

TITLE 14
PROBATE

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14-101 Jurisdiction.

1. The Winnebago Tribal Court shall have the authority to appoint executors and administrators, determine heirs, determine the validity of wills, and to probate and distribute the estates and wills

of any member of the Winnebago Tribe of Nebraska with respect to property located on the reservation except as to trust or restricted land subject to the jurisdiction of the United States.

2. The United States Department of Interior Office of Hearings and Appeals shall have the authority to appoint executors and administrators, determine heirs, determine the validity of wills, and to probate and distribute the estates and will of any member of the Winnebago Tribe of Nebraska with respect to trust or restricted land on the reservation in accordance with the requirements of this code. [TCR 03-192]

14-102 General definitions. The following words have the meanings given below when used in this Title 14, unless a different meaning is apparent from the context:

1. “Reservation” means all the territory within the exterior boundaries of the Winnebago Indian reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 9, 1965 (14 Stat. 67 1) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat . 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.
2. “Tribal member” means a member of the Winnebago Tribe of Nebraska.
3. “Tribe” means the Winnebago Tribe of Nebraska.
4. “Tribal Court” means the Court of the Winnebago Tribe of Nebraska.
5. “Trust real estate” or “trust land” means land held in trust by the United States Government for the benefit of the Tribe or a member of the Tribe.
6. Children and issue include adopted children, both legally and the traditional way of adoption and children of unwed parents where the Tribal Court or any other Court of competent jurisdiction determines that paternity has been acknowledged or established.

14-103 Evidence as to death or status. In proceedings under this Title 14, the Rules of Evidence in civil procedure, including any relating to simultaneous deaths, are applicable unless specifically displaced by this Title 14. In addition, the following rules relating to determination of death or status are applicable:

1. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death 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. A person who is absent for a continuous period of seven years, during which he/she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His/her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

14-104 Records. The clerk of the Tribal Court shall keep a file for each decedent’s estate of all the documents filed with the Court pursuant to this Title 14. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed, or recorded. The certificates relating to letters must show the date of appointment.

14-105 Oaths. Except as otherwise provided in this Title 14, every document filed with the clerk pursuant to this Title 14 shall be deemed to include an oath to the effect that the representations are true to the best knowledge, information and belief of the person subscribing and signing the document. Deliberate falsifications of such documents shall subject the individual to penalties of perjury.

14-106 Notices. Whenever notice of a hearing on any petition or other probate document or matter is required and except for specific notice requirements otherwise provided, proper notice of the time and place of any hearing to be given to any interested person or his/her attorney shall be given as follows:

1. By mailing a true copy of said notice together with the supporting documents at least fourteen days prior to the time fixed for hearing by first class mail addressed to the person to be notified or his/her attorney at the last known post office address given for either, or at his/her last known office or place of residence, or
2. By delivering a true copy thereof to the person to be notified at least fourteen days prior to the date fixed for hearing;
3. If the address or identity of any such person is not known and cannot by the exercise of reasonable diligence be ascertained, notice shall be given by (a) posting a copy of such notice in at least three conspicuous public places on the reservation, such places to be fixed by the Tribal Court for the purpose of posting public notices, for at least fourteen (14) days prior to the time fixed for hearing; and (b) by publishing at least once a week for three consecutive weeks a copy of such notice in a legal newspaper having a general circulation on the reservation, the last publication of which is to be at least three days before the time set for hearing.

Proof of the giving of such notice shall be made by affidavit by the person accomplishing the posting or mailing or personal service and shall be filed with the Court at or prior to the time fixed for hearing. An interested person may waive notice or any other requirement for the mailing on receipt of instrument by a writing signed by him/her or his/her attorney and filed in the proceeding.

14-107 Renunciation of inheritance. Any person who is an heir, devisee, legatee, or beneficiary under a testamentary instrument or under the laws of intestate succession may renounce in whole or in part his/her inheritance or interest by filing with the Court written instrument verified under oath at any time prior to the entry of a decree of distribution. Upon such proper renouncement, the interest renounced passes as if the person renouncing it predeceased the decedent.

14-108 Effect of divorce, annulment, or decree of separation. Any person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he/she is married to the decedent at the time of death. A decree of separation which does not terminate the marital status of husband and wife shall not be considered a divorce for inheritance purposes.

14-109 Effect of fraud and evasion. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Title 14 or if fraud is used to void or circumvent the provisions or purposes of this Title 14, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five 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/her lifetime which affects the succession of his/her estate.

14-110 Disqualification of a willful slayer. Any surviving spouse, heir, devisee, surviving joint tenant, beneficiary of a bond, life insurance policy, or other testamentary device who criminally and intentionally

kills the decedent is not entitled to any benefit under a will or under this Title 14 or any other law of the Winnebago Tribe of Nebraska regarding decedent's estate, and the estate of such decedent will pass as if the killer had predeceased the decedent. A final judgment of conviction of an offense containing the elements of criminal intentional killing is conclusive for the purpose of this section. In the absence of a conviction, the Court may determine by a preponderance of the evidence whether the killing was criminal and intentional for purposes of the section.

14-111 Petition for appointment of administrator or executor. Whenever a member of the Winnebago Tribe dies with or without a will leaving property on the reservation which is subject to the jurisdiction of the Winnebago Tribal Court, any person claiming to be an heir of the decedent or a creditor of the decedent may petition the Court for appointment of an administrator or executor of the decedent and for admission for probate of any instrument purporting to be the last will and testament of the decedent and for distribution of the property. The petition shall state the names and last known addresses of all persons known to the petitioner who may be heirs, devisees, or legatees of the decedent; shall request that a hearing date be fixed on the question of appointment of an administrator or executor of the estate; shall request that notice to creditors be given; shall establish the interest of the petitioner in the estate; shall submit with the petition the purported instrument alleged to be the last will and testament of the deceased, and shall request that notice of hearing be given. Upon the request of such petition, the Court shall fix a time and place for hearing and shall order that persons named in the petition be given notice as provided by this Title 14.

14-112 Priorities of appointment. The following persons, legally competent, shall be afforded priority in order of their listing for appointment as administrator or executor:

1. Any person nominated in the last will and testament of the deceased.
2. The surviving spouse.
3. Children in descending order of age.
4. Other blood relatives in the order of their closeness of relationship.
5. Any other Tribal member who is a creditor of the deceased.
6. Any other Tribal member.

14-113 Duties of administrator or executor. The duties of the administrator or executor shall be to take possession of all property of the deceased subject to this Title 14 and within one month after his/her appointment make an inventory and appraisal of such property and file the original with the Court and mail copies thereof to all persons named in the petition. Such administrator or executor shall within sixty days investigate and attempt to determine and file with the Court a report listing all of the known relatives of the decedent and heirs and devisees who, in the opinion of the executor or administrator, are entitled to distribution of the decedent's estate. The executor or administrator shall give notice to creditors as provided elsewhere in this Title 14, and upon completion of the notice to creditors, shall report to the Court on the amount and nature of each creditor's claim and recommend to the Court with reference to each claim whether or not the same should be allowed and paid. The executor or administrator shall prosecute and defend all actions by and against the estate and shall have the authority to institute actions for the purpose of recovering assets of the decedent's estate. In addition, the executor or administrator shall submit accountings to the Court in accordance with this Title 14, and upon the completion of his/her duties shall distribute the estate in accordance with any order of the Court. The executor or administrator shall file a bond in an amount set by the Court to insure his/her faithful and honest performance of his/her duties as administrator with such sureties as the Court may require. Said bond may be waived by the Court with the consent of the persons entitled to distribution of the decedent's estate or if waived by the decedent's will.

14-114 Oath and letters of appointment. Upon his/her appointment as administrator or executor, the person appointed shall take an oath subscribed to the effect that he/she will faithfully and honestly perform the duties of the administrator or executor. Upon the taking of such oath and filing of the bond, if any, the administrator or executor shall be granted letters of administration or letters of testamentary as proof of his/her appointment.

14-115 Notice to creditors. The administrator or executor of the estate shall cause notice to creditors to be posted in at least three conspicuous places on the reservation at the places designated by the Tribal Court. Said notice shall state that an administrator or executor has been appointed for the estate of the decedent and that any person claiming to be a creditor of the decedent shall have ninety (90) days from the date of the first posting of said notice to present their claim to the clerk of the Tribal Court and that only those claims which are timely presented shall be paid by the estate. Notice by mailing as otherwise provided by this Title 14 shall also be given to any creditor actually known to be such by the administrator or executor. No creditor who holds a security interest in any asset of the decedent's estate shall be required to file a claim in order to be paid.

14-116 Priority of payment of demands against the estate. Where any lien for any demand or claim exists by virtue of a mortgage, pledge, attachment, judgment or execution levy, such lien shall have preference according to its priority to the extent of such demand on any specific property upon which such lien shall have attached. Otherwise, all demands against the estate of any deceased person must be paid in the following order:

1. The expenses of administration;
2. Funeral expenses including the reasonable cost of a burial lot and a reasonable sum for the marker on the grave;
3. The expenses of last illness;
4. Tribal loans;
5. Any debt that may be due by the decedent personally to servants and employees for services rendered within sixty (60) days preceding the decedent's death;
6. Debts having preference by the laws of the United States;
7. All other claims.

If the estate is insufficient to pay all of the debts of any one class, each creditor must be paid pro-rata in proportion to his/her claim, and no creditor of any class shall receive any payment until all of those of the preceding class are paid in full. If the executor or administrator disputes the amount or validity of any claim filed against the estate, he/she shall report the same to the Court who shall fix a time and place for hearing on the validity of such claim, and notice as provided by this Title 14 shall be given to the creditor or claimant. At the time and place fixed for such hearing, the Court shall determine the extent and validity of the claim and shall enter an appropriate order, either allowing or discarding said claim.

14-117 Distribution of property if no taker. If there is no person available to take all or any portion of the decedent's estate, then the property shall pass to the Winnebago Tribe of Nebraska.

14-118 Restriction on interests.

1. Pursuant to the Indian Land Consolidation Act (25 U.S.C.S., section 2205), non-members of the Tribe or non-Indians shall not be entitled to receive by devise or descent any interest in trust or restricted lands within that Tribe's reservation or otherwise subject to that Tribe's jurisdiction; provided that:
 - A. If an Indian dies intestate, the surviving non-Indian or non-member spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as

- such person or persons would have been entitled to take in the absence of such restriction eligibility for inheritance and the remainder shall vest in the Indians or Tribal members who would have been heirs in the absence of a qualified person taking a life estate;
- B. If an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the Tribe, subject to any non-Indian or non-member spouse and/or children's rights as described in paragraph (1) of this section;
 - C. If an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a Tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death; provided, that any non-Indian or non-member spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests. Any eligible devisee shall also have the right to renounce his/her devise in favor of a person or persons who are eligible to inherit.
2. The right to receive a life estate under the provisions of this section shall be limited to:
- A. A spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per centum or more in the tract of land, provided that the Tribe acquires such interests which are less than 10 per centum in the tract of land by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death; or
 - B. A spouse and/or children who occupied the tract as a home at the time of decedent's death.
[TCR 03-192]

14-119 Status of heirs. No person is disqualified to take as an heir because he/she or any person through whom he/she claims is not a member of the Winnebago Tribe of Nebraska or because he/she does not live on the reservation.

14-120 Debts owed to the decedent. No debt owed to the decedent is charged against the share of any person except the debtor.

14-121 Reopening of estates. Any estate may be reopened whenever necessary to dispose of decedent's property discovered after the estate has been closed or to make other necessary corrections.

14-122 Rule of interpretation. In any question arising under the provisions of this Title 14 the Tribal Court shall apply the general principles of probate as announced in the statutory rules of the State of Nebraska except where such rules conflict with specific enactments of this Title 14 or other enactments of the Tribal Code.

14-123 Construction. This Title 14 shall be liberally construed and applied so as to do substantial justice.

14-124 Severability. If any provisions of this Title 14 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Title 14 which can be given effect without the invalid provision or application, and to this end the provisions of this Title 14 are declared to be severable.

14-125 Citation. This Title 14 shall be known as the Winnebago Tribe of Nebraska Probate Code.

14-126 Who may make a will. Any person eighteen or more years of age who is of sound mind may make a will.

14-127 Execution. Except as provided for holographic wills, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his/her direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

14-128 Holographic will. A will which does not comply with the next preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

14-129 Self-proved will. An attested will may, at the time of its execution or at any subsequent date, be made self-proved, by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before a notary public or Tribal judge and evidenced by the notary or judge's certificate under official seal, attached or annexed to the will in form and content substantially as follows: Forms for self-proved wills shall be provided at the Tribal Court.

THE STATE OF _____

COUNTY OF _____

WE, _____

AND _____

The testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his/her last will and that he/she signed willingly or directed another to sign for him/her and that he/she executed it as his/her free and voluntary act for the purposes therein expressed; and that each of the witnesses in the presence and hearing of the testator, sign the will as witness, and that to the best of his/her knowledge the testator was at the time eighteen or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____

The testator, and subscribed and sworn to me before me by _____

And _____, witnesses, this ____ day of _____,
20__.

Signed,

Title

14-130 Who may witness.

1. Any person generally competent to be a witness may act as a witness to a will.
2. A will or any provision thereof is not invalid because the will is signed by an interested witness.

14-131 Choice of law as to execution. 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 of 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 death the testator is domiciled or has a place of abode.

14-132 Revocation by writing or by act a will or any part thereof is revoked:

1. By a subsequent will which revokes the prior will in whole or in part expressly or by inconsistency; or
2. By being burned, torn, canceled, obliterated. Or destroyed with the intent and for the purpose in his/her presence and by his/her direction.

14-133 Revocation by divorce; no revocation by other changes of circumstances. If, after executing a will, the testator is divorced or has his/her marriage 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 executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. 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, and other provisions conferring some power or office on the former spouse are interpreted as if the 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. No change of circumstances other than as described in this section revokes a will.

14-134 Revival of revoked will.

1. If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he/she intended the first will to take effect as executed.
2. If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

14-135 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.

14-136 Events of independent significance. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

14-137 Requirement that devisee survive testator by one hundred hours. A devisee who does not survive the testator by one hundred (100) hours is treated as if he/she predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated number of days.

14-138 Simultaneous death.

1. Where the title of property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise.
2. Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no 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 respectively to those who would have taken in the event that each designated beneficiary had survived.
3. Where there is no sufficient evidence that two joint tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.
4. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.
5. Those provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed or contract of insurance.

14-139 Rules of construction and intention. The intention of a testator as expressed in his/her will controls the legal effect of his/her dispositions. The rules of construction expressed in the succeeding sections of this Probate Code apply unless a contrary intention is indicated by the will.

14-140 Construction that will passes all property; after-acquired property. A will is construed to pass all property which the testator owns at his/her death, including property acquired after the execution of the will.

14-141 Anti-lapse; deceased devisee; class gifts. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, the issue of the deceased devisee who survive the testator by one hundred (100) hours take in place of the deceased devisee, and if they are all of the same degree of kinship to the devisee, they take equally; but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if he/she had survived the testator is treated as a devisee for purposes of this section his/her death occurred before or after the execution of the will.

14-142 Failure of testamentary provision.

1. Except as provided in the next proceeding section, if a devisee other than a residuary any reason, it becomes part of the residue.

2. Except as provided in the next proceeding section, if the residue is devised to two or the share of one of the residuary devisees fails for any reason, his/her share passes to the other residuary devisees in proportion to their interests in the residue.

14-143 Exercise of power of appointment. A general residuary clause in a will, or a will making general disposition of all of the testator unless specific reference is made to the power or there is another indication of intention to include the property subject to the power.

14-144 Non-exoneration. A specific devise passes subject to any security interest existing at the time of death, without right of exoneration, regardless of a general directive in the will to pay debts.

14-145 Construction of generic terms to accord with relationship as defined for intestate successions. Half-bloods, adopted persons and persons born out of wedlock are included in a class gift terminology and terms of relationship in accordance with rules for determining relationship for purposes of intestate succession.

14-146 Ademption by satisfaction. Property which a testator gave in his/her lifetime to a person is as a satisfaction of a devise to that person in whole or in part only if the will provides for deduction of the lifetime gift or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

14-147 Petition for letters testamentary. A petition for letters testamentary may be made by any person having possession of decedent's will. The petition must be made in writing, signed by the petitioner, and shall state the basis for the 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 executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

14-148 Qualification of executor. The Court shall appoint an executor to administer the estate. The executor shall be a competent adult Tribal member and preference shall be given if such person are otherwise qualified, to the person named in the will as such, followed by the surviving spouse or child of the decedent with preference given in descending order of age.

14-149 Appointment of executor.

1. Upon receipt of a petition for letters testamentary, the clerk shall schedule a hearing at which an executor will be appointed and letters testamentary authorized. The hearing shall be scheduled so that adequate notice to interested persons can be made.
2. Notice of the 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 takers, and also by posting notice in a conspicuous place in each of the Tribal office buildings.
3. At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an executor to administer the estate according to the terms of this Probate Code and the decedent's will.
4. Letters testamentary shall be granted to the person appointed as executor upon his/her taking an oath, to be prescribed by the Court, to the effect that he/she will faithfully and honestly administer the estate and upon his/her filing bond, if required.

14-150 Duties of executor; bond. The duties of executor shall be the same as those prescribed in this Probate Code for the administrator of an intestate, and he shall file a bond in a like manner and subject to the same exceptions.

14-151 Creditors. Notice to creditors, determination of the validity of claims and payment of claims shall be handled as prescribed for intestate estates.

14-152 Accounting. Prior payments to the distribution of the estates remaining after payment of all claims and priority payments, the executor shall submit to the Court for approval an accounting of all receipts and disbursements for the estate, showing the present status of the estate and that it is ready for distribution and also showing the computation of any attorney and/or executor's fees involved for which approval for which approval for payment is sought.

14-153 Distribution; closing estate

1. When it is made to appear to the Court that an estate is ready to be distributed, the 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 Probate Code.
2. The estate shall be closed and the personal representative of the estate dismissed and his/her bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed and also upon filing with the Court receipts showing that the estate is fully administered and ready to be closed.

14-154 Distribution; order in which assets appropriated; abatement.

1. Except as provided in subsection (2), and except as provided in connection with the share of the surviving spouse who elects to take an elective shares, shares of distributees abate, without any preference or priority as between real or personal property, in the following order: (A) property not disposed of by the will; (B) residuary devises; (C) general devises; (D) specific devises. 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. 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.
2. If the will expresses an order of abatement, or if the testimony plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of testator.
3. 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 asset.

14-155 Property discovered after estate closed. An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his/her estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after-discovered property in the expenses of the estate.

14-156 Personal representative's and attorney's fees.

1. An administrator or executor may receive a fee to be paid from the estate prior to final distribution of the estate, subject to Court approval upon submission of documentation to the

Tribal Court reflecting a detailed summary of time spent and a description of duties performed and the dollar amount assigned to the efforts expended.

2. An attorney who represents the personal representative of an estate for purposes of administering the estate may submit to the Tribal Court a fee application consisting of a detailed accounting of hours incurred and the hourly rate charged.

14-157 Homestead allowance. A surviving spouse of a decedent who was domiciled on the reservation is entitled to a homestead allowance of the full market value of the homestead. If there is no surviving spouse, each minor dependent child of a decedent is entitled to a homestead allowance of the full market value of the homestead divided by the number of minor dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. The homestead allowance is in addition to any share passing to the surviving spouse or minor dependent child by the will of the decedent unless otherwise provided by intestate succession.

14-158 Exempt property. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the reservation is entitled from the estate to a value not exceeding two thousand five hundred dollars (\$2,500.00) in excess of any security interest therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is not a surviving spouse or child, the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interest plus that of other exempt property is less than two thousand five hundred dollars (\$2,500.00) or if there is not two thousand five hundred dollars (\$2,500.00) worth of exempt property in the estate, if any, to the extent necessary to make up the two thousand five hundred dollars (\$2,500.00) value, rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency have priority over all claims against the estate, except that the right to any asset to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession or by way of elective share.

14-159 Family allowance. In addition to the right to the homestead allowance and exempt property, if the decedent was domiciled on the reservation, the surviving spouse and minor children who the decedent was obligated to support and children who were in fact being supported by him/her are entitled to a reasonable amount of money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid in a lump sum or in periodic installments. It 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 their care and custody as their needs may appear. The family allowance is exempt from and has priority over all claims except for the homestead allowance. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession. The death of any person entitled to family allowance terminates his/her right to allowances not yet paid.

14-160 Source, determination and documentation. If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and 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 of deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He/she may determine the family allowance

in a lump sum not exceeding three hundred dollars (\$300.00) per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. 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.

14-161 Applicable law. When a member of the Winnebago Tribe dies without a valid will, the member's property which is subject to the Court's jurisdiction shall descend to the following persons:

1. One half of the interest shall descend to the surviving spouse and the other one-half shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation.
2. If there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation.
3. If there is no surviving children or issue of any child, the interest shall descend to the surviving spouse.
4. If there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent.
5. If there is no surviving spouse and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent.
6. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters, the interest shall descend equally to surviving grandparents.
7. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents, the interest shall descend equally to surviving aunts and uncles.
8. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents and no surviving aunts and uncles, the interest shall descend equally to surviving nieces and nephews.
9. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents and no surviving aunts and uncles, and no surviving nieces and nephews, the interest shall descend equally to surviving cousins of the first degree.
10. A child may not inherit by intestate succession from or through a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority and a parent may not inherit by intestate succession from or through a child with respect to which such parent's parental rights have been terminated.