

# **PUEBLO OF ISLETA PROBATE ORDINANCE**

## **ARTICLE 1 GENERAL PROBATE PROVISIONS**

### **Section 1.1 Authority and Purpose**

A. The authority to promulgate this Probate Ordinance is derived from Article V, Section 2(e) of the Pueblo of Isleta Tribal Constitution (“To enact ordinances, subject to approval by the Secretary of Interior, to protect the peace, safety, property, health, and general welfare of the members of the Pueblo of Isleta;”) and Article V, Section 2(k) (“To regulate trade, inheritance of personal property, land assignments, and private dealings in pueblo land among members within the pueblo.”).

B. The following statute shall hereinafter be referred to as the Probate Ordinance. The objective of this Probate Ordinance is to provide for the exercise of the greatest possible tribal jurisdiction over the probate of the estate of Decedents who are Members of, or were domiciled or owned Personal Property on, the Pueblo of Isleta.

The Pueblo of Isleta Tribal Council finds that probate proceedings in Pueblo of Isleta Tribal Court may be concluded more economically and more expeditiously than by other jurisdictions to the benefit of all interested parties. Furthermore, the determination of how Property is disposed upon a person’s death is an exercise of self-governance and a means to preserve and give effect to the Pueblo’s laws, customs, and traditions.

C. This Probate Ordinance shall be liberally construed and applied to meet the following objectives:

- (1) To comply with the Decedent’s wishes as much as possible;
- (2) To comply with tribal law and established custom and tradition of distributing a Decedent’s property;
- (3) To provide a simple, efficient, and inexpensive method for probating Decedent’s Property;
- (4) To ensure that the rights of creditors of Decedents are protected to the extent reasonable and fair; and
- (5) To ensure that the Property of Decedents passes to the rightful Heirs or Beneficiaries.

## Section 1.2 Definitions

As used in this title, unless the context otherwise requires:

“**Administrator**” means the person appointed by the Tribal Court to administer the estate of a Decedent according to this Probate Ordinance and may include an Administrator nominated by the Decedent’s Will, appointed at the request of one or more of Decedent’s Heirs, or otherwise appointed by the Court.

“**Beneficiary**” means any person nominated in a Will to receive an interest in Property other than in a fiduciary capacity.

“**Codicil**” means a supplement or an addition to a Will not intended to revoke or supersede such Will in its entirety; a Codicil may explain, modify, add to, subtract from, qualify, alter, restrain, or revoke provisions in an existing Will.

“**Collateral Assignment**” means the assignment of a land assignment by an individual to the Isleta Pueblo Housing Authority as collateral.

“**Decedent**” means a person who has died leaving Property that is subject to administration pursuant to this Ordinance.

“**Devisee**” means any person to whom lands or other Real Property are given by Will.

“**Domicile**” means the place where a person has his or her true, fixed, and permanent home and principal residence, and to which whenever he or she is absent, he or she has the intention of returning.

“**Executor**” means the person named in a will to administer the estate of a Decedent according to the will, or a person otherwise appointed by the Court to administer a will.

“**Family**” means blood relatives and individuals who are legally adopted, unless custom and tradition dictates otherwise, as determined by the Court.

“**Heir**” means any person, including the surviving spouse, who is entitled under the law governing Intestate succession to an interest in the Property of a Decedent.

“**Intestate**” means a person who dies without leaving a valid Will.

“**Issue**” means the descendant(s) and/or offspring of a Decedent or another specified person; such as children, grandchildren, and great-grandchildren, as determined by Tribal Court.

“**Land Assignment**” means the right to possess and use an identifiable portion of the Pueblo’s Reservation in accordance with tribal law, custom, and tradition.

“**Member**” means an enrolled member of the Pueblo of Isleta.

“**Probate**” means the judicial procedure by which either: (a) a testamentary document is established to be a valid will by a court or (b) a court determines the Heirs and distribution of property of a decedent who dies intestate.

“**Pueblo**” means the Pueblo of Isleta.

“**Traditional Personal Items**” mean items belonging to the Decedent that are related to participation in the customs and traditions of the Pueblo of Isleta, and include sacred objects or items of cultural patrimony. Traditional Personal Items shall be distributed in accordance with the customs and traditions of the Pueblo.

“**Personal Property**” means all Property other than Real Property and Traditional Personal Items.

“**Property**” means any interest, legal or equitable in Real or Personal Property, without distinction as to kind, excluding use permits such as for grazing.

“**Real Property**” means all interest in land or in buildings or improvement permanently attached to land, including, as applicable, a Land Assignment or residential lease.

“**Reservation**” means all lands in which the Pueblo is beneficially interested within the exterior boundary of the Pueblo of Isleta, and any lands outside of said exterior boundary held in trust by the United States for the benefit of the Pueblo, or which otherwise constitute Indian lands of the Pueblo restricted as to alienation by federal law.

“**Spouse**” means one’s husband or wife of lawful marriage.

“**Testator**” means a Decedent who dies leaving a valid Will.

“**Tribal Court**” or “**Court**” means the Pueblo of Isleta Tribal Court.

“**Will**” means the last will and testament of a Decedent disposing of his or her Property upon his or her passing.

### **Section 1.3 Jurisdiction and Scope**

A. The Tribal Court shall have jurisdiction to administer in probate the estate of a Decedent who, at the time of his or her death, held a Land Assignment, was domiciled, or owned or held Real Property situated, within the Pueblo’s Reservation to the extent that such estate consists of Property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States or did not pass to a named beneficiary or successor pursuant to a valid beneficiary or contractual provision as defined in Section 1.5 or was not distributed in

accordance with the traditional and customary laws of the Pueblo as agreed to by the Heirs of the decedent as defined in Section 1.4.

B. The Tribal Court shall not have jurisdiction over matters of custom and tradition, except through evidentiary proceedings to determine a custom and tradition. In such matters, jurisdiction shall be recognized and acknowledged in the customs and traditions of the Pueblo. Tribal Court may seek advice from the Pueblo of Isleta Cultural Affairs Committee and others who are knowledgeable on issues of custom and tradition.

C. Scope. This Probate Ordinance shall extend to all probate matters within the Isleta Indian Reservation as set forth herein, to the extent not contrary to applicable federal law.

#### **Section 1.4 Distribution of Traditional Personal Items**

A. Prior to the initiation of the administration of the estate, and notwithstanding the provisions of this Probate Ordinance relating to descent and distribution, the surviving spouse or other traditionally appropriate surviving next of kin may distribute any Traditional Personal Items belonging to the Decedent in accordance with the customs and traditions of the Pueblo.

B. The surviving tribal member spouse or, if there is no surviving tribal member spouse, other traditionally appropriate surviving next of kin as determined by majority of the family of the Decedent, may distribute traditional personal items. Such distribution shall be in accordance with directions left by the Decedent, if any, to the extent consistent with custom and tradition.

#### **Section 1.5: Distribution of Non-Probate Assets and Real Property**

A. Non-probate assets, including but not limited to an insurance or retirement policy with named beneficiary or payable-on-death instructions for a bank account, shall not be distributed in probate proceedings but shall execute at the time of death. In the event there is a dispute as to whether an asset is a non-probate asset, Tribal Court shall make the determination.

B. Interests in Real Property subject to and with named successorship instructions, including but not limited to occupancy agreements and property interests with right of survivorship provisions, shall not be distributed in probate proceedings but shall execute in accordance with such successorship or right of survivorship provisions at the time of death. In the event there is a dispute as to whether an interest in Real Property is a non-probate Real Property interest, the Tribal Court shall make such determination.

#### **Section 1.6 Renunciation**

A. A person (or their personal representative) who is an Heir or Beneficiary, may renounce in whole or in part any right of succession to any Property or interest therein by filing a written instrument with the Court not later than six months after the Decedent's death or the time at which it is determined that the person is entitled to take Property if such is not known at the

time of death. If renunciation is not executed within the timeframe specified herein, the person must take possession of the Property or interest therein.

B. The instrument shall (1) describe the Property or part thereof or interest therein renounced, (2) be signed by the person renouncing, and (3) declare the renunciation and the extent thereof. Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the Decedent.

### **Section 1.7 Effects of Divorce, Annulment, and Decree of Separation**

A person who is divorced from a Decedent or whose marriage to the Decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the Decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Probate Ordinance.

### **Section 1.8 Effect of Homicide on Intestate and Intestate Succession**

A. A surviving spouse, Heir, or Beneficiary who criminally and intentionally kills the Decedent is not entitled to any benefits passing under this Probate Ordinance, and the estate of the Decedent passes as if the killer had predeceased the Decedent.

B. A final judgment of conviction of any offense containing the elements of criminal and intentional killing is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional killing, the Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

### **Section 1.9 Simultaneous Death Provisions**

A. Where the title of Property covered under this Probate Ordinance or the distribution 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 they had survived except where provided otherwise in this Probate Ordinance.

B. These provisions on simultaneous death shall not apply in cases where the Decedent has made provision for a different distribution in a Will.

### **Section 1.10 Non-Tribal Member Shall Not Inherit Trust Land**

In no event and under no circumstances shall an individual inherit trust land or any interest therein within the Isleta Indian Reservation who is not (a) an enrolled member or (b) eligible to be an enrolled member of the Pueblo of Isleta.

## **ARTICLE 2 WILLS**

### **Section 2.1 Who May Make a Will**

Any person eighteen (18) or more years of age and who is of sound mind may make a Will.

### **Section 2.2 Validity of Will**

A. A Will shall be deemed valid if the Decedent had a sane mind and understood what he was doing when he made the Will and was not subject to any undue influence of any kind from another person, and if the Will was executed in the presence of two competent witnesses who are not required to be tribal members and who also sign the Will.

B. In addition, an oral Will under tribal custom and tradition, where the Testator gathers all family members who would constitute Heirs at that time to witness the Property he or she is bequeathing among identified individuals, shall be recognized to be valid so long as: (1) the Court is satisfied by an unopposed petition of such Heirs, (2) the Governor is satisfied that no opposition is made by an Heir at a meeting called by the Governor for that purpose, (3) or the preponderance of evidence presented by all interested parties at a hearing, that the Testator knowingly and intentionally made such an oral Will under tribal custom and tradition. Such petition must be signed by all family members who would constitute Heirs.

C. In addition, an oral Will under tribal custom and tradition, where the Testator orally informs the Governor how the property of the Testator should be bequeathed, shall be recognized to be valid so long as (1) the Governor, within thirty (30) days, provides an affidavit to Testator as evidence of the Testator's request, (2) the Testator was of sound mind when the information was given, and (3) two witnesses are present when the oral will is executed. Such affidavit shall be signed by the two witnesses and filed by Governor with the Enrollment / Census Office and the Mapping and Surveying Division, with a copy to the Testator, and, if desired by the Testator, to the witnesses. The Enrollment / Census Office and the Mapping and Surveying Division shall each create and maintain repositories for filings by the Governor pursuant to this provision.

**Section 2.3 Self-Proved Will-Form**

An attested Will may, at any time of its execution or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, before a notary public under official seal if a notary is available, attached or annexed to the will in form and content and substantially as follows:

State of \_\_\_\_\_

County of \_\_\_\_\_

We, [fill in Testator name], and [fill in Witness names], the testator and the witnesses, respectively, whose names are signed to the attached and foregoing instrument, being first duly sworn, do hereby declare to the foregoing authority that the testator signed and executed the instrument as the testator’s last will and that the testator signed willingly or directed another to sign for the testator, and that the testator executed the instrument as his or her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his or her knowledge the testator was at the time 18 years or more of age, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
TESTATOR

\_\_\_\_\_  
WITNESS

Date:

\_\_\_\_\_  
WITNESS

Date:

[If a Notary is available:]

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_ witnesses, this \_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_  
SIGNED BY A NOTARY PUBLIC

## **Section 2.4 Who May Witness**

A. Any person who, at the time of execution of the Will, would be competent to testify as a witness in Court to the facts relating to execution may be as a witness to the Will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the Will is otherwise satisfactorily proved. The fact that a witness is a Beneficiary under the Will does not invalidate the Will or affect the witness's right to inherit under it, so long as the Will is signed and attested in the presence of the two witnesses.

B. In order to protect the privacy of the Testator, a witness shall not disclose contents of a will to a third party unless in an official capacity for the purpose of verifying his or her signature on the will or with the express permission of the Testator.

## **Section 2.5 Choice of Law as to Execution**

A written Will is valid if executed in compliance with this Probate Ordinance or if its execution complies with the law of the place where the Will is executed at the time of execution, or the law of the place where the Testator is domiciled at the time of execution or at the time of death.

## **Section 2.6 Revocation by Writing or by Act**

A Will or any part thereof is revoked:

- (1) By a subsequent valid Will, Codicil, or other instrument which revokes the prior Will in whole or in part expressly or by inconsistency; or
- (2) By being burned, torn, canceled, obliterated, or destroyed, including all copies, with the intent and for the purpose of revoking it by the Testator or by any person in the Testator's presence and at the Testator's direction.

## **Section 2.7 Revocation by Divorce; No Revocation by Other Changes of Circumstances**

A. If, after executing a Will, the Testator is divorced or the Testator's marriage is annulled, the divorce or annulment revokes any disposition of Property made by the Will to the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the Will expressly provides otherwise.

B. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the Decedent. If provisions are revoked solely by this section, they are revived by Testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a Will.



## **Section 2.8 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.

## **Section 2.9 Confidentiality of a Will**

A will executed by an individual shall remain confidential as to third parties until such time as required by law, or unless waived by the individual who executed the will or by operation of this Ordinance.

# **ARTICLE 3 INTESTATE SUCCESSION**

## **Section 3.1 Intestate Succession**

Any part of the estate of a Decedent not effectively disposed of by a valid Will of such Decedent passes to the Decedent's Heirs as prescribed in the following sections of this Probate Ordinance.

## **Section 3.2 Land Assignment of Intestate Decedent**

A. Subject to Subsection B, a Land Assignment of the Intestate Decedent shall pass as follows:

- (1) if one exists, in accordance with a distribution plan as agreed upon by all Decedent's Heirs;
- (2) to the surviving spouse, if Decedent's surviving spouse is a Member;
- (3) if Decedent's surviving spouse is not a Member, but there is/are one or more minor children of the household who is/are Member(s), the eldest surviving child of Decedent shall inherit the residential Land Assignment, provided that the surviving spouse shall retain a right of occupancy and use of the residential Land Assignment until all Member children are emancipated, and for such period thereafter during the life of the surviving spouse as the inheriting child and tribal law, custom, and tradition may permit the surviving spouse to occupy the residential Land Assignment;
- (4) to Decedent's eldest surviving child who is a Member, if there is no surviving spouse;
- (5) to Decedent's eldest surviving Issue who is a Member, if there is no surviving spouse or Member children of Decedent;

- (6) to Decedent's eldest surviving sibling who is a Member, if there is no surviving spouse, children or Issues of Decedent who are Members;
- (7) to the eldest relative of Decedent of the nearest degree of kinship to Decedent who is a Member ,if there are no surviving spouse, children, Issue, or siblings of Decedent who are Members; and
- (8) to the Pueblo, if there are no surviving next of kin who are Members.

B. Notwithstanding Subsection A, Tribal Court may allow a Land Assignment to pass to Heirs in a manner different than that prescribed in Subsection A, for just cause as determined by Tribal Court and after a hearing on the merits, and upon the issuance of Findings of Fact and Conclusions of Law by Tribal Court. Such Findings of Fact and Conclusions of Law may be appealed. The standard of review of such an appeal shall be an arbitrary and capricious, contrary to law standard.

C. Special Provisions for Land Assignments or Residential Leases. In the event of a land assignment or residential lease containing a housing unit under management of the Isleta Pueblo Housing Authority or subject to a Collateral Assignment or mortgage, Section 1.5.B. shall apply if applicable. Otherwise, distribution shall be made consistent with provisions of the such Collateral Assignment or mortgage, including any binding commitments running with the land that require the property to remain occupied by persons who are low-income or otherwise eligible under such program requirements.

D. Land Assignment without an Heir. In the event a Decedent who holds a land assignment dies without an Heir, the Governor may initiate Probate proceedings pursuant to Article 4.1.A.

### **Section 3.3 Share of the Spouse in Property Other Than a Land Assignment or Residential Lease**

A. Subject to Subsection B, the Intestate share of the surviving spouse in Property of the Decedent other than a Land Assignment or residential lease is:

- (1) the entire Intestate estate, if there is no surviving Issue or parent of the Decedent;
- (2) one-half of the Intestate estate, if there is no surviving Issue but the Decedent is survived by a parent or parents;
- (3) one-half of the Intestate estate, if there is a surviving Issue who is also the Issue of the surviving spouse; or
- (4) one-half of the Intestate estate, if there are surviving Issues one or more of whom are not the Issue of the surviving spouse.

B. Notwithstanding Subsection A, Tribal Court may allow Property to pass to Heirs in a manner different than that prescribed in Subsection A, for just cause as determined by Tribal Court and after a hearing on the merits, and upon the issuance of Findings of Fact and Conclusions of Law by Tribal Court. Such Findings of Fact and Conclusions of Law may be appealed. The standard of review of such an appeal shall be an arbitrary and capricious, contrary to law standard.

### **Section 3.4 Share of Heirs Other Than Surviving Spouse**

A. Subject to Subsection B, the part of the Intestate estate not passing to the surviving spouse pursuant to Section 3.3, or the entire Intestate estate if there is no surviving spouse, passes as follows:

- (1) To the Issue of the Decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of lesser degree take by representation;
- (2) If there are no surviving Issue, to the Decedent's parent or parents equally;
- (3) If there is no surviving Issue or parent, to the Issue of the parents or either of them by representation;
- (4) If there is no surviving Issue, parent, or Issue of a parent, and the Decedent is survived by one or more grandparents or Issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the Issue of the paternal grandparents if both are deceased, the Issue taking equally if they are all of the same degree of kinship to the Decedent, but if of unequal degree those of lesser degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or Issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

B. Notwithstanding Subsection A, Tribal Court may allow Property to pass to Heirs in a manner different than that prescribed in Subsection A, for just cause as determined by Tribal Court and after a hearing on the merits, and upon the issuance of Findings of Fact and Conclusions of Law by Tribal Court. Such Findings of Fact and Conclusions of Law may be appealed. The standard of review of such an appeal shall be an arbitrary and capricious, contrary to law standard.

### **Section 3.5 No Taker**

If there is no taker under the provisions of this chapter, the Intestate estate passes to the Pueblo.

### **Section 3.6 Degree of Kinship**

Degree of kinship is computed based on the number of generations from a common ancestor to each of the persons whose degree of kinship is being determined. In the case of degree of kinship of Decedent's Issue, the degree is the number of generations from Decedent. In the case of kin other than Decedent's Issue, the degree is the number of generations from Decedent's parents if they have any surviving Issue or Decedent's grandparents if there are no surviving Issue of parents.

### **Section 3.7 Representation**

If representation is called for by any provision of this Ordinance, the estate is divided into as many shares as there are surviving Heirs in the nearest degree of kinship and deceased persons in the same degree who left Issue who survive the Decedent. Each surviving Heir in the nearest degree receives one share and the share of each deceased person in the same degree is divided among their Issue in the same manner.

### **Section 3.8 Posthumous Persons**

Persons conceived before the Decedent's death but born thereafter inherit as if they had been born in the lifetime of the Decedent.

### **Section 3.9 Kindred of Half Blood; Stepchildren; Foster Children**

Subject to Section 1.10, persons of the half blood (ie. half brother or half sister) inherit the same share they would inherit if they were of the whole blood, but stepchildren and foster children and their descendants do not inherit, unless adopted. The Court determines by a preponderance of the evidence that the person has been legally adopted.

### **Section 3.10 Divorce**

Divorces of husband and wife do not affect the right of children to inherit their property.

## **ARTICLE 4 INTESTATE ESTATES**

### **Section 4.1 Petition to Probate**

A. When any person dies without a will and the estate is subject to the jurisdiction of the Tribal Court under this Probate Ordinance, any person claiming to be an Heir or creditor of the decedent, may file a petition with the Court to probate the estate. The petition shall specify the relationship of the Petitioner to the decedent and contain the names and addresses of all persons, known to the Petitioner, who may be entitled to inherit from the estate. In the event that a person dies without an Heir, the Governor is authorized to file a petition to probate the estate.

B. The Court shall schedule an Initial Probate Hearing within thirty (30) days of receiving the petition to probate, notifying the Petitioner and all other Heirs listed in the petition of the date, time and location of the hearing.

C. Governor Authority When Heirs Agree Upon a Distribution. Notwithstanding Tribal Court jurisdiction as stated in this Ordinance, nothing shall prevent the Pueblo of Isleta Governor from issuing an Order distributing an estate of a decedent where all the children and/or Heirs, as determined by Governor based on a certified family tree provided to Governor by Pueblo of Isleta Tribal Enrollment Department, have collectively decided and agreed upon such distribution. Such agreement shall be in writing and made prior to Governor issuing an Order. Such Order shall be valid and binding as long as these requirements are met. The Order shall be final and is not subject to Tribal Court jurisdiction or appeal. In the event that such agreement cannot be reached, the estate of the decedent shall be distributed by Tribal Court as prescribed in this Ordinance.

[LEGISLATIVE HISTORY: Amended on February 5, 2020 by Resolution No. 2020 – 005]

D. Governor Authority When Heirs Request Governor to Decide Distribution. Notwithstanding Tribal Court jurisdiction as stated in this Ordinance, nothing shall prevent the Pueblo of Isleta Governor from issuing an Order distributing an estate of a decedent where all the children and/or Heirs, as determined by Governor based on a certified family tree provided to Governor by Pueblo of Isleta Tribal Enrollment Department, have collectively decided and agreed to have Governor decide on the distribution of an estate. Such agreement shall be in writing and made prior to Governor issuing the distribution of the estate in an Order. Such Order shall be valid and binding as long as these requirements are met. The Order shall be final and is not subject to Tribal Court jurisdiction or appeal. In the event that such agreement cannot be reached, the estate of the decedent shall be distributed by Tribal Court as prescribed in this Ordinance.

[LEGISLATIVE HISTORY: Amended on February 5, 2020 by Resolution No. 2020 – 005]

#### **Section 4.2 Initial Hearing/Appointment of Administrator**

A. At the initial probate hearing the Court shall hear from the Petitioner and other Heirs and interested parties present regarding the appointment of an Administrator. When appointing an Administrator the Court shall give priority in the following order to those seeking appointment:

- (1) Surviving spouse of the decedent;
- (2) If there is no spouse, or the spouse declines to serve as the Administrator, the decedent's children have equal priority for appointment;
- (3) If decedent has a deceased child, the deceased child's surviving children, also have an equal priority for appointment;
- (4) If there are no spouse or children, decedent's surviving parents have equal priority for appointment;

- (5) If there are no spouse, children, or parents, then decedent's brothers and sisters have equal priority for appointment (if one or more of decedent's brothers or sisters has died, the children of the deceased sibling(s) also have an equal priority for appointment);
- (6) An interested person may be appointed as an Administrator if all of the persons listed above either decline or are disqualified from serving as Administrator.

B. A person who has highest or equal priority to serve as Administrator may decline to serve and confer his/her relative priority upon another, nominating him/her to serve as Administrator, but this must be done in writing. The Administrator must be at least 18 years old and not otherwise disqualified to serve.

C. The Court may appoint up to two (2) persons to act as Co-Administrators of the Estate if it is deemed necessary by the Court.

D. At the initial hearing the Court shall inform persons seeking to be appointed as the Administrator of the duties that must be fulfilled as the Administrator, including but not limited to, the following:

- (1) Complete and submit a list of Heirs to the Court which includes decedent's spouse (if any), children, or other relatives if decedent was not married and had no children.
- (2) Provide notice to all Heirs of such appointment.
- (3) Submit to the Court proof that all Heirs were given notice of Administrator's appointment, including other interested persons who should be informed of the probate matter, or who may file a claim against the Estate.
- (4) Complete and submit to the Court a list of the debts and financial obligations of the Estate, including all creditors to whom the decedent owed money.
- (5) Submit to the Court a plan regarding how and when the debts of the Estate shall be paid and/or the actions taken to cure such debts.
- (6) Provide notice of the probate matter to known creditors informing them to contact the Court if they wish to file a claim against the Estate.
- (7) Complete an inventory and appraisal of real property which lists all real property owned by the Estate, including land and anything attached to the land. Obtain and include a survey of the property from the Pueblo of Isleta Survey and Mapping Department, including a legal description, name of person to whom the land is registered or assigned with the date of the either registration or assignment. Submit proof of ownership of real property listed on the inventory. Complete an inventory and appraisal of personal property listing all personal property owned

by the Estate, which may include bank accounts, stocks, household effects and anything else that is not real property.

- (8) Convene a meeting with all Heirs to discuss a proposed plan for distribution of Real and Personal Property and make efforts to reach an agreement for submission to the Court. If an agreement is reached all Heirs shall sign and notarize the Proposed Distribution Plan.
- (9) Submit to the Court a proposed plan for distribution of Real Property, which may or may not be agreed upon by all Heirs. If all Heirs have agreed to the plan of distribution each Heir shall provide a notarized signature on the plan.
- (10) Submit to the Court a proposed plan for distribution of Personal Property, which may or may not be agreed upon by all Heirs. If all Heirs have agreed to the plan of distribution each Heir shall provide a notarized signature on the plan.
- (11) Submit to the Court proof of public notice of the pending probate matter, including at least two (2) notices published in the pueblo newspaper stating that the probate matter is being heard in the Pueblo of Isleta Tribal Court, the name of the estate, the date and time of the next hearing and the address and phone number of the Isleta Tribal Court.

E. The Court shall inquire as to the ability of any person seeking to be appointed as Administrator and whether or not they are capable of fulfilling the duties of the administrator.

#### **Section 4.3 Oath of Administrator; Letter of Administration**

A. Upon appointment as Administrator, the person appointed shall take an oath to be prescribed by the Court vowing that he/she will faithfully and honestly administer the distribution of the Estate.

B. Upon taking the oath, the Court shall issue letters of administration as proof of the appointment. The letter of administration authorizes the Administrator to act in any jurisdiction necessary to settle the estate of the decedent with or without ancillary proceedings as allowed or required by any foreign jurisdiction in which decedent may have property.

#### **Section 4.4 Review Hearing.**

A. The Court shall schedule a Review Hearing at least forty-five (45) days after the Initial Hearing, and as necessary thereafter, to determine whether the Administrator has completed all duties and requirements.

B. The Court shall review all forms contained in the Probate Packet, review receipts and documents showing that debts have been paid; review documentation related to real and personal property; and review any proposed plans for distribution.

C. The Court shall hold evidentiary hearings as necessary to take testimony and review evidence regarding issues in dispute. Any person having an interest in decedent's estate must notify the Court in writing within sixty (60) days after the Estate has been admitted to probate. The right to contest a probate matter shall be waived if not timely filed with the Court. In the event of a Will contest, the Court shall take no further action with respect to the probate of the estate, but shall schedule a hearing to hear testimony from all persons contesting the Will.

D. The Court shall ensure that two (2) notices have been published in the local newsletter notifying any unknown Heirs or creditors of the pending probate matter. The notice must adhere to the format prescribed by the Court.

#### **Section 4.5 Final Probate Hearing/Distribution of the Estate**

A. The Court shall schedule a Final Probate Hearing at least sixty (60) days after the initial notice is published in the local newspaper and when it is determined that the Administrator has satisfactorily completed all duties and that the Estate is ready for distribution. At the final hearing the Court shall review the Probate Packet and hear from the Administrator and/or other Heirs or interested parties regarding distribution of the Estate. If the Court determines that all Heirs have reached an agreement as to distribution of the estate, a final order shall be issued as such.

B. If the Administrator has been unable to facilitate an agreement among the Heirs as to distribution of the Estate the Court shall take testimony and/or review evidence regarding the property in dispute. The Court may either make a determination at this hearing or reserve ruling and schedule another hearing at which time the Court shall deliver its decision.

C. Upon issuance of the Final Probate Order the matter shall be closed and the Administrator relieved of his/her duties upon the filing of receipts and an affidavit showing the estate is fully distributed.

### **ARTICLE 5 PROBATE OF WILLS**

#### **Section 5.1 Petition to Probate a Will.**

A. The Executor of an Estate designated in a will or persons named in a will (devisees) may petition the Court to probate the Will of a decedent if any of the following situations exists:

- (1) A devisee (person named in a will) contests the validity of the Will.
- (2) All of decedent's property was not addressed in the Will.
- (3) The Estate includes life insurance policies, retirement funds or certain savings accounts, for which the named beneficiaries have predeceased the decedent or beneficiaries were not named.
- (4) Creditors exist that must be paid outside of what is legally stated in the Will.



B. The petition shall list the names and contact information for all devisees named in the Will and Heirs not named in the Will. A copy of the Will shall be attached to the petition.

C. The Court shall schedule an Initial Probate Hearing within thirty (30) days of the filing of the petition and shall notify all devisees and Heirs listed in the petition of the date, time, and location of the hearing.

### **Section 5.2 Initial Hearing/Endorsement of Administrator**

A. The Court shall review the Will to determine whether the person designated in the Will as Executor is able to fulfill the duties of Administrator.

B. If the named Executor is unable to fulfill the duties of Administrator or is deceased the Court shall give priority in the following order to those seeking appointment:

- (1) Surviving spouse of the decedent;
- (2) If there is no spouse, or the spouse declines to serve as the Administrator, the decedent's children have equal priority for appointment;
- (3) If decedent has a deceased child, the deceased child's surviving children, also have an equal priority for appointment;
- (4) If there are no spouse or children, decedent's surviving parents have equal priority for appointment;
- (5) If there are no spouse, children, or parents, then decedent's brothers and sisters have equal priority for appointment (if one or more of decedent's brothers or sisters has died, the children of the deceased sibling(s) also have an equal priority for appointment);
- (6) An interested person may be appointed as an Administrator if all of the persons listed above either decline or are disqualified from serving as Administrator.

### **5.3 Oath of Administrator/Letters Testamentary**

A. Upon appointment as Administrator, the person appointed shall take an oath, to be prescribed by the Court, vowing that he/she will faithfully and honestly administer the distribution of the Estate.

B. The Court shall issue Letters Testamentary authorizing the Administrator to act in any jurisdiction necessary to settle the Estate of the decedent with or without ancillary proceedings as allowed or required by any foreign jurisdiction in which decedent may have property.

### **5.4 Duties of the Administrator**

The Court shall explain to the Administrator the process to be followed and duties to be completed, including the following:

- (1) Provide notice of such appointment to all devisees and Heirs of decedent.
- (2) Submit proof that all devisees and Heirs were given notice of the probate matter and Administrator's appointment.
- (3) Complete and submit to the Court a list of the debts and financial obligations of the estate, including all creditors to whom the decedent owed money.
- (4) Submit to the Court a plan regarding how and when the debts of the estate shall be paid and/or the actions taken to cure such debts.
- (5) Provide notice of the probate matter to known creditors informing them to contact the Court if they wish to file a claim against the Estate.
- (6) Complete an inventory and appraisal of real property which lists all real property owned by the Estate, including land and anything attached to the land. Obtain and include a survey of the property from the Pueblo of Isleta Survey and Mapping Division, including a legal description, name of person to whom the land is registered, and date it was assigned.
- (7) Complete an inventory and appraisal of personal property listing all personal property owned by the estate, which may include bank accounts, stocks, household effects and anything else that is not real property.
- (8) Submit to the Court a list of any *real* property not included in the Will, with a Proposed Plan for Distribution. If all devisees and/or Heirs have agreed to the plan of distribution each person shall provide a notarized signature on the plan.
- (9) Submit to the Court a list of any *personal* property not included in the Will, with a Proposed Plan for Distribution. If all devisees and/or Heirs have agreed to the plan of distribution each person shall provide a notarized signature on the plan.
- (10) Submit to the Court proof of public notice of the pending probate matter, including at least two (2) notices published in the pueblo newspaper stating that the probate matter is being heard in the Pueblo of Isleta Tribal Court, the name of the estate, the date and time of the next hearing and the address and phone number of the Isleta Tribal Court.

### **Section 5.5 Proving, Contesting and Admitting Will**

#### **A. Proof of Will**

- (1) At the initial hearing the Administrator or any devisee may prove and admit the Will by presenting one or more witnesses to the Will to testify or filing the

affidavit of an attesting witness, which identifies such Will as being that which the Decedent executed and declared to be their last Will.

- (2) If the evidence of none of the attesting witnesses is available, the Court may allow proof of the Will by testimony or other evidence that the signature of the Testator or at least one of the witnesses is genuine.

**B. Contesting the Will**

- (1) At any time within sixty (60) days after a Will has been admitted to probate and notice published in the local newspaper, any person having an interest in the decedent's estate may contest the validity of the Will. If all persons having an interest in Decedent's estate consent, or if no contest is timely filed, the right of contest shall be waived. In the event of a Will contest, the Court shall take no further action with respect to the probate of the estate, but shall schedule a hearing to hear testimony from all persons contesting the Will.
- (2) The Court shall hear testimony and review evidence at the hearing concerning the decedent's capacity to execute a valid Will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the Will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the Will through other evidence or witnesses.

**C. Admission of Contested Will to Probate**

Upon considering all testimony and evidence concerning the Will, the Court shall enter an order affirming the admission of the Will or rejecting such Will. If admission of the Will is affirmed the Court shall issue an order so stating. However, if the Will is rejected the Court shall issue an order stating that the probate of decedent's estate shall proceed as if the decedent died without executing the Will (intestate).

**Section 5.6 Review Hearing**

A. The Court shall schedule a Review Hearing at least forty-five (45) days after the Initial Hearing, and as necessary thereafter, to determine whether the Administrator has completed all duties and requirements.

B. The Court shall review all forms contained in the Probate Packet, review receipts and documents showing that debts have been paid; review documentation related to any real and/or personal property not addressed in the Will; and review any proposed plans for distribution of property not addressed in the Will.

C. The Court shall hold evidentiary hearings as necessary to take testimony and review evidence regarding issues in dispute. Any person having an interest in decedent's estate

must notify the Court in writing within sixty (60) days after the Estate has been admitted to probate. The right to contest a probate matter shall be waived if not timely filed with the Court. In the event that the Will is contested, the Court shall take no further action in the probate matter and shall schedule a hearing to hear testimony and review evidence from persons contesting the Will.

The Court shall ensure that two (2) notices have been published in the local newspaper notifying any unknown Heirs or parties of the pending probate matter. The notice must adhere to the format prescribed by the Court.

### **Section 5.7 Final Probate Hearing**

A. The Court shall schedule a Final Probate Hearing when it appears that an estate is ready to be distributed. The Court shall order distribution according to the Will or the rules of Intestate succession, whichever is applicable, and according to the rules set forth in this Probate Ordinance.

B. The Estate shall be closed and the Administrator of the Estate released from any further duties upon filing an affidavit stating that the Estate was fully administered. As used herein, Personal representative includes an Administrator and Executor.

### **Section 5.8 Property Discovered After Estate Closed**

An estate may be reopened whenever necessary to dispose of a Decedent's Property discovered after their estate has been closed. The Court shall hold hearings as necessary to hear testimony from Heirs and interested persons, as determined by the Court and consistent with this Ordinance. 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 newly discovered property in the expenses of the estate.

## **ARTICLE 6 MISCELLANEOUS**

### **Section 6.1 Applicability Clause**

This Ordinance shall not apply to wills made prior to enactment. This Ordinance shall not apply to estates already lawfully probated. This Ordinance shall not apply to estates currently in probate.

### **Section 6.2 Severability Clause**

If any section, sentence, or article of this Ordinance is deemed invalid or unconstitutional, the remainder of the Ordinance will be held valid and consistent with the laws of the Pueblo of Isleta.

### **Section 6.3 Amendment Clause**

The Pueblo of Isleta Tribal Council reserves the right to amend or modify this Ordinance at any time when deemed necessary by the approval of the Tribal Council.

### **Section 6.4 Repealer Clause**

A. Section 1.1.22 of Retained Sections of 1965 Law and Order Code pursuant to Pueblo of Isleta Tribal Council Resolution No. 2008-192 is repealed as effective law.

B. Section 1.1.71 of Retained Sections of 1965 Law and Order Code pursuant to Pueblo of Isleta Tribal Council Resolution No. 2008-192 (“Five Year Statute of Limitation for Civil Cases”) shall not apply to Probate proceedings authorized by this Ordinance.

Property Pueblo of Isleta