

## CHAPTER – 58 PROBATE CODE

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## CHAPTER 58 – PROBATE CODE

### **58.1 SECTION 1: GENERAL PROVISIONS**

58.1.1 Title. This code shall be known as the Red Cliff Probate Code.

58.1.2 Authority. This code is adopted pursuant to the Red Cliff Constitution, Article VI, sections 1, (e), (i), (j), and (p).

58.1.3 Purpose. The purpose of this Probate Code is to exercise the greatest possible tribal jurisdiction over the probate of the estate of Decedents who were domiciled or owned real or personal property on the Red Cliff Reservation. Probate matters may be concluded more economically and expeditiously in the Red Cliff Tribal Court than in other government's Courts.

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

- (a) To ensure that the property of Decedents pass on to the rightful heirs or beneficiaries.
- (b) To comply with the Decedent's wishes as much as possible.
- (c) To comply with tribal customs and traditions.
- (d) To provide a simple, efficient and inexpensive method for probating Decedent's property.
- (e) To prevent the transfer of land out of tribal ownership and control.
- (f) To ensure that the rights of creditors of Decedents are protected to the fairest extent possible.
- (g) To promote and further the tribe's inherent right to self- governance.

#### 58.1.5 Effective Date

This chapter shall take effect upon its approval of the provisions governing trust property by the Secretary of the Department of the Interior pursuant to 25 U.S.C. 2205(b)(1) and approval of the provisions governing non-trust property pursuant to the Red Cliff Constitution Article VI, section 1(j). For provisions applicable to trust property and trust personality, this chapter shall take effect 180 days after the approval from the Secretary of the Interior.

#### 58.1.6 Interpretation

The provisions of this chapter shall not be deemed a limitation or repeal of any tribal power or authority. In the event that this chapter is silent on some aspect of intestate succession, wills, or probate procedure, the Court may adopt such rules of procedure from any federal, state or other Tribal Court rules of

procedure as the Court deems appropriate.

58.1.7 Scope

It is intended that this Code apply to the estate of Decedents who were domiciled or owned property on the Red Cliff Reservation at the time of their death. However, it is not intended that any provision of this Code conflict with the American Indian Probate Reform Act (AIPRA) and the United States Department of Interior's exclusive jurisdiction over the descent and distribution of trust or restricted property and trust personality. The Tribal Court has no jurisdiction over the descent and distribution of trust or restricted property and trust personality. Sections 58.27 and 58.28 of this Chapter govern the distribution and descent of trust or restricted land and trust personality. Except as to those sections, it is intended that the Tribal Court have jurisdiction to probate Decedent estates of non-trust property within the jurisdiction of this Code.

58.1.8 Severability

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

58.1.9 Application

This chapter shall apply to enrolled tribal members, their spouses and their children residing on the reservation, all enrolled members, or persons eligible for enrollment, of a federally recognized Indian tribe, or who otherwise meet the definition of "Indian" under this Code or own property within the exterior boundaries of the Red Cliff Reservation.

58.1.10 Trials: All trials under this Chapter shall be to the Red Cliff Tribal Court.

**58.2 SECTION 2: JURISDICTION**

58.2.1 The Red Cliff Tribal Court shall have jurisdiction to administer in probate the estate of any Decedent who is an enrolled tribal member, or the spouse or child of a member who at the time of their death was domiciled or owned real or personal property situated within the boundaries of the Red Cliff Reservation to the extent that such estate consists of non-trust property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

58.2.2 The United States Department of the Interior Office of Hearings and Appeals (OHA) has exclusive jurisdiction over all trust property and trust personality in Decedent's estate. When applicable, the OHA may apply sections 58.27 and 58.28 of this Chapter.

**SECTION 3: DEFINITIONS**

- (a) **“Abatement”** means a reduction or decrease.
- (b) **“Administrator”** means the person appointed by the Tribal Court to administer the estate of a Decedent who has died without a will (intestate).
- (c) **“Adopted Person”** is the child of an adoptive parent and of the natural parents for inheritance purposes only.
- (d) **“Adoption”** means the legal process pursuant to law in which a child’s legal rights and duties toward his/her natural parents have been terminated or suspended and similar rights are conferred on other individual(s). “Adoption” also means the formal process of taking into one’s family the child of another and giving the child the rights, privileges and duties of a child and heir.
- (e) **“Beneficiary”** means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.
- (f) **“B.I.A.”** means the Bureau of Indian Affairs with the United States Department of the Interior.
- (g) **“Codicil”** means a supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain, or revoke provisions in an existing will. A codicil does not purport to dispose of the entire estate or to contain the entire will of the Testator, nor does it ordinarily expressly or by implication revoke an entire prior will.
- (h) **“Conveyance”** means the transfer of legal title to property from one person, or a class of people, to another by deed. This term may also include assignment, lease, mortgage, or encumbrance of land.
- (i) **“Days”** means business days and excludes all observed holidays including Tribal holidays.
- (j) **“Decedent”** means a person who has died leaving property that is subject to administration.
- (k) **“Deed”** means the conveyance of realty by a writing signed by the grantor, whereby title to realty is transferred from one to another.
- (l) **“Devise”** means a gift or distribution of property by will.
- (m) **“Devisee”** means any person to whom land or other real property are given by will.
- (n) **“Devolution”** means the passage or transfer from one person to another; the falling on or accrual to one person as the successor of another.
- (o) **“Distributee”** means any person to whom property of a Decedent is distributed other than in payment of a claim, or who is entitled to property of a Decedent under their will or the laws governing intestate succession.
- (p) **“Disinterested”** means that the person will not benefit in any way

directly or indirectly nor will the spouse or any relative of said disinterested person benefit in any way directly or indirectly.

(q) “Doctrine of Dependent Relative Revocation” means a doctrine holding that if the destruction, cancellation, or revocation of a will is dependent on the making of a new will which is not made or is found to be invalid then the original will is still in effect.

(r) “Domestic partner” means an individual who has signed and filed a declaration of domestic partnership in the office of the register of deeds of the county in which he or she resides pursuant to WI §770 or RCCL Chapter 56.

(s) “Domicile” means the place where a person has his or her true, fixed and permanent home and principle establishment, and to which whenever s/he is absent has the intention of returning.

(t) “Donee” means the recipient of a gift or conveyance. In contrast to the giver or donor.

(u) “Eligible Heir” means with regard to trust property, any of a Decedent’s children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are;

- (1) Indian;
- (2) lineal descendants within 2 degrees of consanguinity of an Indian; or
- (3) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by decent, renunciation, or consolidation agreement under 25 U.S.C. §2206(e) or (j)(9), or another trust or restricted interest in such parcel from the Decedent.

(v) “Escheat” means reversion of property to the Tribe because no valid Eligible Heir or person to inherit exists.

(w) “Estate” means the total property that is owned by a Decedent prior to the distribution of that property in accordance with the terms of a will, or when there is no will, by the laws of inheritance as outlined in this chapter.

(x) “Executor” means a person or institution appointed by a Testator to carry out the terms of their will.

(y) “Fiduciary” As a noun means that person or institution who manages money or property for another and who must exercise the highest standard of care in such management activity; as an adjective, it describes the nature of a trust, which is the highest and most scrupulous duty owed to another.

(z) “Guardian” means a person empowered by the law to care for another whom, by virtue of age or lack of mental capacity or other reason is legally unable to care for themself.

(aa) “Heir” means persons, including the Tribe, who are entitled under the laws governing intestate succession to the non-trust property of a Decedent.

(bb) “Incompetent” means a ward or person who is recognized by a

court of law to be substantially incapable of managing their property or caring for themselves by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

(cc) “Indian” means an enrolled member or person eligible to become a member of the Red Cliff Tribe or any other person who is an enrolled member, or eligible to become a member, of a federally recognized Indian tribe, any person meeting the definition of “Indian” under 25 U.S.C. § 2201(2), or is an owner of a trust or restricted interest in land.

(dd) “Interested Person” means any of the following:

- (1) An heir of the Decedent
- (2) A beneficiary named in any document offered for probate as well as the will of the Decedent.
- (3) A beneficiary of a trust created under any document offered for probate as the will of the Decedent.
- (4) A person named as Administrator or Personal Representative in any document offered for probate as the will of the Decedent.

(ee) “Intestate” means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all of the estate.

(ff) “Intestate succession” means succession to property of a Decedent who dies without a will or with a will that has certain provisions that are not valid.

(gg) “Issue” means children, grandchildren, lineal descendant of more remote degree, except those who are the lineal descendants of living descendants. The term includes adopted children and non-marital children whose paternity has been established and their issue.

(hh) “Letters testamentary” means the formal document of authority and appointment given to an executor or Administrator by the Court, empowering him or her to fulfill his or her duties as required by his or her position as executor or Administrator.

(jj) “Life Estate” means an interest in property held for only the duration of a designated person’s life.

(jj) “Living Will” means a document in which a person sets forth direction regarding medical treatment to be given if they become unable to participate in decisions regarding their medical care.

(kk) “Member” means an enrolled member of the Red Cliff Band of Lake Superior Chippewa.

(ll) “Minor” means an individual who has not reached the age of eighteen (18) years.

(mm) “OHA” means the Office of Hearings and Appeals within the U.S. Department of Interior.

(nn) “Personal property” means all non-trust property other than real property.

(oo) “Personal Representative” means that person or entity appointed to oversee the probate process and ensure the Decedent’s estate is settled appropriately. The Personal Representative is either an executor if the deceased person left a will or an Administrator of an intestate estate however, the Tribal Court ultimately determines who will be appointed as Personal Representative by granting letters testamentary to administer the estate. The term Personal Representative as used in this chapter includes both the terms Administrator and executor, which may be used in other jurisdictions.

(pp) “Pretermitted” means a child or other descendant omitted from the will of a Testator.

(qq) “Property” means an interest, legal or equitable in real or personal property, without distinction as to kind, except trust property.

(rr) “Real property” means all interest in land, including improvements to land that have been affixed to the land.

(ss) “Renounce” means to make an affirmative declaration of abandonment; a waiver of rights.

(tt) “Reservation” means the Red Cliff Reservation

(uu) “Residue” means the surplus or left-over part of the Testator’s estate remaining after all the debts and distributions have been completed.

(vv) “Self-proved” means a will that is witnessed by two or more individuals who certify that the will was actually signed by the Decedent or Testator accomplished by a self-proving affidavit signed before a notary public that is attached to the last will and testament.

(ww) “Suspension of parental rights” means the suspension of the parent/child relationship by a court of competent jurisdiction.

(xx) “Taken by representation” means the principle upon which the issue of a Decedent take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living.

(yy) “Termination of parental rights” means the severance of the parent/child relationship by a court of competent jurisdiction.

(zz) “Testator” means a Decedent who dies leaving a valid will.

(aaa) “Title” means the formal rights or ownership of property. Title is the means whereby the owner of lands and property has just possession of their property.

(bbb) “Transfer” means an act of the parties, or of the law, by which the title to property is conveyed from one person or entity, to another person or entity.

(ccc) “Tribal Court” means the Red Cliff Tribal Court.

(ddd) “Trust Personality” means all funds and securities of any kind which are held in trust in an individual Indian money account or

otherwise supervised by the Secretary.

(eee) **“Trust property”** means real or personal property the title to which is in the United States for the benefit of an Indian or Indian Tribe.

(fff) **“Trustee”** means an individual or corporation named by an individual, who sets aside property to be used for the benefit of another person, to manage the property as provided by the terms of the document that created the arrangement.

## 58.4

### **SECTION 4: WILLS**

In determining the validity of a devise of property other than trust or restricted land, the rules contained in this section governing the creation, execution, and revocation of wills shall apply. In determining the validity of a devise of trust or restricted land, the federal law governing the creation, execution, and revocation of wills contained in 25 C.F.R. part 15 shall apply, therefore, the OHA is not bound by the provisions set forth in sections 58.4.3 and 58.4.4 relating to the devise of trust or restricted land through Holographic or Oral wills.

58.4.1 **Who May Make a Will:** Any person of sound mind eighteen (18) years of age or older may make and revoke a will, Codicil or other testamentary document.

58.4.2 **Execution:** Except as otherwise provided for with oral wills or holographic wills, every will shall be put in writing and signed by the Testator, or in the Testator’s presence and at the Testator’s direction signed by another person, and shall be signed by at least two (2) other persons each of whom either witnessed the signing by the Testator of the will or the Testator’s acknowledgement of the signature and direction to do so.

58.4.3 **Holographic Will:** A will which does not comply with section 58.4 of this Chapter is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the Testator.

58.4.4 **Oral Will:**

- (a) A will does not comply with 58.4 of this Chapter is valid as an oral will under custom if all children, whether residing in Testator’s home or not, and Testator’s spouse, if alive, are present at the announcement of the oral will and agree that the Testator orally made known the Testator’s last will before them.
- (b) An oral will is also valid under custom if made in the presence of a competent disinterested adult person by a Testator who declares at the time that it is his or her wish that their property descend in a specific manner upon the event of the Testator’s death.
- (c) The Tribal Court shall hear testimony from the disinterested person who heard such declaration and the Tribal Court shall decide the

following:

- (1) whether such testimony is credible; and
- (2) whether the manner of disposition of Testator's property is reasonable and customary.

If the Tribal Court finds that both of the foregoing conditions prevail, the Testator's expressed intent shall be carried out as a valid will.

#### 58.4.5

##### Self-Proved Will.

A will shall be considered a self-proved, unless contested, and may be admitted to probate without testimony of two (2) disinterested witnesses only with respect to any non-trust property. Trust property shall remain subject to the requirements of 25 C.F.R. part 15 and 43 C.F.R. part 30. Non-self-proved wills, codicils or revocations will only be applicable to non-trust property and only recognized in the Red Cliff Tribal Court, not by the OHA.

A will witnessed by two (2) disinterested witnesses may be made self-proved, by the acknowledgment thereof by the Testator and the affidavits of the witnesses, each made before a notary public, under official seal, attached or annexed to the will in form and content.

- (a) A Testator's affidavit must substantially contain the following content:

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

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*TESTATOR*

Tribal Enrollment Number

Subscribed, sworn to and acknowledged before me by the Testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_ witnesses, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.  

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*SIGNED BY NOTARY*

- (b) Each attesting witness's affidavit must contain substantially the following

content:

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

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<b>WITNESS</b>	Address	Date
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**WITNESS** \_\_\_\_\_ **Address** \_\_\_\_\_ **Date** \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by the Testator,  
and subscribed and sworn to before me by \_\_\_\_\_ and  
\_\_\_\_\_  
witnesses, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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***SIGNED BY NOTARY***

58.5

## SECTION 5: WITNESSES

58.5.1 Any person who, at the time of execution of the will, would be competent to testify as a witness in court to the facts relating to the execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground denial of probate if the execution of the will is otherwise satisfactorily proved.

58.5.2 A will is not invalidated because it is signed by an interested witness; but, unless the will is also signed by two (2) disinterested witnesses, any beneficial provisions of the will for a witness or the witness' spouse are invalid to the extent that such provisions in the aggregate exceed in value what the witness or spouse would have received had the Testator died intestate. Valuation is to be made as of Testator's death.

58.6

## **SECTION 6: INTESTATE SUCCESSION**

58.6.1 Any part of a Decedents non-trust estate that is not disposed of by a valid will, federal law, or through sections 58.27 and 58.28 of this Chapter, passes to the Decedent's Heirs and Eligible Heirs as follows:

(a) To the spouse or domestic partner;

- (1) If there are no surviving issue of the Decedent, or if the surviving issue are all issue of the surviving spouse or surviving domestic partner and the Decedent, the entire estate.
- (2) If there are surviving issue one or more of whom are not issue of the surviving spouse or surviving domestic partner, one-half of Decedent's property other than the following property:
  - (i) The Decedent's interest in non-trust marital property.
  - (ii) The Decedent's interest in non-trust property held equally and exclusively with the surviving spouse or surviving domestic partner.

(b) To the issue, the share of the estate not passing to the spouse or surviving domestic partner, under sub. (2)(i) and 2(ii), or the entire estate in equal shares if there is no surviving spouse or surviving domestic partner.

(c) If there is no surviving spouse, surviving domestic partner, or issue, to the parents equally.

(d) If there is no surviving spouse, surviving domestic partner, issue, or parent, to the brothers and sisters and the issue of any deceased brother or sister in equal shares.

(e) If there is no surviving spouse, surviving domestic partner, issue, parent, or issue of a parent, to the grandparents and their issue as follows:

- (1) One-half to the maternal grandparents equally if both survive, or to the surviving maternal grandparent; if both maternal grandparents are deceased, to the issue of the maternal grandparents.
- (2) One-half to the paternal relations in the same manner as to the maternal relations under sub. (1).
- (3) If either the maternal side or the paternal side has no surviving grandparent or issue of a grandparent, the entire estate in equal shares to the Decedent's relatives on both sides.

58.6.2 No Taker. If there is no taker under the provisions of this chapter, the intestate estate passes to the Tribe.

58.6.3 Posthumous Persons. A person conceived before the Decedent's death but born thereafter inherits as if they had been born in the lifetime of the Decedent.

58.6.4 Kindred of half-blood, stepchildren, foster children. Persons of half-blood inherit the same share they would inherit if they were of whole blood, but stepchildren and foster children of the Decedents do not inherit unless adopted or they are provided for in a will.

**58.7 SECTION 7: COMMENCEMENT OF PROBATE PROCEEDINGS**

At any time after the death of a person subject to this ordinance, any Eligible Heir of the Decedent, a beneficiary of the Decedent's will, or a person designated to serve as Executor by the Decedent's will, may file a Probate Petition with the Red Cliff Tribal Court for the probate of the will and the administration of the non-trust or non-restricted property of the Decedent's intestate estate.

58.7.1 Probate Petition – The probate petition shall contain:

- (a) The name of the Decedent;
- (b) The date of death of the Decedent;
- (c) The Decedent's enrollment number;
- (d) The basis for the Red Cliff Tribal Court's jurisdiction;
- (e) The names, relationship to Decedent, and the mailing address of persons who are, or would be, Eligible Heirs of the Decedent upon the death of the Decedent intestate, and the ages of any who are minors, so far as such information is known to the petitioner;
- (f) Whether the Decedent left a will, and, if so, the names and addresses of the Beneficiaries under the will and the name or names of any person specified in the will as Executor and the address of such person, if known.
- (g) A general description and an estimate of the value of the Decedent's estate subject to probate in the Red Cliff Tribal Court, and a general description of those portions of the Decedent's estate, if any, that are not subject to probate in the Red Cliff Tribal Court, including, but not limited to, any interest in trust or restricted property;
- (h) A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and address of the personal representative appointed in such proceedings;
- (i) A request for appointment of a Personal Representative and a statement of the qualifications of the proposed Personal Representative;
- (j) A request for approval of the Decedent's will, or a request that the Red Cliff Tribal Court find that the Decedent died without a valid will; and
- (k) A verification under oath or penalty of perjury, signed by the petitioner that the contents of the petition are true and correct.

58.7.2 The petitioner shall file with the petition, or as soon after the filing as such document can be obtained:

- (a) A certified copy of the Decedent's death certificate or other evidence, pursuant to section 58.11 of this Chapter, of death; and
- (b) The original or a true and correct copy of the Decedent's will.

58.7.3 A filing fee shall accompany the filing of the petition. This fee shall be established by the Red Cliff Tribal Court.

58.7.4 Duty to Present Will for Probate:

- (a) Every custodian of a will shall deliver the same to the Tribal Court within thirty (30) days after receipt of information that the Testator is deceased. Any such custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.
- (b) Every custodian of a will that includes trust or restricted property shall deliver a copy of said will to the agency or BIA regional office nearest to where the decedent was enrolled.
- (c) If upon delivery of a will or at any later stage in the probate proceedings, the Tribal Court determines that probate jurisdiction belongs in another court, the will shall be delivered to that court.

## 58.8

### **SECTION 8: HEARING ON THE PROBATE PETITION**

Upon initiating the probate of an estate, the will of the Decedent shall be filed with the Tribal Court. Such will may be proven and admitted to probate by one of the following methods:

- (a) By the filing of a self-proved will meeting the requirements of 58.4.5 of this Chapter.
- (b) By filing the affidavit of an attesting witness which identifies such will as being the will which the Decedent executed and declared to be his or her last will.
- (c) If the evidence of none of the attesting witnesses is available, the Tribal Court may allow proof of the will by testimony or other evidence that the signature of the Testator or of at least one (1) of the witnesses is genuine.

#### 58.8.1

Hearing Date. After receiving the Probate Petition, the Red Cliff Tribal Court shall schedule a hearing within thirty (30) days of receipt of the petition, at which time the Red Cliff Tribal Court shall determine the validity of the Decedent's will, whether the will shall be admitted to probate, shall appoint a personal representative, and shall determine whether the matter can be probated without further hearing. If a will is self-proved and no objection is raised, the Red Cliff

Tribal Court may admit the will to probate without a hearing.

58.8.2 Notice of hearing shall be made by the petitioning party in accordance with section 58.10 to all persons named as takers under the will, and to all known heirs of the Decedent if different from the named takers.

58.8.3 At any time within thirty (30) days after the will has been admitted to probate, or within such time as the Tribal Court shall establish in the case of an exempt estate having a value which does not exceed \$5,000, any person interested in the Decedent's estate may contest the validity of such will. In the event of such contest, the Tribal Court shall take no further action with respect to the probate of the estate, but shall set a hearing to determine the validity of such will. All relevant evidence shall be presented at such hearing concerning the Decedent's capacity to execute a valid will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the will, if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

58.8.3 Evidence About Admission of the Will to Probate. If the will is not self-proved, an objection is raised, or the Red Cliff Tribal Court determines that further evidence is required, the Red Cliff Tribal Court shall obtain testimony to determine whether the will shall be admitted to probate. At the initial hearing the Red Cliff Tribal Court shall upon considering all relevant evidence concerning the will, shall enter an order affirming the admission of such will to probate or rejecting such will and ordering that the probate of the Decedent's estate proceed as if the Decedent died intestate.

58.8.4 At the initial hearing, the Red Cliff Tribal Court shall determine a hearing schedule or may determine that a summary order be issued.

58.8.5 Continuance. Upon a showing for good cause, the Red Cliff Tribal Court may grant a continuance to provide more time to present or obtain evidence.

58.8.6 Appointment of Personal Representative. At the Initial Hearing the Red Cliff Tribal Court shall determine, based upon a preponderance of the evidence, who should be appointed as Personal Representative which may also be the Executor of the estate. The Personal Representative shall be a competent adult and preference shall be given to the person named in the will as such, followed by the surviving spouse, child of the Decedent over 18 years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship.

58.8.7 Duties of Personal Representative; Bond:  
The duties of the Personal Representative shall be the same as those prescribed in section 58.9.2(d) of this chapter for the Administrator of an intestate estate.

The Personal Representative shall file a bond in accordance with section 58.9.2(e) and shall be subject to the same exceptions.

58.8.8 Oath of Personal Representative; Letters of Testamentary. Upon his or her appointment as Personal Representative, the person appointed shall take an oath to be prescribed by the Red Cliff Tribal Court to the effect that he or she will faithfully and honestly administer the estate according to the terms of this chapter and the Decedent's will. Upon taking the oath and filing the bond, if any is required, the Personal Representative shall be granted letters testamentary as proof of his or her appointment.

## **58.9 SECTION 9: ADMINISTRATION OF ESTATE**

### **58.9.1 Judicial Administration:**

- (a) Whenever there is a valid will probated by the Tribal Court which does not dispose of all the Decedent's non-trust property, a determination of the Eligible Heirs entitled to such property and its distribution shall be made by the Tribal Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.
- (b) The Tribal Court shall have the authority to take constructive or physical possession of all non-trust property of the Decedent subject to this Chapter, taking into consideration the interests of the person who may have occupied the homestead of the Decedent at the time of his or her death.

### **58.9.2 Administration of Intestate Estate:**

- (a) If an Executor is appointed over a Decedent's non-trust property which is disposed of by a valid will, such person shall likewise assume authority over the Decedent's intestate estate of non-trust property and administer it with the rest of the Decedent's estate of non-trust property.
- (b) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a Decedent's intestate estate of non-trust property, the Tribal Court shall appoint an Administrator over the estate. It shall not be necessary to appoint an Administrator if the value of the Decedent's non-trust property appears to be less than \$5,000 in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.
- (c) The following persons, if legally competent, shall be afforded the priority in order of their listing for appointment as Administrator:
  - (1) the surviving spouse;

- (2) any child over 18 years of age;
- (3) other blood relatives;
- (4) any adult tribal member; or
- (5) any adult person.

(d) The duties of the Administrator shall be:

- (1) To take constructive and/or physical possession of all non- trust property of the Decedent subject to this Chapter as the Tribal Court shall order, taking into consideration the interests of the person or persons who may have occupied the homestead of the Decedent at the time of his or her death.
- (2) Within thirty (30) days of appointment, make an inventory and appraisement of such non-trust property and file it with the Court.
- (3) Within thirty (30) days of appointment, determine and file with the Tribal Court a list of all known relatives of the Decedent, their ages, their relationship to the Decedent, and their whereabouts, if known.
- (4) Subject to approval of the Tribal Court, ascertain and pay all of the debts and legal obligations of the Decedent.
- (5) Prosecute and defend actions for or against the estate.
- (6) Distribute the estate in accordance with the orders of the Tribal Court and file receipts with the Tribal Court showing distribution of the estate of non-trust property.

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

### 58.9.3

#### Appointment of Administrator:

- (a) Upon receipt of a petition to administer an intestate estate of the non-trust property, the Red Cliff Clerk of Court shall schedule a hearing within fourteen (14) days at which an Administrator will be appointed. Said hearing shall be scheduled far enough in advance to allow the required notice to be made. Notice shall be made pursuant to section 58.10 of this chapter.
- (b) Notice of the hearing shall be made by the petitioning party or by the Tribal Court Clerk if the Tribe is the petitioning party and shall be posted

in locations identified in Chapter 27, sec. 27.2.2 of the Red Cliff Code of Laws.

- (c) The Tribal Court shall determine the proper person to appoint as an Administrator, and if such person manifests their willingness to serve, order their appointment as Administrator.
- (d) Subject to the approval of the Tribal Court, the Administrator may be compensated for the performance of their duties. Said fees shall come from the estate of the Decedent.

#### 58.9.4

##### Oath of Administrator; Letters of Administration:

- (a) Upon their appointment as Administrator, the person appointed shall take an oath to be prescribed by the Tribal Court to the effect that they will faithfully and honestly administer the estate.
- (b) Upon taking the oath and filing the bond, if any is required, the Administrator shall be granted letters of administration as proof of their appointment.
- (c) The Tribal Court may waive the requirement that the Administrator file a bond if the Tribal Court finds good cause to do so.

#### 58.10

##### **SECTION 10: NOTICE**

#### 58.10.1

If notice of a hearing on any petition or other matter is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any Interested Person or their advocate if they have appeared by advocate or requested that notice be sent to their advocate. Notice shall be given:

- (a) By mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified mail addressed to the person being notified at the post office address given in their demand for notice, if any, or at their office or place of residence, if known.
- (b) By delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing and submitting a signed affidavit of service to the Tribal Court; or
- (c) If the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in the locations identified within Chapter 27 sec. 27.2.2 of the Red Cliff Code of Laws and within the Miisaniinawind Tribal Newsletter, as may be changed from time to time. Postings shall be made at least fourteen (14) days

before the time set for the hearing.

(d) Notice may be made by publication in a newspaper of general circulation within the last known county or residence of the person being noticed and within the Miisaniinawind Tribal Newsletter. The notice shall be published for a minimum of (2) consecutive issues and shall require submission of an Affidavit of Publication provided by the newspaper. Notice by publication shall be made at least fourteen (14) days before the time set for a hearing.

58.10.2 The Tribal Court, for good cause shown may provide for a different method or time of serving notice for any hearing.

58.10.3 Proof of notice shall be made at or before the hearing and filed with the Red Cliff Clerk of Courts.

58.10.4 A person, including a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or their attorney or advocate and filed with the Red Cliff Clerk of Court. If the person waiving notice is not going to be present at the hearing said waiver of notice shall be signed in the presence of the Red Cliff Clerk of Court or such signature shall be notarized.

**58.11 SECTION 11: EVIDENCE AS TO DEATH OR STATUS CONCERNING NON-TRUST PROPERTY**

58.11.1 In proceedings under this chapter, the following rules relating to determination of death and status are applicable;

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is *prima facie* proof of the identity and death of the Decedent.

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

(c) A person who is absent for a continuous period of five (5) years, during which they have not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. Their death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier. An Affidavit of Diligent Search and Inquiry shall be filed with the Court before the initial probate hearing.

**58.12****SECTION 12: OATH OR AFFIRMATION ON FILED DOCUMENTS**

Except as specifically provided in this Chapter, every document filed with Tribal Court under this Chapter 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. If the Tribal Court finds any filed documents were deliberately falsified, the party or parties may be found in contempt of court and penalties may be imposed pursuant to Chapter 4 section 4.16 of the RCCL.

**58.13****SECTION 13: RECORDS AND CERTIFIED COPIES**

The Red Cliff Clerk of Court or their designee shall keep a file for each Decedent of all documents filed with the Tribal Court under this Chapter and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of a fee, the Clerk shall issue certified copies of any document or paper so filed.

**58.14****SECTION 14: DETERMINATION OF RELATIONSHIP OF PARENT AND CHILD****58.14.1**

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

**58.14.2**

A parent whose rights have been terminated or suspended by a court of competent jurisdiction may not inherit non-trust property from the child, but a natural child is eligible to inherit non-trust property from their natural parent regardless if that parent's rights have been terminated, suspended or otherwise modified.

**58.14.3**

An adopted person shall inherit non-trust property from all other relatives of an adoptive parent as though the adopted person was the natural child of the adoptive parent. The adoption of a child does not affect the right of the child to inherit non-trust property from the natural parent.

**58.14.4**

In cases not covered by this section 58.14, a person born out of wedlock is a child of the mother and is a child of the father if the relationship of parent and child has been established in accordance with applicable law.

**58.15****SECTION 15: EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION****58.15.1**

A person who is divorced from a Decedent or whose marriage to the Decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the Decedent at the time of death. A decree of separation which does not terminate the marriage is not a divorce for purposes of

this Chapter.

58.15.2 A divorce does not affect the rights of children from the marriage to inherit.

**58.16 SECTION 16: RENUNCIATION OF SUCCESSION (CHOOSING NOT TO INHERIT)**

58.16.1 A person (or their Personal Representative) who is an Eligible 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 part the succession to any property or interest therein by filing a written instrument with the Tribal Court not later than six (6) months after the Decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death.

58.16.2 A person (or their Personal Representative) who is an Eligible 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 part, as detailed below, the succession of any interest in trust, by filing a written instrument with the Tribal Court and OHA before the issuance of a final order closing the estate.

58.16.3 With respect to trust property any renunciation must comply with the following rules:

- (a) A person may retain a life estate in a specified interest in trust or restricted land; and
  - (i) renounce the remainder interest; or
  - (ii) renounce the complete interest.

58.16.4 If a person renounces an interest in trust or restricted land, s/he may renounce without making a designation, or renounce only in favor of:

- (a) An eligible heir of the decedent;
- (b) A person eligible to be a devisee of the interest under a valid will who is:
  - (i) a lineal descendant of the testator;
  - (ii) a person who owns a preexisting undivided trust or restricted interest in the same parcel;

- (iii) any Indian; or
- (iv) the Tribe with jurisdiction over the interest.

If a renunciation is made in favor of a designated person, the judge must notify the designated recipient.

58.16.5 If a person renounces an interest in trust or restricted land that is not disposed of by a valid will and represents less than 5% of the entire undivided ownership of a parcel of land, may renounce such interest only in favor of:

- (a) One other eligible heir;
- (b) One Indian who is related by blood;
- (c) One co-owner of another trust or restricted interest in the same parcel; or
- (d) The Tribe with jurisdiction over the interest.

58.16.6 The instrument of renunciation shall be signed dated and either signed in the presence of the Red Cliff Clerk of Court or notarized.

58.16.7 The instrument shall:

- (a) describe the property or part thereof or interest therein renounced;
- (b) be signed by the person renouncing; and
- (c) declare the renunciation and the extent thereof.

58.16.8 A renunciation becomes irrevocable upon final order by the Red Cliff Tribal Court.

58.16.9 Upon proper renunciation, the interest renounced passes as if the renouncing person had predeceased the Decedent.

**58.17 SECTION 17: EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATION OF NON-TRUST PROPERTY**

58.17.1 A surviving spouse, Eligible Heir, or devisee who criminally and/or intentionally kills the Decedent is not entitled to any benefits passing under this Chapter and the estate of the Decedent passes as if the killer had predeceased the Decedent. Property appointed by the will of the Decedent to or for the benefit of the killer passes as if the killer had predeceased the Decedent.

58.17.2 Any joint tenant who criminally and intentionally kills another joint tenant thereby affects a severance of the interest of the Decedent so that the share of the Decedent passes as their property and the killer has no rights of survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

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

58.17.4 Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

58.17.5 A final judgment of conviction of an offense containing the elements of criminal and intentional killing, either as a principal or an accessory before the fact, is conclusive for purposes of this section.

## **58.18 SECTION 18: PREADJUDICATION RULE**

58.18.1 If a person has been charged, whether by indictment, information or otherwise, with manslaughter or homicide in the connection with a Decedent's death, then any and all non-trust property that would otherwise pass to that person from the Decedent's estate shall not pass or be distributed by the Red Cliff Tribal Court until the charges have been resolved.

58.18.2 Pending resolution of the charges against the Eligible Heir the Red Cliff Tribal Court shall appoint an Administrator pursuant to section 58.9.3 of this Chapter.

58.18.3 Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, all non-trust property held by the Tribal Court that was the Decedent's and was designated to the person so absolved, shall pass to the Eligible Heir as if no charge had been filed or made.

## **58.19 SECTION 19: SIMULTANEOUS DEATH PROVISION**

58.19.1 Where the title to the non-trust property covered under this chapter or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the Tribal Court shall order the non-trust property of each person to be disposed of as if they had survived except where provided otherwise in this chapter.

58.19.2 Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of non-trust property and there

is no sufficient evidence that the beneficiaries have died otherwise than simultaneously the non-trust property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed in the proportion that the beneficiary bears to the Decedent or Decedents.

58.19.3 Where there is not sufficient evidence that two (2) joint tenants or tenants by the entirety have died otherwise than simultaneously, the non-trust property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two (2) joint tenants and all of them have so died, the non-trust property thus shall be distributed in the proportion that one bears to the whole number of joint tenants.

58.19.4 Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the non-trust proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

58.19.5 These provisions on simultaneous death shall not apply in cases where the Decedent has made provisions for a different distribution in a will, trust, deed, contract or insurance.

## **58.20 SECTION 20: CONTROL OF FUNERAL ARRANGEMENTS**

58.20.1 Control of funeral arrangements and disposition of the remains of the Decedent shall be based upon any wishes, instructions or directions of the Decedent as expressed in the Decedent's will.

58.20.2 If the Decedent dies intestate or the Decedent's will is silent on the issue of funeral arrangements, the control of the funeral arrangements and the disposition of the remains of the Decedent shall be based upon the decision of the Decedent's family. The decision of the family shall be controlled by the surviving spouse. If the spouse does not survive the Decedent, then the children of the Decedent shall decide, in the event the children cannot decide, the decision shall be made by the eldest child. If there is no surviving spouse or children, then the decisions shall be made by the surviving parents or siblings in that order. If none of these survive the Decedent, then the disposition of the remains shall be determined by the Tribal Court or Personal Representative.

## **58.21 SECTION 21: RED CLIFF CUSTOM AND TRADITIONAL DISTRIBUTION OF NATIVE FINERY AND ARTIFACTS**

Notwithstanding the provisions of this chapter relating to descent and distribution, the surviving spouse or other surviving next of kin may distribute any Native artifact or finery belonging to the Decedent in accordance with the customs and traditions of the Tribe prior to the initiation of the administration of the estate.

Such distribution shall be in accordance with directions left by the Decedent if any.

**58.22**

**SECTION 22: EFFECT OF GRAUD AND EVASION**

58.22.1

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

58.22.2

Any proceeding under this section must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against a perpetrator of fraud later than five (5) years, notwithstanding any other provisions of the Red Cliff Code of Laws, after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced upon the Decedent during their lifetime which affect the succession of the estate.

**58.23**

**SECTION 23: JUDICIAL POWERS AND DUTIES**

58.23.1

The judge of the Tribal Court may make orders for the sale of non-trust 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 Tribal Court judge issuing the same, and shall be filed and recorded as an entry in the proper record.

58.23.2

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

58.23.3

The Red Cliff Tribal Court may have the authority to issue orders requesting non-trust property and/or non-trust personality funds from outside the boundaries of the Red Cliff Reservation to the extent the full faith and credit provisions allow as spelled out in Wisconsin Statutes and Chapter 4 section 4.51 of the Red Cliff Code of Laws.

**58.24**

**SECTION 24: REVOCATION OF WILL BY WRITING OR BY ACT**

A will may be revoked by any means authorized by tribal or Federal law, including executing a subsequent will or other writing with the same formalities provided in section 58.4 of this Chapter. A will may not be deemed revoked by operation of the law of any State.

58.24.1 A will is revoked in whole or in part by:

- (a) A subsequent will, codicil or other instrument which is executed in compliance with the provisions of this Chapter and which revokes the prior will or a part thereof expressly or by inconsistency; or
- (b) Burning, tearing, cancelling, or obliterating the will or part of the will, with the intent to revoke, by the Testator or by some person in the Testator's presence and by the Testator's direction.

58.24.2 A will is revoked by a subsequent marriage of the Testator if the Testator is survived by the spouse, unless:

- (a) The will indicates an intent that it not be revoked by subsequent marriage or makes provision for issue of the Decedent; or
- (b) Testator and the spouse have entered into a contract before or after marriage, which complies with Wisconsin marital property laws and which makes provisions for the spouse or provides that the spouse is to have no rights in the estate of the Testator.

58.24.3 Any provision in a will in favor of the Testator's spouse is revoked by an annulment of the marriage to such spouse or by an absolute divorce. A legal separation is not an absolute divorce for purposes of this section.

58.24.4 If any beneficiary under a will has feloniously and intentionally killed the Decedent, the property that the killer would have taken passes in accordance with section 58.17 of this Chapter.

58.24.5 A will is revoked only as provided in this section.

58.24.6 Except as modified by section 58.24.7, this section is not intended to change in any manner the Doctrine of Dependent Relative Revocation.

58.24.7 When a will, codicil or part thereof has been revoked by a subsequent will, codicil or other instrument under 58.24.1 of this section, the later revocation of the revoking instrument by act under 58.24.2 revives the prior will or codicil or part thereof, unless:

- (a) there is clear and convincing evidence that the Testator did not intend to revive the prior will, codicil or part thereof; or
- (b) the revoking instrument is a codicil which revoked only a part of the will by inconsistency and not expressly, and the evidence is insufficient to prove that the Testator intended no revival.

58.24.8 Proof of a Testator's statements at or after the act of revocation is admissible to establish intent. A will, codicil, or part cannot be revived under this subsection unless the original will or codicil is produced in Court.

## **58.25 SECTION 25: UNINTENTIONAL FAILURE TO PROVIDE FOR ISSUE**

58.25.1 If a Testator fails to provide in their will for any child born or adopted after the making of the will, that child is entitled to receive a share in the estate of the Testator equal in value to the share which the child would have received if the Testator had died intestate, unless:

- (a) the Testator left all or substantially all of their estate to the mother of the child; or
- (b) the Testator eliminated all of his children known to him to be living at the time of execution of the will; or
- (c) the Testator provided for the subsequently born or adopted child by transfers outside the will and the intent that the transfers be in lieu of a testamentary gift is either shown by statements of the Testator or inferred from the amount of the transfers and other circumstances; or
- (d) in any other case it appears from the will or evidence outside the will that the omission was intentional.

If a child entitled to a share under this Chapter dies before the Testator, and the child leaves issue who survive the Testator, the issue who survives the child is entitled to his or her share.

58.25.2 If clear and convincing evidence proves that by mistake or accident the Testator failed to provide in his or her will for a child living at the time of execution or for the issue of any then deceased child, the child or issue is entitled to receive a share in the estate of the Testator equal in value to the share which he or she or they would have received if the Testator had died intestate. Failure to mention a child or issue in the will is not in itself evidence of mistake or accident.

58.25.3 A demand for relief under this section must be presented to the Tribal Court in writing not later than six (6) months after admission of the will pursuant to sec.58.8 of this Chapter.

58.25.4 The Tribal Court shall in its final judgment assign the share of non-trust property or non-trust personality provide by this section:

- (a) from any intestate property first; then
- (b) the balance from each of the beneficiaries under the will in proportion to

the value of the estate each would have received under the will as written, unless the obvious intention of the Testator in relation to some specific gift or other provision in the will would thereby be defeated, in which case the Tribal Court may adopt a different apportionment and may exempt a specific gift or other provision.

58.25.5 If in any case under 58.25.1 or 58.25.2 the Tribal Court determines that the intestate share of non-trust property is a larger amount than the Testator would have wanted to provide for the omitted child or issue of a deceased child or for the issue of a deceased child under this will, or that assignment of the intestate share of non-trust property would unduly disrupt the testamentary scheme, the Tribal Court may in its final judgment make such provision for the omitted child or issue out of the estate as it deems would best accord with the probable intent of the Testator.

## **58.26 SECTION 26: AFTER ACQUIRED PROPERTY**

58.26.1 A will is presumed to pass all non-trust property which the Testator owns at his or her death and which he or she has power to transmit by will, including non-trust property acquired after the execution of the will.

58.26.2 All non-trust property acquired after the death shall be dispersed in accordance with the final probate.

## **58.27 SECTION 27: PROBATE OF TRUST OR RESTRICTED LAND**

58.27.1 Inheritance by Non-Red Cliff Members/Fractionated Heirship:

- (a) The owner of trust or restricted land on the Red Cliff Reservation may only devise such trust or restricted land to a Red Cliff Tribal member, a person eligible for enrollment with the Tribe, or the Tribe.
- (b) For purposes of a devise of trust or restricted land, the creation, execution, and revocation of the will is governed by federal law.
- (c) If a devise of trust or restricted land on the Reservation is made that is not permitted by paragraph (a), the following rules shall apply:
  - (1) The devisee has the right to renounce his or her devise to an eligible devisee;
  - (2) The devisee who is the spouse or lineal descendant of the Testator has the right to reserve a life estate without regard to waste; and
  - (3) A devisee who is not a Tribal member, a person eligible for enrollment in the Tribe, or the Tribe, and who does not reserve a

life estate or renounce his or her devise, the Tribe may exercise its option to purchase and the individual shall be entitled to just compensation in the form of payment of the amount equal to the fair market value of the interest in the land as determined by the Secretary of the Interior.

- (4) In the event the Tribe chooses not to purchase the trust or restricted land, AIPRA's default rule shall apply as outlined in 25 U.S.C. §2206.

58.27.2

Notice:

In order for the Tribe to exercise its option to prevent a transfer of trust or restricted land though a devise not permitted by section 58.27.1 (a), the Tribe must file a written notice of purchase with the Superintendent of the Great Lakes Agency of the Bureau of Indian Affairs, together with certification by the Tribe that copies of the notice of purchase have been mailed on the same date to the Presiding Official at the Office of Hearings and Appeals and the Red Cliff Tribal Judge presiding over the probate and the effected devisee(s). The notice of purchase must be filed with the Office of Hearings and Appeals before the decision or order is issued.

58.27.3

The right to receive a life estate without regard to waste under this section shall be limited to:

- (1) a spouse or lineal descendant who, if they had been eligible, would have inherited an ownership interest of 5% or more in the tract of land; or
- (2) a spouse or lineal descendant who occupied the tract as a home at the time of the Decedent's death.

58.27.4

Intestate Succession of Trust or Restricted Land:

- (a) Only a Red Cliff Tribal member or person eligible for membership in the Tribe may receive trust or restricted land on the Red Cliff Reservation through intestate succession. Any person who is not a Tribal member or person eligible for enrollment in the Tribe may not receive trust or restricted land on the Red Cliff Reservation through intestate succession.
- (b) If intestate succession is not permitted under paragraph (a), but the individual would otherwise receive land pursuant to federal law or sections 58.27.6 and 58.27.7 of this Chapter, or if he or she were a Tribal member or person eligible for membership in the Tribe, the following rules shall apply:
  - (1) The individual has the right to renounce his or her ability to take

the land through intestate succession to a Red Cliff Tribal member or person eligible for enrollment in the tribe;

- (2) If the individual is the spouse or lineal descendant of the Decedent, the individual has the right to reserve a life estate without regard to waste;
- (3) If there are surviving issue one or more of who are not issue of the surviving spouse or surviving domestic partner, one-third of trust personality of the decedent and a life estate without regard to waste in the interest in trust or restricted lands of the decedent.
- (4) If the individual does not renounce his or her ability to take the land through intestate succession, or reserve a life estate, the Tribe may exercise its option to purchase and the individual shall be entitled to just compensation in the form of payment of the amount equal to the fair market value of the interest in the land as determined by the Secretary of the Interior.
- (5) In the event the Tribe chooses not to purchase the trust or restricted land, AIPRA's default rule shall apply as outlined in 25 U.S.C. §2206.

58.27.5 Notice:

In order for the Tribe to exercise its option to prevent a transfer of trust or restricted land through intestate succession not permitted by section 58.27.4 (a), the Tribe must file a written notice of purchase with the Superintendent of the Great Lakes Agency of the Bureau of Indian Affairs, together with certification by the Tribe that copies of the notice of purchase have been mailed on the same date to the Presiding Official at the Office of Hearings and Appeals and the Red Cliff Tribal Judge presiding over the probate and the effected devisee(s). The notice of purchase must be filed with the Office of Hearings and Appeals before the decision or order is issued.

58.27.6 If there is a surviving spouse of the Decedent, the spouse shall receive a life estate without regard to waste in the trust or restricted land of the Decedent. The remainder of the estate shall pass as set forth in section 58.27.7 below.

58.27.7 Where there is no surviving spouse of the Decedent, or there is a remainder interest of 5% or more, pursuant to section 58.27.6 above, the trust or restricted land shall pass as follows:

- (1) To those of the Decedent's children who are Eligible Heirs as defined in 58.3(v) of this Chapter, as a joint tenancy with the right of survivorship.

- (2) If the property does not pass to the Decedent's children, to those of the Decedent's surviving grandchildren who are Eligible Heirs, as a joint tenancy with the right of survivorship.
- (3) If the property does not pass under (2) above, to those of the Decedent's surviving great-grandchildren who are Eligible Heirs, as a joint tenancy with the right of survivorship.
- (4) If the property does not pass under (2) or (3) above, to the Decedent's surviving parent who is an Eligible Heir, and if both parents survive the Decedent and are both Eligible Heirs, to both parents as a joint tenancy with the right of survivorship.
- (5) If the property does not pass under (1) through (4) above, to those of the Decedent's surviving siblings who are Eligible Heirs, as a joint tenancy with the right of survivorship.

58.27.8 No Taker

If the trust or restricted land does not pass to an Eligible Heir pursuant to this section 58.27, then the trust or restricted land shall pass to the Red Cliff Tribe. Except that notwithstanding this paragraph, an Indian co-owner (including the Tribe) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under this section by paying into the estate of the Decedent, before the closing of the probate estate, the fair market value of the interest in the land; if more than one Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

**58.28 SECTION 28: INTESTATE DESCENT OF SMALL FRACTIONATED INTERESTS IN LAND**

58.28.1 Notwithstanding the provisions relating to intestacy and testamentary disposition, and subject to any applicable federal law, any trust or restricted interest in land in the Decedent's estate that is not disposed of by a valid will and represents less than 5% of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the Decedent's estate inventory at the time of the heirship determination, pursuant to 25 U.S.C. §2206 (D), shall descend as follows:

- (a) If there is a surviving spouse, and such spouse was residing on a parcel of land described above at the time of the Decedent's death, the spouse shall receive a life estate without regard to waste in the Decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with section 58.28.2 below.

58.28.2 Single Heir Rule:

In an effort to reduce further fractionation through intestacy, where there is no life estate created or there is a remainder interest pursuant to section 58.28.1(a), the trust, restricted interest or remainder interest shall descend in trust or restricted status as follows:

- (a) The Decedent's eldest surviving child, but only if such child is an Eligible Heir as defined in 58.3(v) of this Chapter. If the Decedent's eldest surviving child is not an Eligible Heir; to the eldest surviving child who would be an Eligible Heir.
- (b) If the interest does not pass under (a) above, to the Decedent's eldest surviving grandchild, but only if such grandchild is an Eligible Heir as defined in 58.3(v) of this Chapter. If the Decedent's eldest surviving grandchild is not an Eligible Heir; to the eldest surviving grandchild who would be an Eligible Heir.
- (c) If the interest does not pass under (a) or (b) above, to the Decedent's eldest surviving great grandchild, but only if such great grandchild is an Eligible Heir as defined in 58.3(v) of this Chapter. If the Decedent's eldest surviving great grandchild is not an Eligible Heir; to the eldest surviving great grandchild who would be an Eligible Heir.
- (d) If the interest does not pass under (a), (b), or (c), then to the Red Cliff Tribe.

## **58.29 SECTION 29: CREDITORS**

### **58.29.1 Notice:**

The Administrator of the estate shall cause notice to creditors to be posted in accordance with Chapter 27 section 27.2.2 of the Red Cliff Code of Laws and published for two (2) consecutive issues in the Miisaniinawind Tribal Newsletter. Said notice shall state that the creditors have ninety (90) days from the date of the first publication of the notice to present their claims to the Administrator and that only those claims so presented may be paid by the estate.

### **58.29.2 Payment of Creditors:**

- (a) Payment to creditors of the Decedent shall be made by the Administrator only upon order of the Tribal Court after determining the validity of the claims by affidavit or personal testimony of the claimant.
- (b) All just claims of creditors allowed by the Tribal Court shall be paid before the distribution of the estate but shall be paid only after the payment of the family allowance and homestead allowances as provided herein.

## **SECTION 30: FAMILY AND HOMESTEAD ALLOWANCES**

If the Decedent was domiciled on trust or restricted land, the surviving spouse or domestic partner and minor children whom the Decedent was obligated to support and children who were in fact being supported by the Decedent are entitled to a reasonable allowance in money out of the non-trust estate for their maintenance during the period of administration. The allowance may be paid as a lump sum or in periodic installments, is exempt from and has priority over all claims. The passing of any person entitled to family allowance terminates his or her right to allowances not yet paid.

In the case of any minor child or dependent child who is not living with the surviving spouse or domestic partner the allowance may be made partially to the child or his or her guardian or other person having his or her care and custody, and partially to the spouse or domestic partner as his or her needs may appear.

In making an allowance under this section, the Tribal Court shall consider the following:

- (a) The Tribal Court shall balance the needs of the spouse, domestic partner, or minor children against the nature of the creditors' claims in setting the amount allowed under this section.
- (b) The size of the estate.
- (c) Other resources available for support.
- (d) The standard of living the family enjoyed at the time of Decedent's death.
- (e) Whether the provisions of a marital property agreement will create a hardship for the surviving spouse.
- (f) Support and education of minor children until a specified age, not to exceed eighteen (18).
- (g) Any other factors that the Tribal Court considers relevant.

The Tribal Court may not order an allowance under this section if any of the following applies:

- (a) The Decedent has amply provided for each minor child and for the spouse or domestic partner by the transfer of probate or non-probate assets, or support and education have been provided for by any other means.
- (b) In the case of minor children, the surviving spouse or surviving domestic partner is legally responsible for support and education and has ample

means to provide them in addition to his or her own support.

- (c) In the case of the surviving spouse or surviving domestic partner, he or she has ample means to provide for his or her support.

The Tribal Court may set aside property to provide an allowance and may appoint a trustee to administer the property, subject to the continuing jurisdiction of the court. If a child dies or reaches the age of eighteen (18) or if at any time the property held by the trustee is no longer required for the support of the spouse or domestic partner or the support and education of the minor child, any remaining non-trust property is to be distributed by the trustee as the Tribal Court orders in accordance with the terms of the Decedent's will or to the Eligible Heirs of the Decedent in intestacy or to satisfy unpaid claims of the Decedent's estate.

The Tribal Court may set aside such sums from the estate as the Tribal Court may deem necessary for maintenance and upkeep of a home set aside for the benefit of a surviving spouse and/or children.

58.30.1

Advancements:

If a person dies intestate, non-trust property which they gave in their lifetime to an Eligible 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 Eligible Heir to be an advancement. For this purpose, the non-trust property advanced is valued as of the time the Eligible Heir came into possession or enjoyment of the non-trust property or as of the time of death of the Decedent, whichever first occurs. If the recipient of the non-trust property fails to survive the Decedent, the non-trust property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration of acknowledgement provides otherwise.

58.30.2

Debts to Decedent:

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

58.31

**SECTION 31: ACCOUNTING**

Prior to the distribution of every estate for which an Administrator has been appointed, such Administrator shall render an accounting to the Tribal Court for its approval, verified under oath, showing the amount of money received and expended from the estate, from whom received and to whom paid with receipts for such payment, the name and amount of each claim against the estate which has been presented and the disposition of such claim, the trust and non-trust

property sold or distributed and any other matter necessary to fully show the condition and affairs of the estate and that it is ready for distribution including the computation of any attorney's and/or Administrator's fees for which approval for payment is sought.

58.31.1 Final Account.

When the affairs of the estate have been fully administered, the Administrator shall file a final account with the Tribal Court, verified under oath, which shall affirmatively set forth:

- (a) That all claims against the estate have been paid, or that such claims have been paid with the exceptions shown;
- (b) The amount of money received and expended, from who received and to who paid referring to receipts for each payment;
- (c) The trust and non-trust property selected by the surviving spouse and family allowances paid if any;
- (d) The remaining assets of the estate, including unexpended and unappropriated money;
- (e) A statement that there is nothing further to be done in the administration of the estate except as shown in the final account;
- (f) The proposed determination of distributees, indicating the name, age, address and relationship to the Decedent of each Distributee and the proposed distributive share of non-trust property that each Distributee is to receive;
- (g) A request that the Tribal Court set a time for filing objections to the final account, or to the proposed determination of the Distributees or to the proposed distributive share of non-trust property of each Distributee;
- (h) A request that the Tribal Court set a hearing on any objections filed; and
- (i) A request that the Tribal Court determines the Distributees and the distributive share of non-trust property of each and approves the final account.

58.31.2 Approval and Order of Final Account.

Upon the filing of a final account, the Tribal Court shall enter an order setting a time for filing objections to the final account which shall be no less than twenty (20) days after such order and set a hearing on objections, if any, which shall be

no less than ten (10) days after the deadline for filing objections.

Immediately following entry of the order, the Administrator shall send by certified mail a true copy of the order to each Interested Person at their last known address. The order shall also be posted in accordance with 58.10.1(c) of this Chapter.

On or before the deadline for filing objections, any Interested Person may file an objection to the final account, the proposed determination of Distributees or the proposed distributive share of non-trust property specifying the reasons for objection. If any such objection is filed, the Tribal Court shall hold a hearing, consider all evidence relevant to the objection and determine the controversy.

If no objections are filed and if the final account appears to be proper, the Tribal Court shall enter an order:

- (a) Directing the Administrator to pay those unpaid claims, charges and allowances against the estate as shown in the final account;
- (b) Determine the Decedent's distributees, indicating their names, ages, addresses and the distributive share of the remaining estate which each is to receive; and
- (c) Directing the Administrator to distribute such non-trust share or shares to each Distributee.

Upon finding that the estate has been fully administered and is ready to be closed, the Tribal Court shall enter an order closing the estate and discharging the Administrator and his or her bondsman if any.

#### 58.31.3 Reopening Estate.

An estate may be reopened if additional non-trust property is discovered which should have been distributed in the estate, an inconsistent order has been entered or any necessary act remains unperformed.

Upon receipt of a petition to reopen an estate from any Interested Persons, the Tribal Court shall set a hearing no less than thirty (30) days' notice to all interested persons.

If the Tribal Court reopens the estate, it shall appoint an Administrator which may be the former Administrator or another qualified person. The provisions of this Chapter as to original administration shall apply as applicable to accomplish the purpose for which the estate is reopened.