

# FALLON PAIUTE-SHOSHONE TRIBE



## LAW AND ORDER CODE

Title 20

Probate Code for Non-Trust Property

# Fallon Paiute-Shoshone Tribe

## Law & Order Codes

### Law and Order Code

#### TITLE 20

#### PROBATE CODE FOR NON-TRUST PROPERTY

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**Law and Order Code**  
**TITLE 20**  
**PROBATE CODE FOR NON-TRUST PROPERTY**

**Approved by FBC December 28, 2021**

**Resolution No. 21-F-178**

**Effective January 27, 2022**

**TITLE 20 – PROBATE CODE FOR NON-TRUST PROPERTY**

**20-10 GENERAL PROVISIONS**

**20-10-010 Title**

This Ordinance is known and may be cited as the “Fallon Paiute-Shoshone Tribe Probate Code for Non-Trust Property” or the “Probate Code.”

**20-10-020 Authority**

This Ordinance is enacted and promulgated by the Fallon Paiute Shoshone Tribe’s Business Council (“FBC”) pursuant to the powers granted to the FBC by the Tribe’s Constitution and Bylaws, including the powers to make laws governing the conduct of people within the territorial boundaries of the Fallon Paiute Shoshone Tribe (“Tribe”), to manage and deal with Tribal lands and resources, and to maintain law and order.

**20-10-030 Findings, Applicability, Purpose, Objectives and Restrictions.**

**(a) Findings.**

- (1) The FBC finds that creating a Probate procedure in the Fallon Paiute Shoshone Tribal Court (“Tribal Court”) is in the best interest of Tribal members. Probate matters may be concluded more economically and quickly in the Tribal Court than in other government’s courts.
- (2) Findings with respect to American Indian Probate Reform Act of 2004, 25 U.S.C. §§ 2201 *et seq.* (“AIPRA”):
  - (A) Prior to the effective date of AIPRA, the descent and distribution of interests in trust and restricted assets were governed by the intestate succession law of the state where the property was located. AIPRA provides for the first time a federal probate code that governs the passing of trust and restricted assets.
  - (B) On June 20, 2006, AIPRA became effective. AIPRA is a federal law passed by Congress in 2004 that overhauls the federal probate process for Indian trust property. It creates a federal Probate code that can be replaced by an approved Tribal probate code, which shall govern the intestate succession of trust assets in federal probate.
  - (C) The FBC has made the decision to not create a Tribal probate code for trust property. Based on this, the probating of trust property,



including an Individual Indian Money Account (hereinafter IIM Account), will continue to be handled by the Department of the Interior's Office of Hearings and Appeals, and which will continue to the federal Probate code created by AIPRA for the intestate succession of trust assets.

- (D) All Non-Trust Property (including, but not limited to, a house, car, personal items and Native American finery and artifacts) must be probated through state courts or the Tribal Court. In exercising its sovereignty, the Tribe wishes to maximize the probating of non-trust property by the Tribal Court instead of state courts. To accomplish this goal, the FBC has created and passed this Probate Code for Non-Trust Property.
- (b) **Applicability.** This Probate Code for Non-Trust Property shall apply to all probate matters not involving:
    - (1) the descent and distribution of trust and restricted lands within the Tribe's reservation or otherwise subject to its jurisdiction; and
    - (2) the descent and distribution of money contained within IIM accounts or other trust personalty.
  - (c) **Purpose.** This Probate Code for Non-Trust Property will provide for the exercise of the greatest possible Tribal jurisdiction over:
    - (1) the probate of the estate of decedents who were domiciled or owned personal property on the Fallon Paiute Shoshone Reservation and Colony;
    - (2) the probate of the estate of Tribal members who were domiciled or owned personal property on non-Fallon Paiute Shoshone Tribe lands.
  - (d) **Objectives.** This Probate Code for Non-Trust Property shall be liberally construed and applied to meet the following objectives:
    - (1) To ensure that the property of a deceased person is given to the rightful heirs or beneficiaries.
    - (2) To comply with the decedent's wishes.
    - (3) To provide a simple, efficient and inexpensive method for probating a decedent's property.
    - (4) To ensure that the rights of creditors of Decedents are protected.
    - (5) To ensure consistency with the Tribe's custom and tradition, as much as possible to discourage disagreements over a decedent's property.
    - (6) To promote and further the Tribe's inherent right of self-governance.

#### **20-10-040 Definition of Terms**

The following definitions shall apply to this Title, unless the context otherwise required:

- (a) "Abatement" means a reduction or decrease.
- (b) "Absent Member" means a member of the Fallon Paiute Shoshone Tribe who, for a period of at least one (1) year, has not cashed a per capita distribution check, whose per capita distribution check is returned undeliverable, or the member has not completed an annual address verification form and whose absence is unexplained.
- (c) "Administrator" means a person or entity not designated in a will who is appointed by the Tribal Court to oversee the probate process and ensure the decedent's estate is settled appropriately.
- (d) "Adopted Person" is the child of an adopting parent and of the natural parents for inheritance purposes only. The adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.
- (e) "Adoption" means the legal process pursuant to statute in which a child's legal rights and duties toward his or her natural parents are terminated and similar rights and duties toward his or her adoptive parents are substituted. 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. This legal definition of adoption does not include the customary adoption traditionally practiced by members of the FPS Tribe.
- (f) "Bond" means an obligation to pay a sum of money upon the happening of a stated event.
- (g) "Child" or "children" for purposes of this Probate Code for Non-Trust Property, includes any formally adopted child.
- (h) "Class Gift" means a devise or gift to a body of people, uncertain in number at the time of the gift, to be ascertained at a future time, who are all to take in equal, or other definite proportions, the share of each being dependent for its amount upon the ultimate number of people in the class. (Example: "I leave ten-thousand dollars (\$10,000.00) to my grandchildren." In the example, the decedent's grandchildren constitute a class of people which may grow over time but will be a certain number upon the passing of the decedent.)
- (i) "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.
- (j) "Conveyance" means the transfer of legal title to property from one person, or a class of persons, to another person by deed. This term may also include assignment, lease, mortgage or encumbrance of land.
- (k)

- (k) “Decedent” means a person who is deceased.
- (l) “Deed” means a conveyance of realty by a writing signed by a grantor, whereby title to realty is transferred from one to another.
- (m) “Devise” means a gift or distribution of a gift of property by will.
- (n) “Devisee” means a person or entity that receives property under a will.
- (o) “Disinterested” means a person who has neither an interest directly or indirectly in the cause or matter at issue nor will a spouse or any relative of the person benefit in any way directly or indirectly, and who is lawfully competent to testify.
- (p) “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 his or her will or the laws governing intestate succession.
- (q) “Domicile” means the place where a person has his or her true, fixed and permanent home and principal establishment. In addition, whenever the person is absent he or she intends to return to the permanent home.
- (r) “Estate” means property not attached to real estate owned by the decedent at the time of death.
- (s) “Executor” or “Personal Representative” means that person or entity appointed to oversee the probate process and ensure the decedent's estate is settled appropriately. It may be the person named by a testator in his or her will; however, the court ultimately determines who will be appointed as the personal representative of the decedent's estate by granting letters testamentary to administer the estate. The term executor as used in this Title includes both the terms administrator and personal representative.
- (t) “FPST” or “Tribe” means the Fallon Paiute Shoshone Tribe.
- (u) “Fraud” means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he or she shall act upon it to his or her injury.
- (v) “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 himself or herself. Guardianship may also involve the duty to manage the estate of a child or incompetent person.
- (w) “Heir” means any individual or entity eligible to receive property from a decedent in an intestate proceeding.
- (x) “Heirs of the first or second degree” means parents, children, grandchildren, grandparents, brothers and sisters of a decedent.

- (y) "Incompetent" means a ward or person who is recognized by a court of law to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.
- (z) "Indian" means any person who is a member of a federally recognized Indian Tribe, is eligible to become a member of any federally recognized Indian Tribe, or is an owner (as of October 27, 2004) of an interest in trust or restricted Land; or any person meeting the definition of Indian under applicable Federal law.
- (aa) "Indian tribe" or "tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds land in trust.
- (ebb) "Individual Indian Money" or "IIM" account means an interest-bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets.
- (cc) "Inheritance" means property received from another under the laws of intestacy.
- (dd) "Interested Witness" means any of the following:
  - (1) Any devisee, beneficiary, or grantee of any document offered for probate to which they also served as a witness on the same;
  - (2) A person named as personal representative in any document offered for probate as the will of the decedent; or
  - (3) Any additional persons as the Tribal Court may include.
- (ee) "Intestate" means the decedent died without a valid will.
- (ff) "Intestate Succession" means the succession of property of a decedent who passes without a will or with a will that has certain provisions which are not valid, i.e. no longer alive or available.
- (gg) "Issue" when used to refer to persons who take by intestate succession, means children, grandchildren, and lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term includes legally adopted children and non-marital children and his or her issue. In the case of a non-marital child for the father of the issue, paternity must be legally established prior to the passage of the father.
- (hh) "Land" means any real property and includes within its meaning for purposes of this Title improvements permanently affixed to real property.
- (ii) "Letters Testamentary" means the formal document of authority and appointment given to a personal representative by the Tribal Court, empowering him or her to fulfill his or her duties as required by his or her position as a personal representative.



- (jj) “Life Estate” means an interest in real or personal property that is limited in duration to the lifetime of its owner or some other designated person or persons or measurable period of time.
- (kk) “Living Will” means a document in which a person sets forth directions regarding medical treatment to be given if he or she becomes unable to participate in decisions regarding his or her medical care.
- (ll) "Member" means an enrolled member of the Fallon Paiute-Shoshone Tribe.
- (m) “Minor” means an individual who has not reached the age of majority as defined by the applicable law.
- (nn) “Passes” or “passed” means dies or has died.
- (oo) “Per capita” means any per capita payments made to Tribal members by the Fallon Paiute-Shoshone Tribe.
- (pp) "Personal Property" means all property, other than Real Property, not including trust personal property (trust personalty).
- (qq) "Personal Representative" or “executor” means that person or entity appointed to oversee the probate process and ensure the decedent's estate is settled appropriately. It may be the person named by a testator in his or her will; however, the court ultimately determines who will be appointed as personal representative of the decedent's estate by granting letters testamentary to administer the estate. The term personal representative as used in this Title includes both the terms administrator and executor.
- (rr) "Presumptive Death" means that an absent member is presumed to have passed from proof of a six (6) year continued unexplained absence after being declared an "absent member" (see absent member definition) by the Fallon Business Council and during which absence the absent member is not heard from. The presumption is that duration of life ceases at the expiration of six (6) years from the time the Tribal member was declared an absent member and after the lapse of the six (6) years there is a presumption of death.
- (ss) “Probate” means the legal process by which applicable tribal, federal, or state law that affects the distribution of a decedent’s estate is applied to:
  - (1) Determine the heirs;
  - (2) Determine the devisees and validity of wills;
  - (3) Determine whether claims against the estate will be paid from estate funds; and
  - (4) Order the transfer of any estate property to the heirs, devisees, or other persons or entities entitled by law to receive the property.
- (tt) “Property” means any interest, legal or equitable in real or personal property. Re: C. Allen Letter 8/30/2021e in



- (uu) "Real Property" or "Land" means all interest in land. Buildings or improvements permanently attached to land may not be considered a part of the land.
- (vv) "Remainder" means the part of decedent's estate that remains after all specific bequests have been satisfied.
- (ww) "Renounce" means to make an affirmative legal declaration of abandonment, or a waiver of rights.
- (xx) "Residue" means the surplus or leftover part of a testator's estate remaining after all the debts and distributions have been completed.
- (yy) "Restricted property" means real property, the title to which is held by an Indian, but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property.
- (zz) "Secretary" means the Secretary of the Interior or an authorized representative. The authorized representative of the Secretary for the performance of probate functions is Bureau of Indian Affairs. The authorized representative of the Secretary for adjudication of probate for trust and restricted interests is the Office of Hearings and Appeals.
- (aaa) "Take by Representation" means the principle upon which the issue of a decedent takes or inherits the share of an Estate which the decedent would have taken or inherited, if living.
- (bbb) "Testate" means that the decedent executed a valid will.
- (ccc) "Testator" means a person who has executed a valid will.
- (ddd) "Title" means the formal rights of ownership of property. Title is the means whereby the owner of lands and property has the just possession of his or her property.
- (eee) "Transfer" means an act of the parties, or of the law, by which the title to property is conveyed from one person to another.
- (fff) "Tribal Court" means the Tribal Court for the Fallon Paiute-Shoshone Tribe.
- (ggg) "Trust or Restricted Lands" and "Trust or Restricted Interest" means lands or interests in lands within the jurisdiction of the Fallon Paiute Shoshone Tribe, Title to which is held by the United States in trust for the FPST or an individual, or which is held by the Fallon Paiute Shoshone Tribe or individual subject to a restriction by the United States against alienation.
- (hhh) "Trust Personal Property" or "Trust Personalty" means all funds and securities of any kind that are held in trust in an IIM account or otherwise owned in trust by the United States for the benefit of an individual Indian.
- (iii) "Trust property" means real or personal property, or an interest therein, for which the United States holds the title to the property in trust for the benefit of an individual Indian or Tribe.

- (jjj) “Will” means a written document executed with the required formalities and intended to facilitate the passage of the testator’s property upon death.

## **20-20 DESCENT AND DISTRIBUTION OF PROPERTY**

### **20-20-010 Descent and Distribution of Trust Property.**

The descent and distribution of trust and restricted land, and IIM accounts or any other trust personal property (trust personalty) shall solely be controlled by federal law through the Secretary.

### **20-20-020 Descent and Distribution of Non-Trust Property.**

The descent and distribution of non-trust property shall solely be controlled by this Title.

## **20-30 ACTS OF INDEPENDENT SIGNIFICANCE**

### **20-30-010 Renunciation or Disclaimer of Interests.**

A person (or his or her personal representative) who is an Heir, Devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Tribal Court at any time before the distribution of the estate after the decedent's passing 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 passing. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir or devisee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

- (a) **Acceptance of Interest.** A renunciation or disclaimer of an interest filed in accordance with this Section shall be considered accepted when implemented in a final order by the Tribal Court, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest.
- (b) **Rules of Construction.** Nothing in this Section shall be construed to allow the renunciation of an interest that is subject to the provisions of Section 20-50-50 in favor of more than one (1) person.
- (c) Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the Decedent or recipient of a gift (donee).
- (d) Instruments for renunciation shall conform to the following:
  - (1) It shall describe the Property or part thereof or interest therein renounced.
  - (2) It shall be signed by the person renouncing.
  - (3) It shall declare the renunciation and the extent thereof.
  - (4) It shall state that the renunciation is irrevocable.

- (5) It shall be dated and properly notarized.

**20-30-020 Marriage; Effect of Divorce, Annulment and Decree of Separation.**

- (a) **Marriage.** Only legally valid marriages recognized by Title 12 of the Law and Order Code shall be recognized for probate purposes. These include marriages entered into within the Tribe's jurisdiction pursuant to Title 12, and marriages entered into outside of the Tribe's jurisdiction if such marriages are valid in the jurisdiction in which they were entered into.

- (1) Domestic partnerships meeting the requirements stated above for a valid marriage shall be recognized for probate purposes.
- (2) Traditional marriages shall not be recognized for probate purposes.
- (3) Common law marriage shall not be recognized unless the marriage is recognized by the jurisdiction in which the arrangement was entered.

(b) **Surviving Spouse.**

- (1) An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death of the decedent.
- (2) Separation. A decree of separation that does not dissolve a marriage to terminate the status of husband and wife, shall not be considered a divorce or annulment for the purpose of this Section.
- (3) Nothing in subparagraph (a)(1), above, shall prevent the Tribal Court from giving effect to a non-trust property right settlement if one (1) of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

(c) **Subsequent Divorce.**

- (1) If, after executing a will, a testator is divorced or the marriage of the testator is annulled, as of the effective date of the divorce or annulment, any disposition of non-trust property made by the will to the former spouse of the testator shall be considered to be revoked unless the will expressly provides otherwise.
- (2) Property that is prevented from passing to a former spouse of a decedent under subparagraphs (a)(1) or (b)(1), above, shall pass as if the former spouse failed to survive the decedent.
- (3) Any provision of a will that is considered to be revoked solely by operation of this subparagraph (b)

shall be revived by the remarriage of a testator to the former spouse of the testator.

## **20-30-030      Heirship by Killing.**

For purposes of this Section, the term “heir by killing” shall mean any person, who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent:

- (a) No heir by killing shall in any way acquire any non-trust property as the result of the death of the decedent, but such property shall pass in accordance with this Section.
- (b) The heir by killing shall be deemed to have predeceased the decedent as to decedent's non-trust property which would have passed from the decedent or his or her estate to such heir:
  - (1) under intestate succession under this Title; unless otherwise provided for;
  - (2) as the surviving spouse;
  - (3) by devise;
  - (4) as a reversion or a vested remainder;
  - (5) as a survivorship interest; and
  - (6) as a contingent remainder or executory or other future interest.
- (c) **Joint Tenants, Joint Owners, and Joint Obligees.**
  - (1) Any non-trust property held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.
  - (2) As to non-trust property held jointly by three (3) or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the death of the decedent shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.
  - (3) Notwithstanding any other provision of this Section, the decedent's non-trust property that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his or her estate; the remainder of the interests shall remain in joint tenancy with the right of survivorship among the surviving joint tenants.
- (d) **Life Estate for the Life of Another.** If the estate is held by a third (3rd) person whose possession expires upon the passing of the decedent, it shall remain in such person's hands for the period of time following the decedent's passing equal to the life expectancy of the decedent but for the killing.
- (e) **Preadjudication Rule.**

- (1) If a person has been charged, whether by indictment, information, or otherwise by the United States, a Tribe, or any state, with voluntary manslaughter or homicide in 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 Tribal Court until the charges have been resolved.
  - (2) Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such property shall pass as if no charge had been filed or made.
  - (3) Upon conviction of such person, and the exhaustion of all appeals, if any, the non-trust property in the estate shall pass in accordance with this Section.
- (f) **Broad Construction.** This Section shall not be considered penal in nature but shall be construed broadly in order to affect the policy that no person shall be allowed to profit by his or her own wrong doing, wherever committed.

**20-30-040 Simultaneous Passing Provisions.**

- (a) Where the title to property covered under this Title or the passage or transfer from one (1) person to another thereof depends upon priority of passing and there is not sufficient evidence that the persons have died other than simultaneously, the property of each person shall be disposed of as if they had survived except where provided otherwise in this Title.
- (b) Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is not sufficient evidence that these beneficiaries have died otherwise than simultaneously the 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.
- (c) Where there is not sufficient evidence that two (2) joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half ( $\frac{1}{2}$ ) as if one (1) had survived and one-half ( $\frac{1}{2}$ ) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died, the property thus shall be distributed in the proportion that one (1) bears to the whole number of joint tenants.
- (d) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.
- (e) The above provisions on simultaneous passing shall not apply in cases where the decedent has made provisions for a different distribution in a will, trust, deed, contract or insurance policy.



## **20-40 WILLS**

### **20-40-010 Who May Make a Will.**

Any person eighteen (18) or more years of age and who is of sound mind (possessing testamentary capacity) who has any right, title, or interest in non-trust property, may dispose of non-trust property by will.

### **20-40-020 Execution.**

Except as otherwise provided for in the oral wills (Section 20-40-040) or the holographic wills (Section 20-40-030) sections, every will shall be put in writing and dated 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) persons who shall serve as witnesses. Each of the witnesses shall either have witnessed the signing by the testator of the will or the testator's acknowledgment of the signature and direction to do so. The two (2) witnesses must each be:

- (a) eighteen (18) or more years of age;
- (b) of sound mind; and
- (c) Disinterested.

### **20-40-030 Handwritten (Holographic) Will.**

For purposes of this Section, the term "Holographic Will" means a will that is entirely written and signed by the testator in his or her own handwriting:

- (a) A will that does not comply with Section 15 may be valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.
- (b) Intent that the document constitutes the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

### **20-40-040 Oral Will.**

A will which does not comply with Section 20-40-020 is valid under custom if:

- (a) 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; or
- (b) The will is made in the presence of two (2) competent disinterested adult persons by a testator who declares at the time that it is his or her wish that his or her property descend in a specific manner upon the event of the testator's passing. The court shall hear testimony as to whether or not the oral will as declared by the two (2) competent disinterested adult persons represents the testator's expressed intent. The testimony shall come from the two (2) competent disinterested adult persons 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.

**20-40-050 Self-Proved Will.**

- (a) A will may remove some of the formalities of proof by complying with this section and shall be considered a self-proved will. Unless contested, a self-proved will may be admitted to probate without testimony of the two (2) disinterested witnesses.
- (b) The attesting witnesses to a will, including, without limitation, an electronic will, may sign a declaration under penalty of perjury or an affidavit before any person authorized to administer oaths in or out of the State, stating such facts as the witness would be required to testify to in court to prove the will. The declaration or affidavit must be written on the will or, if that is impracticable, on some paper attached thereto. If the will is an electronic will, the declaration or affidavit must be in a record incorporated as part of, attached to or logically associated with the electronic will. The sworn statement of any witness so taken must be accepted by the Tribal Court as if it had been taken before the Tribal Court.
- (c) The affidavit described in subsection (b) may be in substantially the following form:

State of Nevada        }  
                                       } ss.  
 County of                }

Date: \_\_\_\_\_

Then and there personally appeared \_\_\_\_\_ and \_\_\_\_\_, who, being duly sworn, depose and say: That they witnessed the execution of the foregoing will of the testator, \_\_\_\_\_; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

\_\_\_\_\_  
 Affiant

\_\_\_\_\_  
 Affiant

Subscribed and sworn to before me this  
 \_\_\_\_ day of the month of \_\_\_\_\_ of the year \_\_\_\_\_

\_\_\_\_\_

Notary Public

- (d) The declaration described in subsection (b) may be in substantially the following form:

Under penalty of perjury pursuant to the laws of the Fallon Paiute Shoshone Tribe (or the State of Nevada), the undersigned, \_\_\_\_\_ and \_\_\_\_\_, declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, \_\_\_\_\_; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ Declarant

\_\_\_\_\_ Declarant

- (e) If a testator or a witness signing an affidavit or declaration described in subsection (b) appears by means of audio-video communication, the form for the affidavit or declaration, as set forth in subsections (c) and (d), respectively, must be modified to indicate that fact.

**20-40-060 Who May Witness.**

- (a) Any person eighteen (18) or more years of age who, at the time of execution of the will, would be competent to testify as a witness in court to the facts relating to execution, may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.
- (b) A will is not invalidated because 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 passing.

**20-40-070 Choice of Law as to Execution.**

For non-trust property, a written will is valid if executed in compliance with this Probate Code or if its execution complies with the law at the time of execution in the place where the will is executed, or of the law of the place where at the time of execution or at the time of passing of the testator is domiciled or has a place of abode.

**20-40-080 Revocation by Writing or by Act.**

A will or any part thereof is revoked by either of the following:

- (a) By a subsequent valid will, codicil, or other instrument which revokes the prior will in whole or in part, expressly or by inconsistency.
- (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 the testator's presence and at the testator's direction.

**20-40-090 Revocation by Divorce; No Revocation by Other Changes of Circumstances.**

- (a) If, after executing a will, the testator is divorced or the testator's marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as personal representative, personal representative, trustee, conservator, or guardian, unless the will expressly provides otherwise.
- (b) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.
- (c) No change of circumstances other than as described in this section or Section 20-40-100 revokes a will.

**20-40-100 Revival of Revoked Will.**

- (a) If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act under Section 20-40-080, the revoked part of the previous will is revived. This section does not apply if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part of the previous will to take effect as executed.
- (b) If a subsequent will that wholly revoked a previous will is itself revoked by a revocatory act under Section 20-40-080, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declaration that the testator intended the previous will to take effect as executed.

**20-40-110 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.

#### **20-40-120 Events of Independent Significance.**

A will may dispose of property by reference to acts and events which have significance apart from the disposition made by the will. These events of independent significance may occur before or after the execution of the will or before or after the testator's passing. The execution or revocation of a will of another person is such an event.

#### **20-40-130 Rules of Construction and Intention.**

- (a) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions.
- (b) The following rules of construction apply unless a contrary intent is clear in the will:
  - (1) **All Property and After-acquired Property.** A will is construed to pass all property which the testator owns at his or her passing including property acquired after the execution of his or her will.
  - (2) **Devisee Must Survive Testator by One-Hundred and Twenty (120) Hours.** A devisee who does not survive the testator by one-hundred and twenty (120) hours is treated as if he or she predeceased the testator, unless the will of the decedent contains such language dealing explicitly with a simultaneous passing, including common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.
  - (3) **Failure of Testamentary Provision.** If a devise other than a residuary devise fails for any reason, it becomes part of the residual estate. If the residual estate is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his or her share passes to the other residuary devisees, or to other residuary devisees in proportion to his or her interests in the residue.
  - (4) **Class Gifts.** One (1) who would have been a devisee under a class gift if he or she had survived the testator is treated as a devisee for purposes of this section whether his or her passing occurred before or after the execution of the will.
  - (5) **Exercise of Power of Appointment.** A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment unless specific reference is made to that power.
  - (6) **Generic Terms.** A person who shares only one (1) parent in common with another person, adopted persons and persons born out of wedlock are included in class gifts terminology and terms of relationships in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless paternity has been established during the life of the father.



Determination of as to whether or not paternity has been established shall be controlled by the laws to establish the paternity of a child contained within Title 12 of the Fallon Paiute Shoshone Tribal Law and Order Code.

- (7) Property given during the lifetime of the testator will reduce the amount given through the will only if:
  - (A) The will provides for deduction of the lifetime gift; or
  - (B) The testator declares in a contemporaneous writing that the gift will reduce the amount given by the testator's will.

The value of the property shall be determined based on when the devisee comes into possession of the property.

- (c) **Joint Tenancy; Right of Survivorship.** If a testator devises non-trust property interests in the same parcel of land to more than one (1) person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

## **20-50 INTESTATE DISPOSITION**

### **20-50-010 Intestate Succession.**

If any part of an estate contains non-trust property and it is not effectively disposed of by a valid will, it shall pass to the decedent's heirs as prescribed in this Chapter 20-50.

### **20-50-020 Descent and Distribution of Non-Trust Property.**

The net estate of a person dying intestate shall descend subject to the restrictions of Section 20-50-020 of this Chapter and shall be distributed as follows:

- (a) The surviving spouse shall receive the following share:
  - (1) All of the decedent's share of the net community estate; and
  - (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.
- (b) 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) To the issue of 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.
  - (2) If the intestate is not survived by issue, then to the decedent's parent or parents who survive the intestate, in equal shares.

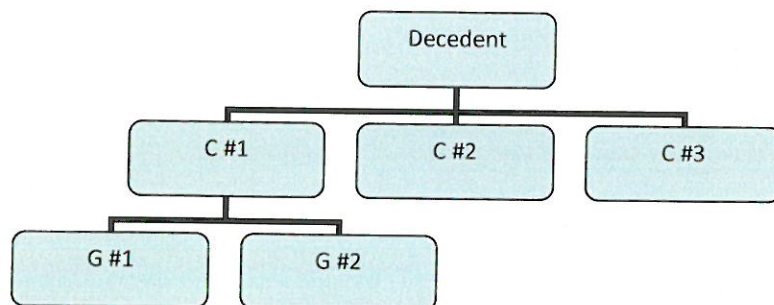
- (3) If the intestate is not survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.
  - (4) If the intestate is not 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 grandparent or grandparents shall take one-half.
  - (5) If the intestate is not 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.
- (c) Inheritance by Child. For the purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.
  - (d) Take by Representation is addressed in Section 20-50-040.

**20-50-030 No Person to Acquire Intestate Estate/Intestate Estate Passes To Tribe.**

If there is no person who takes or acquires an estate or portion of the estate of the intestate estate, the intestate estate passes to the Fallon Paiute Shoshone Tribe.

**20-50-040 Right of Representation.**

- (a) “Representation” means a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the deceased as follows:



- (b) After determining who of those entitled to share in the estate are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the

sum of the number of persons who survive the deceased who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the deceased but who left issue surviving the deceased (see chart for “C” = children); each share of a deceased person in the nearest degree shall be divided among those of the deceased’s issue who survive the deceased and have no ancestor then living who is in the line of relationship between them and the deceased, those more remote in degree (see chart for “G” = grandchildren) taking together the one share which their ancestor would have taken had he or she survived the deceased.

- (c) If C#1 died prior to the “Deceased” the children of C#1 would share equally in the one share the decedent left to their parent. So, the grandchildren each take one-half of C#1's one-third share.

#### **20-50-050 Posthumous Persons.**

A person conceived before the decedent's passing but born thereafter and who lives at least one-hundred and twenty (120) hours after birth inherits as if he or she had been born in the lifetime of the decedent.

#### **20-50-060 Kindred of a Person Who Shares Only One Parent in Common with Another Person; Stepchildren; Foster children.**

A person who shares only one (1) parent in common with another person inherits the same share he or she would inherit if he or she were of the whole blood, but stepchildren and foster children and descendants of stepchildren or foster children do not inherit.

#### **20-50-070 Divorce.**

A divorce(s) of husband and wife does not affect the right of a child(ren) to inherit the parent’s property.

#### **20-50-080 Determination of Relationship of Parent and Child.**

If for purpose of intestate succession a relationship of parent and child shall be established to determine succession by, through or from a person as follows:

- (a) An adopted person shall inherit from all other relatives of an adoptive parent as though the adopted person was the natural child of the adoptive parent and the relatives shall inherit from the adoptive parent’s estate as if they were the adoptive parent's relatives.
- (b) 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 father has been legally established in accordance with applicable law.

#### **20-50-090 Special Rule Relating to Survival.**

In the case of intestate succession under this Chapter 20-50, if established by clear and convincing evidence an individual fails to survive the decedent by at least one hundred and twenty (120) hours:

- (a) the individual shall be deemed to have predeceased the decedent for the purpose of intestate succession; and
- (b) the heirs of the decedent shall be determined in accordance with this Chapter 20-50.

**20-50-100 Advancements.**

(a) **Non-Trust Property.**

- (1) If a person passes without a valid will, property which he or she gave in his or her lifetime shall only be reduced from the heir's share of the estate if:
  - (A) The person who passed upon giving the property declared in a contemporaneous writing to treat the property as such; or
  - (B) The heir declares in a writing that the property should be treated as such.
- (2) The value of the property shall be determined based on when the heir comes into possession of the property.
- (3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment of the person who passed intestate provides otherwise.

(b) **Advancements of Trust Personal Property during Lifetime; Effect on Distribution of Estate.**

- (1) The trust personal property of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent's lifetime to a person eligible to be an heir of the decedent shall be treated as an advancement against the heir's inheritance, but only if the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift is an advancement or is to be taken into account in computing the division and distribution of the decedent's intestate estate.
- (2) For the purposes of both this Probate Code, trust personal property advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever occurs first.
- (3) If the recipient of the trust personal property predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's estate unless the decedent's contemporaneous writing provides otherwise.

**20-50-110 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.



## **20-60 FAMILY RIGHTS AND PROTECTIONS**

### **20-60-010 Pretermitted Spouse.**

For purposes of this section, the term “pretermitted” means those persons not known by the testator at the time of the execution of the will and omitted in the will.

- (a) Except as provided in Subparagraph (b), immediately below, if the surviving spouse of a testator married the testator after the testator executed the will of the testator, the surviving spouse shall receive the intestate share in the decedent's non-trust property that the spouse would have received if the testator had died intestate, unless it appears from the will that the omission was intentional or the testator had 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.
- (b) In satisfying a share provided in this section, the devises made by the will abate as provided in Section 20-90-050 which concerns "abatement."

### **20-60-020 Pretermitted Children.**

For purposes of this section the term “pretermitted” means those persons not known by the testator at the time of the execution of a will and omitted in the will.

- (a) If a testator fails to provide in his or her will for any of his or her children living or born or adopted after the execution of the will, the omitted child receives a share in the non-trust estate equal in value to that which they would have received if the testator had died Intestate unless:
  - (1) it appears from the will that the omission was intentional; or
  - (2) when the will was executed the testator had one (1) or more children and devised substantially all his or her 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 statements of 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 or her will for a living child solely because he or she believes the child to be dead, the child receives a share in the non-trust estate equal in value to that which they would have received if the testator had died intestate.
- (c) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 20-90-050, which concerns "abatement."

### **20-60-030 Family Allowance.**

- (a) If the decedent was domiciled within the Tribe's jurisdiction, the surviving spouse 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 his or her maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the non-trust estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

- (b) A reasonable allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having his or her care and custody; but in case of any minor child or dependent child who is not living with the surviving spouse, 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, as his or her needs may appear. The family allowance is exempt from and has priority over all claims.
- (c) The family allowance is not chargeable against any benefit or share conveying to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The passing of any person entitled to family allowance terminates his or her right to allowances not yet paid.

**20-60-040 Source, Determination and Documentation.**

- (a) If the non-trust estate is otherwise sufficient, non-trust property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children or children who are adults may select non-trust property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of non-exempt property taken as exempt property.
- (b) The personal representative may determine the family allowance in a lump sum not exceeding six thousand dollars (\$6,000.00) or periodic installments not exceeding five hundred dollars (\$500.00) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

**20-60-050 Summary Probate of Exempt Estates.**

- (a) **Exempt Estates.** A non-trust estate having an appraised value which does not exceed five thousand dollars (\$5,000.00) and which is to be inherited by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all

general creditors and the probate thereof may be summarily concluded as provided in this Section.

- (b) **Notice of Hearing to Determine Whether the Estate is an Exempt Estate.** Upon petition of the personal representative, the court shall enter an order stating that it appears, from the appraised value that the whole non-trust estate does not exceed five thousand dollars (\$5,000.00) and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any there be, why the whole non-trust estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be in accordance with Section 20-90-040. On or before the time set for such hearing, the personal representative shall file his or her affidavit with the Tribal Court indicating compliance with this requirement of giving notice.
- (c) **Hearing to Determine Whether the Non-Trust Estate is an Exempt Estate.** If, upon such hearing, the Tribal Court finds that such non-trust estate is an exempt estate, the Tribal Court shall enter an order directing the personal representative to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share(s) of such estate to those entitled thereto and filing receipts therefore, the estate shall be closed.

## **20-70 ADMINISTRATION OF INTESTATE ESTATES**

### **20-70-010 Petition.**

- (a) When any person passes leaving an intestate estate subject to the jurisdiction of the Tribal Court under this Title, any person claiming to be an heir of the decedent, or the FPST, may petition the Tribal Court for a determination of the heirs of the decedent and for the distribution of such property.
- (b) The petition shall contain:
  - (1) The name of the decedent,
  - (2) The decedent's enrollment status with the Fallon Paiute Shoshone Tribe (enrolled, eligible for enrollment, enrolled in another federally recognized Indian Tribe),
  - (3) The date of death of the decedent,
  - (4) The names and addresses of the decedent's surviving family so far as such information is known to the petitioner,
  - (5) Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will,

- (6) A general description of the decedent's estate subject to probate in the Tribal Court, and a general description those portions of the decedent's estate, if any, that are not subject to probate in the Tribal Court, including, but not limited to any interests in trust or restricted property or trust personalty, if known,
  - (7) 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,
  - (8) A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative.
  - (9) A request for approval of the last will and testament of the decedent, or a request that the court find that the decedent died without a valid will, if applicable, and
  - (10) A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct.
- (c) The petitioner shall file with the petition, or as soon after filing as such documents can be obtained:
- (1) A certified copy of the decedent's death certificate, and
  - (2) The original or a true and correct copy of any will found or document alleged to be the last will and testament of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence.
- (d) Whenever there is a valid will probated by the Tribal Court that does not dispose of all the decedent's property, a determination of the 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.

**20-70-020 Administration of Intestate Estate.**

- (a) If a personal representative is appointed over a decedent's property, which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.
- (b) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Tribal Court shall appoint a personal representative over the estate. It shall not be necessary to appoint a personal representative if the value of the decedent's property appears to be less than five thousand dollars (\$5,000.00) 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 his or her listing for appointment of a personal representative: the surviving

spouse, any child of the decedent over eighteen (18) years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship, any adult Fallon Paiute Shoshone Tribal member, or any adult person.

- (d) The duties of the personal representative shall be as follows:
  - (1) To take constructive or physical possession of all property of the decedent subject to this Title 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 passing.
  - (2) Within one (1) month of appointment, make an inventory and appraisal of such property and file it with the Tribal Court.
  - (3) Within one (1) month 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 the 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 order of the Tribal Court and file receipts with the Tribal Court showing distribution of the estate.
- (e) The personal representative shall file a bond in an amount to be set by the Tribal Court to insure his or her faithful, honest performance of his or her duties as personal representative. Unless otherwise made to appear necessary or desirable, no bond shall be required of a personal representative who is the spouse or child of a decedent.

**20-70-030 Appointment of Personal Representative.**

- (a) Upon receipt of a petition to administer an intestate estate, the Court Clerk shall schedule a hearing at which a personal representative shall be appointed. Said hearing shall be scheduled in accordance with Sections 20-90-30 and 20-90-040.
- (b) Notice of the hearing shall be made by the petitioning party or by the Court Clerk if the Tribe is the petitioning party. The Notice shall be in accordance with Section 20-90-040.
- (c) The Tribal Court shall determine who is the proper person to appoint as personal representative, and if such person manifests his or her willingness to serve, order his or her appointment as personal representative.

**20-70-040 Oath of Personal Representative; Letters of Testamentary.**

- (a) Upon his or her appointment as personal representative, the person appointed shall take an oath to be prescribed by the Tribal Court to the effect that he or she will faithfully and honestly administer the estate.

- (b) 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.
- (c) If the Tribal Court finds good cause to do so, the Tribal Court may waive the requirement that the personal representative file a bond.

**20-70-050 Notice to Creditors.**

The personal representative of the estate, or the Court Clerk Courts if no personal representative is appointed, shall cause notice to creditors to be posted in at least three (3) conspicuous places within the Tribe's jurisdiction and published for three (3) consecutive issues in the official newsletter of the Fallon Paiute Shoshone Tribe, and either the largest local Fallon, Nevada newspaper (e.g., Lahontan Valley News) or the largest Reno, Nevada newspaper (e.g. Reno Gazette Journal). Said notice shall state that creditors have ninety (90) days from the date of the first publication of the noticed to present their claims to the personal representative or Court Clerk and that only those claims so presented may be paid to the estate.

**20-70-060 Payment of Creditors.**

- (a) Payment to creditors of the decedent shall be made by the personal representative or by the Court Clerk if no personal representative is appointed, only upon the order of the 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 court shall be paid before distribution of the estate, but shall be paid only after payment of the family allowance as provided herein.

**20-70-070 Accounting.**

Prior to the distribution of the estate for which a personal representative has been appointed, such personal representative shall render an accounting to the Tribal Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and distribution of the estate can commence and also showing the computation of any attorney's and/or personal representative's fees involved for which approval for payment is sought. In estates in which no personal representative is appointed, the Court Clerk shall account to the Tribal Court for all transactions relating to the estate.

**20-70-080 Distribution and Closing Estate.**

- (a) When it is made to appear to the Tribal Court that an estate is ready to be distributed, the Tribal Court shall order such according to the rules of intestate succession and this Title.
- (b) The Estate shall be closed and the personal representative dismissed, and his or her bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, is now ready to be closed.



## **20-80 PROBATE OF WILLS**

### **20-80-010 Duty to Present Will and Petition for Probate.**

- (a) Every custodian of a will containing provisions to distribute real or personal property other than trust or restricted land or trust personalty shall deliver the will to the Tribal Court within thirty (30) days after receipt of information that the testator has passed. Any will custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.
- (b) Along with the will, the will custodian shall include a petition containing the information required by Section 20-70-010, subparagraphs b and c.

### **20-80-020 Proving, Contesting and Admitting Will.**

#### **(a) Proof of Will.**

- (1) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Tribal Court. The will may be proven and admitted to probate 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.
- (2) 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 at least one (1) of the witnesses is genuine.

#### **(b) Contest of Will.**

- (1) At any time within ninety (90) days after a will has been admitted to probate, or within such time as the Tribal Court shall establish, any person having an interest in the decedent's estate may contest the validity of the will. Notice of such contest shall be made directly to the Tribal Court. In the event of a will contest, the Tribal Court shall take no further action with respect to the probate of the estate, but shall set a day and hour for hearing on the will contest.
- (2) Relevant evidence shall be presented at the will 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, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

- (c) **Admission of Contested Will to Probate.** Upon considering all relevant evidence concerning the will, the Tribal Court shall enter an order affirming the admission of the will to probate or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died without executing the will.

#### **20-80-030      Petition for Letters Testamentary.**

A petition for letters testamentary may be made by any person having possession of a decedent's will or any heir. The petition must be in writing, signed by the petitioner, and shall state the basis for the Tribal Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as personal representative or executor and the address of such person, if known. The original copy of the will shall be submitted to the Tribal Court with the petition.

#### **20-80-040      Qualifications of Personal Representative.**

The Tribal Court shall appoint a personal representative (executor) to administer the estate. The personal representative shall be a competent adult and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse, child of the decedent over eighteen (18) years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship, any adult Fallon Paiute Shoshone Tribe tribal member, or any adult person.

#### **20-80-050      Appointment of Personal Representative.**

- (a) Upon receipt of a petition for letters testamentary, the Court Clerk shall schedule a hearing at which a personal representative shall be appointed and letters testamentary authorized. The hearing shall be scheduled and notice provided to interested parties in accordance with Section 20-90-040. Notice of hearing shall be made by the petitioning party to all persons named as takers under the will, and to all known heirs of the decedent if different from the named beneficiaries and also posted in a conspicuous place in the Tribal Court building.
- (b) At the hearing, the Tribal Court shall first determine the validity of the decedent's will and then appoint a personal representative to administer the estate according to the terms of this Title and the decedent's will.
- (c) Letters testamentary shall be granted to the person appointed as personal representative upon his or her taking an oath, to be prescribed by the Tribal Court, to the effect that the personal representative will faithfully and honestly administer the estate, and upon the personal representative filing of bond, if required.

#### **20-80-060      Creditors.**

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for Intestate Estates (Chapter 20-70).

#### **20-80-070      Accounting.**

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the personal representative shall submit to the Tribal Court for approval an accounting of all receipts and disbursements from the Estate, showing the present status of the estate and that distribution of the estate can commence, and also showing the computation of

any Attorney's and/or personal representative's fees involved for which approval for payment is sought.

**20-80-080      Distribution and Closing Estate.**

- (a) When it is made to appear to the Tribal Court that distribution of an estate can commence, the Tribal Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Title.
- (b) The estate shall be closed and the personal representative of the estate dismissed and his or her bond, if any, released upon filing with the Tribal Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed.

**20-80-090      Property Discovered After Estate Closed.**

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his or her estate has been closed. The Tribal Court shall order distribution of the property to the person or people entitled thereto after making whatever orders appear necessary to ensure a just distribution of the after discovered property.

**20-90 JUDICIAL CONSTRUCTION**

**20-90-010      Subject Matter Jurisdiction.**

- (a) The Tribal Court shall have exclusive jurisdiction to administer in probate the estate of a decedent who, at the time of his or her death was domiciled or owned real property situated within the Fallon Paiute Shoshone Tribe trust or restricted lands, to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the Department of the Interior.
- (b) **The Department of the Interior:** The Department of the Interior has exclusive jurisdiction over the adjudication of probate estates for owners of trust or restricted property.
- (c) **Tribal Court.** To the extent permitted by the Constitution of the Fallon Paiute Shoshone Tribe, applicable Federal and State laws, the Tribal Court has jurisdiction over all non-Trust property subject matter relating to:
  - (1) Estates of decedents, including construction of wills, determination of heirs, successors of decedents, and estates of protected persons;
  - (2) Protection of minors and incapacitated persons; and
  - (3) Trusts that are not under the exclusive jurisdiction of the Department of the Interior.

## **20-90-020 Evidence as to Passing.**

In proceedings under this Title, in addition to the Fallon Paiute Shoshone Tribe Rules of Civil Procedure – Title 2 and the Rules of Evidence – Title 3, the following rules relating to a determination of death apply:

### **(a) Decedent:**

(1) A certified or authenticated copy of a death certificate issued by an official or agency of the place where the passing occurred is prima facie proof of the fact, place, date and time of passing and the identity of the decedent.

(2) 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 of the dates, circumstances and places disclosed by the record or report.

### **(3) Absent Member Presumptive Death.**

(A) A member may be presumed to have passed if the member:

- (i) has been declared an absent person,
- (ii) is further absent for a continuous period of not less than six (6) years, during which that person has not been in contact with those who knew the member, and
- (iii) remains unfound after diligent search or inquiry by the FPST.

(B) After the conditions are satisfied as noted in Subparagraph (A), the Tribal Court or other court of competent jurisdiction may declare presumptive death if the absent member's whereabouts remain unknown for sixty (60) days after completion of notice under Section 20-90-040 by the Office of Tribal Enrollment.

(C) Upon the court's or other court of competent jurisdiction's declaration of presumptive death, the member shall be deemed to have passed.

### **(b) Missing Heirs.**

(1) An heir may be presumed missing if:

- (A) such heir's whereabouts remain unknown for sixty (60) days after completion of notice efforts under 20-90-050; and
- (B) in the proceeding to determine a decedent's heirs, the Tribal Court finds that the missing heir has had no contact with the other heirs of the decedent, if any, or with the FPST or, if the missing heir is a member, relating to his or her accrued per capita distribution account (Subparagraph (a)(3)(A)(iii), above) at any time during the six (6) year period preceding the hearing to determine Heirs.

(2) An heir determined to be missing shall be deemed to have predeceased the decedent for purposes of descent and devise personal property within that decedent's estate.

**20-90-030 Court Procedures, Rules and Powers.**

- (a) Unless specifically provided to the contrary in this Title or unless inconsistent with its provisions, the Fallon Paiute Shoshone Tribe Rules of Civil Procedure – Title 2, including the rules concerning vacation of orders, govern formal proceedings under this Title. Appeals shall be taken in accordance with the procedures provided in Title 1 of the Fallon Paiute Shoshone Tribe Law and Order Code.
- (b) **Judicial Powers and Duties of Tribal Court.**
  - (1) The Tribal Court may make orders for the sale of personal Property at public or private sale for the compounding of debts, for the settlement of an estate as insolvent, for the approval of bonds and all other orders of an ex parte nature as may facilitate the settlement of estates. The orders shall be in writing, signed by the judge issuing the same, and shall be filed and recorded as an entry in the proper record.
  - (2) The court shall examine the bonds filed by the personal representative, with a view to ascertaining his or her sufficiency and may approve the same. The court may examine any inventory, sale, bill, account current, final account and vouchers filed therewith, or examine into the condition of an estate generally. Bond may be waived for good cause shown.
  - (3) The court shall have the authority to draft orders requesting property or funds outside the exterior boundaries of the Tribe's jurisdiction to be delivered for probate to the court.
  - (4) The court shall have the authority to make declarations of presumptive death in accordance with Section 20-90-020(a) & (b).
- (c) **Records and Certified Copies.** The Court Clerk shall keep a file for each decedent of all documents filed with the court under this Title and shall keep a numerical index of all such estates to facilitate access to such records. Unless the Court labels a document or paper confidential, upon payment of a fee, as established by the Court, the Court Clerk shall issue certified copies of any document or paper so filed.
- (d) **Trials.** All trials under this shall be by the Tribal Court.
- (e) **Oath or Affirmation on Filed Documents.** Except as specifically provided in this Title, every document filed with the court under this Title 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, and the penalties for perjury shall follow deliberate falsification therein.

**20-90-040 Notice.**

- (a) 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 his or her attorney/advocate if they have appeared by attorney/advocate or requested that notice be sent to his or her attorney/advocate. Notice shall be given by any of the following methods:

- (1) By mailing a copy thereof at least thirty (30) days before the time set for the hearing by certified or registered mail.
  - (2) 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 at least three (3) conspicuous public places within the Tribe's jurisdiction at least thirty (30) days before the time set for the hearing and publishing the notice in the Tribe's official newsletter.
  - (3) The Court for good cause shown may provide for a different method or time of serving notice for any hearing.
- (b) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.
- (c) A person, including a guardian ad litem, or other person or institution who manages money or property for another and who must exercise the highest standard of care in such management activity (fiduciary), may waive notice by a writing signed by the person or his or her attorney/advocate and filed in the proceeding.

**20-90-050      Distribution: Order in which Assets Appropriated; Abatement.**

A person who has executed a valid will may determine the order in which the assets of his estate are applied to the payment of his debts. If he or she does not, then the provisions of this section express rules that may be regarded as approximating what people who have executed a valid will generally want. The statutory order of abatement is designed to aid in resolving doubts concerning the intention of a particular person who has executed a valid will, rather than to defeat his or her purpose. Hence, Subparagraph (c), below, directs that consideration be given to the purpose of a person who has executed a valid will.

- (a) Except as provided in Subparagraph (b), below, and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:
- (1) Property not disposed of by the will.
  - (2) Residuary devises.
  - (3) General devises.
  - (4) Specific devises.
- (b) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each

classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

- (c) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the Order Of Abatement stated in Subparagraphs (a) and (b), above, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.
- (d) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

#### **20-90-060 Effect of Fraud and Evasion.**

The remedy of a party wronged by fraud is intended to be supplementary to other protections provided in this Title and can be maintained outside the process of settlement of the estate. Thus, if a will which is known to be a forgery is probated informally, and the forgery is not discovered until after the period for contest has run, the defrauded heirs still could bring a fraud action under this section.

- (a) Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Title or if fraud is used to avoid or circumvent the provisions or purposes of this Title, 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) benefiting from the fraud, whether innocent or not.
- (b) Any proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against someone not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his or her lifetime, which affect the succession of the estate.

#### **20-90-070 Reference to Foreign Law.**

The Tribal Court is encouraged to refer to foreign law, including laws of other tribes and states, federal law, common law and uniform or model laws, for assistance in resolving issues of probate and inheritance law on which this Probate Code is silent.

#### **20-90-080 Severability.**

If any provision of this Probate Code or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Probate Code which can be given effect without the invalid provision or application, and to this end the provisions of this Probate Code are declared to be severable.

**20-90-090 Construction Against Implied Repeal.**

This Probate Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

**20-90-100 Captions.**

Headings, captions, section, and subparagraph headings are employed for convenience or reference purposes only and will not be deemed a part of the text of any section.

**20-90-110 Sovereign Immunity.**

Nothing in this Probate Code shall be deemed to waive the sovereign immunity of the Fallon Paiute Shoshone Tribe or any of its enterprises, officers, agents, or employees.

**20-90-120 Secretarial Approval.**

This Title shall not be subject to the approval of the Secretary. This Title shall not govern the descent and distribution of trust or restricted lands or trust personalty.



# FALLON PAIUTE-SHOSHONE TRIBE

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**Resolution No. 21-F-178**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE-SHOSHONE TRIBE, THE FALLON BUSINESS COUNCIL, THAT:**

**WHEREAS:** the Fallon Business Council ("Council") is the recognized Governing Body of the Fallon Paiute-Shoshone Tribe ("Tribe") and was established to exercise the privileges and powers of self-government, to conserve and develop the Tribe's resources for the social and economic well-being of its members, and to preserve and protect the civil rights of its members; and

**WHEREAS:** the Fallon Paiute-Shoshone Tribe is federally recognized by the United States Government and the Secretary of the Interior as a Native American Tribe, and by the power vested by the Tribal Constitution and Bylaws pursuant to Article VI – Powers & Duties of the Council, Section 1(h), the Council has the power "to promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court"; and

**WHEREAS:** pursuant to this power, the Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation and Colony; and

**WHEREAS:** the Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living and working on Tribal lands; and

**WHEREAS:** to meet this goal, the Council recognized a need to adopt laws addressing probate for non-trust property, so it prepared a new Title 20 of the Law and Order Code titled "Probate Code for Non-Trust Property"; and


**WHEREAS:** the new Title 20 was posted for at least thirty days to allow for public comment, but no comments were received; and

**NOW THEREFORE BE IT RESOLVED** the Fallon Business Council hereby adopts the attached version of the new Title 20 – Probate Code for Non-Trust Property of the Tribe's Law and Order Code, which shall go into effect on January 27, 2022; and

**BE IT FINALLY RESOLVED** that the Fallon Business Council hereby directs that the Tribal Secretary make the new Title 20 – Probate Code for Non-Trust Property of the Tribe's Law and Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester.

**CERTIFICATION**

At a duly held meeting of the seven members of the Governing Body of the Fallon Paiute-Shoshone Tribe, five of which constitute a quorum, there were 6 members present on the 28<sup>th</sup> day of December 2021, who **VOTED 5 FOR, 0 AGAINST, and 1 ABSTENTION(S)**, in the adoption of the foregoing resolution, in accordance with the powers vested by the Fallon Paiute-Shoshone Tribe's Constitution and By-Laws.

  
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**Margot Dyer, Secretary**  
**Fallon Business Council**