are applicable:

- (1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent.
- (2) A certified or authenticated copy of any record of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report.
- (3) A person who is absent for continuous period of five (5) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Section 5-1-28 Renunciation of Succession

A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in

whole or in part the succession to any property or interest therein by filing an instrument with the court not later than six (6) months after the decedent's death. The instrument shall:

- (1) Describe the property or part thereof or interest therein renounced.
- (2) Be signed by the person renouncing.
- (3) Declare the renunciation and the extent thereof.

Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent of donee.

Section 5-1-29 Felonious Death

(1) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits under a will, or the estate of the decedent if no will was made, and effects a severance of the interest so that the share of the decedent passes as his property and the killer has no rights by survivorship under this code.

(2) Any tenants by the entirety or community property owner or joint tenant who criminally and intentionally kills another joint tenant thereby effects a severance of the interest so that share of the decedent's property passes as his property and the killer has no rights by survivorship. This applies to joint tenancies, tenancies by the entireties, and community property interest, in all real or personal property, joint bank accounts, saving and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond-like insurance policy or other contractual arrangement who criminally and intentionally kills the principal obligee or the person upon whose life the policy is issued upon is not entitled to any benefit under the bond, policy or etc., and it becomes payable as though the killer had predeceased the defendant.

(4) A final judgment of conviction of the offense is conclusive, however, in its absence the court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

CHAPTER 2 INTESTATE SUCCESSION

Section 5-2-1 Rule of Descent

(1) Whenever any person having title to any real or personal property having the nature or legal character of real estate or personal estate undisposed of, and not otherwise limited by marriage settlement, dies intestate, the estate shall descend and be distributed in parcenary to

his kindred, male and female, subject to the payment of his debts, in the following course and manner:

a) If the intestate leaves spouse and children, or the descendants of any children surviving, one-half (1/2) of the estate shall descend to the surviving spouse, and the residue thereof to the surviving children and descendants of children, as hereinafter limited; or

b) If the intestate leaves spouse and no children nor descendants of any child, then the real and personal estate of the intestate shall descend and vest in the surviving spouse.

(2) Except in cases above enumerated, the estate of any intestate shall descend and be distributed as follows:

a) To his children surviving, and the descendants of his children who are dead, the descendants collectively taking the share which their parents would have taken if living;

b) If there are no children, nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead, the descendants collectively taking the share which their parents would have taken if living, in equal parts; or

c) If there are no children, nor their descendants, nor father, mother, brothers, sisters, nor descendants of deceased brother and sisters, nor spouse living, then to the grandfather, grandmother, uncles, aunts and their descendants, the descendants taking collectively the share of their immediate ancestors in equal parts.

Section 5-2-2 Same: Illegitimate Person

(1) The rule of descent of all property, real and personal, of any illegitimate person dying intestate and leaving property and effects shall be as follows:

a) To the surviving spouse and children, as the property and effects of other persons in like cases;

b) If the deceased illegitimate leaves no children or descendants of a child or children, then the whole estate shall descend to and vest in the surviving spouse;

c) If the deceased illegitimate person leaves no surviving spouse or descendants, his estate shall descend to and vest in his mother and her children, and their descendants, one-half (1/2) to his mother and the other half to be equally divided between

her children and their descendants, the descendants of the child taking the share of the deceased parent or ancestors;

d) If the deceased illegitimate person leave no heirs as above provided, the estate shall pass and vest in the next of kin of the mother of such illegitimate person, in the manner as the estate of a legitimate person would pass by law to the next of kin.

Section 5-2-3 Posthumous Persons

Persons conceived before the decedent's death, but born thereafter, inherit as if they had been born in the lifetime of the decedent.

Section 5-2-4 Kindred of Half-Blood; Stepchildren; Foster Children

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

Section 5-2-5 Alienage; Escheat

(1) The alienage of the legal heirs shall not invalidate any title to real estate which shall descend or pass from the decedent, except where that foreign country forbids foreigners to do the same.

(2) If a decedent leaves no heirs, devisees or legatees entitled to take real property under the terms of this code, the decedent's property shall escheat to the Shoshone and Arapaho Tribes.

(3) The burden of proof is upon a non-resident alien to establish the existence of reciprocal rights asserted by him.

Section 5-2-6 Divorce

Divorces of husband and wife do not affect the right of children to inherit their property.

Section 5-2-7 Determination of Relationship of Parent and Child

(1) If, for purposes of intestate succession, a relationship of parent and child shall be established to determine succession by, through or from a person:

a) An adopted person is the child of an adopting parent and of the natural parents for inheritance purposes only. The adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent;

b) An adopted person shall inherit from all other relatives of an adoptive parent as though he was the natural child of the adoptive parent and the relatives shall inherit from the adoptive parent's estate as if they were his relatives; and

c) In cases not covered by paragraph (a), a person born out of wedlock is a child of the mother and is a child of the father, if the relationship of parent and child has been established pursuant to this Law and Order Code.

CHAPTER 3 PROBATE OF INTESTATE ESTATE

Section 5-3-1 Petition

(1) When any person within the jurisdiction of the Tribal Courts of the Shoshone and Arapaho Tribes dies leaving an intestate estate subject to the jurisdiction of the Shoshone and Arapaho Tribal Probate Court, any person claiming to be an heir of the decedent may petition the Probate Court for an administration of the estate of the decedent and for the distribution of such property, real or personal, as he shall be the owner of at the time of death. (Form V-4)

(2) If a valid will probated by the court does not dispose of all of the decedent's property, a determination of the heirs entitled to such property and its distribution without the necessity of a separate petition and proceeding shall be allowed.

Section 5-3-2 Administration of Intestate Estate

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

(2) Whenever it appears reasonably necessary to the preservation, administration and/or distribution of a decedent's intestate estate or upon the petition of any heir of the decedent, the court shall appoint an administrator over the estate. If the value of the decedent's property appears to be less than \$1,000.00, no problems in administering the estate are foreseen, and no one requests that one be appointed, it is not necessary to appoint one.

(3) The following person, if legally competent, shall be afforded priority in the order of their listing for appointment as administrator: The surviving spouse, children in descending order of age, blood relatives in their order of closeness of tribal relationship, any adult tribal member, and any adult person.

(1) Upon receipt of a petition to administer an intestate estate, the clerk shall schedule a hearing at which an administrator will be appointed. Said hearing shall be scheduled far enough in advance to allow the required notice to be made in a reasonable manner.

(2) Notice of the hearing shall be made by the clerk to all interested parties.

(3) The court shall determine who is the proper person to appoint as administrator, and if such person manifests his willingness to serve under his appointment, so appoint him.

(4) Upon appointment, the person shall take an oath to be prescribed by the court to the effect that he will faithfully and honestly administer the estate. (Form V-5)

(5) Upon taking the oath and filing the bond, if required, the administrator shall be granted Letters of Administration as proof of his appointment. (Form V-6)

(6) The duties of the administrator shall be:

a) To take possession of all property of the decedent subject to this Probate Code;

b) Within one (1) month of his appointment, make an inventory and appraisal of such property and file it with the court;

c) Determine and file with the court a list of all known relatives of the decedent, their ages, relationship to decedent, and their whereabouts if known, within one (1) month of appointment;

d) Subject to the prior approval of the court, ascertain and pay all of the debts and legal obligations of the decedent;

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

f) Render an accounting as provided below;

g) Distribute the estate in accordance with the order of the court; and

h) File receipts with the court showing distribution of the estate within one hundred twenty (120) days of appointment.

(7) The Administrator shall file a bond in the amount to be set by the court to insure his faithful, honest performance of his duties, unless he is a spouse or child of the decedent or bond is waived by the court.

Section 5-3-4 Notice to Creditors and Payment

(1) The administrator, or clerk if none, shall cause notice to all creditors of the decedent to be published at least twice in a publication of general circulation on the Reservation. It shall state that creditors have ninety (90) days from the date of the first publication of the notice to present their claims to the administrator or clerk and that only those claims so presented shall be paid by the estate. (Form V-7)

(2) Payment to creditors shall be made only upon the order of the court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(3) All just claims allowed by the court shall be paid before distribution of the estate, but only after payment of the family and homestead allowance as provided herein.

Section 5-3-5 Accounting and Final Report

(1) Prior to distribution, an administrator appointed by the court shall render an accounting to the court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution in a final report. (Form V-8)

(2) The accounting shall show the computation of any attorney's, advocate's, lay counselor's and/or administrator's fees involved for which approval for payment is required. (Form V-9)

(3) In estates in which no administrator has been appointed, the clerk shall account to the court for all transactions relating to the estate.

Section 5-3-6 No Taker

If there is no taker under the provisions of this code, the intestate estate passes to the Shoshone and Arapaho Tribes.

Section 5-3-7 Advancements

(1) If a person dies intestate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement.

(2) For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the death of the decedent, whichever occurs first.

(3) If the recipient fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

Section 5-3-8 Debts to Decedent

(1) A debt owed to the decedent is not charged against the intestate share of any person except the debtor.

(2) If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate or other share of the debtor's issue.

Section 5-3-9 Status of Heirs

No person is disqualified to take as an heir because he or one through whom he claims is not a member of the Shoshone and Arapaho Tribes or because he does not live on the Reservation.

Section 5-3-10 Distribution; Closing Estate

(1) When it is made to appear to the court that an estate is ready to be distributed, the court shall order such according to the rules of intestate succession and this Probate Code. (Form V-10)

(2) The estate shall be closed and the administrator dismissed and his bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, is now ready to be closed. (Form V-11)

CHAPTER 4 WILLS

Section 5-4-1 Who May Make a Will

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

Section 5-4-2 Execution

Except as otherwise provided for holographic wills, every will shall be put in writing signed by the testator or in his presence and at his direction signed by another person, and shall

be signed by at least two (2) persons, each of who witnessed the signing or the testator's acknowledgment of the signature and direction to do so.

Section 5-4-3 Holographic Will

A will which does not comply with the preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 5-4-4 Self-Proved Will; Form

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

THE WIND RIVER INDIAN RESERVATION
SHOSHONE AND ARAPAHO TRIBAL COURT
FORT WASHAKIE, WYOMING

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

TESTATOR

WITNESS

WITNESS

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to by _____ and _____, witnesses, this day of _____, 19__.

SIGNED BY JUDGE OR NOTARY

Section 5-4-5 Who May Witness

- (1) Any person generally competent to be a witness may act as a witness to a will.
- (2) A will or any provision thereof is not invalid because the will is witnessed by an interested witness.

Section 5-4-6 Choice of Law as to Execution

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

Section 5-4-7 Revocation: Writing or Act

A will or any part thereof is revoked:

- (1) By a subsequent will which revokes the prior will in whole or in part expressly or by inconsistency.
- (2) By being burned, torn, cancelled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and at his direction.

Section 5-4-8 Revival of Revoked Will

If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third, the first will is revoked in whole or in part unless it is evident from the circumstances and the terms of the revocation of the second or from the testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

Section 5-4-9 Incorporation by Reference

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

Section 5-4-10 Events of Independent Significance

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the 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 a will of another person is such an event.

Section 5-4-11 Rules of Construction and Intention

(1) The intention of a testator as expressed in his will controls the legal effect of his dispositions.

(2) Rules of construction apply unless a contrary intent is clear in the will:

a) All property; after-acquired property. A will is construed to pass all property which the testator owns at his death including property acquired after the execution of his will;

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

c) Failure of testamentary provision:

i) if a devise other than a residuary devise fails for any reason, it becomes part of the residue; or

ii) if the residue is devised to two (2) or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue;

d) Class gifts. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will;

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

f) Generic terms. Half-bloods, adopted persons and persons born out of wedlock are included in class gifts and relationships as defined for intestate succession to apply to wills; and

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

CHAPTER 5 PROBATE OF WILLS

Section 5-5-1 Petition for Letters Testamentary

(1) A petition for letters testamentary may be made by any person having possession of a decedent's will. (Form V-12)

(2) It must be in writing, signed by the petitioner, and shall state the basis for the court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as executor and the address of such person if known.

(3) The original copy of the will shall be submitted to the court with the petition.

Section 5-5-2 Executor

(1) The court shall appoint an executor to administer the estate.

(2) The executor shall be a competent adult and preference shall be given, if qualified, to the person named in the will as such, followed by the surviving spouse or child of the decedent with preference given in descending order of age.

Section 5-5-3 Appointment of Executor

(1) Upon receipt of the petition, the clerk shall schedule a hearing at which an executor will be appointed and letters testamentary authorized.

(2) Adequate notice of the hearing shall be made to all persons named as takers under the will and to all known heirs of the decedent, if different from the named takers.

(3) Letters testamentary shall be granted to the person appointed as executor upon his taking an oath prescribed by the court to the effect that he will faithfully and honestly administer the estate and upon his filing the bond, if required. (Forms V-13 and V-14)

Section 5-5-4 Duties of Executor; Bond

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

Section 5-5-5 Creditors

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates. (Form V-15)

Section 5-5-6 Accounting and Final Report

Prior to the distribution of the estate remaining after payment of all just claims approved by the court and other priority payments, the executor shall submit a final report to the court for approval and accounting of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or executor's fees involved for which approval for payment is sought. (Forms V-16 and V-17)

Section 5-5-7 Distribution; Closing Estate

(1) When it is made to appear to the court that an estate is ready to be distributed, the court shall order such according to the will or the rules of intestate succession and according to the provisions in this Probate Code. (Form V-18)

(2) The estate shall be closed and the personal representative discharged and his bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, and is now ready to be closed. (Form V-19)

Section 5-5-8 Abatement

(1) Order of abatement of shares of distributees abate without preference or priority as between real and personal property in the following order:

- a) Property not disposed of by will;
- b) Residuary devises;
- c) General devises; and
- d) Specific devises.

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

(3) Abatement within each classification above is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the will.

Section 5-5-9 Property Discovered After Estate Closed

(1) An estate may be reopened whenever necessary to dispose of decedent's property discovered after his estate had been closed. (Form V-20)

(2) The court shall order distribution of the property to those entitled thereto after making whatever orders appear necessary to assure a just participation of the after-discovered property in the expenses of the estate.

CHAPTER 6 FAMILY RIGHTS: SPOUSE

Section 5-6-1 Elective Share

(1) If a married person domiciled on the Wind River Indian Reservation shall by will deprive the surviving spouse of more than the elective share, as hereafter set forth, of the property which is subject to disposition under the will, reduced by funeral and administration expenses, homestead allowance, family allowances and exemption, and enforceable claims, the surviving spouse has a right of election to take an elective share of that property as follows:

- a) One-half ($\frac{1}{2}$) if there are no surviving issue of the decedent;
- b) One-fourth ($\frac{1}{4}$) if the surviving spouse is not the parent of any surviving issue of the decedent; or
- c) One-half ($\frac{1}{2}$) if there are surviving issue of the decedent and spouse.

(2) If the surviving spouse dies or becomes incompetent within three (3) months of the will being admitted to probate, or prior to being advised by the court of the right to election, a personal representative or guardian of the deceased or incompetent surviving spouse has the right of election as the surviving spouse would have had if living or competent. The right of election must be exercised in accordance with Section 5-6-5 of this Code.

(3) If a personal representative or guardian fails to exercise the right of election within the time provided in section 5-6-1, the will shall govern and control the distribution of the estate.

Section 5-6-2 Waiver of Rights

(1) The right of election and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived totally or partially before or after marriage by a written contract, agreement or waiver signed by the party waiving after fair disclosure.

(2) Unless it provides to the contrary, a waiver of “all rights” (or equivalent language) in the property or estate of a present or prospective spouse, or a complete property settlement entered into after or in anticipation of separation or divorce, is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to one from the other by intestate succession or will executed before the waiver of property settlement.

Section 5-6-3 Homestead Allowance; Exempt Property; Family Allowance; Exception

(1) A surviving spouse or, if none, minor children are entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will, except that, if it clearly appears from the will that a provision therein made for the surviving spouse is intended to be in lieu of these rights, he is not so entitled if he does not renounce the provisions made for him in the will.

(2) The term “homestead allowance” as used in this Section (1) herein means that every resident of the Wind River Indian Reservation is entitled to a homestead allowance not exceeding \$10,000.00 in value, exempt from levy or sale, writ of attachment or any process except expenses of administration or funeral expenses of the decedent where there is not other property in the estate sufficient to pay the expenses.

(3) The term “exempt property” as used in Section (1) herein means that the following property, when owned by any person, is exempt from levy or sale upon execution, writ of attachment or any process and continues if changing residence:

- a) The family bible, pictures and school books;
- b) A lot of any cemetery or burial ground;

c) Furniture, bedding, provisions and other household articles not to exceed \$2,000.00. When two (2) or more persons occupy the same residence, each is entitled to a separate exemption;

d) The tools, a motor vehicle, farm implements or stock in trade of any person, used and kept for the purpose of carrying on his trade or business, not exceeding \$7,000.00; and

e) The value of the property selected by the surviving spouse shall be ascertained by the appraisal of three (3) disinterested appraisers sworn to make a true appraisal of the value of the property.

Section 5-6-4 Duty of Court to Advise

(1) If a surviving spouse has a right to election under Section 5-6-1, then at any time after the filing of an inventory and not more than three (3) months after admission to probate, the court shall advise the surviving spouse of his right to election and shall explain fully the right and that in the event of the failure to exercise the right of election, the will shall govern and control the distribution of the estate. (Form V-21)

(2) If the surviving spouse dies or becomes incompetent before being advised of the right of election under Section 5-6-1 and has not filed a waiver or renunciation of the right of election, the court shall advise the personal representative or guardian of the estate of the deceased or incompetent surviving spouse of the right of election as provided in (1) above.

Section 5-6-5 Time Limit and Procedure

(1) The surviving spouse, or a personal representative or guardian of the estate of a deceased or incompetent surviving spouse, may elect to take his elective share in the estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within three (3) months after the admission of the will to probate or within thirty (30) days after being advised of the right of election, whichever limitation last expires. In the event of a failure to file a petition within the foregoing time limitation, the will governs and controls the distribution of the estate. (Form V-22)

(2) After the filing of the petition to elect to take an elective share, the court shall set the petition for hearing and the surviving spouse, or his personal representative or guardian, shall give notice by certified mail not less than twenty (20) days before the date of hearing of the time and place set for hearing to all persons whose interest will be adversely affected by the taking of the elective share.

(3) The court shall determine the right to the elective share and shall order its payment from assets of the estate. An assignment or allotment of assets by the personal

representative to the elective share need not be made until the entry of a decree of distribution or such other time as may be designated by the court.

(4) The surviving spouse, his personal representative or guardian may withdraw his demand for an elective share at any time before entry of a final determination by the court of the right to an elective share.

(5) Any time after having been advised of the right of election, the surviving spouse or his personal representative or guardian may file with the court a renunciation or waiver of the right of election, in which event the will shall govern and control the distribution of the estate.

CHAPTER 7 DISTRIBUTION BY AFFIDAVIT AND SUMMARY PROCEDURE

Section 5-7-1 Payment of Indebtedness and Delivery of Tangible Personal Property or Instruments Evidencing Debt, etc.

(1) Not earlier than thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument evidencing the debt, obligation, stock or chose in action to the person or persons claiming to be the distributees of the property, upon being presented an affidavit, filed as provided by subsection (3) of this section, (Form V-23) made by or on behalf of the distributees stating:

a) The value of the entire estate, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars (\$30,000.00);

b) Thirty (30) days have elapsed since the death of the decedent and no application for appointment of a personal representative is pending or has been granted in any jurisdiction; and

c) The claiming distributees are entitled to payment or delivery of the property, the facts concerning the distributee's relationship to the decedent, and there are no other distributees of the decedent having a right to succeed to the property under probate proceedings.

(2) The transfer agent for any security shall change the registered ownership on the books of a corporation from the decedent to the distributee or distributees upon presentation of an affidavit as provided in subsections (1) and (3) of this section.

(3) When filed with the county clerk and a certified copy is presented to a party with custody of assets, the affidavit shall be honored and have the same effects as provided for in

subsections (1), (2) and (4) of this section. The county clerk of the county in which any vehicle is registered shall transfer title of the vehicle from the decedent to the distributee or distributees upon presentation of an affidavit as provided in subsection (1) of this section.

(4) Upon presentation of an affidavit as provided in subsections (1) and (3) of this section, any bank, savings and loan institution, credit union or any other like depository shall pay any deposit in the sole name of the decedent, together with the interest and dividends thereon, to the distributee or distributees. A receipt for the payment by the distributee paid is a valid and sufficient release and discharge for the payment made.

Section 5-7-2 Collection of Claims of Certain Creditors of Decedent by Affidavit

(1) Not earlier than ninety (90) days after the death of a decedent, the Shoshone and Arapaho Tribes or any board or committee or instrumentality thereof, or the United States or any agency or instrumentality thereof, or the State of Wyoming or any agency, instrumentality or political subdivision thereof, to whom the decedent was indebted or to whom the decedent's estate would be indebted if the estate were being administered upon, may collect all of the assets of the decedent referred to in Section 5-7-1, stating:

- a) The value of the entire estate, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars (\$30,000.00);
- b) Ninety (90) days have elapsed since the death of the decedent;
- c) No application for appointment of a personal representative is pending or has been granted in any jurisdiction;
- d) To the best knowledge of the affiant, no affidavit pursuant to Section 5-7-1, in connection with the decedent, has been presented to any party referred to in Section 5-7-1;
- e) The facts concerning the creditor's claim being made by the party on behalf of whom the affidavit is presented, the total amount of the claim, and any payments received thereon from any source whatsoever; and
- f) That by presentation of the affidavit the party on behalf of whom the affidavit is presented (Form V-24):
 - i) waives any immunities from suit or levy of execution it might otherwise have;

ii) agrees to indemnify and hold harmless from all claims whatsoever any party delivering assets on the basis of such affidavit, to the extent of the full value of the assets so delivered; and

iii) is answerable and accountable to a personal representative of the estate, if appointed, or to any other person or party having a superior right.

(2) When filed with the county clerk and a certified copy thereof is presented to a party with custody of assets, the affidavit shall be honored and shall have the effects as provided for in Sections 5-7-1, 5-7-2 and 5-7-3.

(3) If the total assets collected by a creditor designated in this section, by virtue of the affidavit or affidavits, exceed the net balance of the creditor's claim, then the creditor shall:

a) Pay the overplus to any other creditor who proceeds properly under this section;

b) If there is no such creditor, pay the overplus to the distributees named in an affidavit prepared and presented pursuant to Section 5-7-1; or

c) If no affidavit is presented, obtain an order from the probate court which would have jurisdiction were the estate being administered upon, designating itself the agent pursuant to Section 5-7-3, and thereupon proceed as provided in the Shoshone and Arapaho Probate Code.

Section 5-7-3 Summary Procedure for Distribution of Real Property; Application for Decree; Notice by Publication; Presumptive Evidence of Title; Effect of False Statements

(1) If any person dies who is the owner of real property, including mineral interests, but whose entire estate including personal property does not exceed thirty thousand dollars (\$30,000.00), the person or persons claiming to be the distributees of the decedent may file, not earlier than thirty (30) days after the decedent's death, an application for a decree in the Shoshone and Arapaho Probate Court. (Form V-25)

(2) The application shall be sworn to and signed by each person claiming and shall state the facts required by Section 5-7-1 (a) and (b). The application shall also fully describe any real property being claimed. The application shall have attached thereto a sworn report of appraisal, made by a person who has no legal interest in the estate, showing the value on the date of the decedent's death of all interests owned by the decedent in real property, including mineral interests.

(3) After publication of the notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the Reservation, or otherwise as the court may order, the court shall consider the application. If it appears that the facts stated in the application are not in dispute, the court shall enter a decree establishing the right and title to the property. A certified copy of the decree shall be recorded in the office of the county clerk or Bureau of Indian Affairs and thereafter the decree and the record thereof shall be presumptive evidence of title to the property. (Forms V-26 and V-27)

(4) In the event that the decree is entered as the result of a petition containing false statements, title to the property which passes as a result of the decree shall not be affected but the person or persons signing and swearing to the application shall be subject to the appropriate penalties for perjury.

(5) The procedure provided by this section may be used in addition to the affidavit procedure provided by Section 5-7-1, or in the alternative, if the person or persons claim both real and personal property.

History: Adopted 1987. Restated Nov. 1, 2004, by the Shoshone & Arapaho Tribal Court.