

WAGANAKISING ODAWA



TRIBAL CODE of LAW TITLE XIII. MARRIAGE AND PROBATE

2023 – Version 10.2

WAGANAKISING ODAWA TRIBAL CODE of LAW

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TITLE XIII. MARRIAGE AND PROBATE

Chapter 1. Marriage

Codification Note: Repeals and Replaces WOS 2007-001 and WOS 2013-003

13.101 PURPOSE

The purpose of this act is to govern the making of marriages under Tribal law and this statute shall repeal and replace WOS 2007-001 and WOS 2013-003.

(Source: WOS 2020-010, May 1, 2020, Section I)

13.102 DEFINITIONS

- A. “Adult” means a person eighteen (18) years of age or older.
- B. “Endorsement” means the Marriage Clerk or Deputy Marriage Clerk endorses the marriage license for a proper legal record.
- C. “Jurisdiction” means *all territory within the Tribal Reservation and to any and all persons or activities therein based upon the inherent sovereign authority of the Little Traverse Bay Bands of Odawa Indians and Federal law. (Little Traverse Bay Bands of Odawa Indians Constitution, Article IV (B)).*
- D. “LTBB” or “Tribe” means the Little Traverse Bay Bands of Odawa Indians.
- E. “Marriage” means the legal and voluntary union of two persons to the exclusion of all others.
- F. “Marriage Clerk” means a person(s) who issues Marriage commissions and endorses Marriage Certificate on behalf of the Little Traverse Bay Bands of Odawa Indians and is responsible for filing and maintaining records under this Statute, including Deputy Marriage Clerk(s).

G. “Marriage Commissioner” means a person who has been issued a Marriage commission by the Little Traverse Bay Bands of Odawa Indians.

H. “Tribal Citizen” means an enrolled member of Little Traverse Bay Bands of Odawa Indians.

I. “Tribal Court” means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians as defined in the LTBB Constitution.

(Source: WOS 2020-010, May 1, 2020, Section II)

13.103 MARRIAGE AND THE CAPACITY TO MARRY

A. Marriage as a civil contract. To be valid, and for purposes of this law, marriage is a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute a marriage. A marriage relies upon the issuance of a license, a ceremony solemnizing the marriage, and the endorsement of the marriage certificate.

B. Capacity to consent. A person seeking to be married must fulfill each of the following requirements:

1. Freely consent to the marriage and have the mental capacity to marry;
2. Be at least eighteen (18) years of age or older as evidenced by a birth certificate, driver’s license, passport, Tribal Enrollment card or other identification documents, be at least sixteen (16) years of age as evidenced by a birth certificate, driver’s license, passport, Tribal Enrollment card or other identification documents and with the consent of a parent or legal guardian, which consent must be notarized, or has been emancipated by a court of competent jurisdiction;
3. Not have an existing spouse;
4. Not be blood relatives to each other in any of the following degrees:

- a. Parent and child;
- b. Grandparent and grandchild;
- c. Brother and sister, or half-brother and half-sister;
- d. Uncle and niece, or aunt and nephew; or
- e. Cousins in the first degree.

(Source: WOS 2020-010, May 1, 2020, Section III)

13.104 MARRIAGE LICENSES

A. Application for Marriage License. All persons wishing to be married in accordance with this act shall obtain a marriage license from a Marriage Clerk or a Marriage Commissioner. The application to obtain a marriage license shall be in the form of an affidavit and shall contain the following information for each person:

- 1. Full legal name, including last name before first marriage, if previously married;
- 2. Home mailing and street address,
- 3. Age;
- 4. Sex;
- 5. Social Security Number;
- 6. LTBB Tribal affiliation, if applicable;
- 7. Present age and date and place of birth;
- 8. If either party was previously married number of times;
- 9. The names of each person's parents and the place of birth for each parent, if known. For each person's mother, the mother's name before first marriage shall be identified, if known;

10. If either person is a minor, the name and address of the parents, adoptive parent, or guardian of each party; or if emancipated, certified copies of papers granting emancipation;

11. A statement of consent to the civil jurisdiction of the Tribe; and

12. A statement that says “I, we, intend to marry and that this affidavit is made for the purpose of obtaining a marriage license; that each of the above-named persons is not related to the other within the degree prohibited by the WOS _____ Marriage Statute and is of sufficient mental capacity to contract marriage; that said persons are acquainted with the laws of the Little Traverse Bay Bands of Odawa Indians relative to marriage; that there is no legal impediment to said marriage; and that to the best of knowledge and belief of the undersigned all of the foregoing statements are true”.

B. Authority of Marriage Clerk to issue marriage licenses.

1. A Marriage Clerk or Marriage Commissioner shall have the power to issue a marriage license.

2. A Marriage Clerk or Marriage Commissioner shall issue a marriage license upon validation of the following:

a. a properly-completed affidavit for a marriage license;

b. payment of a reasonable license and processing fee; and

c. A statement of consent to the civil jurisdiction of the Tribe.

C. Validity of License. A marriage license shall be valid for thirty (30) days from the date of issuance.

(Source: WOS 2020-010, May 1, 2020, Section IV)

13.105 SOLEMNIZATION OF MARRIAGE

A. Qualification to perform marriages.

1. The following persons shall be qualified to perform marriages under this Statute:

- a.** A medicine person or traditional spiritual leader;
- b.** Clergymen duly designated by the governing body of his or her faith as having the authority to perform marriages;
- c.** A Tribal Court Judge of the Tribal Court or Justice of the Tribal Court of Appeals;
- d.** The Tribal Chairperson;
- e.** A Tribal Judge of a Court of another federally recognized Tribe who is authorized by Tribal law to perform marriages;
- f.** A Tribal Notary; and
- g.** Any person who is deemed qualified by the persons being married.

B. Permissible location. A marriage performed in accordance with this act shall be solemnized within the jurisdiction of the Tribe.

C. Examination of marriage license. Prior to the marriage ceremony, the person performing the ceremony shall review the marriage license and determine that the persons seeking to be married are the persons named on the license. For that purpose, the person performing the ceremony may administer oaths and examine the identification of the persons seeking to be married.

D. Marriage ceremony. A marriage ceremony performed under this act need not take any particular form, but the persons seeking to be married must declare in the presence of the person

performing the ceremony, and in the presence of two adult witnesses, that they receive each other as spouses. After the ceremony, the person who performed the marriage ceremony shall sign the marriage license with a statement that shall include their name, address, and if applicable title; date and place of the ceremony; and the names of two witnesses. The two witnesses shall also print and sign the marriage license.

(Source: WOS 2020-010, May 1, 2020, Section V)

13.106 PROCEDURE FOR RECOGNITION OF MARRIAGES AFTER SOLEMNIZATION

- A.** Return of fully-executed marriage license to the Marriage Clerk. Following the marriage ceremony, the marriage affidavit, and the fully executed marriage license shall be returned to the Marriage Clerk within seven (7) days for endorsement.

- B.** Endorsement of marriage license by Marriage Clerk. The Marriage Clerk must endorse upon each copy its date of receipt.

- C.** Marriage Clerk issuance of marriage certificate. Upon receipt of a fully-executed marriage license and the original marriage license affidavit, the Marriage Clerk must examine the affidavit, the license, and the signatures of the witnesses and the person performing the marriage to ensure that the information appearing is complete and that the marriage was performed in accordance with the provisions of the license. Upon a determination that the affidavit, the license, and the signatures are in proper form, and that there has been compliance with the terms of the license, the Marriage Clerk shall endorse its certification upon the license, and deliver a copy of the marriage license to the persons for whom it was issued. The endorsement must be completed to ensure a proper legal record of marriage.

- D.** Storage of marriage records. The Marriage Clerk shall file the certified marriage license of marriage together with the application and affidavit for marriage license with the permanent records of the Tribe.

E. Obtaining certified copies of marriage certificate. Should the parties to any marriage performed under the auspices of these provisions desire that a marriage certificate be filed or recorded in another jurisdiction, they may obtain certified copies from the Marriage Clerk at a fee not to exceed \$25.00.

(Source: WOS 2020-010, May 1, 2020, Section VI)

13.107 MARRIAGE COMMISSIONER

A. Qualifications. The Marriage Clerk shall issue a Marriage commission to any qualified person who submits an application in accordance with this Statute. The Marriage Clerk may charge a reasonable application fee. A person qualified for a Marriage commission shall be:

1. A citizen of the Little Traverse Bay Bands of Odawa Indians;
2. Is a registered Tribal Notary of the Little Traverse Bay Bands of Odawa Indians;
3. Has legal residency in the United States;

B. Application Materials. Every application for a Marriage commission shall be made on forms determined by the Marriage Clerk that shall include:

1. The applicant's name as it appears on their Notary Commission;
2. The applicant's residence address and telephone number;
3. A declaration that the applicant is a citizen of the Little Traverse Bay Bands of Odawa Indians and documentation of proof;
4. A declaration that the applicant is a citizen of the United States or proof of the applicant's legal residency in this country;

5. Documentation that the person is a registered Tribal Notary of the Little Traverse Bay Bands of Odawa Indians;
6. An application fee;
7. Such other information as the Marriage Clerk may deem appropriate.
8. A statement that says “I certify, with my signature below, that I have read the Marriage Statute and understand the required marriage license process”.

C. Application Denial. The Marriage Clerk shall deny an application based on any of the following:

1. Submission of an official application containing material misstatement or omission of fact;
2. Revocation or suspension of their Little Traverse Bay Bands of Odawa Indians Tribal Notary status.

D. Application Appeal. Denial of an application may be appealed by filing in proper form with the Tribal Court within thirty (30) days after denial, except that an applicant may not appeal when the Marriage Clerk within 5 years prior to the application has:

1. Denied or revoked for disciplinary reasons any previous application, commission, or license of the applicant; or
2. Made a finding that grounds for revocation of the applicant’s commission existed.

E. Upon receipt of valid Marriage commission issued by the Little Traverse Bay Bands of Odawa Indians Marriage Clerk, such person shall be designated as a “Marriage Commissioner” and shall be authorized to perform the applicable functions of this Statute.

F. Jurisdiction and Term. A person commissioned as a Marriage Commissioner shall be a six (6) years term, unless the commission is earlier revoked for “Official Misconduct”, resigned or

surety bond has expired.

G. “Official Misconduct” means:

1. A Marriage Commissioner’s performance of any act prohibited, or failure to perform any act mandated, by this Statute or by any other law in connection with a marriage commission; or
2. A Marriage Commissioner’s performance of an official act in a manner found by the Marriage Clerk and/or the Tribal Court to be negligent or against the public interest.

(Source: WOS 2020-010, May 1, 2020, Section VII)

13.108 RECOGNITION OF FOREIGN MARRIAGES, AFFIRMANCE OF PAST TRIBAL COURT MARRIAGES

A. Recognition of foreign marriages. The Little Traverse Bay Bands of Odawa Indians shall recognize as valid and binding any marriage formalized or solemnized in compliance with the laws of the place of formalization or solemnization.

B. Prior Tribal Court Marriages. The Little Traverse Bay Bands of Odawa Indians affirms the validity and binding nature of all marriages performed under WOS 2013-003.

(Source: WOS 2020-010, May 1, 2020, Section VIII)

13.109 SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute shall continue in full force and effect.

(Source: WOS 2020-010, May 1, 2020, Section IX)

13.110 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2020-010, May 1, 2020, Section X)

Chapter 2. Dissolution of Marriage

Codification Note: Repeals and Replaces 2008-007 and 2015-013

13.201 PURPOSE AND TITLE

The Little Traverse Bay Bands of Odawa Indians finds that the Tribe's interest over family relations is an integral part of tribal self-government and the Tribe's history and culture, that it is exceedingly important to the Tribe to support the preservation of families, that families thrive when they receive appropriate emotional and financial support, and that the lives of children and families improve by strengthening parental responsibility for family and child support. The Tribe encourages the protection and preservation of the continuity of family, but recognizes that in the event of dissolution of marriage, divorce proceedings need uniform, efficient and equitable ways to provide for the dissolution of the marriage. This Statute repeals and replaces Waganakising Odawak Statutes 2008-007 Dissolution of Marriage, and 2015-013 Amendment to WOS 2008-007 Dissolution of Marriage.

(Source: WOS 2023-001, March 2, 2023, Section I)

13.202 DEFINITIONS

- A. *"Court"* means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- B. *"Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians"* means *"areas referenced in Little Traverse Bay Bands Constitution, Article IV (A) ... lands which are now and hereafter owned or acquired by the Little Traverse Bay Bands of Odawa Indians or held in trust for the Tribe by the United States."*
- C. *"Tribe"* means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2023-001, March 2, 2023, Section II)

13.203 JURISDICTION

The Court shall have jurisdiction over divorce proceedings for the dissolution of marriage, including issues of child custody, child support, division of property, or alimony where at least

one (1) party to the proceedings is a Tribal Citizen of the Little Traverse Bay Bands of Odawa Indians and has been a bona fide resident of the Tribal Jurisdiction for a period of at least 180 days prior to the filing of the action.

(Source: WOS 2023-001, March 2, 2023, Section III)

13.204 SIMPLE DISSOLUTION

A. An action for Simple Dissolution shall be commenced by the filing of a joint petition by the parties that contains the following:

- 1.** The full legal name, address, social security number and driver's license number of each party to the marriage;
- 2.** The Tribal Citizenship number of at least one of the parties;
- 3.** A statement that at least one of the parties have resided within the Tribal jurisdiction for six months immediately before the filing of the petition;
- 4.** A statement that the parties have no children under the age of 18, unless emancipated, or no dependent children together, and the wife is not pregnant,
- 5.** The maiden name of the wife and/or her name prior to the marriage if different;
- 6.** The date and location of the marriage;
- 7.** The date and location of the separation of the parties;
- 8.** A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, or that the parties have lived separate and apart for one (1) year;
- 9.** A proposed division of marital property and debt that contains provisions about how personal belongings, assets, property, and their debts are going to be divided once

the parties are no longer married. Or a statement that there are no personal belongings, assets, debts, or property such as homes, cars, etc.;

10. A statement that neither party is requesting alimony.

B. A simple dissolution shall be granted by the Court without a hearing.

(Source: WOS 2023-001, March 2, 2023, Section IV)

13.205 DISSOLUTION OF MARRIAGE

A. A decree of dissolution of marriage shall be granted without regard to the fault of the parties and upon a finding that the marriage has broken down irretrievably, and that there remains no reasonable likelihood that the marriage can be preserved; or the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least one (1) year immediately prior to the filing of the petition for divorce.

1. Fault of a party or basis for the breakdown of the marriage, is a relevant factor in awarding alimony or spousal support notwithstanding the decree of dissolution of marriage granted without regard to the fault of the parties.

B. An action for divorce shall be commenced by the filing of a petition by one of the parties and shall contain the following:

1. The full legal name, address, social security number and driver's license number of each party to the marriage;

2. The Tribal Citizenship number of at least one of the parties;

3. The names and birth dates of any children born of the marriage or of any children born prior to the marriage where the husband is asserted to be the father;

4. A statement as to whether or not the wife is pregnant at the time the petition is filed;

5. The maiden name of the wife and/or her name prior to the marriage if different;

6. The date and location of the marriage;
 7. The date and location of the separation of the parties;
 8. A proposed division of marital property and debt, and custody of children, if any.
 9. A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, or that the parties have lived separate and apart for one (1) year.
- C. The non-petitioning party may file a response to the petition within thirty (30) days of receipt of the petition.
- D. The response may state the facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property, child custody arrangement, or other relief different than that proposed by the petitioner.
- E. A copy of the response must be served on the petitioning spouse.
- F. Following a petition for divorce, and after the opportunity for the non-petitioning party to respond, the Tribal Court shall hold a hearing unless the parties have stipulated to all matters and issues pending.
- G. If the parties stipulate, and the Tribal Court is convinced that the stipulation is fair and equitable, the court may enter a decree without a hearing.
- H. If minor children are involved, the Court may order the parties to counseling, continue the action for a maximum of three months to enable the parties to reconcile, or take such other actions as may be in the best interests of the parties or the minor children of the marriage.
- I. Hearings shall be held within six (6) months of the date that the petition is filed, with actions involving the custody of minor children taking precedence over all other civil cases.

J. At the hearing, both parties shall have the opportunity to testify, call witnesses, present evidence and cross-examine their spouse and any other witnesses.

K. The intentional filing of groundless petitions shall result in the imposition of sanctions.

L. A final order of the Tribal Court may be appealed in the same fashion and manner as any other order of the Court.

(Source: WOS 2021-001, March 2, 2023, Section V)

13.206 DIVISION OF PROPERTY

When a divorce is granted, the Court shall order distribution of all real and personal property in an equitable fashion and shall allocate the marital financial obligations of the parties, in whole to either party, or partially to each party.

(Source: WOS 2023-001, March 2, 2023, Section VI)

13.207 ALIMONY

Alimony is a form of support to a dependent spouse. The spouse must be substantially dependent on the income of another spouse for the regular necessities of life. The amount of alimony or spousal support will vary with the disparity of the party's incomes and the length of the marriage. Alimony may be awarded for a term of years and/or upon the death or remarriage of the parties.

A. After the equitable distribution of assets and liabilities, the Court may grant alimony to either party, in a lump sum payment or in periodic payments or both.

B. The Court shall consider the length of the marriage, the age, physical and emotional conditions of each of the parties and all sources of available income to either party.

1. All sources of available income. The Court shall recognize all sources of current available separate household income when the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least one (1) year

immediately prior to the filing of the petition for divorce.

2. Such order may be modified, on motion of either party to reflect changes in either party's economic circumstances.

C. Groundless filings may result in the imposition of sanctions.

D. The Court, upon motion, shall terminate alimony to any spouse who has remarried or upon the death of either party.

(Source: WOS 2023-001, March 2, 2023, Section VII)

13.208 CHILD CUSTODY, VISITATION AND SUPPORT

A. In any action for divorce, the Court shall have the authority to determine the custody of any child less than eighteen (18) years of age. Custody is the care, control and maintenance of a child which includes legal and physical custody.

1. Legal custody is the decision-making authority.

2. Physical custody is the caregiving authority.

B. The Court shall have jurisdiction to award custody of a minor child to one of the parents, or both of the parents.

C. The court must order joint physical custody of a child to both parents unless the court determines that joint physical custody is not in the best interests of the child as set forth in this Statute.

D. A person who is giving legal custody may make important life decisions for a child, such as health care, education, child care and general welfare.

1. Joint legal custody gives both parents the right to make these decisions.

2. Sole legal custody gives one parent all decision-making responsibilities.
- E.** A person who is giving physical custody has actual physical residency of a child.
1. Joint physical custody means that each parent will have specific times with a child.
 2. Sole physical custody means that one parent provides for the day-to-day care for the child and the non-custodial parent may be given parenting time.
- F.** In determining the best interest of the child, the Court shall consider all relevant factors including:
1. The love, affection, and other emotional ties existing between the parent involved and the child.
 2. The capacity and disposition of the parent to give the child love, affection, and guidance and to continue the child's education.
 3. The capacity and disposition of a parent, for reasons other than poverty, to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child's health and well-being.
 4. The ability of a parent to provide a stable and satisfactory environment for the child.
 5. The mental and physical health of the parent.
 6. The home, school, and community record of the child.
 7. The wishes of the child may be weighed by the Court, but are not controlling to the Court's decision. The Judge will meet with the child in his or her chambers to discuss the child's wishes.
 8. The interaction and interrelationship of the child with siblings and any other

person who may significantly affect the child's best interest.

9. The willingness and ability of each of the parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

10. Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

11. Any other factor considered by the court to be relevant to a particular child custody dispute.

G. The Court shall not consider conduct of a proposed custodian that does not affect his or her relationship to the child.

H. The Court shall have no presumption that one parent is better suited to be a custodian because of gender.

I. Differences in financial circumstances alone shall not be a deciding factor in the determination of custody.

J. The Court shall have the authority to require the non-custodial parent to pay such sum as the Court may determine appropriate and proper for the support and maintenance of the child.

K. The Court shall designate visitation for the non-custodian parent or parent(s) and shall provide for the foster and expansion of the relationship between the non-custodial parent(s) and the child whenever possible, unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental or emotional health.

L. The Court, upon petition of either parent to whom custody or visitation of the minor child may be awarded, may revise, amend or alter any order concerning the care, custody, support or visitation rights with any child consistent with the best interests of the child.

M. Changes in domicile where the custodial parent wants to move out-side of the Tribal Territorial Jurisdiction, shall require prior Court approval. The Court shall consider the following

factors:

1. Consent of both parents.
2. Prospective advantages of the move for improvement of the general quality of life for the custodial parent and child.
3. The likelihood of the custodial parent complying with the Tribal Court Order once he or she is no longer resides within the Tribal Territory.
4. The extent to which there will be a realistic opportunity for non-custodial visitation which can continued to foster the relationship between the non-custodial parent(s) and the child.

N. Both custodial and non-custodial parents shall notify the Court of any changes in domicile or residency.

O. When the Court has ordered periodic support payments under this code, and the parent does not pay as ordered, the Court shall use the same methods to collect these payments as it would to enforce any money judgment in a civil action, including contempt.

(Source: WOS 2023-001, March 2, 2023, Section VIII)

13.209 TEMPORARY INTERIM ORDERS

A. The Court may issue temporary orders during the pending of all proceedings involving child custody, child support, visitation, alimony and the possession of real and personal property.

B. Such orders may be granted upon the motion of either party or on the Court's own motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines that an emergency exists or a party cannot be found, in which case such orders may be issued ex-parte.

C. Emergency may be interpreted to include, but not limited to:

1. a danger of physical abuse to the spouse or the party's child(ren);
2. severe emotional abuse;
3. a lack of means for interim subsistence; or
4. the danger that the child(ren) will be removed from jurisdiction.

D. If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) days.

(Source: WOS 2023-001, March 3, 2023, Section IX)

12.210 ENFORCEMENT

When either party to a divorce proceeding shall fail willfully to comply with an order of the Tribal Court, the other party may file a petition with the Court alleging such failure. The Court shall then issue notice to the party, which shall include a copy of the petition, and set a date for the hearing. At the hearing, the Court shall take testimony as to the alleged failure to comply with its order, and issue any order which it shall deem just and proper under the circumstances

(Source: WOS 2023-001, March 2, 2023, Section X)

12.211 SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2023-001, March 2, 2023, Section XI)

12.212 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2023-001, March 2, 2023, Section XII)

Chapter 3. Probate Code

13.301 PURPOSE

The purpose of this Statute is to provide for the distribution of estates upon the death of Tribal citizens and others within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians ("LTBB").

(Source: WOS 2006-020, November 22, 2006, Section I)

13.302 JURISDICTION

Upon the death of a Tribal citizen, or of any person domiciled within the LTBB reservation, the Tribal Court has jurisdiction to determine the heirs of the decedent, the claims of creditors, and the distribution of property under this Statute. The Court's jurisdiction in probate matters shall cover all of the decedent's real and personal property, including that which is located outside of the Reservation, and any debts owed to the decedent.

(Source: WOS 2006-020, November 22, 2006, Section II)

13.303 COVERAGE OF THIS STATUTE

The provisions of this Statute shall be used to distribute the assets of any person domiciled on the Reservation owning assets valued at more than \$15,000.00 (fifteen thousand dollars). In the event a person domiciled on the Reservation dies owning \$15,000.00 (fifteen thousand dollars) or less in assets the Court shall not have jurisdiction to probate the estate.

(Source: WOS 2006-020, November 22, 2006, Section III)

13.304 DEFINITIONS

For purposes of this Statute, the terms below are defined as follows:

- A. “Beneficiary”:** A beneficiary is a person who is designated to receive something from a legal arrangement or instrument, for example, property designated pursuant to a decedent’s valid will, income from a trust, or the proceeds from an insurance policy.
- B. “Decedent”:** A decedent is a deceased person with interests to be determined as demonstrated within this Statute.
- C. “Heir”:** An heir is a person who is entitled under this Statute, based upon a family relationship to the decedent, to receive the property of a decedent who dies without a will.
- D. “Holographic Will”:** A holographic will is one that is written entirely by the decedent that is not witnessed or otherwise does not fully comply with the requirements for a will under this Statute.
- E. “Immediate Family”:** The immediate family is generally comprised of the surviving spouse, parents, grandparents, son(s), daughter(s), brother(s) and sister(s) of the decedent.
- F. “Legally Incompetent”:** A person is legally incompetent when a court has determined that the person is mentally or physically unable or unfit to comprehend the nature and consequences of legal proceedings.
- G. “Minor”:** A minor is a person who has not reached age eighteen (18).
- H. “Marriage”:** The legal union of a man and a woman as husband and wife, generally pursuant to a Tribal or state license, and made official by a formal ceremony.
- I. “Probate”:** Probate is the legal process by which applicable Tribal common and written law, state law, or federal law that affects the distribution of the decedent’s estate is applied to determine the decedent’s heirs, approve wills and beneficiaries, and transfer any personal or real property held in trust by a trustee for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

J. “Real Property”: Real property includes all improvements and fixtures upon land; that which is incidental and appurtenant to land; all rights, interests, privileges, easements, and encumbrances relating to land, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these, except that such term shall never include subsurface rights or the title or ownership interest in tribal, trust, or otherwise restricted land.

K. “Testator”: A person who has written a will.

(Source: WOS 2006-020, November 22, 2006, Section IV)

13.305 LIMITED JURISDICTION OVER TRANSFERS INVOLVING REAL PROPERTY

The Court may effectuate transfers of land assignments or permanent structures affixed to the land, in accordance with codified Tribal Property and Housing law.

Once the transfer is complete, the Court shall forward a copy of the "transfer" to the Executive Branch for record-keeping purposes. The Court may only effectuate transfer title of real property if the decedent owned the property in fee, with no tribal or federal ownership interests or restrictions.

(Source: WOS 2006-020, November 22, 2006, Section V)

13.306 PETITION FOR ADMINISTRATION OF ESTATE OR FOR PROBATE OF WILL

A. Filing. The surviving spouse, or if none, any family member of the decedent, the personal representative as designated in decedent will, or a creditor of the decedent may file a probate petition. In the case of an unmarried minor, a legal guardian, or person appointed by the Court if a ward of the Court, may file the petition.

B. Time for Filing. The petition should normally be filed within sixty (60) days of

the death of decedent.

C. Form of Filing. The petition shall contain the following information:

1. The date and location of death of decedent and age of decedent at time of death;
2. A statement of the decedent's tribal affiliation, if any;
3. The name of the person filing the petition, tribal enrollment number, if any, age, residence, and relationship to the decedent;
4. A statement that the decedent left no will, or that the will is filed with the petition and offered for probate;
5. The names, ages, and relationship to the decedent of all known heirs of decedent, and if decedent dies with a will, the names, ages, and relationship, if any, of all beneficiaries under the will;
6. A detailed statement of assets and approximate value of each;
7. A list of names and addresses of the decedent's creditors, including all possible creditors that the petitioner can reasonably determine by reviewing the decedent's financial records and papers; and
8. A general list of items that were buried/burned with decedent not to be distributed.

D. Minor or Legally Incompetent Heirs. Upon the filing of the petition for administration, the Court shall ascertain whether or not there are any heirs, legatees, or devisees under the age of eighteen (18) years or legally incompetent heirs. If so, the Court shall appoint a guardian ad litem to represent the minor or legally incompetent heir's interests until the determination of distribution of belongings is final. The Court

will give careful attention to all actions concerning that of a minor individual under eighteen (18) years of age or a legally incompetent heir.

(Source: WOS 2006-020, November 22, 2006, Section VI)

13.307 APPROVAL OF WILLS

A. When any member of the LTBB Community dies, the Tribal Court shall at the request of any interested party determine the validity of the will after giving notice and full opportunity to appear in Court to tell all persons who might be beneficiaries of the decedent. The Court shall provide actual notice of the proceedings to each beneficiary designated in decedent's will. In the event of a will contest, the Court shall try the case according to rules and procedures relating to civil cases in the LTBB Tribal Court. Normally challenges to a will should not be accepted after a final probate order is issued.

B. Formal Will. A will shall be deemed valid if (1) the decedent had a sane mind and understood what s/he was doing when s/he made the will, (2) the decedent was not subject to any undue influence of any kind from any person, and (3) if the will was made in writing and signed by the decedent and one (1) witness. The witness cannot be a beneficiary under the will or have a significant interest in the outcome of the will. If the Court determines the will to be validly executed, it shall issue a final probate order, stating that the property described in the will be given to the persons named in the will or, in the event that a person named in the will predeceases the testator, to their heirs of that person in accordance with this Statute.

C. Holographic Wills. The Court has discretion to determine the validity of a decedent's holographic will. The Court may consider evidence including, but not limited to, affidavits or testimony verifying that the will was hand-written by the decedent and that the decedent was not subject to duress when writing the will. If the Court determines that the holographic will is valid, it shall issue a final probate order, stating that the property described in the will be given to the persons named in the will or, in the event that a person named in the will predeceases the testator, to their heirs of that person in accordance with this Statute.

D. Invalid Will; Property Not Accounted for in Decedent's Will. Where the Court finds that the decedent's will is invalid, the Court shall order the administration of decedent's estate as if the decedent had died without a will. Where the Court finds that there is property of the decedent that was left out of a valid will and no other lawful instrument designates a beneficiary, the Court shall order distribution of the undesignated property, by following the procedures under this Statute where the decedent dies without a will.

E. Beneficiary Criminally Responsible for the Death of the Decedent. Any beneficiary or any heir of the decedent found to be criminally responsible for the death of the decedent shall not be entitled to inherit or receive any interest of the decedent's estate.

(Source: WOS 2006-020, November 22, 2006, Section VII)

13.308 ADMINISTRATION OF ESTATE WHERE DECEDENT HAS NO WILL

Administration of a decedent's property commences by filing a petition for administration with the Tribal Court. Once the probate petition is filed, pursuant to Section VI of this Statute, the Tribal Court shall order distribution of the decedent's assets remaining after satisfaction of the debts and expenses of the estate as follows in the event it determines that no valid will exists:

A. If a spouse survives decedent, all assets shall be distributed to the surviving spouse;

B. If there is no surviving spouse, all assets shall be distributed equally to decedent's surviving children;

C. If there is no surviving spouse or children, all assets shall be distributed to decedent's surviving parent/s;

D. If there is no surviving spouse, children or parents, all assets shall be distributed equally among decedent's grand-children;

E. If there are no surviving persons listed in A-D, all assets shall be distributed equally among decedent's surviving sibling/s;

F. If there are no surviving persons listed in A-E, all assets shall be distributed equally to decedent's surviving first cousin/s;

G. If there are no surviving persons listed in A-F, any real property in the Reservation shall escheat to LTBB; any other assets shall be distributed as the Court deems equitable to close friends or caretakers of the decedent.

(Source: WOS 2006-020, November 22, 2006, Section VIII)

13.309 DETERMINATION OF HEIRS AND DISTRIBUTION OF PROPERTY

A. In the case of a decedent without a will, the Court will make such inquiries of the petitioner, family members, the Enrollment Office or other sources as it deems necessary to make sure the list of heirs is submitted with the petition is complete.

B. In the case of multiple heirs and mixed financial, personal property and or real property assets, the Court shall hold hearings as it deems necessary to determine equitable distribution. Provided, a distribution plan submitted jointly by all affected heirs shall be presumed equitable.

(Source: WOS 2006-020, November 22, 2006, Section IX)

13.310 NOTICE TO CREDITORS

A. Once the Court receives the list of creditors in the Probate petition, the Court shall mail notice to each creditor listed that probate proceedings have commenced for the possessions of the decedent. Proof of mailing shall be filed in the case record.

B. For creditors who may be unknown or are not reasonably ascertainable, the Court shall issue a notice to creditors by publication. The notice shall be published on the Tribal website, in a Tribal newspaper and in one other local newspaper of general

circulation for two consecutive publication dates and proof of publication shall be filed in the case record.

C. The last date for creditors to file claims against the estate shall be forty--five (45) days from receipt of notice or from the second date of publication, and are thereafter barred from any claim.

D. Claims shall have the following order of priority:

- 1.** Court costs for actual notice and publication for creditor's claims, and actual notice and publication for determining heirs;
- 2.** Debts owing for expenses of decedent's last illness and subsequent funeral charges not covered by LTBB;
- 3.** Claims of indebtedness to the Little Traverse Bay Bands of Odawa Indians;
- 4.** Debts owing to members of the Little Traverse Bay Bands of Odawa Indians;
- 5.** Claims of all other creditors.

(Source: WOS 2006-020, November 22, 2006, Section X)

13.311 PAYMENT OF CREDITOR' CLAIMS

A. All tangible personal property of the decedent that is of a unique keepsake nature, such as art, family heirlooms and photographs, is exempt from sale to pay for claims of creditors. The Court shall not order sale of such tangible personal property of the decedent to satisfy any liens or judgments of creditors.

B. Decedent's remaining Per Capita funds are subject to satisfaction of liens or judgments of creditors.

(Source: WOS 2006-020, November 22, 2006, Section XI)

13.312 FORM OF PROBATE PLEADINGS

The Tribal Court shall determine what documents must be filed in a probate case.

(Source: WOS 2006-020, November 22, 2006, Section XII)

13.313 SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute shall continue in full force and effect.

(Source: WOS 2006-020, November 22, 2006, Section XIII)

13.314 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2006-020, November 22, 2006, Section XIV)

Chapter 4. Probate Code for Small Estates

13.401 PURPOSE

The purpose of this Statute is to provide for the distribution of small estates upon the death of Tribal Citizens and others within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians ("LTBB").

(Source: WOS 2011-003, January 8, 2011, Section I)

13.402 JURISDICTION

Upon the death of a Tribal Citizen, or of any person within the Tribe's jurisdiction, may petition the Tribal Court to determine the heirs of the decedent, the claims of creditors, and the distribution of property under this Statute. The Court's jurisdiction in probate matters shall cover all of the decedent's real and personal property, including that which is located outside of the Reservation, and any debts owed to the decedent.

(Source: WOS 2011-003, January 8, 2011, Section II)

13.403 COVERAGE OF THIS STATUTE

The provisions of this Statute shall be used to distribute the assets of any person domiciled on the Reservation owning assets valued at less than \$15,000.00 (fifteen thousand dollars).

(Source: WOS 2011-003, January 8, 2011, Section III)

13.404 DEFINITIONS

For purposes of this Statute, the terms below are defined as follows:

A. "Beneficiary" means a person who is designated to receive something from a legal arrangement or instrument, for example, property designated pursuant to a decedent's valid will,

income from a trust, or the proceeds from an insurance policy.

B. “Decedent” means a deceased person with interests to be determined as demonstrated within this Statute.

C. “Heir” means a person who is entitled under this Statute, based upon a family relationship to the decedent, to receive the property of a decedent who dies without a will.

D. “Holographic will” means a will that is written entirely by the decedent that is not witnessed or otherwise does not fully comply with the requirements for a will under this Statute.

E. “Immediate Family” means family members generally comprised of the surviving spouse, parents, grandparents, son(s), daughter(s), brother(s) and sister(s) of the decedent.

F. “Intestate” means dying without leaving a will or leaving an invalid will so that the property of the estate passes by the laws of succession rather than by the direction of the deceased.

G. “Legally Incompetent” means a person determined by a court to be mentally or physically unable or unfit to comprehend the nature and consequences of legal proceedings.

H. “Minor” means person who has not reached age eighteen (18).

I. “Marriage” means the legal union of a man and a woman as husband and wife, generally pursuant to a Tribal or state license, and made official by a formal ceremony.

J. “Probate” means the legal process by which applicable Tribal common and written law, state law, or federal law that affects the distribution of the decedent’s estate is applied to determine the decedent’s heirs, approve wills and beneficiaries, and transfer any personal or real property held in trust by a trustee for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

K. “Real Property” means property including all improvements and fixtures upon land; that which is incidental and appurtenant to land; all rights, interests, privileges, easements, and encumbrances relating to land, including tenancies and liens of judgment, mortgage, or otherwise;

and any portion of these, except that such term shall never include subsurface rights or the title or ownership interest in tribal, trust, or otherwise restricted land.

L. “Testator” means a person who has written a will.

M. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

N. “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

O. “Will” means the legal instrument that permits a person, the testator, to make decisions on how his or her estate will be managed after death.

(Source: WOS 2011-003, January 8, 2011, Section IV)

13.405 LIMITED JURISDICTION OVER TRANSFERS INVOLVING REAL PROPERTY

A. The Court may effectuate transfers of land assignments or permanent structures affixed to the land, in accordance with codified Tribal Property and Housing law.

B. Once the transfer is complete, the Court shall forward a copy of the "transfer" to the Executive Branch for record-keeping purposes. The Court may only effectuate transfer title of real property if the decedent owned the property in fee, with no tribal or federal ownership interests or restrictions.

(Source: WOS 2011-003, January 8, 2011, Section V)

13.406 PETITION FOR SMALL ESTATE

A. Filing. The surviving spouse, or if none, any family member of the decedent, the personal representative as designated in decedent will, or a creditor of the decedent may file a petition for small estate. In the case of an unmarried minor, a legal guardian, or person appointed by the Court if a ward of the Court, may file the petition.

B. Time for Filing. The petition should normally be filed within sixty (60) days of the death

of decedent.

C. Form of Filing. The petition shall contain the following information:

1. The date and location of death of decedent and age of decedent at time of death;
2. A statement of the decedent's tribal affiliation, if any;
3. The name of the person filing the petition, tribal enrollment number, if any, age, residence, and relationship to the decedent;
4. A statement that the decedent left no will, or that the will is filed with the petition and offered for probate;
5. The names, ages, and relationship to the decedent of all known heirs of decedent, and if decedent dies with a will, the names, ages, and relationship, if any, of all beneficiaries under the will;
6. An inventory list that includes a detailed statement of assets and approximate value of each;
7. A list of names and addresses of the decedent's creditors, including all possible creditors that the petitioner can reasonably determine by reviewing the decedent's financial records and papers; and
8. A general list of items that were buried/burned with decedent not to be distributed.
9. A request to designate a person as the personal representative if one is not identified in the will or the person identify in the will is unable or unwilling to serve as the personal representative.

D. Minor or Legally Incompetent Heirs. Upon the filing of the petition for administration, the Court shall ascertain whether or not there are any heirs, legatees, or devisees under the age of eighteen (18) years or legally incompetent heirs. If so, the Court shall appoint a guardian ad litem

to represent the minor or legally incompetent heir's interests until the determination of distribution of belongings is final. The Court will give careful attention to all actions concerning that of a minor individual less than eighteen (18) years of age or a legally incompetent heir.

(Source: WOS 2011-003, January 8, 2011, Section VI)

13.407 APPOINTMENT OF PERSONAL REPRESENTATIVE

The Court shall appoint a person as the Personal Representative.

(Source: WOS 2011-003, January 8, 2011, Section VII)

13.408 VALUE OF PROPERTY

The Personal Representative shall file with the Court a final inventory list of the entire estate. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, family allowance, exempt property, administration costs and expenses, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in Section XII.

(Source: WOS 2011-003, January 8, 2011, Section VIII)

13.409 HOMESTEAD ALLOWANCE

- A.** A decedent's surviving spouse is entitled to a homestead allowance of \$15,000.00.
- B.** If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance equal to \$15,000.00 divided by the number of the decedent's minor and dependent children.
- C.** The homestead allowance is exempt from and has priority over all claims against the estate, except administration costs and expenses and reasonable funeral and burial expenses.

D. A homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by elective share.

(Source: WOS 2011-003, January 8, 2011, Section IX)

13.410 ASSET DISTRIBUTION

A. Upon a showing of evidence, satisfactory to the court, of payment of the expenses for the decedent's funeral and burial and if the balance of a decedent's gross estate consists of property of the value of \$15,000.00 or less, the court may order that the Personal Representative to distribute the property to the decedent's heirs in accordance with the Will or by intestate.

B. Upon a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, and if the balance of the gross estate after payment of the expenses would consist of property of the value of \$15,000.00 or less, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the Personal Representative to distribute to the decedent's heirs in accordance with the Will or by intestate.

C. Other than a surviving spouse who qualifies for allowances under this Statute or the decedent's minor children, an heir who receives property through an order under this section is responsible, for 63 days after the date of the order, for any unsatisfied debt of the decedent up to the value of the property received through the order. The court shall state this condition in the order.

D. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in this Statute.

(Source: WOS 2011-003, January 8, 2011, Section X)

13.411 PRIORITY OF CLAIMS

A. If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- 1.** Costs and expenses of administration.
- 2.** Reasonable funeral and burial expenses.
- 3.** Homestead allowance.
- 4.** Family allowance.
- 5.** Exempt property.
- 6.** Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.
- 7.** Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.
- 8.** Court costs for actual notice and publication for creditor's claims, and actual notice and publication for determining heirs.
- 9.** Claims of indebtedness to the Little Traverse Bay Bands of Odawa Indians.
- 10.** Debts and taxes to other local or state governmental entities.
- 11.** Debts owing to Citizens of the Little Traverse Bay Bands of Odawa Indians.

12. Claims of all other creditors.

B. A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference, over a claim not due.

C. If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each non-probate transfer, including those made under a trust, bears a proportionate share or equitable share of the total burden.

(Source: WOS 2011-003, January 8, 2011, Section XI)

13.412 CLOSING STATEMENT

A. Unless prohibited by court order or the estate value is more than \$15,000 after all listed costs and distributions have been made under subsection (1), a personal representative may close a small estate at any time after disbursement and distribution of the estate, a sworn statement stating all of the following:

1. To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness.

2. The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled to the estate.

3. The personal representative has sent a copy of the closing statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, and has furnished a full account in writing of the estate administration to the distributees whose interests are affected.

B. Any objection to the closing statement must be filed with the Court within twenty-eight

(28) days of the filing of the closing statement. If there are no objections, then the Personal Representative shall receive a certificate of completion.

C. If an action or proceeding involving the personal representative is not pending in the court within one (1) year after the closing statement is filed under this section, the personal representative's appointment terminates.

(Source: WOS 2011-003, January 8, 2011, Section XII)

13.413 EXEMPTIONS

A. The Tribe recognizes and adopts the following State of Michigan laws that provide for assets owned by the decedent to pass to the decedent's heirs without the necessity of probate:

1. MCL 257.236 provides that the title to motor vehicles of a decedent whose total value does not exceed \$60,000 may be transferred to the heirs by the Michigan Department of State if there are no other assets requiring probate. The Secretary of State must be furnished with proof of death of the registered owner and a certificate setting forth the fact that the applicant is the surviving husband or wife or the applicants are the heirs of the decedent. This is accomplished by filing the papers at the Secretary of State Office.

2. MCL 324.80312 provides for the transfer of water craft without probate proceedings if there are no other assets requiring probate and the value of the water craft is less than \$100,000. This is accomplished by filing the proper papers at the Secretary of State Office.

3. MCL 408.480 provides that wages or fringe benefits in any amount may be delivered to the heirs of the decedent in order of priority as follows: surviving spouse, surviving children, surviving mother or father, and surviving sister or brother.

4. MCL 700.3981 provides that a hospital, convalescent or nursing home, morgue, or law enforcement agency holding cash not exceeding \$500 and wearing apparel of a decedent may deliver the cash and wearing apparel to a person furnishing identification

and an affidavit that the person is the spouse, child, or parent of the decedent and that an estate of the decedent is not pending.

B. Monies held by the Tribe either in the form of Per capita payments, payroll wages or fringe, or other Tribal distributions may be delivered to the Decedent's heirs in priority as follows: surviving spouse, surviving children, surviving mother or father, and surviving sister or brother.

C. Individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent's estate appointed after the delivery.

(Source: WOS 2011-003, January 8, 2011, Section XIII)

13.414 APPROVAL OF WILLS

A. When any member of the LTBB Community dies, the Tribal Court shall at the request of any interested party determine the validity of the will after giving notice and full opportunity to appear in Court to tell all persons who might be beneficiaries of the decedent.

B. Where the Court finds that the decedent's will is invalid, the Court shall order the administration of decedent's estate as if the decedent had died without a will.

C. Where the Court finds that there is property of the decedent that was left out of a valid will and no other lawful instrument designates a beneficiary, the Court shall order distribution of the undesignated property, by following the procedures under this Statute where the decedent dies without a will.

(Source: WOS 2011-003, January 8, 2011, Section XIV)

13.415 LAWS OF SUCCESSION

A. If the Decedent dies intestate, then the Personal Representative shall distribute the decedent's assets remaining after satisfaction of the debts and expenses of the estate by the following law of succession:

1. If a spouse survives decedent, all assets shall be distributed to the surviving spouse;
2. If there is no surviving spouse, all assets shall be distributed equally to decedent's surviving children;
3. If there is no surviving spouse or children, all assets shall be distributed to decedent's surviving parent/s;
4. If there is no surviving spouse, children or parents, all assets shall be distributed equally among decedent's grand-children;
5. If there are no surviving persons listed in 1-4, all assets shall be distributed equally among decedent's surviving sibling/s;
6. If there are no surviving persons listed in 1-5, all assets shall be distributed equally to decedent's surviving first cousin/s;
7. If there are no surviving persons listed in 1-6, any real property in the Reservation shall escheat to LTBB; any other assets shall be distributed as the Court deems equitable to close friends or caretakers of the decedent.

B. In the case of a decedent without a will, the Court will make such inquiries of the petitioner, family members, the Enrollment Office or other sources as it deems necessary to make sure the list of heirs is submitted with the petition is complete.

C. Beneficiary Criminally Responsible for the Death of the Decedent. Any beneficiary or any heir of the decedent found to be criminally responsible for the death of the decedent shall not be entitled to inherit or receive any interest of the decedent's estate.

(Source: WOS 2011-003, January 8, 2011, Section XV)

13.416 NOTICE TO CREDITORS

A. The Personal Representative shall file with the Court a final inventory list of the entire

estate. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, exceed homestead allowance, family allowance, exempt property, administration costs and expenses, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, notice shall be giving to the creditors. For creditors who may be unknown or are not reasonably ascertainable, the Court shall issue a notice to creditors by publication. The notice shall be published on the Tribal website, in a Tribal newspaper and in one other local newspaper of general circulation for two consecutive publication dates and proof of publication shall be filed in the case record.

B. The last date for creditors to file claims against the estate shall be forty--five (45) days from receipt of notice or from the second date of publication, and are thereafter barred from any claim.

(Source: WOS 2011-003, January 8, 2011, Section XVI)

13.417 PAYMENT OF CREDITOR'S CLAIMS

A. All tangible personal property of the decedent that is of a unique keepsake nature, such as art, family heirlooms and photographs, is exempt from sale to pay for claims of creditors. The Court shall not order sale of such tangible personal property of the decedent to satisfy any liens or judgments of creditors.

(Source: WOS 2011-003, January 8, 2011, Section XVII)

13.418 FORM OF PROBATE PLEADINGS

The Tribal Court shall determine what documents must be filed in a small estate case.

(Source: WOS 2011-003, January 8, 2011, Section XVIII)

13.419 SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute

shall continue in full force and effect.

(Source: WOS 2011-003, January 8, 2011, Section XIX)

13.420 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2011-003, January 8, 2011, Section XX)