

ROUND VALLEY INDIAN TRIBES
A Sovereign Nation of Confederated Tribes

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LOCATION: ON STATE HWY 162
ONE MILE NORTH OF COVELO
IN ROUND VALLEY
TRIBAL TERRITORY SINCE TIME BEGAN

ROUND VALLEY RESERVATION ESTABLISHED 1856

PROBATE CODE

OF THE

ROUND VALLEY INDIAN

TRIBES

2014

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PROBATE CODE
of the
Round Valley Indian Tribes

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**PROBATE CODE
of the
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1. JURISDICTION; PURPOSE; DEFINITIONS

1.1. The Tribal Court shall have jurisdiction to administer in probate the estate of a decedent who, at the time of their death, was domiciled or owned real or personal property situated within the territory and jurisdiction of the Round Valley Indian Tribes ("Tribe"), as defined by Article I of the Constitution.

1.2. This Chapter shall be referred to as the "Probate Code." The objective of the Probate Code is to provide for the exercise of the greatest possible tribal jurisdiction over the - probate of the estate of decedents who were domiciled or owned real or personal property situated within the territory and jurisdiction of the Tribe. This Probate Code seeks to ensure probate may be concluded more economically and more expeditiously than by other jurisdictions. Furthermore, the determination of how property is disposed upon a person's death is an exercise of self-governance crucial to tribal sovereignty. With the exception of assignments in land, this Probate Code does not govern ownership in federal trust lands, which are determined by the Bureau of Indian Affairs pursuant to the American Indian Probate Reform Act, § U.S.C. 2201, *et seq.*

1.3 The Probate Code shall be liberally construed and applied to meet the following objectives:

1.3.1 To ensure that the property of decedents passes to the rightful heirs or beneficiaries

1.3.2 To comply with the decedent's wishes as much as possible.

1.3.3 To comply with Tribal custom and tradition.

1.3.4 To provide a simple, efficient and inexpensive method for probating decedent's property

1.3.5 To prevent the transfer of land out of Indian ownership and control.

1.3.6 To ensure that the rights of creditors of decedents are protected to the extent possible and fair.

1.3.7 To promote and further the Tribe's inherent right to self-governance

1.4. The net estate of a person dying intestate shall descend and shall be distributed as follows:

1.4.1. The surviving spouse shall receive the following share:

1.4.1.1. All of the decedent's share of the net community estate; and

1.4.1.2. One-half (1/2) of the net separate estate if the intestate is survived by issue; or three quarters (3/4) of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or all of the net separate estate, if there is no surviving issue nor parent nor issue of the parent.

1.4.2. The share of the net estate not distributed to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

1.4.2.1. To the issue of the intestate, lineal descendants; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree then those of more remote degree shall take by representation

1.4.2.2 If the intestate not survived by issue, e.g. if the intestate had no lineal descendants, then to the decedent's parent or parents who survive the intestate, in equal shares.

1.4.2.3. If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

1.4.2.4. If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparents or grandparents shall take one-half.

1.4.2.5. If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each

such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be unequal degree, then those of more remote degree shall take by representation.

1.4.3. Where necessary to determine a single heir and there are one or more heirs in a single category, heirship findings shall be determined in priority of age, the older to have preference over the younger.

1.5. For the purposes of this Probate Code, words used in the present tense include the future, the singular number include the plural, the masculine form includes the feminine; and the word "shall" is mandatory and not permissive. Unless otherwise required from the context:

1.5.1. "Assignment" shall mean an "assignment of land" as the term is used in Article X, Section 2 of the Tribe's Constitution.

1.5.2. "Decedent" shall mean a deceased person.

1.5.3 "Descendant" of an individual means all of the individual's descendants of all generations, with relationship of parent and child at each generation, being determined by the definition of child and parent contained in this section.

1.5.4 "Degree of kinship" shall mean the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

1.5.5. "Devise" means a testamentary disposition of real or personal property or means to dispose of real or personal property by will.

1.5.6. "Distribution" means the judicially-determined apportionment and division after the payments of debt and charges of the assets of an estate, among those legally entitled to share.

1.5.6. "Estate" shall mean all of the assets and liabilities of a deceased person.

1.5.7. "Heirs" shall mean those persons, including the surviving spouse, who are entitled under the rules of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

1.5.8. "Intestate" shall mean that a person has died without making a valid will as to some or all of his assets. Such property will pass to other persons under the intestate succession rules of this Probate Code.

1.5.9. "Indian finery" shall mean items of personal adornment. made in the Indian tradition, by human craft.

1.5.10. "Indian artifacts" shall mean an object, irrespective of age, made by human craft and in the Indian tradition.

1.5 .11. "Issue" shall mean all the lineal descendants of the ancestor including all lawfully adopted children. Children who have been cared for or considered adopted by custom shall not be considered issue of the ancestor unless lawfully adopted. Posthumous children are considered as living at the death of their parent.

1.5.12. "Net estate" shall mean the property of the decedent exclusive of any enforceable claims against the estate.

1.5 .13. "Parent" shall mean the biological or lawful adoptive mother or father of a person. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

1.5.14. "Personal property" shall mean any property that is not included in the definition of real estate, excluding Indian finery and Indian artifacts.

1.5.15. "Spouse" shall mean a party to a marriage recognized by any jurisdiction, including the Tribe. It shall not include a party to a common law marriage unless the marriage is recognized by the jurisdiction in which the arrangement was entered.

1.5.16. "Trust Property" shall mean any property, title to which is held in trust or restricted fee status by the United States for the benefit of a member of a federally recognized Indian tribe.

1.5.17. "Trustee" shall mean a fiduciary, guardian, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, estate, or trust

1.5.18. "Will" shall mean an instrument validly executed as required by this Probate Code that disposes of an individual's estate at death.

2. HEARING; NOTICE; WAIVER OF NOTICE; SUPPLEMENTAL HEARING

2.1 Hearings to determine heirs or to probate wills of deceased members of the tribe shall be conducted only after notice of time and place of such hearings shall have been posted twenty (20) days in five or more conspicuous places on the reservation. Copies of such notices shall be served personally or by mail, to such probable heirs to, and claimant against, an estate at least twenty (20) days in advance of the date set for the hearing, except that in cases involving no contest. interested parties, if all appear, may waive their right to twenty (20) days notice and testimony may be taken at once.

2.2. When it appears that a supplemental hearing is necessary to secure material evidence, such a hearing may be conducted after notice has been given to those person on whom notice of the original hearing was served and to such other persons as the testimony taken at the original hearing indicates may have a possible interest in the estate.

3. WTINESSES; OATHS

The Tribal Judge is authorized to administer oaths. All witnesses shall be examined under oath and their testimony reduced to writing and certified as being correct by the person reducing the testimony to writing. The Judge may, in his or her discretion. limit the number witnesses in any case.

4. GUARDIAN AD LITEM

Minors presumed interested in an estate must be represented at the hearing by guardian ad litem appointed by the Tribal Judge.

5. TESTAMENTARY CAPACITY; WILLS;

A descendant of the age of eighteen (18) years or more and of testamentary capacity, who has any right, title, or interest in personal property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses, *provided*, however that such property may also be disposed of by a holographic will. The testator may at any time during this lifetime, revoke his will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it.

6. APPROVAL OR DISAPPROVAL OF WILL

Wills shall be approved or disapproved only after testimony has been taken as to the testamentary capacity of the decedent at the time the will was signed, and as to the circumstances surrounding its execution. If, in the opinion of the Judge, the will was coerced from the decedent, or he was unduly influenced or of unsound mind at the time of its execution, the Judge will disapprove it and proceed to probate the estate as in the case of intestacy.

7. CREDITORS' CLAIMS; AFFIDAVIT; PRIORITIES

7 .1. Persons having claims against the estate of a decedent may file same with the Tribal Judge at any time after the death of the decedent and up to and including the time of the hearing. All claims must be filed in writing and in triplicate. All claims must be itemized in detail and sworn to before a person authorized to administer oaths. Each such claim must be supported by an affidavit of the claimant or someone in his behalf, that the amount is justly due

from decedent, that no payments have been made on the account that are not credited thereon, and that there are no offsets to the knowledge of the affiant.

7.2. All claims that have existed for more than five (5) years shall not be allowed.

7.3. Claims of creditors shall be allowed priority in payment in the following order:

7.3.1 Probate fee;

7.3.2. Claims for expenses of last illness and funeral charges;

7.3.3. Claims of indebtedness to the United States or any of its agencies;

7.3.4. Claims of indebtedness due the Tribe of which decedent was a member

7.3.5. Claims of federal Government on account of any social security or old age assistance payment; and

7.3.6. Claims of general creditors

8. PROBATE FEES

Upon a determination of the heirs to estate property, or approval of any will disposing distribution of any estate property or in any event prior to distribution of any estate property is made, a probate fee to be set and published by the Tribal Court shall be due and payable from the estate of the decedent; *provided* that the Tribal Court may waive such fee for good cause.

9. DECISIONS

9.1. The Judge shall incorporate his or her findings and conclusions in a decision citing, in cases where decedent died intestate the applicable provisions of law regarding decedent and distribution and in decision approving wills he shall state the particular property each devisee or legatee is to receive. Decisions shall state those claims allowed and those disallowed against the estate. A copy of the decision shall be mailed to each heir and claimant and to all other interested parties.

9.2. Within three (3) days after a decision is made, copies shall be mailed to each heir and claimant and to all other interested parties.

9.3 Distribution of an estate may be made after sixty (60) days from the date of the decision, unless a petition for rehearing is filed within that period.

10. SUMMARY DISTRIBUTION PROCEEDINGS; VALUE AND NATURE OF ELIGIBLE ESTATES

Estates of deceased persons, minors or incompetent persons, where the value of the entire estate does not exceed the sum of Five Hundred Dollars (\$500.00) and the property, of said estate consists wholly of personal property, may be settled and distributed without procuring letters of administration or of guardianship.

11. APPLICATION TO SETTLE ESTATE

Any person desiring to settle an estate under the foregoing Summary Distribution Proceedings shall make and file with the Clerk of the Tribal Court an application stating that the person whose estate is sought to be administrated is dead, a minor or an incompetent, and that the value of the estate subject to probate does not exceed the sum of Five Hundred Dollars (\$500.00), which application shall also contain the names, ages, relationships and addresses of the known heirs and the description and value of the property included in the estate.

12. APPOINTMENT OF TRUSTEE; DUTIES AND RESPONSIBILITIES

12.1 Upon the presentation of such affidavit, the Tribal Judge may without notice, appoint the affiant or some other qualified person to act as trustee of said estate by a written order and may, in his or her discretion, require a bond of said trustee.

12.2. An appointed trustee is entitled to the possession of all of the personal property of said decedent, minor or incompetent only if there is no real property belonging to such person. No formal appraisal thereof shall be required, nor shall notice to creditors be given, *provided*, however, rights of creditors against said decedent or his estate shall not be affected by this proceeding, and said personal property, whether in the possession of said trustee or other persons, except after sale by said trustee shall be subject to rights of creditors. Said trustee, with the approval of the Tribal Court, may pay from the assets of the estate sums due to a creditor or creditors of said decedent.

12.3. Whenever, in the discretion of the trustee it becomes necessary for any reason to sell all or part of the personal property of such estate, said trustee may sell all or any part of said personal property by public sale after at least three (3) days notice of the time and place of said sale by posting by said trustee in three (3) public and conspicuous places within the exterior boundaries of the Round Valley Reservation. Property sold by said trustee shall no longer be a part of such

estate, and shall be deemed to have been replaced by the proceeds of such sale or sales.

12.4. In cases of estates of decedents, the trustee shall make distribution of the balance of the estate remaining after the payment of expenses and such debts or claims as are paid with the approval of the Tribal Court, in kind or in cash, or partly in kind and cash, to the known heirs of the decedent, determined pursuant to the intestacy rules at Section 1.4 of this Probate Code, and present the receipts or receipts of such heirs with his accounting. In case of minors or incompetents, the trustee shall retain the balance of said estate and thereafter apply the same for the benefits of such minors or incompetents in such manner as the Tribal Court may direct.

12.5. Within thirty (30) days after the order appointing said trustee, the trustee shall file with the Tribal Court a verified accounting, setting forth all property received and disbursed by him as such trustee, with vouchers for payments, distribution, and expenses.

12.6. Upon the filing of such accounting, the same shall be examined by the Tribal Court, and, if approved by the Tribal Court, said trustee shall be discharged from further obligation except where the balance of said estate has been retained in the case of minors or incompetents. In the latter case, said trustee shall return an additional account following the expenditure of the balance of the estate as directed by the Tribal Court, together with vouchers therefore, and shall be discharged upon approval of such account by the Tribal Court.

13. ASSIGNMENTS

13.1. Upon the death of an Indian Holding an Assignment issued pursuant to Article X, Section 2 of the Tribe's Constitution ("assignee"), the assignee's heirs or devisees shall have first chance in the reassignment of the land, provided such persons are members of the Tribe, who would be eligible to receive an Assignment pursuant to Article X, Section 2 of the Tribe's Constitution.

13.1.1. Where a will or written request has been made by the assignee that designates the person he or she desires to have his land reassigned to, the decedent's request shall be honored, *provided* such person is a member of the Tribe who would be eligible to receive an Assignment pursuant to Article X, Section 2 of the Tribe's constitution

13.1.2. Where no will or written request has been made by the assignee that designates the person he or she desires to have his land reassigned to, the assignment must be reassigned according to the intestacy rules at Section 1.4 of this Probate Code, *provided* that the entire Assignment shall be assigned to the receiving party or parties and the Assignment shall not be divided into shares.

13.2. If a devisee or an heir is chosen in accordance with Sections 13.1 is already in possession of his due portion of assigned Tribal land, as determined at the sole discretion of the Tribal Council, he or she may, if he or she so desires, relinquish land held of equal area to that he or she is about to receive and relinquish the remaining land to the Tribe. Any improvements on the relinquished lands shall be disposed of in accordance with Section 13.7.

13.4. When an assignee has willed his or her assignment to a person who is under the age of eighteen (18) at the time of his or her death, or where the heirs in the absence of any will are underage, the land may be farmed by the parent or guardian of the said minor; or, if the parent or guardian already has all the land he can properly care for, as determined at the sole discretion of the Tribal Council, the assignment may be leased until such time as the child comes of age; provided that if it be leased, the lease shall have the approval of the Bureau of Indian Affairs Agency Superintendent, and be deposited as Individual Indian Money to be expended under applicable rules; provided further that the Bureau of Indian Affairs Agency Superintendent shall pay to the parent or guardian of the minor not less than one-fourth of net proceeds of the lease if such parent maintains a reasonably good home, food, clothing, and care of the minor, as determined by the Tribal Councils in its sole discretion.

13.5 When a heir, or by will or by selection, as provided for in Section 13.1.1, dies, the inherited Assignment shall be cancelled and shall then be subject to reassignment according to the intestacy rules at Section 1.4 of this Probate Code, *provided* that the entire Assignment shall be assigned to the receiving party or parties and the Assignment shall not be divided into shares; and *further provided* that such persons are members of the Tribe and would be eligible to receive an assignment pursuant to Article X, Section 2 of the Tribe's Constitution.

13.6. If no heirs can qualify as eligible for an Assignment, then the land shall be held in Tribal control awaiting assignment; provided, that if no heir can qualify for the improvement(s) on the land in accordance with Section 13.7, the value of the improvement(s) shall remain as a lien against the land, and the person to whom it shall finally be assigned shall be required to pay the appraised value of the improvements to the Tribe, such appraisal to be made at the time the Assignment is applied for.

13.7. Improvements of any character made upon assigned land, i.e. the land contemplated by Article X, Section 2 of the Tribe's Constitution, may be bequeathed to and inherited by members of the Tribe or otherwise be disposed of according to this Probate Code, provided that no permanent improvements shall be removed from the land without consent of the Tribal Council.

13.7.1. The following classes of improvements shall be considered the personal property of the persons erecting or constructing the same upon

the assigned land, unless otherwise stipulated in writing in the formal assignment of land:

13.7.1.1. Dwelling houses.

13.7.1.2 Fences of all kind, except those fences which form the outer boundaries of the Assignment.

13.7.1.3. Pumping machinery; *provided* it is such that it can be removed without destruction or material damage to the well or other water source; provided further that the well itself shall not be considered personal property and it shall be left in good condition and shall be considered a part of the real property.

13.7.2. The owner of personal property of the kind designated as an "Improvement" in Section 13.7.1 of this Probate Code may dispose of it by sale, gift, or will; or it may pass on to his heirs upon his death according to Section 1.4 of this Probate Code, if he or she dies intestate.

13.7.3 When personal property of the kind referred to in sections 13.7.1 and 13.7.2 is inherited or purchased by a person or person who cannot make use of it on the land where it is located, the party so inheriting or purchasing, may dispose of it in one or more of the following ways:

13.7.3.1. By sale to a person who can use it where it is located

13.7.3.2. By removing it as his or her own expense.

13.7.3.3. By sale to a person who will remove it.

13.7.3.4. By sale to the Tribe on such terms as may be agreed upon.

Provided that any property that is to be removed from the land shall be removed within a period of ninety (90) days from the date which the land itself shall have passed into the person's ownership, and provided further, that the land from which the improvements are removed shall be left in the same good condition as before the improvements were placed upon it. except in the case of a well or foundations, which may be left by agreement with the new assignee.

14. DISTRIBUTION OF INDIAN FINERY AND INDIAN ARTIFACTS

Notwithstanding the provisions of this Probate Code, Indian artifacts and Indian finery belonging to the decedent shall be distributed in accordance with the customs and

traditions of the Tribe. To the extent that the family disagrees as to what that custom and tradition is, the tribal court will make a determination based on hearing of evidence.

15. SLAYER RULE

No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person, or receive any interest whatsoever in the estate of the decedent or any portion of his or her estate.

16. SEVERABILITY

If any section, clause, or provision of this Probate Code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of the Probate Code and application to any other person or circumstance shall remain be valid and in effect.