

Siletz Tribal Code § 8.600
Probate Ordinance
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PROBATE ORDINANCE

Siletz Tribal Code § 8.600

§ 8.600 **PURPOSE AND AUTHORITY**

(a) The Siletz Tribal Council has the authority to adopt laws governing the disposition of property related to probate within its jurisdiction. The Siletz Tribal Council has the authority to adopt this Ordinance pursuant to the Constitution of the Confederated Tribes of Siletz Indians of Oregon (the “Tribe”), Article IV, Section 1.

(b) The Siletz Tribal Council finds that authorizing and directing the Siletz Tribal Court to hear and determine probate proceedings will simplify the probate process for surviving family members, will encourage tribal members to plan for the transfer of their property upon their deaths, and will further strengthen the Tribe’s powers of self-governance.

(c) The Siletz Tribal Council hereby declares that the policy of the Tribe is to encourage tribal members to plan for the transfer of their property upon their deaths by making wills, and to strengthen the Tribe’s self-governance by providing a means for probating estates in the Siletz Tribal Court.

§ 8.601 **DEFINITIONS**

When used in this Ordinance, unless context requires otherwise:

(a) “Codicil” means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(b) “Decedent” means a deceased person.

(c) “Estate” means all of the assets and liabilities of a deceased person.

(d) “Heir” or “heirs” means any person, including a surviving spouse, who is entitled under the rules of intestate succession to the property of a decedent on the decedent’s death intestate.

(e) “Indian” means an enrolled member of the Confederated Tribes of Siletz Indians of Oregon, or any other person of Indian blood who is a member of a federally recognized Indian

tribe, or any other person on the Siletz Reservation or having substantial contacts and interests within Siletz's Indian Country, who is recognized by the community as an Indian.

(f) "Intestate" means that a person has died without making a valid will as to some or all of his or her assets. Such property will pass to other persons under the intestate succession rules of this Ordinance.

(g) "Issue," when used to refer to persons who take by intestate succession, means all the lineal descendants of the ancestor and includes all lawfully adopted children and all children legally certified as having been customarily adopted pursuant to Siletz Tribal Code § 8.037. Children for whom the parent-child relationship has been legally severed or terminated shall be considered issue only for purposes of inheriting items of family or cultural significance through intestate succession. Posthumous issue are considered as living at the death of their parent.

(h) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that passes on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death, individual retirement account or bond, or similar document.

(i) "Parent" means the biological or lawful adoptive mother or father of a person. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction, except as provided in subsection (g) of this section.

(j) "Personal property" means all property other than real property and includes title to homes located on property held in trust for the Tribe, such as conveyed homes.

(k) "Personal representative" means that person appointed by the Tribal Court to carry out the powers and duties conferred by this Ordinance on behalf of the estate.

(l) "Public administrator" means the person or entity Tribe appointed by the Tribal Court as personal representative to administer estates where appointment of another personal representative is not sought, or where no other suitable person is willing and available to serve.

(m) "Real property" means all interests and estates in land, including leasehold interests and improvements to land such as houses or other buildings which have been affixed to the land; provided, however, that a home, including a mobile or modular home, which is located on individual trust property and subject to a security interest, mortgage, promissory note or other financing agreement or which is located on Tribal fee or trust property shall be considered personal property for purposes of this Ordinance. All other homes shall be considered real property for purposes of this Ordinance.

(n) “Representation” means a method of determining distribution of an intestate estate in which the takers are in unequal degrees of kinship with respect to the intestate decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship to the intestate decedent, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate decedent who are in the nearest degree of kinship (heirs) and the number of persons in the same degree of kinship who died before the intestate decedent (deceased heirs) but who left issue surviving the intestate decedent; each share of a deceased heir in the nearest degree shall be divided among those of the deceased heir’s issue who survive the intestate decedent and have no ancestor then living who is in the line of relationship between them and the intestate decedent, those more remote in degree taking together the share which their ancestor (the deceased heir) would have taken had he or she survived the intestate decedent.

(o) “Siletz Indian Country” means and includes:

- (1) All land within the limits of the Siletz Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
- (2) All Indian allotments or other lands held in trust for a Siletz Tribal member or for the Tribe, the Indian titles to which have not been extinguished, including rights-of-way running through the same;
- (3) All land within the Service Area of the Tribe, as defined by the Siletz Restoration Act, 25 U.S.C. § 711 et seq., amendments thereto, and legislative history to those Acts; and
- (4) All Tribal housing, wherever situated, over which the Tribe maintains jurisdiction pursuant to the Tribal Housing Ordinance, Siletz Tribal Code § 13.200 et seq.

(p) “Spouse” means a party to a marriage recognized by any jurisdiction, including the Tribe. It shall not include a party to a common law marriage unless the marriage is recognized by the jurisdiction in which the arrangement was entered.

(q) “Testator” means a decedent who died leaving a valid will.

(r) “Tribe” or “Tribal” means and refers to the Confederated Tribes of Siletz Indians of Oregon.

(s) “Trust or restricted property” means any property, title to which is held in trust or restricted fee status by the United States for the benefit of a member of a federally recognized Indian tribe or for a tribe.

(t) “Will” means an instrument, including a codicil, validly executed as required by this Ordinance that disposes of an individual’s estate at death.

(u) “Tribal Court” or “Court” means the Tribal Court of the Confederated Tribes of Siletz Indians of Oregon.

§ 8.602 PERSONS AND PROPERTY SUBJECT TO ORDINANCE

(a) Persons and Property Subject to Ordinance; Domicile Presumed.

- (1) This Ordinance applies to the personal and real property of all enrolled members of the Tribe who are domiciled within Siletz Indian Country.
- (2) An enrolled member of the Tribe shall be presumed to be domiciled within Siletz Indian Country, regardless of residence elsewhere, in the absence of proof of domicile in another jurisdiction.
- (3) The Tribe shall have exclusive jurisdiction over all Siletz Tribal funds, benefits, accounts, payments and other monies held or distributed to any enrolled member of the Tribe, including minor and adult trust accounts, elder stipends, tribal per-capita payments and other distributions, Self Sufficiency Program funds and all other benefits.
- (4) The Tribe shall have exclusive jurisdiction over all determinations or proceedings made or conducted pursuant to this Ordinance which involve Tribal housing under the jurisdiction of the Tribe pursuant to Siletz Tribal Code § 13.200 et seq.
- (5) When invoked, the Tribe shall have exclusive jurisdiction over the disposition of all cultural objects as provided in Section 8.608 of this Ordinance, and shall have a right of first refusal where a cultural object is intended to be sold.

(b) Jurisdiction of Tribal Court.

- (1) The Tribal Court shall have all authority necessary to take evidence on and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent’s estate under this Ordinance.
- (2) The Tribal Court shall have the broadest possible authority to execute its duties and responsibilities under this Ordinance. It shall have authority to probate all estate interests subject to this Ordinance which do not come within the exclusive jurisdiction of the United States.
- (3) Any person who participates in probate or other proceedings before the Tribal Court thereby consents to the full jurisdiction of the Tribal Court in those proceedings and in all related proceedings.

§ 8.603 **INTESTATE SUCCESSION**

(a) **Succession Rules.** The estate of a person dying intestate shall be distributed as follows:

- (1) **Surviving Spouse and Issue.** If the decedent leaves a surviving spouse and issue, the surviving spouse shall have one-half interest in the estate and the issue shall have one-half interest in the estate.
- (2) **Surviving Spouse and No Issue.** If the decedent leaves a surviving spouse and no issue, the entirety of the estate shall pass to the surviving spouse.
- (3) **Other Than Surviving Spouse.** Where the decedent leaves no surviving spouse:
 - (A) If the decedent leaves issue, the estate shall pass by representation to the decedent's issue.
 - (B) If the decedent leaves no surviving issue, the estate shall pass to the surviving parents of the decedent.
 - (C) If the decedent leaves no surviving issue or parents, the estate shall pass by representation to the issue of the decedent's parents.
 - (D) If the decedent leaves no surviving issue, parents, or parents' issue, the estate shall pass to the grandparents of the decedent and the issue of any deceased grandparent of the decedent by representation.

(b) **Inheritance by Child.** For the purposes of inheritance by, through and from any child, the effects and treatment of the parent-child shall not depend on whether the parents have been married.

(c) **Effect of Adoption.** For the purposes of intestate succession, legally adopted children shall be treated no differently than biological children; provided, however, that an adopted child shall not be eligible to inherit through intestate succession the estate of his or her biological parents or other biological family members.

(d) **Indian Custom and Tradition Distribution of Indian Cultural Items.**

- (1) For purposes of this section, "Indian cultural items" includes but is not limited to regalia, beadwork, jewelry, woven baskets, clay pottery, carvings, sculptures, masks, and the like.

- (2) Notwithstanding subsection (a) of this section, Indian cultural items belonging to the decedent shall be distributed in accordance with the customs and traditions of the Confederated Tribes of Siletz Indians of Oregon. Such distribution shall be in accordance with directions left by the decedent, if any, or, if the decedent left no directions, shall be as directed by the surviving spouse of the decedent; if the decedent leaves no surviving spouse, then by direction of the decedent's eldest surviving adult sibling; if decedent leaves neither a surviving spouse nor surviving adult sibling, then by direction of the decedent's parents; if the decedent leaves no surviving spouse, surviving adult sibling or surviving parents, then by direction of the eldest surviving adult child of the decedent.
- (3) Where a beneficiary receiving one or more Indian cultural items under subsection (d)(2) of this section wishes to sell such item or items, the Tribe shall have a right of first refusal to purchase such Indian cultural item or items at appraisal value.
- (4) The Tribal Court shall have continuing jurisdiction over the disposition of Indian cultural items.

(e) **Escheat for Want of Heirs.** Whenever any person dies, leaving property subject to the jurisdiction of the Tribal Court, and not being survived by any person entitled to the same under the laws of the Tribe, such property shall be designated as escheat property and shall pass to the Tribe; provided, however, that if the Tribal Court determines that the decedent had a special known interest in a particular activity of the Tribe, the Tribal Court may direct that the escheated estate be dedicated to such activity.

§ 8.604 WILLS

(a) **Who May Make A Will.** Any enrolled member of the Confederated Tribes of Siletz Indians of Oregon who is of sound mind and is eighteen (18) years of age or older, or a minor who is emancipated or the parent of a child, may, by will or codicil, devise all or a portion of his or her estate, both real and personal, subject to the provisions of this Ordinance.

(b) **Requirements of Wills.**

- (1) In order to be valid under this Ordinance, a will (including a codicil) must satisfy all of the following requirements:
 - (A) Every will shall be in writing and signed by the testator or some other person under the testator's direction in the presence of the testator.
 - (B) The will shall be attested by two or more competent witnesses, not having an interest in the testator's estate or in the will, signing their

names to the will in the presence of the testator by the testator's direction or request.

- (2) A will executed outside Siletz Indian country in the mode prescribed by law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Tribe.
- (3) Any will purporting to devise an interest in trust or restricted property shall in addition to the provisions of this section meet all the lawful requirements of the Bureau of Indian Affairs found in Title 25 of the United States Code and Title 25 of the Code of Federal Regulations as presently enacted or hereafter amended.

(c) **Revocation of Will.** A will, or any part thereof, can be revoked by:

- (1) A subsequent valid written will or codicil; or
- (2) By being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the will, by the testator or by another person in the presence and at the direction of the testator, and in the presence of two competent witnesses not having an interest in the outcome. The facts of such injury or destruction, including the direction of the testator where the action is done by another, must be proved by two competent witnesses not having an interest in the outcome.

(d) **Effect of Subsequent Divorce of Testator.** A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse.

(e) **Revival of Prior Valid Will.** If, after making any valid will, the testator shall duly make and execute a second will, the destruction, cancellation or revocation of the second will shall not revive the first will. If the subsequent will is determined invalid, the first will shall be deemed not to have been revoked.

(f) **Death of Related Devisee or Legatee Before Testator.** When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done had he or she survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section.

(g) **Lapsed Legacy or Devise.**

- (1) If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of intestate succession as provided in this Ordinance.
- (2) If the will gives the residue of the estate to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(h) **Remainers In Estate for Life.** If any person, by will or by the operation of the laws of the Tribe, shall devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator.

(i) **Will to Operate On After-Acquired Property.** Any estate, right, or interest in property acquired by the testator after the making of his or her will shall pass as if title thereto was vested in him at the time of making the will, unless the language of the will makes clear the testator's intention was otherwise.

(j) **Contribution Among devisees and Legatees.** When any testator in his last will shall give any personal property or real estate to any person and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

(k) **Intent of Testator Controlling.** All courts and others concerned in the execution of a will shall have due regard to the direction of the will, and the true intent and meaning of the testator in all matters brought before them shall control unless prohibited by law.

(l) **Omitted Child Born or Adopted After Execution of Will.**

- (1) If a will fails to name or provide for a child of the testator who is born or adopted by the testator after the will's execution and who survives the testator, referred to in this section as an "omitted child," the child must receive a portion of the testator's estate as provided in subsection (1)(3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.
- (2) In determining whether an omitted child has been named or provided for, the following rules apply:
 - (A) A child identified in a will by name is considered named whether identified as a child or in any other manner.

- (B) A reference in a will to a class described as the children, descendants, or issue of the testator who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a testator’s heirs or family, does not constitute such a naming.
 - (C) A nominal interest in an estate does not constitute a provision for a child receiving the interest.
- (3) The omitted child must receive an amount equal in value to that which the child would have received under Section 8.603 of this Ordinance (Intestate Succession) if the testator had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the testator’s intent. In making the determination, the court may consider, among other factors, the various elements of the testator’s dispositive scheme, provisions for the omitted child outside the testator’s will, provisions for the testator’s other children under the will and otherwise, and provisions for the omitted child’s other parent under the will and otherwise.
 - (4) In satisfying a share provided by this section, the bequests made by the will abate as provided in Section 8.614 of this Ordinance (Abatement).
- (m) **Omitted Spouse Married After Execution of Will.**
- (1) If a will fails to name or provide for a spouse of the testator whom the decedent marries after the will’s execution and who survives the testator, referred to in this section as an “omitted spouse,” the spouse must receive a portion of the testator’s estate as provided in subsection (m)(3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.
 - (2) In determining whether an omitted spouse has been named or provided for, the following rules apply:
 - (A) A spouse identified in a will by name is considered named whether identified as a spouse or in any other manner.
 - (B) A reference in a will to the testator’s future spouse or spouses, or words of similar import, constitutes a naming of a spouse whom the testator later marries. A reference to another class such as the testator’s heirs or family does not constitute a naming of a spouse who falls within the class.

(C) A nominal interest in an estate does not constitute a provision for a spouse receiving the interest.

(3) The omitted spouse must receive an amount equal in value to that which the spouse would have received under Section 8.603 of this Ordinance (Intestate Succession) if the testator had died intestate, unless the Court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the testator's intent. In making the determination the court may consider, among other factors, the spouse's property interests under applicable laws, the various elements of the testator's dispositive scheme, and a marriage settlement or other provision and provisions for the omitted spouse outside the testator's will.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in Section 8.614 of this Ordinance (Abatement).

(n) **Omission of Spouse or Child Living at Execution of Will.** If a will fails to provide for a spouse to whom the testator was married at the time of the execution of a will, or a child born or adopted and living at the time of the execution of the will, the spouse or child so excluded shall receive that portion of the estate to which he or she would have been entitled under the rules of intestate succession unless the testator's will specifically and clearly states the intent to exclude the named spouse or child.

§ 8.605 PROBATE PROCEEDINGS

(a) **Initiation of Probate Proceedings.** At any time after the death of a person subject to this Ordinance, any person meeting the qualifications required of the personal representative of the decedent's estate may initiate the probate of the decedent's estate.

- (1) Probate proceedings shall be initiated by a Petition for Probate filed with the Siletz Tribal Court containing:
 - (A) The name of the decedent;
 - (B) The decedent's enrollment status with the Tribe (enrolled, eligible for enrollment, enrolled in another federally recognized Indian tribe);
 - (C) The date of death of the decedent;
 - (D) The names and addresses of the decedent's surviving family so far as such information is known to the petitioner;
 - (E) Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will;

- (F) A general description of the decedent’s estate subject to probate in the Tribal Court, and a general description of those portions of the decedent’s estate, if any, that are not subject to probate in the Tribal Court, including but not limited to any interests in trust or restricted property;
 - (G) A statement of whether any probate proceedings are pending in any other jurisdiction and, if so, the name and address of the personal representative appointed in such proceedings;
 - (H) A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative;
 - (I) A request for approval of the decedent’s will, or a request that the court find that the decedent died without a valid will, if applicable; and
 - (J) A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct.
- (2) The petitioner shall file with the petition, or as soon after filing as such documents can be obtained:
- (A) A certified copy of the decedent’s death certificate; and
 - (B) The original or a true and correct copy of any will found or document alleged to be the decedent’s will. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence.

(b) **Qualifications of Personal Representative; Priority.** Powers and responsibilities for administration of an estate as personal representative shall be granted to one or more of the persons hereinafter listed, and they shall be respectively entitled in the following order:

- (1) The person or persons named to serve as personal representative in the decedent’s will.
- (2) The surviving spouse or such person as the surviving spouse may request to have appointed.
- (3) The decedent’s next of kin in the following order:
 - (A) Child or children;

- (B) Father or mother;
 - (C) Brothers or sisters;
 - (D) Grandchildren; and
 - (E) Nephews or nieces.
- (4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.
 - (5) If the person so entitled shall fail for more than forty (40) days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the Tribal Court that there is no next of kin, or they waive their right, or if no suitable person is available and willing, then the court may appoint the public administrator to administer such estate.

(c) **Parties Disqualified; Result of Disqualification After Appointment.**

- (1) The following persons are not qualified to act as personal representatives:
 - (A) Minors;
 - (B) Persons of unsound mind; or
 - (C) Persons who have been convicted of any felony or of a misdemeanor involving moral turpitude.
- (2) When any person to whom letters of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any felony or of a misdemeanor involving moral turpitude, the court shall revoke his or her letters.
- (3) A nonresident of the Siletz Reservation may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the Siletz Reservation or who is an attorney of record of the estate, upon whom service of all papers may be made; provided that such appointment must be made in writing and filed by the clerk of the Tribal Court with other papers of such estate.
- (4) No person shall be disqualified from serving as a personal representative by virtue of the fact that he or she may be a beneficiary of the estate, but such person shall always be mindful of the fact that they serve the estate in a fiduciary capacity and must put the interests of the estate ahead of their personal interest.

(d) Powers and Duties of Personal Representative.

- (1) The personal representative shall have the power and duty to:
 - (A) Take possession and control of all the decedent's assets subject to the probate jurisdiction of the Court, and to preserve such assets for the benefit of the estate;
 - (B) Give all notices to family members, heirs, beneficiaries, government agencies or creditors as required or allowed by this Ordinance;
 - (C) Act in a fiduciary capacity in the name of the estate, subject to applicable orders of the Court, to settle any claim against the estate, collect any debts owed to the estate, and initiate or defend any litigation involving the estate;
 - (D) Administer, in a fiduciary capacity, the affairs of the estate to ensure that the estate is preserved and distributed in accordance with the directions expressed the decedent's will, or in the absence of such a will, in accordance with the rules of intestate succession set out in this Ordinance;
 - (E) Exercise any power granted by the decedent's will or by order of the Court; and
 - (F) Avoid any conflict of interest between the interests of the personal representative and the interests of the estate by always placing the interests of the estate ahead of their personal interest.
- (2) The personal representative shall serve without bond, unless a bond is required by the Tribal Court or by the terms of the decedent's will.

(e) Hearing; Order Initiating Probate; Appointment of Personal Representative and Letters of Administration.

- (1) Within thirty (30) days of the filing of a petition for probate, the Tribal Court shall hold a hearing during which the Court shall review the sufficiency of the petition and examine the petitioner under oath and determine whether the decedent died having left a valid will or died intestate.
 - (A) The Tribal Court shall take evidence as to the validity of any will, and as to the qualifications of the petitioner or other person to be

the personal representative. In the absence of an original, the Court may permit a true and correct copy of a will to be probated.

- (B) The Tribal Court shall enter an order initiating probate of the decedent's estate upon the following findings:
 - (i) The petitioner or another person is qualified and entitled to be appointed personal representative;
 - (ii) The decedent died having left a valid will or intestate; and
 - (iii) The petition and other evidence before the Tribal Court are sufficient to support the jurisdiction of the Tribal Court.
 - (C) The order initiating probate shall either establish and initiate probate of decedent's will or shall conclude that the decedent died intestate and identify the decedent's heirs of law. Except in the event of a contest of a will pursuant to Section 8.611 of this Ordinance (Will Contests), such order shall be conclusive.
- (2) Following the conclusion of the hearing and order initiating probate, the Court shall issue letters of administration conferring the powers and duties of the personal representative on the petitioner or another person. The term "letters of administration" shall apply to the authority granted to a personal representative under this Ordinance, regardless of whether decedent died testate or intestate.

(f) **Oath of Personal Representative.** Before letters of administration are issued, the appointed personal representative must take and subscribe an oath, before the clerk of the Tribal Court or some other person authorized to administer oaths, that the duties and responsibilities as personal representative will be performed according to law. The oath must be filed with the Tribal Court.

(g) **Notice of Appointment as Personal Representative, Pendency of Probate; Proof by Affidavit.** Within twenty (20) days after appointment, the personal representative of the estate of a decedent shall cause written notice of the appointment and pendency of said probate proceedings to be served personally or by mail to each heir, legatee and devisee of the estate and to each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to the personal representative, and proof of such mailing or service shall be made by affidavit or declaration under penalty of perjury and filed with the Tribal Court. Such notice shall include a copy of the Tribal Court's order determining whether the decedent died testate or intestate.

(h) **Cancellation of Letters of Administration.** The Tribal Court shall have authority, for any cause deemed sufficient, to cancel and annul letters of administration and appoint other personal representatives in the place of those removed. If, after letters of

administration are granted, a will of the deceased is found and the Tribal Court grants probate thereof, the Tribal Court may revoke or amend the letters of administration.

(i) **Successor Personal Representative.** If a personal representative of an estate dies or resigns or the letters of administration are revoked before the settlement of the estate, successor letters of administration shall be granted to a person to whom the letters would have been granted if the original letters had not been obtained, 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 Tribal Court orders otherwise.

(j) **Inventory and Appraisal; Filing; Copy Distribution.**

(1) Within ninety (90) days after appointment, unless a longer time shall be granted by the Tribal Court, the personal representative shall make and verify by affidavit a true inventory and appraisal of all of the property of the estate passing under the will or by 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 of property. The personal representative shall determine the fair net value, as of the date of the decedent's death, of each item of property contained in the inventory after deducting the encumbrances, liens, and other secured charges. Such items of property shall be classified as follows:

- (A) Real property, by legal description;
- (B) Stocks and bonds;
- (C) Mortgages, notes, and other written evidences of debt;
- (D) Bank accounts and money;
- (E) Furniture and household goods; and
- (F) All other personal property accurately identified, including the decedent's nonprobate assets, and proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative.

(2) The inventory and appraisal 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 nonprobate asset.

(3) 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.

(k) **Summary Probate of Exempt Estates.**

- (1) **Exempt Estates.** An estate having an appraised value which does not exceed \$3,500 and which is to be inherited, through the rules of intestacy or by devise, by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this subsection.
- (2) **Notice of Hearing to Determine Whether the Estate is an Exempt Estate.** Upon petition of the personal representative, the Tribal Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Court, that the appraised value of the whole estate does not exceed \$3,500 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any, 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.
 - (A) Notice of such hearing shall be given by posting a true copy of such order in the Administration Building of the Confederated Tribes of Siletz Indians of Oregon, and by sending a true copy of such order by certified mail to all persons known to the personal representative to be an heir, devisee or legatee of such decedent.
 - (B) Such notice shall be posted or mailed no fewer than ten (10) days before the time set for such hearing.
 - (C) At or before the time set for such hearing, the personal representative shall file his or her affidavit with the Tribal Court indicating compliance with this requirement of giving notice.
- (3) **Hearing to Determine Whether the Estate is an Exempt Estate.** If, upon such hearing, the Tribal 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 deceased 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 to them and filing receipts with the Tribal Court, the estate shall be closed, and the personal representative discharged.

(l) **Interim Reports of Personal Representative.**

- (1) The personal representative shall make, verify by oath, and file with the clerk of the Tribal Court reports of the affairs of the estate at least annually, and more frequently if necessary or required by the Court. Such report shall contain:
 - (A) A statement of the claims against the estate filed and allowed and all those rejected;
 - (B) 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, the personal representative may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange;
 - (C) A statement of the amount of property, real and personal, which has come into the personal representative's hands, and give a detailed statement of all sums collected by the personal representative, and of all sums paid out; and
 - (D) A statement of such other things and matters as may be proper or necessary to give the Court full information regarding any transactions done by the personal representative or which should be done.
- (2) 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 Tribal Court will provide notice to the same group of people of the hearing on the report.

(m) Final Report of the Personal Representative; Petition for Decree of Distribution.

- (1) When the estate is ready to be closed, the personal representative shall make, verify and file with the Tribal Court the final report and petition for distribution. Such final report and petition shall:
 - (A) Show any moneys collected since the previous report;
 - (B) Show any property which may have come into the hands of the personal representative since the previous report;
 - (C) Show any debts of the estate paid;

- (D) Show generally the condition of the estate at the time of the final report and petition;
 - (E) Set out the names and addresses, as nearly as may be, of all the legatees and devisees under any valid will;
 - (F) Set out the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate;
 - (G) Give a particular description of all the property of the estate remaining undisposed of;
 - (H) Set out such other matters as may tend to inform the Tribal Court of the condition of the estate; and
 - (I) Ask the Tribal Court for a settlement of the estate and distribution of property and the discharge of the personal representative.
- (2) If the personal representative has been discharged without having legally closed the estate, obtained an adjudication as to the heirs, or procured a decree of distribution or final settlement, the Tribal 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.

(n) **Time and Place of Hearing on Final Report and Petition for Distribution; Notice.** When such final report and petition for distribution has been filed, the Tribal Court shall fix a day for hearing it which must be at least twenty days after the report was filed. The personal representative shall, not less than twenty (20) days before the hearing, mail a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to the personal representative, and shall make an affidavit providing proof of such mailing and file it with the Tribal Court at or before the hearing.

(o) **Hearing on Final Report and Petition for Distribution; Decree of Distribution.**

- (1) Any person interested may file objections to the final report and petition for distribution, or may appear at the hearing and present his objections thereto. The Tribal 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 should be approved, and to determine who are the persons entitled to have the property distributed to them.
- (A) If the Tribal Court approves the final report and petition and finds the estate ready to be closed, it shall 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.

(B) Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the Tribal Court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

(2) The Tribal Court may, upon such final hearing, partition among the persons entitled thereto the estate held in common and undivided and designate and distribute their respective share, or it may 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 whom said estate is assigned shall pay or secure to the other parties interested in said estate their proportion of the value thereof as determined by the Tribal Court from the appraisal, or from any other evidence which the Court may require.

(3) If it shall appear 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.

(4) The Tribal 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.

(A) No estate shall be partitioned, or sold where partition is impracticable, except upon a hearing before the Tribal Court.

(B) 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 shall be proper and equitable.

(p) **Distributions to Minors.** When a decree of distribution orders distribution of an estate or interest therein to a person under the age of eighteen (18) years, it shall be required that:

(1) The money be 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 attaining the age of eighteen (18) years and furnishing proof thereof satisfactory to the depository; or

- (2) A general guardian shall be appointed, and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

(q) **Letters After Final Settlement.** A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued.

(r) **Receipts for Expenses from Personal Representative.** The personal representative shall produce receipts or cancelled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain with the Court until the probate has been completed and the personal representative has been discharged; provided, however, that the personal representative may be allowed any item of expenditure, not exceeding twenty dollars (\$20.00), for which no receipt is produced, if such item is supported by oath of the personal representative, but such allowances without receipts shall not exceed the sum of three hundred dollars (\$300.00) in any one estate.

§ 8.606 LIMITED RULINGS

(a) **Who May Request.**

- (1) Any beneficiary or heir of a deceased Siletz Tribal Member, or any person claiming to be the beneficiary or heir of a deceased Siletz Tribal Member, may ask the Tribal Court to enter a limited ruling on a discrete question related to the administration of the decedent's estate. By making such a request, that person consents to the full jurisdiction of the Tribal Court in the resulting and all related Court proceedings.
- (2) Any supervisor within a department of the Tribal Administration requiring a limited ruling in order to determine the appropriate recipient of any financial benefit which would have been distributed to the deceased Siletz Tribal member, or the General Manager of the Tribe may ask the Tribal Court to enter a limited ruling to make such a determination; provided, however, that such individual must be disinterested and such request shall be made in that individual's official capacity.

(b) **How to Make A Request.**

- (1) Requests for limited rulings must be made in writing and submitted to the Clerk of the Tribal Court.
- (2) Requests for limited rulings made by a beneficiary or heir of a deceased Siletz Tribal Member, or any person claiming to be the beneficiary or heir of a deceased Siletz Tribal Member, shall state:
 - (A) The name and address of the person making the request;

- (B) Whether the person making the request is a Siletz Tribal Member, and if so, the enrollment number;
 - (C) The name, address and Siletz Tribe enrollment number of the decedent;
 - (D) The relationship of the person making the request to the deceased Siletz Tribal Member, including if that person claims to be a beneficiary or heir of the decedent;
 - (E) A short, plain statement of the question for which the limited ruling is sought; and
 - (F) A narrative summary of relevant background information relating to the request.
- (3) Requests for limited rulings made by a Tribal Administration supervisor or by the General Manager of the Tribe shall state:
- (A) The name and position title, including department, of the person making the request;
 - (B) The name, address and Siletz Tribe enrollment number of the decedent;
 - (C) A short, plain statement of the question for which the limited ruling is sought; and
 - (D) An explanation of the need for such limited ruling.
- (4) Supporting documentation, including but not limited to a death certificate and valid will, shall be submitted with the request for limited ruling when such documentation is available.

(c) **Presumption of Exercising Jurisdiction.** Absent good cause to the contrary, the Tribal Court shall presumptively exercise its jurisdiction to make limited rulings in order to facilitate the efficient administration of tribal estates.

- (1) Good cause for denying a request for a limited ruling includes, but is not limited to:
 - (A) A finding by the Court that it lacks jurisdiction over decedent's estate; or

(B) A finding by the Court that the individual making the request is not permitted to do so under subsection (a) of this section, including a finding that the requesting party is not a beneficiary or heir of the decedent.

(d) **Preliminary Findings Required.**

(1) Before approving a request for a limited ruling, the Tribal Court must make the following preliminary findings in a written opinion:

(A) The decedent was an enrolled member of the Confederated Tribes of Siletz Indians of Oregon;

(B) The decedent was domiciled in Siletz Indian country at the time of death; and

(C) The individual submitting the request for a limited ruling is either beneficiary or heir of the decedent pursuant to subsection (a)(1) of this section, or else is submitting the request as a supervisor or General Manager as provided in subsection (a)(2) of this section; and

(D) The question that is the subject of the limited ruling is one that is proper for the Tribal Court to answer.

(2) The Tribal Court shall take all evidence necessary to make the above preliminary findings.

(3) The Tribal Court may conduct an evidentiary hearing, and in either case shall issue a written opinion either denying or granting a request for limited ruling.

(e) **Written Opinion.** Within 30 days from granting a request for limited ruling, the Tribal Court shall issue a written opinion answering the question posed in the request for limited ruling.

(f) **Effect of Limited Ruling.** Limited rulings under this section shall be binding on all Tribal Administration, and shall be binding in all subsequent probate proceedings involving that decedent and in all future proceedings involving the parties to the limited ruling.

§ 8.607 DISPOSITION OF TRUST PROPERTY AND HOMES LOCATED ON TRUST PROPERTY

(a) **Privately-Owned Land.** Land owned in fee simple by an individual and which is not held in trust may pass through a valid will or other devise under section 8.604 of this Ordinance, or where the decedent dies intestate, may pass according to the rules of intestate succession as provided in section 8.603 of this Ordinance.

(b) **Individual Trust Land.** In accordance with Federal law, including the American Indian Probate Reform Act of 2004, Pub. L. No. 108-374, 118 Stat. 1773, land held in trust for an individual Indian as that term is defined under 25 U.S.C. § 2201 may pass according to a valid will or other devise, or if the decedent dies intestate, according to the rules of nontestamentary distribution as provided under 25 U.S.C. § 2206(a).

(c) **Homes Located on Tribal Trust Land.** Where the deceased Siletz Tribal Member owned a home, including a mobile or modular home, located on land held in trust for the Tribe, the following provisions apply:

- (1) Non-members of the Tribe are ineligible to inherit homes located on land held in trust for the Tribe through the intestate succession provisions of this Ordinance.
- (2) If the decedent died leaving a valid will devising the home to another enrolled member of the Tribe, the home shall pass according to the terms of that will.
- (3) If the decedent died leaving a valid will devising the home to a non-member of the Tribe, the home shall pass according to the terms of that will but the Tribe may exercise its authority to terminate the lease of the underlying Tribal trust land; provided, however, that if the Tribe terminates the lease of the underlying Tribal trust land then the Tribe must provide just compensation for the value of the home.
- (4) If the decedent died intestate leaving a spouse who is a member of the Tribe, or leaving no spouse but leaving heirs who are members of the Tribe, then the home shall pass according to the rules of intestate succession as provided in Section 8.603 of this Ordinance (Intestate Succession).
- (5) If the decedent died intestate leaving a non-member spouse but leaving heirs who are members of the Tribe, title to the home shall pass according to the rules of intestate succession as provided in Section 8.603 of this Ordinance (Intestate Succession) subject to a life estate in the surviving spouse.

§ 8.608 DISPOSITION OF CULTURAL OBJECTS

(a) **Policy.**

- (1) It is the policy of the Confederated Tribes of Siletz Indians to protect its history and culture and to preserve them for future generations by preventing the trafficking of cultural objects and prohibiting the non-permitted collection of cultural objects following the death of a Tribal member or a relative of a Tribal member.”

- (2) The Tribe has a significant property interest, including but not limited to a significant intellectual property interest, in its history, cultural heritage, traditional knowledge and cultural expressions, including cultural objects. As such, expressions and documentation of that history, cultural heritage, traditional knowledge and cultural expressions are situated on the Siletz Reservation and therefore subject to the exclusive jurisdiction of the Tribe where the Tribe invokes its jurisdiction.
- (3) The policy objective of this section is to prevent cultural objects from leaving the Tribe, including Tribal families, following the death of a Tribal member or the death of a relative of a Tribal member.

(b) **Applicability.** This section applies where one or more cultural objects, as that term is defined in this section, are to be given away, sold, devised, or otherwise disposed of or relinquished as a result of the death of either an enrolled Tribal member or a relative of an enrolled Tribal member, and the beneficiary or recipient of the cultural objects is not an enrolled Tribal member or the issue of an enrolled Tribal member.

(c) **Jurisdiction.** The Tribe retains exclusive jurisdiction over the disposition of cultural objects when this section applies and when the Tribe invokes its jurisdiction.

(d) **Definitions.** For purposes of this section, the following definitions shall apply:

- (1) “Cultural object” means any object which has historical, traditional, cultural or religious significance to the Tribe including, but not limited to, ceremonial objects, funerary objects, jewelry, regalia, or objects used for obtaining traditional foods.
- (2) “Relative” means a member of a family that includes a Tribal member, regardless of whether the relation is by blood, marriage, or otherwise. This term is intended to be construed broadly in order to achieve the policies set forth in this section.

(e) **Determination That This Section Applies.** Information regarding the pending or executed disposition of cultural objects shall be brought to the attention of the Cultural Resources Department, who will then investigate that information and issue a written determination explaining whether a cultural object is involved and if so, whether this section applies to the disposition of that cultural object.

(f) **Notice to Parties.** Where the Cultural Resources Department determines that this section applies to the disposition of a cultural object, in addition to the letter explaining that determination under subsection (e) of this section the Cultural Resources Department shall send via U.S. mail to the known address of all parties and shall publish weekly for one month on the Tribal website, in the Tribal newspaper, and in a newspaper of general circulation in proximity to the known residence of all parties a notice providing the following information:

- (1) A description of the cultural object(s) being given away, sold, devised, or otherwise disposed of or relinquished;
- (2) A statement explaining the policies of the Tribe as expressed in subsection (a) of this section and how the disposition of the cultural object(s) would contravene those policies;
- (3) A statement explaining the Tribe's right of first refusal to purchase any cultural objects for sale or intended to be sold, consistent with subsection (f) of this section;
- (4) A statement explaining exclusive jurisdiction over the disposition of the cultural object(s), which the Tribe may invoke by initiating a proceeding against the party in Tribal Court;
- (5) The date by which a response is requested and any information that response should contain, including but not limited to actions taken to mitigate the pending disposition of the cultural object(s).

(g) Invoking Exclusive Jurisdiction of the Tribe.

- (1) Where the Cultural Resources Department has followed the notice requirements of subsection (f) of this section, and where either the Cultural Resources Department received a response pursuant to that section which failed to adequately address issues raised by the Department or where the Cultural Resources Department received no response by the date provided in subsection (f)(5), the Cultural Resources Department may make a written recommendation to the Tribal Council to invoke the Tribe's exclusive jurisdiction over disposition of one or more cultural objects pursuant to subsection (c) of this section.
- (2) Upon written recommendation by the Cultural Resources Department, the Tribal Council may invoke the exclusive jurisdiction of the Tribe by passing a resolution stating that the Tribal Council intends to invoke such jurisdiction, the specific purpose for which such jurisdiction is invoked, and a direction that the Legal Department shall initiate a cause of action in Tribal Court against the parties identified by the Cultural Resources Department in its written recommendation for the reasons specified therein.
- (3) Upon passage by the Tribal Council of a resolution under subsection (g)(2) of this section, the Legal Department shall initiate a cause of action against the specified parties pursuant to Siletz Tribal Code § 3.023.

(h) **Tribe Right of First Refusal.** Notwithstanding the other provisions of this section, where one or more cultural objects are being or intended to be put up for sale the Tribe retains a right of first refusal to purchase the object(s) at a price equal to the fair market value of those objects; provided that the Tribe shall be responsible for appraisal of the cultural object(s).

§ 8.609 DISTRIBUTION OF UNCLAIMED TRIBAL BENEFITS

(a) **Applicability.** This section applies where a deceased Tribal member leaves unclaimed Tribal monetary benefits, including one or more per capita payments and/or elder stipends, which the Tribe holds for the benefit of that Tribal member.

(b) **Jurisdiction.** The Tribe retains exclusive jurisdiction over distribution of unclaimed Tribal monetary benefits, including where a deceased Tribal member’s estate is going through probate in another jurisdiction. Such Tribal monetary benefits are kept at the Tribal Administration Building located on the Siletz Indian Reservation until properly claimed, and as such are within the exclusive jurisdiction of the Tribe.

(c) **Distribution Pursuant to Payable On Death Designation.**

- (1) Where a Tribal member has designated one or more “payable on death” beneficiaries under this section, outstanding Tribal monetary benefits belonging to that Tribal member shall pass according to the payable on death designation upon the death of the Tribal member.
- (2) Tribal members may designate one or more “payable on death” beneficiaries to inherit any unclaimed Tribal monetary benefits by filing a Payable On Death Beneficiary Designation Form with the Tribal Trust Officer.
- (3) Where a Tribal member has designated one or more “payable on death” beneficiaries as provided in subsection (b)(1) of this section, upon the death of that Tribal member the “payable on death” beneficiary may claim the Tribal monetary benefits by presenting his//her government-issued identification and a certified copy of the deceased Tribal member’s death certificate to the Tribal Trust Officer; provided, that if the Tribe already has a certified copy of the death certificate, the “payable on death” beneficiary need not present a copy of the same.

(d) **Distribution Under Decedent’s Will.**

- (1) Where a deceased Tribal member with unclaimed Tribal monetary benefits did not designate any “payable on death” beneficiaries but did leave a will, the terms of that will shall govern distribution of the unclaimed Tribal monetary benefits, in accordance with this subsection.

- (2) Where the deceased Tribal member's will specifically provides for distribution of outstanding Tribal monetary benefits, distribution shall follow the terms of the will.
- (3) Where the deceased Tribal member's will does not specially provide for distribution of outstanding Tribal monetary benefits, those benefits shall be distributed as part of the residue of the estate.
- (4) The executor or administrator of the estate of the deceased Tribal member may transfer the unclaimed Tribal monetary benefits into an estate bank account by presenting written authorization such as Letters of Administration to the Tribal Trust Officer, who shall then cause such transfer to issue.

(e) **Distribution Under Intestate Succession.**

- (1) Where a deceased Tribal member with unclaimed Tribal monetary benefits did not designate any "payable on death" beneficiaries and died intestate, those benefits shall pass in accordance with Section 8.603 of this Ordinance (Intestate Succession) and this subsection.
- (2) Where the estate of the deceased Tribal member is going through probate, the executor or administrator of the estate may transfer the unclaimed Tribal monetary benefits into an estate bank account by presenting written authorization such as Letters of Administration to the Tribal Trust Officer, who shall then cause such transfer to issue.
- (3) Where the estate of the deceased Tribal member does not go through probate, or where the estate of a deceased Tribal member goes through probate in another jurisdiction and the executor or administrator of the estate does not transfer the unclaimed Tribal monetary benefits into an estate bank account, the unclaimed Tribal monetary benefits shall be distributed as follows:
 - (A) Any person believing themselves to be an heir to a deceased Tribal member with unclaimed Tribal monetary benefits may petition the Tribe to disburse those benefits by presenting to the Tribal Trust Officer a certified copy of the death certificate of the Tribal member, as well as an affidavit identifying all known heirs or potential heirs of the deceased Tribal member, providing the known addresses and telephone numbers of those heirs and potential heirs, and certifying upon penalty of perjury that the affiant knows of no other heirs or potential heirs and that the decedent died intestate.

- (B) Upon receipt of a certified copy of the death certificate and an affidavit identifying the heirs and potential heirs of a deceased Tribal member, the Tribal Trust Officer shall verify that the Tribal member listed on the death certificate is the same person with unclaimed Tribal monetary benefits, and shall investigate and positively identify all heirs of the deceased Tribal member.
- (C) Upon identification by the Tribal Trust Officer of all heirs of the deceased Tribal member, the Trust Officer shall send via U.S. Mail, return receipt requested, a notice that the individual is entitled to an identified portion of the Tribal member's unclaimed benefits; provided, that if the Trust Officer is unable to identify any heirs or cannot locate the current address of any of the heirs, then the Trust Officer shall also cause to be published on the Tribal Website and in the Tribal Newspaper a notice that such individuals are entitled to a portion of the deceased Tribal member's unclaimed benefits.
- (D) Heirs shall have five years from the date of death of the Tribal member to claim outstanding Tribal monetary benefits, at which time those benefits shall revert to the Tribe under subsection (f) of this section.
- (E) Where the Tribal Trust Officer has a conflict of interest, the Trust Officer shall appoint an agent to fulfill the Trust Officer's duties under this section as appropriate.

(f) **Reversion to Tribe.** Tribal monetary benefits that remain unclaimed five years after the death of the Tribal member shall revert to the Tribe as follows:

- (1) No sooner than five years from the date of death of the Tribal member with unclaimed Tribal monetary benefits, the Tribal Trust Officer shall cause to be published on the Tribal website and in the Tribal newspaper a notice with the following information:
 - (A) Name of deceased Tribal member;
 - (B) Date of death of deceased Tribal member;
 - (C) Name of known living relatives of the deceased Tribal member, if applicable;
 - (D) Direction for anyone believing themselves to be an heir or descendant of the deceased Tribal member to contact the Tribal Trust Officer, together with contact information;

- (E) Date by which heir or descendant must contact the Tribal Trust Officer regarding the unclaimed Tribal monetary benefits, upon which date said benefits shall revert to the Tribe, provided that such date shall be exactly five years after the death of the Tribal member or, if falling on a weekend or holiday observed by the Tribe, the next business day; and
 - (F) Statement that if no heirs or descendants have claimed the outstanding Tribal monetary benefits before the date of reversion, claims to those benefits will be forever barred.
- (2) The notice under subsection (f)(1) of this section shall be published on the Tribal website and in the Tribal newspaper weekly for two months prior to the date of reversion of the unclaimed benefits to the Tribe.
 - (3) If the Tribal Trust Officer determines that no heir or descendant has attempted to claim the outstanding Tribal monetary benefits, then on the date provided under subsection (f)(1)(E) of this section the Tribal Trust Officer shall cause the balance of the benefits to be transferred into the general fund of the Tribe and shall close any account the Tribe may have held for the benefit of the deceased Tribal member.

(g) **Appeal to Tribal Court.** Determinations under this section shall constitute a final administrative action for purposes of appeal to the Siletz Tribal Court under Siletz Tribal Code § 3.064 (Review of Tribal Administrative Decisions).

§ 8.610 CLAIMS AGAINST ESTATE

(a) **Notice to Creditors.** The personal representative shall give notice to the creditors of the decedent, announcing the personal representative’s appointment and requiring that persons 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 nonprobate assets. The personal representative shall file with the Court proof by affidavit of the giving and publication of the notice.

- (1) The personal representative shall first file the original of the notice with the Court; and
- (2) The personal representative shall then cause the notice to be published once each week for three (3) successive weeks in a newspaper of general distribution serving the Siletz Reservation and Lincoln County, Oregon.

(b) **Form of Notice.** Notice under subsection (a) of this section must contain the following elements in substantially the following form:

The personal representative named below has been appointed as personal representative of the estate of [insert name of decedent]. Any person having a claim against the decedent

must present the claim in the manner as provided in Section 8.610 of the Siletz Tribal Code by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the Siletz Tribal Court. The claim must be presented within sixty (60) days after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in Section 8.610 of the Siletz Tribal Code. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication:

Personal Representative:

Attorney for the Personal Representative:

Address for Mailing or Service:

(c) Claims Barred.

- (1) All claims against the decedent or the decedent's estate are barred unless presented within sixty (60) days of the first publication of the notice required by this section or receipt of actual notice of the decedent's death, whichever is sooner, except that the time limitations for presenting claims under this section do not accrue to the benefit of any liability or casualty insurer.
- (2) Claims against the decedent that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within sixty (60) days of the date of first publication of the notice to creditors, but the amount of recovery on any claim not so presented cannot exceed the amount of the insurance.
- (3) The claims may at any time be presented as provided in subsection (d) of this section, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate.
- (4) This section does not serve to extend any otherwise relevant statute of limitations.

(d) Claims; Form; Manner of Presentation.

- (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:
 - (A) The name and address of the claimant;

- (B) The name and address of the claimant's agent, if applicable, and the nature of authority of the agent signing the claim on behalf of the claimant;
- (C) A statement of the facts or circumstances constituting the basis of the claim, attaching any documents evidencing the claim;
- (D) The amount of the claim; and
- (E) 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.

(2) The claim does not need to be supported by affidavit.

(3) A claim must be presented within sixty (60) days of the date of first publication of the notice as required by subsection (c) of this section by:

(A) 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

(B) Filing the original of the signed claim with the Tribal Court.

(4) A claim is 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.

(e) **Allowance or Rejection of Claims.** The personal representative shall allow or reject all claims timely presented. The personal representative may allow or reject a claim in whole or in part. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within thirty (30) days after the personal representative's receipt of the claimant's notice, the claimant may petition the Court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part.

(f) **Allowance of Claims; Notice.** If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first class mail to the address stated on the claim. Allowed claims must be ranked among the acknowledged debts of the estate to be paid expeditiously in the course of administration of the estate.

(g) **Rejection of Claims; Notice; Remedy.**

(1) If the personal representative rejects a claim, in whole or in part, the claimant must bring a petition for allowance of the claim in the probate

action within thirty (30) days after notification of rejection or the claim is forever barred.

(A) The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim, and shall file an affidavit with the court showing the notification and the date of the notification.

(B) The date of service or of the postmark is the date of notification.

(C) The notification must advise the claimant that the claimant must bring a petition for allowance of the claim in the probate action within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.

(h) **Execution of Judgment Against Decedent Barred Upon Decedent's Death; Presentation of Judgment as Claim.** If a judgment was entered against the decedent during the decedent's lifetime, the judgment may not be executed after the death of the decedent except by presenting it as a creditor's claim as provided in subsection (d) of this section.

(i) **Secured Claim; Creditor's Right.** If a creditor's claim is secured by any property of the decedent, this section does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in subsection (d) of this section.

(j) **Order of Payment of Debts.** After payment of costs of administration, the debts of the estate shall be paid in the following order:

(1) Funeral expenses in such amount as the Court shall order, including a reasonable amount for the cost of a monument.

(2) Expenses of the last illness, in such amount as the Court shall order.

(3) Wages due for labor performed within sixty (60) days immediately preceding the death of decedent.

(4) Debts having preference by the laws of the United States.

(5) Taxes, or any debts or fees owing to the Tribe.

- (6) Judgments rendered against the decedent during the decedent's lifetime which are liens upon real estate on which executions might have been issued at the time of the decedent's death, and debts secured by mortgages in order of their priority.
- (7) All other demands against the estate.

§ 8.611 **WILL CONTESTS**

(a) **Action for Contest of Probate or Rejection of Will.**

(1) Any person interested in any will who wishes to contest the validity of or the rejecting of the will shall petition the Tribal Court within four (4) months immediately following the notice of approval or rejection of the will.

(A) The petition shall contain objections and exceptions to the contested will, or to the rejection thereof.

(B) Issues regarding the competency of the decedent to make a will, or regarding the execution by a decedent of the will under restraint, 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.

(2) If no person appears within the time allowed under subsection (a)(1) of this section, the approval for probate or rejection of such will shall be binding and final.

(b) **Notice of Contest.** Upon the filing of the petition pursuant to subsection (a) of this section, the Court shall issue a notice 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.

(c) **Burden of Proof.** In any contest proceedings, the previous order of the Court probating or refusing to probate a will, or finding that the decedent died intestate, shall be sufficient evidence of the findings and conclusions contained in the Court's order. 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.

(d) **Orders Following Hearing on Contest.** If a petitioner proves with clear and convincing evidence that the previous order of the Court accepting or rejecting a will in whole or in part was in error, or that the Court's 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 died intestate, and may amend the letters of appointment of the personal representative for the estate.

(e) **Costs.** In any 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's fees as the Court may deem proper.

§ 8.612 FAMILY SUPPORT PENDING PROBATE

(a) **Support of Surviving Spouse and Children Pending Probate.** During the pendency of a probate proceeding, the surviving spouse of a decedent may petition the Court for an award from the estate of the decedent to provide basic maintenance and support.

- (1) If the decedent is survived by children of the decedent who are not also the children of the surviving spouse, on petition of such a child the court may divide the award between the surviving spouse and all or any of such children as it deems appropriate.
- (2) If there is not a surviving spouse, the minor children of the decedent may petition for an award.

(b) **Award Discretionary.** Any award made and the amount of such award to the surviving spouse and decedent's children is in the Court's discretion. The Court may consider, in addition to any other relevant factors:

- (1) The claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in Tribal Court with respect to basic maintenance and support;
- (2) The resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and nonprobate estate;
- (3) The intentions of the decedent, as reflected in the provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise, as well as provisions made for third parties or other entities under the decedent's will or otherwise that would be effected by an award;
- (4) If the claimant is the surviving spouse, the duration and status of the marriage of the decedent to the claimant at the time of the decedent's death;

- (5) The effect of any award on the availability of other resources or benefits to the claimant;
- (6) The size and nature of the decedent's estate; and
- (7) Oral or written statements made by the decedent that are otherwise admissible as evidence.

(c) **Priority of Award.** The award has priority over all other claims made in the estate. In determining which assets must be made available to satisfy the award, the claimant is to be treated as a general creditor of the estate, and unless otherwise ordered by the Court the assets shall abate in satisfaction of the award in accordance with Section 8.614 of this Ordinance (Abatement).

(d) **Immunity of Award from Debts and Claims of Creditors.** If any property awarded under this section is being purchased or contracted or is subject to any encumbrance, it will continue to be subject to any such contract or encumbrance. All other property awarded and cash paid under this section is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse existing at the time of death.

(e) **Exhaustion of Estate; Closure of Estate; Discharge of Personal Representative.** If an award provided by this section will exhaust the estate, the Court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any.

§ 8.613 UNIFORM SIMULTANEOUS DEATH ACT

(a) **Devolution of Property in Case of Simultaneous Death of Owners.** Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person shall be disposed of as if he or she had survived the other, except as provided otherwise in this section.

(b) **Procedure when Beneficiaries Die Simultaneously.** Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that those beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he or she had survived all the other beneficiaries.

(c) **Simultaneous Death of Joint Tenants.** Where there is no sufficient evidence that two joint tenants 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.

(d) **Distribution of Insurance Policy when Insured and Beneficiary Die Simultaneously.** Where the insured and the beneficiary in a life or accident insurance policy have died and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(e) **Scope of Section Limited.** This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this section.

§ 8.614 **ABATEMENT**

(a) **Abatement Generally.**

- (1) Except as provided in subsection (a)(2) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:
 - (A) Intestate property;
 - (B) Residuary gifts;
 - (C) General gifts;
 - (D) Specific gifts.
- (2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a)(1) of this section, a gift abates as may be found necessary to give effect to the intention of the testator.
- (3) The personal representative may petition the court for an order requiring adjustments in, or contributions from, interests in the estate assets as necessary to give effect to the intent of the testator.

§ 8.615 **INHERITANCE RIGHTS OF SLAYER**

(a) **Slayer Defined.** For purposes of this section, “slayer” shall mean any person who participates, either as a principal or an accessory, in the willful and unlawful killing of any other person.

(b) **Slayer Not to Benefit from Death.** No slayer shall in any way acquire any property or receive any benefit as the result of the death of a decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or the decedent’s estate to the slayer under any provision of this Ordinance or under any agreement made with the decedent, or as to any property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent.

(c) **Insurance Proceeds.** Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designates some person other than the slayer or the slayer's estate as secondary beneficiary and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(d) **No Additional Liability for Payment by Insurance Company, Bank, Etc.** Any insurance company making payment according to the terms of its policy, or any bank or other person performing an obligation for the slayer, shall not be subjected to additional liability by the terms of this section if such payment or performance is made without written notice, at its office or at an individual's home or business address, of the killing by a slayer.

(e) **Rights of Persons Without Notice Dealing with Slayer.** The provisions of this section shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase from the slayer for value and without notice property which the slayer would have acquired except for the terms of this section; provided, however, that all proceeds received by the slayer from such sale shall be held by the slayer in trust for the persons entitled to the property under the provisions of this section pending adjudication of the interests of the slayer, and the slayer shall also be liable both for any portion of such proceeds which the slayer may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

(f) **Record of Conviction as Evidence Against Claimant of Property.** The record of the slayer's conviction for having participated in the willful and unlawful killing of the decedent shall be admissible in evidence in any civil action arising under this section.

§ 8.616 GENERAL PROVISIONS

(a) **Effective Date.** This Ordinance shall take effect thirty (30) days after the date of its enactment by the Siletz Tribal Council. This Ordinance shall not affect the validity or terms of wills executed before the effective date.

(b) **Applicability.** In addition to applying prospectively, this Ordinance shall apply to all probate matters pending before the Tribal Court which as of the effective date have not received a final disposition. This Ordinance shall not apply to probate matters disposed of by the Tribal Court prior to the effective date.

(c) **Severability.** If any section, clause, or provision of this Ordinance, 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 Ordinance or application to any other person or circumstance shall still be valid and in effect.