

WINNEBAGO TRIBAL CODE
TITLE 14

TITLE 14
PROBATE

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: PROBATE	1-1

WINNEBAGO TRIBAL CODE
TITLE 14

TITLE 14
ARTICLE 1
PROBATE

14-101	Jurisdiction.	14-133	Revocation by divorce; no revocation by other changes of circumstances.
14-102	General definitions.	14-134	Revival of revoked will.
14-103	Evidence as to death or status.	14-135	Incorporation by reference.
14-104	Records.	14-136	Events of independent significance.
14-105	Oaths.	14-137	Requirement that devisee survive testator by one hundred hours.
14-106	Notices.	14-138	Simultaneous death.
14-107	Renunciation of inheritance.	14-139	Rules of construction and intention.
14-108	Effect of divorce, annulment or decree of separation.	14-140	Construction that will passes all property; after-acquired property.
14-109	Effect of fraud and evasion.	14-141	Anti-lapse; deceased devisee; class gifts.
14-110	Disqualification of a willful slayer.	14-142	Failure of testamentary provision.
14-111	Petition for appointment of administrator or executor.	14-143	Exercise of power of appointment.
14-112	Priorities of appointment.	14-144	Non-exoneration.
14-113	Duties of administrator or executor.	14-145	Construction of generic terms to accord with relationship as defined for intestate successions.
14-114	Oath and letters of appointment.	14-146	Ademption by satisfaction.
14-115	Notice to creditors.	14-147	Petition for letters testamentary.
14-116	Priority of payment of demands against the estate.	14-148	Qualification of executor.
14-117	Distribution of property if no taker.	14-149	Appointment of executor.
14-118	Restrictions on interests.	14-150	Duties of executor; bond.
14-119	Status of heirs.	14-151	Creditors.
14-120	Debts owed to the decedent.	14-152	Accounting.
14-121	Reopening of estates.	14-153	Distribution; closing estate.
14-122	Rule of interpretation.	14-154	Distribution; order in which assets appropriated; abatement.
14-123	Construction.	14-155	Property discovered after estate closed.
14-124	Severability.	14-156	Personal representative's and attorney's fees.
14-125	Citation.	14-157	Homestead allowance.
14-126	Who may make a will.	14-158	Exempt property.
14-127	Execution.	14-159	Family allowance.
14-128	Holographic will.	14-160	Source, determination and documentation.
14-129	Self-proved will.	14-161	Applicable law.
14-130	Who may witness.		
14-131	Choice of law as to execution.		
14-132	Revocation by writing or by act a will or any part thereof is revoked.		

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

TITLE 14
ARTICLE 1
PROBATE

14-101	Jurisdiction.	14-133	Revocation by divorce; no revocation by other changes of circumstances.
14-102	General definitions.	14-134	Revival of revoked will.
14-103	Evidence as to death or status.	14-135	Incorporation by reference.
14-104	Records.	14-136	Events of independent significance.
14-105	Oaths.	14-137	Requirement that devisee survive testator by one hundred hours.
14-106	Notices.	14-138	Simultaneous death.
14-107	Renunciation of inheritance.	14-139	Rules of construction and intention.
14-108	Effect of divorce, annulment or decree of separation.	14-140	Construction that will passes all property; after-acquired property.
14-109	Effect of fraud and evasion.	14-141	Anti-lapse; deceased devisee; class gifts.
14-110	Disqualification of a willful slayer.	14-142	Failure of testamentary provision.
14-111	Petition for appointment of administrator or executor.	14-143	Exercise of power of appointment.
14-112	Priorities of appointment.	14-144	Non-exoneration.
14-113	Duties of administrator or executor.	14-145	Construction of generic terms to accord with relationship as defined for intestate successions.
14-114	Oath and letters of appointment.	14-146	Ademption by satisfaction.
14-115	Notice to creditors.	14-147	Petition for letters testamentary.
14-116	Priority of payment of demands against the estate.	14-148	Qualification of executor.
14-117	Distribution of property if no taker.	14-149	Appointment of executor.
14-118	Restrictions on interests.	14-150	Duties of executor; bond.
14-119	Status of heirs.	14-151	Creditors.
14-120	Debts owed to the decedent.	14-152	Accounting.
14-121	Reopening of estates.	14-153	Distribution; closing estate.
14-122	Rule of interpretation.	14-154	Distribution; order in which assets appropriated; abatement.
14-123	Construction.	14-155	Property discovered after estate closed.
14-124	Severability.	14-156	Personal representative's and attorney's fees.
14-125	Citation.	14-157	Homestead allowance.
14-126	Who may make a will.	14-158	Exempt property.
14-127	Execution.	14-159	Family allowance.
14-128	Holographic will.	14-160	Source, determination and documentation.
14-129	Self-proved will.	14-161	Applicable law.
14-130	Who may witness.		
14-131	Choice of law as to execution.		
14-132	Revocation by writing or by act a will or any part thereof is revoked.		

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

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

absence of a conviction, the Court may determine by a preponderance of the evidence whether the killing was criminal and intentional for purposes of this Section. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

14-118 Restrictions 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;

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

- 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. [TCR 03-192]

14-120 Debts owed to the decedent. No debt owed to the decedent is charged against the share of any person except the debtor. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

14-123 Construction. This Title 14 shall be liberally construed and applied so as to do substantial justice. [TCR 03-192]

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. [TCR 03-192]

14-125 Citation. This Title 14 shall be known as the Winnebago Tribe of Nebraska Probate Code. [TCR 03-192]

14-126 Who may make a will. Any person eighteen or more years of age who is of sound mind may make a will. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

14-151 Creditors. Notice to creditors, determination of the validity of claims and payment of claims shall be handled as prescribed for intestate estates. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14 ARTICLE 1

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. [TCR 03-192]

WINNEBAGO TRIBAL CODE
TITLE 14

the Court. Such notice shall include a copy of the Court's order determining whether the Decedent died testate or Intestate.

- b. If the Personal Representative does not otherwise give notice to creditors under Section 14.112 within sixty (60) days after appointment, the Personal Representative shall cause written notice of his/her appointment and the pendency of the Probate proceedings to be mailed to the State of Nebraska's Department of Health and Human Services, and proof of the mailing shall be made by affidavit and filed with the Court.
7. **Cancellation of Letter of Direction.** The Court appointing any Personal Representative shall have authority for any cause deemed sufficient, to cancel and annul such assignment and appoint another Personal Representative in place of those removed. If after a letter of direction is granted, a will of the deceased is found and Probate thereof is granted, the letter may be revoked or amended according to the will.
 8. **Successor of a Personal Representative.** If a Personal Representative of an Estate dies or resigns or the letter of direction is revoked before the settlement of the Estate, a successor letter of direction shall be granted to a person to whom the letters would have been granted if the original letter had not been obtained from the Court, and the successor Personal Representative shall perform like duties and incur like liabilities as the preceding Personal Representative, unless the Decedent provided otherwise in a duly Probated will or unless the Court orders otherwise.
 9. **Inventory and Appraisement, Filing with the Court.**
 - a. Within three months after appointment, unless the Court provides longer, the Personal Representative shall make and verify by affidavit a true inventory and appraisement of all of the property of the Estate passing under the will or by the laws of intestacy and which shall have come to the Personal Representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The Personal Representative shall determine the fair net value, as of the date of the Decedent's death, of each item contained in the inventory after deducting the encumbrances, liens and other secured charges on the item. Such property shall be classified as follows:
 - i. Real property, by legal description.
 - ii. Stocks and bonds.
 - iii. Mortgages, notes, and other written evidences of debt.
 - iv. Bank accounts and money.
 - v. Furniture and household goods.
 - vi. All other Personal Property accurately identified including the Decedent's non-Probate assets and proportionate share in any partnership, but no inventory of the partnership property shall be required of the Personal Representative.
 - b. The inventory and appraisement shall be filed with the Tribal Court and notice of its filing shall be served on any heir, legatee, Devisee, unpaid creditor who has filed a claim or beneficiary of a non-Probate asset.
 - c. The Personal Representative shall have the duty to amend the inventory and appraisal within thirty (30) days of acquiring knowledge of any additional property of the Estate. Notice of the amendment shall be served as notice of the original inventory was served.
 10. **Personal Representative Reports to the Court.**
 - a. The Personal Representative shall make, verify by his/her oath, and file with the clerk of the Court reports outlining the affairs of the Estate at least annually, and more frequently if necessary or if required by the Court. Such report(s) shall contain:

WINNEBAGO TRIBAL CODE
TITLE 14

- i. A statement of the claims against the Estate filed and allowed and all those rejected.
 - ii. A statement whether it is necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the Estate or expenses of administration or allowance to the family, he/she may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange.
 - iii. A statement of the amount of property real and personal, which has come into his/her hands, and give a detailed statement of all sums collected by him/her, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the Court full information regarding any transactions by him done or which should be done.
 - b. The Personal Representative will provide notice, in person or by mail, to all Heirs at law, Legatees, Devisees, and claimants against the Estate of the filing of the report. The Court will provide notice to the same group of people of the hearing on the report.
11. **Final Report of the Personal Representative.** When the Estate is ready to be closed, the Personal Representative shall make, verify and file with the Court his final report and petition for distribution. Such final report and petition shall, among other things, show that the Estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the Personal Representative since his/her previous report, any debts paid, and the general condition of the Estate at the time. It shall also include the names and addresses to the best possible extent of all the Legatees and Devisees in the event there shall have been a will, and the names and addresses as nearly as may be, of all the Heirs who may be entitled to share in such Estate, and shall give a particular description of all the property of the Estate remaining undisposed of, and shall set out such other matters as may tend to inform the Court of the condition of the Estate, and it may ask the Court for settlement of the Estate and for distribution of the property and the discharge of the Personal Representative. If the Personal Representative has been discharged without having legally closed the Estate, without having legally obtained an adjudication as to the Heirs, or without having legally procured a decree of distribution or final settlement, the Court may in its discretion upon petition of any person interested, cause all such steps to be taken in such Estate as were omitted or defective.
12. **Scheduling Hearing on Final Report and Petition for Distribution.** When a final report and petition for distribution has been filed, the Court shall fix a day for hearing in which must be at least fourteen days after the report is filed. The Personal Representative shall, not less than fourteen days before the hearing, mail a copy of the notice of the time and place fixed for the hearing to each heir, Legatee, Devisee and distribute whose name and address are known to him/her, and proof of such mailing shall be made by affidavit and filed at or before the hearing with the Court.
13. **Hearing on Final Report, Decree on Distribution.** Any person interested may file objections to the final report and petition for distribution, or may appear at the hearing and present his/her objections then. The Court may take such testimony it deems proper or necessary to determine whether the Estate is ready to be settled, and whether the transactions of the Personal Representative shall be approved, and to determine who are the Legatees or Heirs or persons entitled to have the property distributed to them.
 - a. The Court shall, if it approves such report and finds the Estate ready to be closed, enter a decree approving such report, find and adjudge the persons entitled to the remainder of the Estate, and that all debts have been paid and by such decree shall distribute the real and Personal Property to those entitled to it.

WINNEBAGO TRIBAL CODE
TITLE 14

- b. Upon the production of receipts from the beneficiaries or distributes for their portions of the Estate, the Court shall, if satisfied with the correctness thereof, adjudge the Estate closed and discharge the Personal Representative. The Court may upon such final hearing partition among the person entitled thereto the Estate held in common and undivided and designate and distribute their respective shares; or assign the whole or any part of said Estate to one or more of the persons entitled to share therein. The person or persons to who said Estate is assigned shall pay or secure to the other parties interested in said Estate their just proportion of the value thereof as determined by the Court from the appraisal, or from any other evidence which the Court may require.
 - c. If it appears to the Court at or prior to any final hearing that the Estate cannot be fairly divided, then the whole or any part of said Estate may be sold or mortgaged by the Personal Representative and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.
 - d. The Court shall have the authority to make partition, distribution and settlement of all Estates in any manner which to the Court seems right and proper, to the end that such Estates may be administered and distributed to the persons entitled thereto. No Estate shall be partitioned, nor sold where partition is impracticable, except upon a hearing before the Court. The Court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale, and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels subject to such charges or burdens as such be proper and equitable.
14. **Distributions to Minors.** When a decree or distribution of an Estate or interest is to a person under the age of eighteen (18) years, it shall be required that:
- a. The money is deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the Minor subject to withdrawal only upon the order of the Court in the original Probate proceeding, or upon said Minor's attaining the age of eighteen (18) years and furnishing proof thereof; or
 - b. A guardian shall be appointed and the money or property shall be paid or delivered to such guardian prior to the discharge of the Personal Representative in the original Probate proceeding.
15. **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.
16. **Debts owed to Decedent.** No debt owed to the Decedent is charged against the share of any person except the debtor.
17. **Letters of Direction after Final Distribution and Settlement.** Should other property of the Estate be discovered, or for any other reason necessary, the Court may issue subsequent letters of direction if needed.
18. **Personal Representative Expense Reconciliation.** The Personal Representative shall produce receipts and/or cancelled checks for the expenses and charges associated for any and all expenses and charges which he/she shall have paid in conjunction with duties in settling the Estate. All receipts shall be filed and remain with the Court until the completion of Probate and the Personal Representative has been discharged. [TCR 14-124]

WINNEBAGO TRIBAL CODE
TITLE 14

14-112 Claims Against the Estate.

1. **Notice to Creditors.** The Personal Representative shall give notice to creditors of the Decedent, announcing the Personal Representative's appointment and requiring that person's having claims against the Decedent present their claims within sixty (60) days from the notice or be forever barred as to claims against the Decedent's Probate and non-Probate assets. The Personal Representative shall file with the Court proof by affidavit of the giving and publication of the notice.
 - a. The Personal Representative shall first file the original notice with the Court.
 - b. The Personal Representative shall cause a notice to be published once each week for three successive weeks in a newspaper of general distribution serving the Winnebago Tribal Reservation and Winnebago Nebraska.
 - c. The Personal Representative shall also mail a copy of the notice, including the Decedent's social security number to the State of Nebraska's Department of Health and Human Services.

2. **Claims, Proper Format and Manner of Presentment.**
 - a. The claimant, or attorney, or agent shall sign the claim and include the following information:
 - i. The name and address of the claimant.
 - ii. The name, address, if different from that claimant, and nature of authority of an agent signing the claim on behalf of the claimant.
 - iii. A statement of the facts or circumstances constituting the basis of the claim; attaching any documents evidencing the claim.
 - iv. The amount of the claim.
 - v. If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.
 - b. The claim does not need to be supported by an affidavit.
 - c. The claim must be presented within sixty (60) days of the date of first publication of the notice in Section 14-112.1 or it is barred without exception by:
 - i. Serving on or mailing to, by regular first class mail, the Personal Representative or the Personal Representative's attorney a copy of the signed claim; and
 - ii. Filing the original of the signed claim with the Court.
 - d. A claim will be deemed presented upon the later of the date of postmark or service on the Personal Representative or the Personal Representative's attorney, and filing with the Court.

3. **Priority of Claims against the Estate.**
 - a. Where any lien, 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:
 - i. The expenses of administration.
 - ii. Funeral expenses including the reasonable cost of a burial lot and a reasonable sum for the marker on the grave.
 - iii. The expenses of last illness.
 - iv. Tribal loans.
 - v. Any debt that may be due by the Decedent personally to servants and employees for services rendered within sixty days preceding the Decedent's death.
 - vi. Debts having preference by the laws of the United States.

WINNEBAGO TRIBAL CODE
TITLE 14

- vii. All other claims.
 - a. 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 Personal Representative 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.
4. **Homestead Allowance.** A surviving spouse of a Decedent who was domiciled on the Reservation is entitled to a homestead allowance of (\$15,000.00) fifteen thousand dollars. If there is no surviving spouse, each minor child and each dependent child of the Decedent is entitled to a homestead allowance amounting to fifteen thousand dollars (\$15,000.00) divided by the number of minor and dependent children of the Decedent. The homestead allowance is exempt from and has priority over all claims against the Estate except for costs and expenses of administration. The 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 therein, by Intestate succession or by way of elective share.
5. **Exempt Property.**
- a. In addition to the homestead allowance, the surviving spouse of a Decedent who was domiciled on the Reservation is entitled from the Estate to value not exceeding ten thousand dollars (\$10,000.00) in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the Decedent are entitled jointly to the same value unless the Decedent has provided in his or her will that one or more of such children shall be disinherited, in which case only those children not so disinherited shall be so entitled. For purposes of this Section, disinherited means providing in one's will that a child shall take nothing or a nominal amount of ten dollars or less from the Estate.
 - b. If encumbered chattels are selected and if the value of excess of security interests, plus that of other exempt property, is less than ten thousand dollars (\$10,000.00), or if there is not ten thousand dollars (\$10,000.00) worth of exempt property in the Estate, the surviving spouse and children are entitled to other assets of the Estate, if any, to the extent necessary to make up the ten thousand dollars (\$10,000.00) 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 for costs and expenses of administration, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of a homestead and family allowance.
 - c. These rights are in addition to any benefit or share passing to the surviving spouse by the will of the Decedent unless otherwise provided therein, by intestate succession, or by way of elective share. These rights are in addition to any benefit or share passing to the surviving children by intestate succession and are in addition to any benefit or share passing by the will of Decedent to those surviving children not disinherited unless otherwise provided in the will.
6. **Family Allowance.** In addition to the right to homestead allowance and exempt property, if the Decedent was domiciled on the Reservation, the surviving spouse and the minor or dependent children whom the Decedent was obligated to support and such children were in fact being

WINNEBAGO TRIBAL CODE
TITLE 14

supported by the Decedent are entitled to a reasonable allowance in 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.

- a. The allowance may be paid as 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; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear.
- b. The family allowance is exempt from and has priority over all claims except for costs and expenses of administration and 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, therein, by intestate succession, or by way of elective share.
- c. The death of any person entitled to family allowance, other than the surviving spouse, terminates his right to allowances not yet paid.

7. **Exempt Estates.** An Estate having an appraised value which does not exceed \$7,500.00 (seven thousand five hundred dollars) and which is to be inherited by a surviving spouse and/or minor children of the Decedent shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this Section.

- a. Notice of Hearing to Determine Whether Estate is Exempt Estate. Upon petition of the Personal Representative, the Court shall enter an order stating that it appears, from the appraised value of the whole Estate that it does not exceed \$7,500.00 (seven thousand five hundred dollars) and that such Estate is to be inherited by the surviving spouse and/or minor children of the Decedent and shall set a date and hour for hearing objections of and interested persons, if any there be, why the whole Estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the Decedent. Notice of such hearing shall be given to all persons known to the Personal Representative to be an heir, devisee, legatee or creditor of the Decedent, in accordance with this Title.
- b. Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such hearing, the Court finds that such Estate is an exempt Estate, the Court shall enter an order directing the Personal Representative to distribute such Estate to the surviving spouse and/or the minor children of the Decedent as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such Estate to those entitled thereto and filing receipts therefore, the Estate shall be closed. [TCR 14-124]

14-113 Will Contests.

1. **Contests of Probate Limitations on Actions and Issues.** Any person who wishes to contest the validity of, or reject any or all of a will, shall petition the Tribal Court within one-hundred twenty (120) days immediately following the notice of approval or rejection of a will.
 - a. The petition shall contain his/her objections and exceptions to the will. Issues addressing the competency of the deceased and his/her ability to make a last will and testament, or respecting the execution by the deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it shall be tried and determined by the Court.
 - b. If no person raises such objections within the one-hundred twenty days (120) days stated above, the approval of the Probate or rejection of such shall be binding and final.

WINNEBAGO TRIBAL CODE
TITLE 14

2. **Notice of Contest.** Upon filing a contest, a notice shall be issued to the Personal Representative of the Decedent's Estate, and to all Heirs at law, Legatees named in the will, or to their guardians if any of them are Minors, or their Personal Representatives if any of them are dead, requiring them to appear before the Court, on a day therein specified, to show cause why the petition should not be granted.
3. **Burden of Proof.** In any will contest proceedings, the burden of proof shall rest upon the person contesting the Court's previous order. The Court's previous order shall stand unless the person contesting it provides clear and convincing evidence to the contrary.
4. **Court orders following Hearing on Contest.** If a Court finds that a petitioner has proven with clear and convincing evidence that the previous order of the Court accepting or rejecting a will in whole or in part or a finding that the Decedent died Intestate was in error, the Court shall issue a new order reflecting the evidentiary findings made following the contest proceedings. The new order may accept or reject a will, in whole or in part, may find that the Decedent dies Intestate, and may amend the letters of appointment of the Personal Representative for the Estate.
5. **Costs.** In a contest proceeding, assessment of costs shall be in the discretion of the Court. If the contestant is not successful, the Court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney fees as the Court may deem proper. [TCR 14-124]

14-114 Abatement.

1. Except as provided in subsection 14-114.2, shares of distributees abate, without any preference or priority as between Non-Trust and Non-Restricted Real Property 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 Section 14-114.1, 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. [TCR 14-124]

14-115 Disqualification of a Willful Slayer. Any surviving spouse, heir, Devisee, surviving joint tenant, beneficiary of a bond, life insurance policy, or other testamentary devise who is found criminally responsible for the death of the Decedent is not entitled to any benefit under a will or under this Title 14

WINNEBAGO TRIBAL CODE
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. [TCR 14-124]

14-116 Waiver of Right to Elect and of Other Rights.

1. The right of election of a surviving spouse and the right of the surviving spouse to a homestead allowance, exempt property, and family allowance, or any of them, may be waived wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.
2. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:
 - a. he or she did not execute the waiver voluntarily;
 - b. the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:
 - i. was not provided a fair and reasonable disclosure of the property or financial obligations of the Decedent;
 - ii. did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the Decedent.
3. The issue of unconscionability of a waiver is for decision by the Winnebago Tribal Court as a matter of law.
4. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or Estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement. [TCR 14-124]

14-117 General Provisions.

1. **Effective Date.** After duly approved by the Tribal Council this Title shall be forwarded to the Secretary for approval. This Title shall become effective one-hundred eighty (180) days after the date it is approved by the Secretary.
2. **Severability.** If any section, clause, or provision of this Code, or its application to any person or circumstance is declared invalid for any reason by a Court of competent jurisdiction, the remaining provisions of the Code or application to any other person or circumstance shall still be valid and in effect. [TCR 14-124]