

DRAFT
REVISED NORTHERN CHEYENNE LAW &
ORDER CODE

TITLE 10
PROBATE CODE

DRAFT

TITLE 10

PROBATE CODE

TABLE OF CONTENTS

Chapter 1

GENERAL SECTION

- 10-1-1 Adoption of Heirship and Probate Code
- 10-1-2 Purposes – Liberal Construction
- 10-1-3 Jurisdiction
- 10-1-4 General Definitions
- 10-1-5 Petition for Testacy Proceeding
- 10-1-6 Public Notice of Hearing
- 10-1-7 Service of Notice on Interested Parties
- 10-1-8 Proof of Service of Notice of Hearing
- 10-1-9 Waiver of Notice
- 10-1-10 When Orders or Notice Binding One Binds Another – Representation
- 10-1-11 Effect of Divorce, Annulment, or Separation Decree
- 10-1-12 Homicide – Effect on Intestate Succession, Wills, Joint Assets, Life Insurance, and Beneficiary Designations
- 10-1-13 Duty and Liability of Will Custodian
- 10-1-14 Grounds of Will Contest – Hearing
- 10-1-15 Testacy Hearing
- 10-1-16 Exemptions
- 10-1-17 Rights of Adopted Child

Chapter 2

INTESTATE SUCCESSION

- 10-2-1 Intestate Estate
- 10-2-2 Succession Without Probate
- 10-2-3 Who May Initiate Probate Proceedings
- 10-2-4 Priority of Settlement
- 10-2-5 Order of Succession
- 10-2-6 Intentions of Decedent

Chapter 3

PROBATE

- 10-3-1 Who May Make a Will
- 10-3-2 Written Instruments – Wills
- 10-3-3 Execution of a Will – Validity
- 10-3-4 Holograph Will
- 10-3-5 Self-Proved Will
- 10-3-6 Who May Witness – Effect of Witness by Beneficiary
- 10-3-7 Incorporation by Reference

- 10-3-8 Separate Writing Identifying Disposition of Tangible Personal Property
- 10-3-9 Revocation by Writing or Act
- 10-3-10 Omitted Spouse
- 10-3-11 Pretermitted Child

Chapter 4

APPOINTMENT OF PERSONAL REPRESENTATIVE SPECIFIC ADMINISTRATOR DUTIES

- 10-4-1 Appointments
- 10-4-2 Social Administrator
- 10-4-3 Qualification of Special Administrator
- 10-4-4 Purpose of Appointment Special Administrator
- 10-4-5 Personal Representative
- 10-4-6 Qualifications of Personal Representative
- 10-4-7 Purpose of Personal Representative
- 10-4-8 Petition for Appointment of Special Administrator Personal Representative
- 10-4-9 Priorities in Appointment of Special Administrator, Personal Representatives
- 10-4-10 Duties of Special Administrator and Personal Representative
- 10-4-11 Distribution Settlement Discharge
- 10-4-12 Mismanagement – Limitations on Actions
- 10-4-13 Compensation

TITLE IX

HEIRSHIP AND PROBATE CODE

I. GENERAL SECTION

10-1-1. Adoption of Heirship and Probate Code.

The code shall be known as the Northern Cheyenne Heirship and Probate Code. This code shall supercede any contradictory sections or ordinances.

10-1-2 Purposes - Liberal Construction.

A. This Code shall be liberally construed and applied to promote its underlying purposes and policies.

B. The underlying purposes and policies of this Code are to:

1. Discover and make effective the intent of a decedent in distribution of his property;

2. Promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to *his* successors;

3. Facilitate the power of the Northern Cheyenne Tribal Reservation to prescribe the manner of descent and distribution of the property of its members.

10-1-3 Jurisdiction

The Northern Cheyenne Tribal Reservation has the inherent power to prescribe the manner of descent and distribution of the property of its members. The Court shall have jurisdiction over personal property of any person who is a resident and dies on the Reservation. The Court shall have the power to appoint conservators and representatives for minors and incompetents, determine the validity of wills, and to probate estates and wills.

10-1-4. General Definitions.

Subject to additional definitions contained *in* subsequent sections which are applicable to specific sections, the following definitions apply:

1. Application- a written request for an order of appointment.
2. Child - includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

C. Claims - in respect to estates of decedents. and protected persons, includes liabilities of the decedent or protected person, and liabilities of the estate which arise at or after the death of the decedent^o or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to. specific assets alleged to be included in the estate.

D. Conservator - means a person who is appointed by a court to manage the estate of a protected person.

E. Devise- when used as a noun means a testamentary disposition of real or personal property--and when used as a verb means to· dispose of real or personal property by will.

F. Devisee - means any person designated in a will to receive a devise.

G. Disability- cause for a protective order or of a conservator when:

1. A minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or when funds are· needed for his support and education and that protection is necessary or desirable to obtain or provide funds;
or

2. A person is unable. to manage his property and affairs - - -effectively for ·reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, incarceration, detention by a foreign power, or disappearance.

H. Distributee - any person who has received property of a decedent from *his* personal representative other than· as a creditor or purchaser.

I. Estate - includes the property of the decedent, or other person whose affairs are subject to the code.

J. Fiduciary – include personal representative, guardian, and conservator

- K. Formal Proceedings - means those conducted before a judge with notice to interested persons.
- L. Guardian - a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment. This term does not include a person who is merely a guardian ad litem.
- M. Heirs- those persons, including the surviving spouse who are entitled under intestate succession to the property of a decedent.
- N. Incapacitated Person- Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment
- O. Interested Person- Includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it related to particular persons may vary from time to time and must be determined by the particular purpose of and matter involved in an proceedings.
- P. Intestate Estate- any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed by this code so long as part of the estate is non-trust and non-restricted real property, or personal property of a tribal member.
- Q. Issue- of a person means all his lineal descendants of all generations with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.
- R. Minor- a person is under eighteen (18) years of age.
- S. Mortgage- Any conveyance, agreement, or arrangement in which property is used as security.

- T. Parent- includes any person entitle to take, or who would be entitle to take if the child died without a will, as a parent under this code intestate succession from the child who relationship is in question.
- U. Personal Representative- Includes executor, administrator, successor, personal representative, and persons who perform substantially the same function under the law governing their status.
- V. Petition- a written request to the court for an order after notice
- W. Property- non-trust and non-restricted real property and personal property of any interested therein.
- X. Protected Person- a minor or other person for whom a conservator has been appointed or other protective order has been made.
- Y. Protective Proceedings- a proceeding to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise incompetent or because is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- Z. Testacy Proceedings- a proceeding to establish a will or determine intestacy.
- AA. Ward- a person for whom a guardian has been appointed. A “minor ward” is a minor for whom a guardian has been appointed solely because of minority.
- BB. Will- Includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises other will.

10-1-5 Petition for Testacy Proceeding *[As amended by Ord. DOI 3(98)]*

When any member of the tribe dies leaving property subject to the jurisdiction of the Northern Cheyenne Court, any person claiming to be an heir or devisee of the decedent, or the tribe itself, may file a petition in the Trial Court (hereinafter "Court") for the purposes of:

- A. Invoking testacy proceedings to determine intestacy of the decedent's estate, or to establish the validity of the decedent's will; and
- B. Commencement of all necessary determinations resulting in the settlement of the decedent's estate, including petitions and appointment of special administrator, guardians, or personal representative.

10-1-6 Public Notice of Hearing [As amended by Ord DOI 3(98)]

Within ten (10) working days after the Petition for Testacy proceedings is filed, the Court Clerk shall give notice of the date, time, and place of the hearing, and the business to be conducted in accordance with the Northern Cheyenne Civil Procedure Code.

10-1-7 Service of Notice on Interested Parties.

A copy of the notice of Hearing shall be served at least ten (10) days before the date of hearing on each known claimant, presumptive heir, and other interested parties in the manner provided for in the Northern Cheyenne Civil Procedure Code.

10-1-8. Proof Of Service of Notice of Hearing.

Proof of service required in Section 9-1-7 shall be filed by the Clerk of Court. Proof of service shall comply with the requirements set forth in the Northern Cheyenne Civil Procedure Code.

10-1-9. Waiver of Notice.

A person, including a guardian, conservator, or other fiduciary, may waive notice by a writing signed by him, or his attorney, and filed with the Clerk of Court.

10-1-10. When Orders or Notice Binding One Binds Another- Representation.

A. In formal proceedings involving estates of decedents, minors, protected persons, incapacitated persons, unborn or unascertained persons are bound by orders of the Court so long as notice is properly given to:

1. Personal representative;
2. A person with identical interests;
3. A parent of a minor; or
4. Guardian or other representative of a ward.

B. Subsection (A) applies only to the extent that there is no conflict of interest between the person receiving orders or notice and the person bound by the order or notice.

10-1-11. Effect of Divorce, Annulment, or Separation Decree.

A. A person who is divorced from the decedent or whose marriage to the decedent has

been annulled is not a surviving spouse unless by virtue of a subsequent marriage he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

B. The following persons are estopped from claiming a marriage to a decedent:

1. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is recognized as valid, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or subsequently live together as man and wife;
2. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
3. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

10-1-12. Homicide - Effect on Intestate Succession. Wills. Joint Assets. Life Insurance. and Beneficiary Designations.

A. A surviving spouse, heir, devisee, or creditor who purposely and knowingly kills the decedent is not entitled to any benefits under the will or 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.

B. Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by 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.

C. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously 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 arrangement, and it becomes payable as though the killer had predeceased the decedent.

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

E. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may

determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

F. This section does not affect the rights of any person who before rights. under this section have been adjudicated purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obliger making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

10-1-13. Duty and Liability of Will Custodian.

Every custodian of a will must deliver the will to the Tribal Court or to a personal representative named in the will within twenty (20) days after receipt of information that the maker of the will has died. Any such custodian who fails to do so may be liable for monetary damages sustained by a person injured as a result of such failure.

10-1-14. Grounds of Will Contest - Hearing.

A. If anyone appears to contest the will, he must file written grounds or opposition to the probate and serve a copy on the individual petitioning for the probate and other interested parties within thirty (30) days after the admission of the will to probate. Issues which may be considered by the Court are:

1. The competency of the decedent to make the will;
2. Whether the will resulted, from duress, menace, fraud, or undue influence;
3. Whether the will is legal in form and properly executed; and
4. Any questions substantially affecting the validity of the will.

B. A hearing shall be held to resolve a will contest. If the Court decides the will is invalid, the probate will be voided at that time and the personal representative will be relieved of his duties. The personal representative shall not be liable for any act done in good faith previous to such voiding.

10-1-15. Testacy Hearing

A. The Court Shall determine the validity or invalidity of any purported will(s), and whether or

not the decedent's estate of any part of the decedent's estate is an intestate estate.

- B. Based upon this determination, the Court may also make the following appointments so long as all notice requirements are met indicating such appointments would be considered:
1. Receive petition and/or upon the Court's own motion, appoint a special administrator;
 2. Receive petition(s) for appointment of a personal representative to probate a valid will, or administer an interstate estate and make an appointment; and
 3. Appoint guardian to represent the interest of a minor, incapacitated, or disabled person who has an interest in the estate.
- c. The Court may elect to set a date for another hearing to make any necessary appointments, including those set out in subsection (B).

10-1-16. Exemptions

A. Certain property shall be exempt from claims of all interested parties including creditors. Exempt property shall be:

- I. The dwelling of the decedent valued up to \$5,000.00; and
2. Articles protected under the Historical Protection ordinance at the time of death of the decedent.

B. Nothing in this exemption shall be interpreted to affect the claims of secured creditors.

10-1-17 Rights of Adopted Child

Except as otherwise provided in a decree of adoption, a tribal member adopted by someone not a tribal member, retains all inheritance rights derived from his biological parents.

II. INTESTATE SUCCESSION

10-2-1. Intestate Estate.

Any part of the estate of decedent not effectively disposed of by his will passes as prescribed in the following sections.

10-2-2. Succession Without Probate.

Absent creditor claims, real property or contested cases, the title of the decedent's property shall automatically vest in the person who has possession.

10-2-3. Who May Initiate Probate Proceedings.

Any person claiming interest in the decedent's property may file a petition in the court for the purpose of settling the decedent's estate. Persons claiming interest include creditors and persons not in possession of claimed property.

10-2-4. Priority of Settlement.

In settling the decedent's estate, the court shall first pay creditor claims subject to the exempt property provisions.

10-2-5. Order of Succession.

The court will determine, using the intentions of the decedent as the guide, what portion of decedent's estate each claimant, other than a creditor, should have. The court will also consider the needs of those dependent upon the decedent. The court may refer to Montana Code Annotated 72-2-201 through 72-2-212 for guidance.

10-2-6. Intentions of Decedent.

The intentions of the decedent will be determined from testimony of people who knew the decedent.

III. PROBATE

10-3-1. Who May Make a Will.

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

10-3-2. Written Instruments - Wills.

When any member of the Northern Cheyenne Tribe dies leaving a will disposing of property, other than allotment or other trust property subject to the jurisdiction of the United States, the Northern Cheyenne Court shall:

1. Give notice and full opportunity to appear in court to all interested parties at a hearing petitioned under 10-1-5;
2. Determine the validity or invalidity of the will;
3. Resolve which will is controlling when more than one will is presented for probate and a conflict results.

B. If the Court finds there is a valid will, distribution of the decedent's property shall comply

with the terms of the will under the Probate Section of this Code.

c. If the Court finds the will invalid, determination of heirs and distribution will proceed the Intestate Succession Section of this Code.

10-3-3. Execution of a Will - Validity.

Except as provided for holographic wills, -and writings within 10-3-4, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgement of the signature of the will.

10-3-4. Holograph Will.

A. A will which does not comply with 10-3-3 is valid as a holographic will, whether or not witnessed, if the signature and material provisions are in the handwriting of the testator.

B. A holographic will may be valid even if immaterial parts or introductory wording are printed, typed, or stamped, so long as the printed, typed or stamped portion could be deleted and the handwritten portion would still evidence the testator's intent in devising his property.

10-3-5. Self-Proved Will.

A. Any will may be simultaneously executed, attested, and made self-proved by acknowledgement thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19 __, being first duly sworn, and do hereby declare to the undersigned authority that I sign and execute as my last will and that I sign it willingly (or willingly- direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____ the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signed and executes this instrument as his last will and that he signs it willingly (Or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

NORTHERN CHEYENNE INDIAN RESERVATION

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

(Signed) _____

(Title)

B. An attested will may at any time subsequent to its execution be made self-proved by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code where the acknowledgement occurs and is evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

NORTHERN CHEYENNE. INDIAN RESERV A TION

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the

undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly or directed another to sign for him and that he executed it. as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

_____ Testator

_____ Witness

_____ Witness

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

(Signed) _____

(SEAL)

(Title)

10-3-6 Who May Witness - Effect of Witness by Beneficiary.

- A. Any person generally competent to be a witness may act as a witness to a will.
- B. A will is not invalid because the will is signed by an interested witness
- C. All beneficial devise made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witness to the same, but a mere claim on the estate of the testator does not prevent his creditors from being competent witness to his will.
- D. If a witness to whom any beneficial devise void under Subsection (C) is made would have been entitled to any share of the state of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made him in the will.

10-3-8. Incorporation by Reference

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

10-3-8. Separate Writing Identifying Disposition of Tangible Personal Property.

A. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.

B. To be admissible this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator, or be signed by him and must describe the items and the devisees with reasonable certainty.

C. The writing may be:

- 1 Referred to as one to be in existence at the time of the testator's death;
- 2 Prepared before or after the execution of the will;
- 3 Altered by the testator after its preparation; or
- 4 A writing which has no significance apart from its effect upon the dispositions made by the will.

10-3-9. Revocation by Writing or Act.

A will or any part of thereof is revoke:

- A. By a subsequent will which revokes the prior will or part expressly or by inconsistency; or
- B. By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

10-3-10. Omitted Spouse.

If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will, and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

10-3-11. Pretermitted Child.

A. If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

1. It appears from the will that the omission was intentional;
2. When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child, or
3. The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator or from the amount of the transfer or other evidence.

B. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives share in the estate equal in value to that which he would, have received if the testator had died intestate:

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE SPECIAL ADMINISTRATOR·
DUTIES

10-4-1. Appointments

A. Upon of a decedent's death whose estate will be settled under the jurisdiction of the Northern Cheyenne Court, the Court may, upon petition or by its own motion, appoint a Special Administrator who shall serve until a Personal Representative is appointed. If a Personal Representative is not petitioned for and appointed, the Special Administrator may be named as a Personal Representative until the decedent's estate is settled.

B. Personal Representative may be petitioned for when the decedent died leaving a valid will, or when an intestate estate is involved

10-4-2. Social Administrator

When any member of the Northern Cheyenne Tribe or any other person domiciled on the Northern Cheyenne Reservation dies, owning at the time of his death property other than allotment or other trust property subject to the jurisdiction of the United States, the Court may,

on its own motion, at the request of any member of the Northern Cheyenne Tribe named in the decedent's will, or any other interested party, appoint a Special Administrator.

10-4-3 Qualification of Special Administrator.

The Special Administrator shall be any legally competent adult tribal

10-4-4 Purpose of Appointing Special Administrator

The purpose of appointing a temporary: Special Administrator is to take charge of the decedent's estate immediately so that the property will not be lost, wasted or depreciated in value.

10-4-5 Personal Representative.

When any resident of the Northern Cheyenne Reservation dies leaving a valid will, or an intestate estate, with or without naming a personal representative, and owing at the time of death property other than allotment or other trust property subject to the jurisdiction of the United State, the Court shall, at the request of any member of the Northern Cheyenne Tribe, or any other interest party, appoint a Personal Representative.

10-4-6 Qualifications of Person Representative.

The Personal Representative shall be legally competent adult.

10-4-7 Purpose of Personal Representative.

The purpose of appointing a Personal is to have one person with the responsibility and authority to settle the decedent's estate in accord with the decedent's will and/or applicable provisions of this Code

10-4-8. Petition for Appointment of Special Administrator Personal Representative.

A. petition for appointment of a Special Administrator must be writing, signed by the applicant; state facts essential to give jurisdiction of the case, and when known to the applicant, the names, ages, and addresses of the heirs of the decedent and the names and addresses of other interested parties, and filed with the Clerk of Court.

B. In addition to the requirements of subsection (A), an applicant for Personal Representative

shall also state his knowledge or belief that the decedent died intestate or left a valid will, give the reasons for his knowledge or belief, and state which priority categories under 10-4-9 he asserts as authorizing his appointment.

10-4-9 Priorities in Appointment of Special Administrator. Personal Representative

A. Special Administrator. Priority shall be by the Court to a tribal member who is not related to the decedent; and is not an heir or named beneficiary of the decedent

B. Personal Representative. Priorities in the Court's appointment of qualified Personal Representative are:

1. The person named in the decedent's will as Personal Representative unless:

A. Another person petitions the Court showing the named Personal Representative is incompetent or otherwise disabled; or

B. The named Personal Representative refused to undertake the duties of Personal Representative in settlement of the decedent's estate.

2. If Under subsection (B) a named Personal Representative is not available the priorities of appointment are:

A. A surviving spouse of his disgnee;

B. A lineal decent

C. A parent;

D. A collateral descent;

E. A creditor in respect to property in the decedent's estate which is under the jurisdiction of the Tribal Court; or

F. Others

10-4-10 Duties of Special Administrator. Personal Representative.

A. The duties of Special Administrator and Personal Representative are:

1. Inventory and Appraisal:

- a. Within thirty (30) days of appointment, make and return upon oath to the Court, a complete inventory of all of the property of the estate under the jurisdiction of the Court, including any claims against the property, and an appraisal of the value of each item listed in the inventory
 - b. The Special Administrator or Personal Representative may request the Court to appoint an appraiser.
 - c. If, after the filing of the inventory and appraisal, any property is found which was not included in the previous inventory and appraisal, the property shall be appraised and added to the inventory and appraisal required under subsection (A)(1) within ten (10) days of its discovery.
2. A Special Administrator, after an inventory and appraisal is completed and accepted by the Court, shall deliver any property of the estate in his possession and a copy of the inventory and appraisal accepted by the Court to a Court Appointed Personal Representative. Except, in the event that the Court reappointing the temporary Special Administrator as a Personal Representative, he shall fulfill the duties of that office until discharge by the court in the manner provided for this Code.

B. Duties of Personal Representative:

1. Receive any property and/or inventory and appraisal of the estate from a Special Administrator and issue him a receipt.
2. Bond: The Court may appoint without a bond, but may later require the Administrator or Representative to file a bond in the amount deemed reasonable in relation to the assets of the estates. When such bond is required, it shall be obtained through a surety company, or two reliable members of the tribe who reside within the boundaries of the Northern Cheyenne Reservation, who execute an agreement in the writing which is approved and accepted by the Court and filed with the Clerks and Court.
3. Notice to Creditors: Immediately after appointment, the appointee shall cause to be posted in public place in three (3) communities on the Northern Cheyenne Reservation, and published in the tribal newsletter, or if there is non, in a newspaper of general circulation on or adjacent to the Northern Cheyenne Reservation, a notice or Personal Representative in either an intestate or probate proceeding. Such notice shall require all creditors and all shall persons having claims against the decease or the estate to serve such claims upon the person giving notice and to also file them

with the Clerk of Court within sixty (60) days from publishing of the notice. The notice shall be posted for a period of four (4) consecutive weeks, such posting and publishing to be concurrent. A copy of the notice posted and proof of publication shall be filed with the Clerk of Court.

4. Notice of Acceptance or Rejection of Claim:
 - a. The appointee shall examine each claim filed and notify the claim in writing whether he will recommend its acceptance or rejection within thirty (30) days of the expiration of the period for filing of claims against the estate if the claim is rejected or not approved within thirty (30) days of the expiration of the period for filing of claims, the claimant may begin legal action to establish his claims. Such action must be commenced within thirty (30) days of notice of rejection or within sixty (60) days after filing the claim.
 - b. All claims shall be preferred in the following order;
 - i. Expenses of administration;
 - ii. Expenses of last illness and burial;
 - iii. Any amount due the Northern Cheyenne Tribe;
 - iv. All other claims

The appointee shall file copies of the notices of rejection or acceptance of claims with the Clerks of Court.

5. Petition for Determination of Takers and Distribution of Estate; As soon as reasonably possible after the inventory appraisal and acceptance or rejection of claims are computed, the appointee shall petition the Court for the determination of takes and distribution of the estate. This petition shall include the names of all claimants entitled to payment, the names of claimants whose claims were rejected, the names of each heir or devisee and, a statement of their share of the estate, and such other information as may be necessary to assist the Court in the distribution of the estate.
6. Final Report: Within thirty (30) days after the Court's determination of takes and distribution of the estate, the appointee shall file his report with the Court showing he has fully discharged his duties and shall file receipts or other proof of delivery of all property of the decedent and the making of all payments ordered by the Court. This report constitutes the appointee's request for discharge upon settlement of the estate.
7. Other Duties Assigned by the Court: At the time of appointment of a Special Administrator or Personal Representative, the Court may assign duties in addition to those listed in this Code. Such additional duties shall be reasonable in light of the complexity of the particular estate before the Court. The additional duties will be

noted in the Court's Order of Appointment.

10-4-11 Distribution Settlement Discharge.

Upon receipt of the Special Administrators' or Personal Representative's final report and the Court's findings that all duties have been faithfully completed the Court shall enter an order closing the estate and discharging the Special Administrator or Personal Representative.

10-4-12 Mismanagement – Limitations on Actions.

- A. A special Administrator or Personal Representative and the surety on his bond may be liable to any person who suffers monetary loss or damage as a result of mismanagement of the estate
- B. An action under subsection (A) must be commenced within two (2) years from the date of the final order closing the estate.

10-4-13 Compensation.

A Special Administrator Personal Representative or Appraiser may be compensated from the assets and income of the estate in an amount determined by the Court as being fair and reasonable taking into consideration the complexities of the settlement of the estate and the value of the estate.