

The Yavapai-Apache Nation Probate Code¹

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Article I: Introduction

1.01: Authority

A. The Yavapai-Apache Nation has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of the Nation's Tribal Members and over all other Persons on the lands within the exterior boundaries of the Nation's Reservation lands as necessary to protect the public health, safety, welfare, political integrity, and economic security of the Nation as provided under Article I of the Constitution of the Yavapai-Apache Nation ("Constitution").

B. The legislative authority of the Yavapai-Apache Nation is vested in the Yavapai-Apache Tribal Council as provided under Article IV, Section 1 of the Constitution. The Yavapai-Apache Tribal Council is authorized to enact this Probate Code as provided under the Constitution, Article V, Subsections (a) to protect the health and welfare of the Nation, (f) to veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or any other tribal assets without the formal consent of the Tribe, (n) to regulate domestic relations of Persons within the jurisdiction of the Tribe, (u) to exercise civil jurisdiction over all Tribal Members and Non-Members to the fullest extent permitted by federal law, and (v) to enact ordinances necessary or incidental to the exercise of the Nation's legislative powers. The Yavapai-Apache Tribal Council enacts this Probate Code to regulate Persons and activities within the Reservation to the fullest extent recognized under federal law.

C. The judicial authority of the Yavapai-Apache Nation is vested in the Yavapai-Apache Tribal Court. Article V, Section 1 of the Constitution. The Tribal Court is authorized to exercise jurisdiction over all cases and controversies within the jurisdiction of the Nation that arise under the Constitution, the laws of the Nation, by virtue of the Nation's inherent sovereignty, or which are vested in the Tribal Courts by federal law as provided under Article V, Section 2 of the Constitution. The Tribal Court is authorized to interpret, construe, and apply this Probate Code as provided under Article V, Section 3(a) of the Constitution.

1.02: Findings

The Yavapai-Apache Tribal Council finds the following:

A. It is the best interest of the Nation to provide for the exercise of greatest possible tribal jurisdiction over the Probate of the Estates of Decedents who were Domiciled on or owned Personal Property on the Yavapai-Apache Reservation.

B. Conducting the Probate of Estates in Tribal Court is in the best interest of Tribal Members, as well as Non-Tribal Members Domiciled on the Reservation, because Probate in Tribal Court may be concluded more economically and more expeditiously than in other jurisdictions.

C. Establishing a uniform Probate process will affirm and enhance the Nation's ability to exercise its self-determination and sovereignty.

1.03: Purpose

The purpose of this Probate Code is to establish uniform procedures to encourage the preparation of Wills and Successor Forms for the transfer of property upon death; to discover, carry out and honor the intent of the Decedent; to detail the manner of descent and distribution in the event that there is no Will; to provide a cost-efficient and user-friendly Probate process; and to affirm and enhance the Nation's ability to exercise its self-determination and sovereignty. The Probate Code's provisions shall be liberally construed to facilitate the accomplishment of these purposes.

1.04: Scope

A. This Probate Code applies to the following:

- i. The descent and distribution of Personal Property of Tribal Members, regardless of place of Domicile.
- ii. The descent and distribution of Personal Property of any Person Domiciled on the Reservation.

B. This Probate Code shall not apply to the following:

- i. The descent and distribution of Real Property.
- ii. The descent and distribution of Trust Assets.
- iii. The descent and distribution of Cultural Items, except as set forth in Article XIV of this Probate Code.

1.05: Effective Date

This Probate Code shall be effective as of the date specified in the Tribal Council Resolution adopting the Code. This Probate Code shall apply to all Probate cases pending before the Tribal Court on the day the Probate Code is enacted into law.

1.06: Sovereign Immunity

Nothing in the Probate Code shall be construed as, or is intended to be, a waiver or modification of the Nation's sovereign immunity, or a consent by the Nation to jurisdiction or suit against it or its elected officials, officers, employees, representatives, or agents.

1.07: Severability

If a court of competent jurisdiction finds any provision of this Probate Code to be invalid or illegal under applicable federal or tribal law, such provision shall be severed from this Probate Code and the remainder of this Probate Code shall remain in full force and effect.

1.08: Repeal of Prior Law

To the extent that any prior motion, resolution, ordinance, code, act, or other tribal law conflicts with any provisions of this Probate Code, the provisions of this Probate Code shall control, and the conflicting provision(s) are hereby repealed.

Article II: Definitions

"Administrator" means the Person appointed by the Tribal Court to administer the Estate of a Decedent according to this Probate Code and may include an Administrator designated in a Will, appointed at the request of an Interested Party, or appointed by the Tribal Court.

"Adult" means a Person who is eighteen (18) years of age or older or a Person emancipated by a court of competent jurisdiction or by legal marriage.

"Beneficiary" means any Person stated in a Will or Succession Form to receive an interest in property other than in a fiduciary capacity.

"Child" or **"Children"** means the lineal descendants of the Decedent including all lawfully adopted Children and all Children born after death of Decedent.

"Conservator" means a Person who is appointed by a court of competent jurisdiction to manage the Estate of a Minor or Incompetent Person.

"Constitution" means the Constitution of the Yavapai-Apache Nation.

"Creditor" means a Person or other entity who has any claim against an Estate, both secured and unsecured.

"Cultural Item" means an item having ongoing historical, traditional, or cultural importance central to the Yavapai or Apache Peoples. Such items include, but are not limited to, regalia, ceremonial instruments, and other items used for or in cultural dances, ceremonies, and traditional gatherings.

"Decedent" means a Person who has died leaving property that is subject to administration.

“Domicile” means the place where a Person has his or her true, fixed and permanent residence and principal establishment.

“Estate” means all assets and liabilities of a Decedent.

“Foster Parent” means a Person providing substitute family care for a Child who has been voluntarily or involuntarily removed from parental care.

“General Creditor” means a Person or other entity who has an unsecured claim against an Estate. General Creditor shall not mean the Nation or the United States Federal Government.

“Guardian” means a Person who is designated by a court of competent jurisdiction to be legally responsible for the care and custody of a Minor or Incompetent Person.

“Heir by Killing” means any Person who knowingly participates, either as a principal or as an accessory before the fact, in the willing and unlawful killing of a Decedent to whom that Person is an Heir.

“Heirs” means those Persons who are entitled by a Will or under the rules of Intestate succession to the property of a Decedent.

“Home” means a residential dwelling that has one or more habitable rooms with facilities for living, sleeping, cooking and eating and that is owned as indicated by a Quitclaim Deed or other deed.

“Incompetent Person” means a Person who has been found to be incompetent by order of the Tribal Court as set forth in the Yavapai-Apache Nation Adult Guardianship Code or by order of another court of competent jurisdiction.

“Interested Party” means a Person who has a recognizable stake (and therefore standing) in a matter.

“Intestate” means that a Person has died without making a valid Will as to some or all of the Person’s Estate assets. Such property shall pass to other Persons under the Intestate succession rules of this Probate Code.

“Letters of Administration” mean the formal document of authority and appointment given to an Administrator by the Tribal Court, empowering that Person to perform the duties required of the position of Administrator.

“Minor” means a Person who is under eighteen (18) years of age and who has not been emancipated by a court of competent jurisdiction or by legal marriage.

“Nation Department” or **“Department”** means any official tribal governmental department, program, or office established and vested with authority by the Yavapai-Apache Tribal Council.

“Non-Member” means a Person who is not an enrolled member of the Yavapai-Apache Nation.

“Non-Testamentary Instrument” means a written instrument, other than a Will, that directs for non-Probate transfer on death of money, property, or other benefits to a Person designated in that written instrument and contains a provision that (1) money or other benefits due to, controlled by or owned by a Decedent before death shall be paid after the Decedent's death to a Person whom the Decedent designates in the instrument, and (2) the money or other assets are held or administered by a third party or financial institution on behalf of the Decedent. For all purposes of this Probate Code, a properly executed Successor Form shall be considered a Non-Testamentary Instrument.

“Parent” means the biological or lawful adoptive mother or father of the Child, recognized by a state or tribal law. It does not include any Person whose Parent-Child relationship has been terminated by a court of competent jurisdiction; however, Children of Parents whose rights have been terminated still retain the rights of inheritance.

“Person” means a human being.

“Personal Property” means any property that is not included in the definition of Real Property.

“Probate” means the legal process by which this Probate Code and other applicable tribal law is applied to distribute the Decedent's Estate.

“Quitclaim Deed” means a legal instrument by which a grantor conveys his or her present interest, if any, in a Home on Reservation land to a grantee without warranting the validity of the title.

“Real Property” means all interests and estates in land, except that Homes located on Reservation land and residential dwellings on Reservation land subject to a United States Housing and Urban Development Program Section 184 or other loan program lien shall be considered Personal Property for the purpose of this Probate Code.

“Reservation” means all land held in trust by the United States for the benefit of the Nation.

“Significant Familial-Type Relationship” means a ceremonial or religious godparent relationship to a Child, or a long-term and ongoing personal relationship with the Child in which a Person:

- i. Has or had physical custody of the Child or resided in the same household as the Child;
- ii. Supplied, or otherwise made available to the Child, food, clothing, shelter and incidental necessities and provided the Child with necessary care, education and discipline; and
- iii. Through interaction, companionship, interplay and mutuality, helped fulfill the Child's psychological needs for a Parent as well as the Child's physical needs.

“Spouse” means a party to a marriage recognized by any jurisdiction.

“Successor Form” means a written document executed in accordance with the requirements of this Probate Code and intended to facilitate the passage of the Decedent’s Home upon death to another Tribal Member. A Successor Form is a Non-Testamentary Instrument.

“Testate” means that a Person has died having made a valid Will as to some or all of the Person’s Estate assets. Such property shall pass to other Persons as directed in that valid Will and as described in Article XII of this Probate Code.

“Testator” means a Person who has created a valid Will.

“Tribal Council” or **“Council”** means the Yavapai-Apache Tribal Council, the legislative branch of the Yavapai-Apache Nation as described under Article IV of the Nation’s Constitution.

“Tribal Court” means the Yavapai-Apache Nation Tribal Court, the judicial branch of the Yavapai-Apache Nation as described under Article VI of the Nation’s Constitution.

“Tribal Member” means a Person who is an enrolled member of the Yavapai-Apache Nation.

“Trust Asset(s)” means all Real Property or Personal Property, funds, and securities of any kind that are held in trust in an Individual Indian Money account (IIM account) or otherwise held in trust by the United States for the benefit of an individual Indian.

“Will” shall mean a written document executed in accordance with the requirements of this Probate Code and intended to facilitate the passage of the Testator's property upon death.

“Yavapai-Apache Nation” or **“Nation”** means the federally recognized Indian Tribe known as the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde Arizona.

Article III: Administrative Provisions

3.01 – Records

A. The Tribal Court shall keep a file for each Decedent of all documents filed with the Tribal Court as part of a Probate case under this Probate Code. Such documents shall be retained perpetually by the Tribal Court.

B. The Enrollment Department shall be the repository for original Wills and Successor Forms submitted by Tribal Members. This management of the Will and Successor Form repository within the Enrollment Department shall be governed by the provisions below and by the Enrollment Department Will and Home Successor Form Repository Policy approved by Tribal Council resolution.

i. The Enrollment Department shall keep Tribal Member Wills and Successor Forms in a sealed, tamper-proof envelopes within in a fireproof file cabinet. The Enrollment Department shall include the receipt for a submitted Will or Successor Form within the Tribal Member's enrollment file.

ii. A Tribal Member who submitted a Will or Successor Form may request the release of their own Will or Successor Form back from the custody of the Enrollment Department. Upon such a request, the Enrollment Department shall return the Will or Successor Form back to the requesting Tribal Member. The Enrollment Department shall return the Will or Successor Form to the Tribal Member in-person, along with a copy of a receipt signed by both Enrollment Department personnel and Tribal Member, at the time of return. The Enrollment Department shall retain the original return receipt in the Tribal Member's enrollment file.

iii. A Tribal Member Successor Form stored by the Enrollment Department shall be subject to the highest duty of confidentiality. During the life of the Tribal Member, the Enrollment Department shall not share a Tribal Member's Successor Form with any Person other than (1) the requesting Tribal Member who submitted the Successor Form or (2) any Person with a valid court order from the Tribal Court or other court of competent jurisdiction granting that Person the right to obtain a certified copy of the Tribal Member's Successor Form.

iv. A Tribal Member Will stored by the Enrollment Department shall be subject to the highest duty of confidentiality. During the life of the Tribal Member, the Enrollment Department shall not share a Tribal Member's Will with any Person other than (1) the requesting Tribal Member who submitted the Will or (2) any Person with a valid court order from the Tribal Court or other court of competent jurisdiction granting that Person the right to obtain a certified copy of the Tribal Member's Will.

v. After the death of the Tribal Member as shown by a valid death certificate and upon request, the Enrollment Department shall provide a certified copy of a Successor Form to the Administrator of the Tribal Member's Estate, the Tribal Council Secretary, the Tribal Court, or the Yavapai-Apache Nation Office of the Attorney General.

vi. After the death of the Tribal Member as shown by a valid death certificate and upon request, the Enrollment Department shall provide a certified copy of a Will to the Tribal Court or the Administrator of the Tribal Member's Estate. The Tribal Court shall accept a certified copy of the Will; however, at the request of the Tribal Court, the Enrollment Department shall make the original Will available for an in-camera inspection.

3.02 – Data Sharing

A. To promote an effective and efficient Probate process, data sharing between the Nation's Departments, branches, and programs with records related to the ownership, descent, and distribution of Personal Property on the Nation is highly encouraged.

B. Where the Tribal Court submits a request for information related to a Probate process, the Department subject to the request shall make a good-faith effort to respond to the request in a timely manner. Where the information is available, the Department subject to the request shall strive to provide the requested information no later than fourteen (14) business days from the date of the request.

Article IV: Jurisdiction

4.01 – Jurisdiction of Tribal Court

A. The Tribal Court shall have jurisdiction to administer in Probate the Estate of any Tribal Member Decedent and any Decedent whose place of Domicile was, at the time of their death, on the Reservation.

B. The Tribal Court shall have all authority necessary to take evidence and determine the validity of any Will or other document, the qualification of any Person to be an Administrator, 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 Probate Code.

C. The Tribal Court shall have the broadest possible authority to execute its duties and responsibilities under this Probate Code. It shall have authority to Probate all Estate interests subject to this Probate Code that do not come within the exclusive jurisdiction of the United States pursuant to the American Indian Probate Reform Act.

D. Unless specifically provided to the contrary in this Probate Code, the Tribal Court shall apply the Yavapai-Apache Nation Rules of Civil Procedure, as amended by the Tribal Court and or the Tribal Council from time to time, to all civil actions administered under this Probate Code.

4.02 – American Indian Probate Reform Act

Pursuant to the American Indian Probate Reform Act (AIPRA), the United States shall carry out the Probate of Trust Assets, as currently set out in 25 C.F.R. Part 15 and other applicable law.

Article V: Proof of Death

5.01 – Evidentiary Proof

A certified copy of the death certificate is required to distribute the Estate of Decedent. A certified copy of the death certificate shall be attached to the Probate petition or provided to Tribal Court as soon as practicable following the first hearing, if applicable.

5.02 – Presumption of Death

A Person whose death is not established under Section 5.01 who is absent for a continuous period of not less than six years, during which that Person has not been in contact with family, friends, or other contacts and whose absence is not satisfactorily explained after a diligent search or inquiry, is presumed to be dead via a valid court order.

Article VI: Home Succession

6.01 – Home Succession

A. Homes on Reservation land are not a Trust Asset per federal law.

B. Homes on Reservation land shall only distribute to Tribal Members. Non-Members are ineligible to be designated as Beneficiaries or to inherit Homes on Reservation land. Life estates are also not available to Non-Members.

C. Only Homes owned as indicated by a Quitclaim Deed or other deed may be distributed pursuant to a Successor Form.

6.02 – Successor Forms

A. A valid Successor Form shall be considered a Non-Testamentary Instrument and is not controlled by a Will and cannot be superseded by a Will. Homes distributed by valid Successor Forms shall not be subject to Probate.

B. Beneficiary designations for Homes on Reservation land eligible to be distributed by a Successor Form may be made through a Successor Form provided by the Nation. A valid Successor Form shall:

- i. Designate a primary Beneficiary who is a Tribal Member; a contingent Beneficiary who is a Tribal Member may also be designated;

- ii. Be signed by the owner, as indicated on a Quitclaim Deed, other deed;
- iii. Be notarized by a valid notary of record;
- iv. Include a copy of the Quitclaim Deed or other deed; and
- v. Be filed with the Enrollment Department.

C. The Beneficiary designation on a valid Successor Form is controlling and determines who will receive the Home.

D. Any changes to the Beneficiary designation on a Successor Form must be done by filing a subsequent Successor Form with the Enrollment Department and not through a Will.

E. If the Decedent had a valid Will but did not designate a Beneficiary on a valid Successor Form, or if the designated Beneficiary and contingent Beneficiary both pre-deceased the Decedent, the Tribal Court shall look to the Decedent's valid Will to ascertain whom the Decedent intended to receive the Home.

F. In the event that there is no valid Successor Form or valid Will, the Tribal Court shall apply the rules of Intestate Succession set forth in Section 11.01 and 11.02 to determine who shall inherit the Home. The devise of any Home shall be to one Heir whenever possible to minimize fractionation of interests.

G. The provisions of Section 11.06, Effect of Homicide, shall apply to the succession of Homes on Reservation land.

H. Any challenges to the validity of a Successor Form shall be governed by the processes set forth in Section 15.04.

6.03 – Land Leases

A. The residential land lease underlying a Home on Reservation land shall be terminated upon death of the Decedent.

B. A new residential land lease shall be executed for the Beneficiary of a Home upon the issuance of a new Quitclaim Deed to that Beneficiary.

C. All residential land leases and Quitclaim Deeds shall only be considered valid upon approval by Tribal Council

6.04 – Exemptions

Sections 6.02 and 6.03 shall not apply to any residential dwelling or land lease on the Reservation that is subject to United States Housing and Urban Development Section 184 or other loan program lien.

Article VII: Non-Testamentary Assets

7.01 – General

A. A provision for a non-Probate transfer on death in any insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature is a Non-Testamentary Instrument.

B. Except in events of lawful divorce as detailed in Section 7.01 (E) below, when a Beneficiary has been designated in a Non-Testamentary Instrument, the Beneficiary designation on record with the institute of record is controlling and determines who will receive the asset governed by the Non-Testamentary Instrument. Any changes to the Beneficiary of an asset governed by a Non-Testamentary Instrument must be done with the institution of record and not through a Will. A Will does not override the direction already provided to the institution.

C. The provisions of Section 11.06, Effect of Homicide, shall apply to the distribution of assets governed by a Non-Testamentary Instrument.

D. In the event that the Beneficiary pre-deceased the Decedent, the amount in the asset governed by the Non-Testamentary Instrument to which the Decedent, immediately before death, was entitled to shall be transferred as part of the Decedent's Estate and be subject to the Probate process under this Probate Code.

E. A lawful divorce, finalized subsequent to the execution of a Non-Testamentary Instrument, shall result in the Court deeming the divorced Spouse to have predeceased the Decedent. In the event that a Person who controls an interest in or owns an asset governed by a Non-Testamentary Instrument dies subsequent to the filing for divorce with a Spouse but prior to the finalization of said divorce, the Tribal Court shall consider the divorce to be finalized.

7.02 – IGRA Trusts

Treatment and distribution of Trusts established by the YAN Revenue Allocation Plan pursuant to the Indian Gaming Regulatory Act (“IGRA”) shall be as set forth in the YAN Revenue Allocation Plan. When the YAN Revenue Allocation Plan provides that funds shall be paid to the Estate of a deceased Tribal Member, the distribution of such funds shall be subject to this Probate Code.

Article VIII: Wills

8.01 – Who May Make a Will

Any Person of sound mind who is eighteen (18) or older, or an emancipated Minor, may make a Will.

8.02 – Requirements of Wills

A. To be valid and effective, a Will must:

- i. Be in writing, dated, and signed by the Testator or some other Person under the Testator's authority and direction while in the presence of the Testator; and
- ii. The Will shall be attested by two or more Adult 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. Any bequest given in any Will to a subscribing witness shall be void.

B. The Tribal Court shall have the discretion to declare a Will that does not comply with the requirements of Section 8.02 (A) to be a valid Holographic Will if the following requirements are met:

- i. The Testator was eighteen (18) years or older, or an emancipated Minor, and of sound mind at the time of the Will's creation;
- ii. The material provisions are in the handwriting of the Testator;
- iii. The Will is signed by the Testator; and
- iv. The Testator intended the document to dispose of his or her property after death.

C. Intent that a tangible medium or an electronic record constitutes the Testator's Will can be established by extrinsic evidence, including, for Holographic Wills under Section 8.02 (B), portions of the document that are not in the Testator's handwriting.

8.03 – Foreign Wills

A. To the extent it is not in conflict with the provisions of this Probate Code, any Will executed according to the laws of a Tribe, country, or state where it was executed may be admitted to Probate in the Tribal Court provided that the execution was within ten (10) years of the date of the Decedent's death.

B. If any provision of the foreign Will conflicts with this Probate Code or the laws of the Nation, such provision shall be considered invalid, and distribution of the property governed by such provision shall be distributed in accordance with this Probate Code.

8.04 – Addendum for the Disposition of Personal Property

A. A Will may refer to a written Addendum to dispose of items of tangible Personal Property other than money and not otherwise specifically disposed of by the Will.

B. To be admissible under Section 8.04 as evidence of the intended disposition, the Addendum must be explicitly referenced in the Will; shall either be in the Testator's handwriting or be signed by the Testator; and shall describe the items and the Beneficiaries with reasonable certainty. The Addendum may be prepared before or after the Execution of the Will and may be altered by the Testator after its preparation.

Article IX: Expedited Probate of Small Estates

9.01 – General

A. The surviving Spouse, Guardian of the Decedent's Minor Child, Child, or Parent of a Decedent may file a petition for expedited distribution of an Estate where the following conditions are met: (1) at least 30 days have lapsed since the Decedent's death; (2) the total value of the Personal Property, excluding any assets governed by Non-Testamentary Instruments, belonging to the Decedent's Estate is not more than \$50,000; and (3) the Estate does not contain a residential dwelling on the Reservation that is subject to a United States Housing and Urban Development Section 184 or other loan program lien.

B. An Estate that meets the requirements set forth in Section 9.01 (A) shall be exempt from the claims of all General Creditors and the Probate thereof may be expeditiously processed as provided in this section.

C. Both Testate and Intestate Estates that meet the requirements set forth in Section 9.01 (A) shall be distributed as set forth in Section 9.03.

9.02 – Notice and Opportunity for Objection

A. Upon receiving a petition for summary distribution of an Estate that meets the requirements set forth in Section 9.01 (A), the Tribal Court shall enter an order stating that it appears, from the inventory filed with the Tribal Court, that the value of the Estate, excluding assets governed by Non-Testamentary Instruments, does not exceed \$50,000. If Decedent left a Will, the Tribal Court's order may set forth a shortened timeline for challenges to the Will as provided under Section 15.05 (A).

B. No later than thirty (30) days after filing the petition, the petitioner shall provide a list of Persons to Tribal Court that the Petitioner has reason to believe are an Heir of the Decedent or Creditor of the Estate. The Tribal Court shall send a true and correct copy of the order issued pursuant to Section 9.02 (A) by certified mail to all Persons on the list.

C. The petitioner shall contact the Enrollment Department to determine whether the Decedent had filed a Successor Form or Will with the Enrollment Department no later than thirty (30) days after filing the petition and shall report the existence of a Will or Successor Form to the Tribal Court within ten (10) days of the petitioner's finding.

D. An Interested Party shall have thirty (30) days from the receipt of the Tribal Court order to file an objection with Tribal Court to contest the classification of the Estate as a small Estate or to object to the summary distribution of the Estate. The timeline for the objection to a Will of a small Estate shall be governed by the timeline set forth in the Tribal Court's order made pursuant to Section 9.02 (A) and shall not exceed ninety (90) days.

9.03 – Distribution Process

A. If the Tribal Court finds that the requirements of Section 9.01 (A) are met, the petition for summary distribution is complete, and no Interested Party has contested the summary distribution or otherwise objected, the Tribal Court shall order the Estate distributed.

B. In the event that the Decedent died Intestate, the Estate shall be distributed according to the provisions of Article XI of this Probate Code.

C. In the event the Decedent left a valid Will, the Estate shall be distributed in accordance with that Will and in accordance with the provisions of Article XII of this Probate Code.

D. Following distribution and the proper filing of receipts with the Tribal Court, the Estate shall be closed, and no further proceedings shall be necessary.

E. All objections shall be referred to for further Probate proceedings pursuant to Section 15.02 of this Probate Code.

9.04 – Exemptions

A. Article IX of this Probate Code shall not apply to any Estate containing a residential dwelling on the Reservation that is subject to United States Housing and Urban Development Section 184 or other loan program lien.

B. If a Creditor's claim is secured by any property of the Decedent, the Creditor may realize on the Creditor's security as provided under applicable law.

Article X: Probate of All Other Estates

10.01 – Petition for Probate

A. At any time after the death of a Person subject to this Probate Code, any Person may initiate the Probate of the Decedent's Estate by filing a petition for Probate with the Tribal Court that contains the following:

- i. The name of the Decedent.
- ii. The Decedent's enrollment number.
- iii. The Decedent's date of death.
- iv. A certified copy of the Decedent's death certificate.
- v. The names and addresses of the Decedent's relatives to the extent such information is known to the petitioner.
- vi. The original or a true and correct copy of any Will found, or document alleged to be the last Will of the Decedent. If no original is available, the petitioner shall provide a description of the efforts made to obtain the original and any facts relating to the absence.
- vii. If the Decedent left a Will, the names and addresses of the Beneficiaries under the Will.
- viii. To the extent known by petitioner, a general description of the Decedent's Estate subject to Probate in Tribal Court, and a general description of those portions of the Decedent's Estate, if any, not subject to Probate in this Court.
- ix. Any other information about the Estate or other relevant information that may be necessary to establish that the Court has jurisdiction over the Probate proceedings.
- x. A statement of whether any Probate proceedings are pending in any other jurisdiction, and, if so, the name and case number of the other proceedings, and the name and address of the Administrator or similar Person appointed in such proceedings.
- xi. A request for appointment of an Administrator and a statement of the qualifications of the proposed Administrator including, without limitation, relation to the Decedent.

Subsections (iv), (vi), and (vii) of Section 10.01 (A) may be provided at the time of filing the petition or as soon as practicable thereafter.

B. In the event that the documentation provided pursuant to Section 10.01 (A) indicates that the Estate should be distributed in accordance with Article IX of this Probate Code, Article IX shall govern the distribution of the Estate.

10.02 – Notice of Initial Hearing

A. Upon receipt of a petition for Probate of an Estate, the Tribal Court shall schedule a hearing at which an Administrator shall be appointed. The hearing shall be scheduled no less than fifteen (15) business days in advance of the hearing date in order to allow proper notice to be given.

B. The Tribal Court shall send a true and correct copy of such order by certified mail to all Persons named in the Petition submitted pursuant to Section 10.01 (A). Such notice shall be posted or mailed not less than ten (10) business days before the time set for such hearing. Notice shall also be posted in a conspicuous place in the Tribal Court building.

10.03 – Initial Hearing

A. Within thirty (30) days of the receipt of a petition for Probate, or as soon as practicable thereafter, the Tribal Court shall hold a hearing to consider:

- i. Initiating Probate proceedings;
- ii. Appointing an Administrator; and
- iii. Issuing the Letters of Administration.

B. Before Letters of Administration are issued, the appointed Administrator must take and subscribe an oath that the duties and responsibilities as Administrator will be performed according to law before a Tribal Court Clerk or some other Person authorized to administer oaths.

C. Following the conclusion of the hearing, the order initiating Probate, and the oath of the appointed Administrator, the Tribal Court Clerk shall issue Letters of Administration conferring the powers and duties of the Administrator on whatever Person the Tribal Court has appointed for that role.

D. Within twenty (20) days of the appointment of the Administrator, the Tribal Court shall serve written notice of appointment and the pendency of Probate proceedings to each Heir of the Estate whose names and addresses are known to him or her. Such notice shall include a copy of the Tribal Court's order determining whether the Decedent died Testate or Intestate.

10.04 – Appointment of Administrator

A. An Administrator appointed by Tribal Court must be at least eighteen (18) years old and legally competent. Persons who have been convicted of any felony or misdemeanor involving moral turpitude may not serve as Administrator.

B. If the Decedent's Will expressly names a Person to serve as Administrator, the Tribal Court shall appoint that Person to serve as Administrator unless:

- i. The named Person does not meet the requirements of set forth in Section 10.04 (A), or
- ii. The named Person refuses to serve as an Administrator.

C. In appointing an Administrator, provided such Persons meet the requirements of Section 10.04 (A), the Tribal Court shall give priority to the following Persons in order:

- i. The surviving Spouse,
- ii. An Adult Child of Decedent
- iii. A Parent of Decedent.
- iv. A sibling of Decedent.

D. If none of the Persons listed in Section 10.04 (C) is able or willing to serve as Administrator the Tribal Court shall appoint an Administrator who meets the requirements of Section 10.04 (A).

10.05 – Administrator's Duties

A. The Administrator shall perform duties related to the administration of the Estate, including the following:

- i. Within ten (10) days of appointment, determine and file with the Tribal Court a list of all known relatives of the Decedent, their ages, their relationship to the Decedent, and their whereabouts if known;
- ii. Within thirty (30) days of appointment, contact the Enrollment Department to determine whether the Decedent had filed a Successor Form or Will with the Enrollment Department and, if a Successor Form or Will is on file, report the existence of that Successor Form or Will to the Tribal Court within ten (10) days of its finding.
- iii. Within thirty (30) days of appointment, unless exempt as a small Estate under Article IX of this Probate Code, provide the Tribal Court with a list of names and addresses of Creditors of the Estate sufficient for the Tribal Court to provide notice in accordance with

Section 10.08. The Administrator is subject to an ongoing duty to notify the Tribal Court of any new Creditors discovered at any time during the Probate process;

iv. Make an inventory and appraisal of the Personal Property in the Decedent's Estate and, in accordance with the ninety (90) day deadline set forth in Section 10.06, file the inventory and appraisal with the Tribal Court;

v. Subject to the approval of the Tribal Court and unless exempt as a small Estate under Article IX, ascertain and pay all of the debts and legal obligations of the Decedent;

vi. Distribute the Estate in accordance with the order of the Tribal Court and file receipts with the Tribal Court showing distribution of the Estate, and;

vii. Comply with Tribal Court orders related to the Administration of the Estate.

B. The Tribal Court shall have discretion to require the Administrator to post a bond to insure honest performance of their duties. Unless the Tribal Court finds it necessary, no bond shall be required of an Administrator who is the surviving Spouse, Child, or blood relative of the Decedent.

C. If, at any time after appointment, an Administrator does not adequately perform the duties required by Section 10.05 (A), the Tribal Court shall revoke his or her appointment.

D. The Tribal Court may revoke the appointment of the Administrator for any good cause.

10.06 – Inventory and Appraisal

A. Within ninety (90) days of appointment, the Administrator shall file with the Tribal Court an inventory in the form of an affidavit listing all property of the Estate passing under the Will, by laws of Intestacy, or through the directions of a Non-Testamentary Instrument which is in the possession or knowledge of the Administrator.

B. The inventory shall provide the appraised value of each item as of the date of the Decedent's death, and all encumbrances, liens, or other secured interests charged against any item and all other debts.

C. The appraised value may be an estimated value so long as there is a rational basis for the value provided. A formal appraisal is not required but may be ordered by the Tribal Court.

D. Notice of the filing of the inventory shall be served on each Heir and Creditor.

E. If the Administrator obtains knowledge of any additional property of the Estate, either as a result of the notice process or otherwise, the inventory shall be amended, and the procedures set forth in Section 10.06 shall be completed within thirty (30) days of acquiring such knowledge.

10.07 – Sale of Estate Property

A. No sale of any property of an Estate is valid unless made pursuant to an order of the Tribal Court.

B. After filing the inventory and appraisal and before full distribution of the Estate, the Administrator may petition the Tribal Court for authority to sell property of the Estate for purposes of paying the expenses of last illness and burial of Decedent, Estate administration, claims against the Estate, distribution, or any lawful purpose in the best interest of the Estate or the Heirs. If, in the Tribal Court's judgment, such sale is in the best interest of the Estate, the Tribal Court shall order such sale and prescribe the terms upon which the property shall be sold.

10.08 – Creditors

A. Unless it is determined by the Tribal Court pursuant to Article IX of this Probate Code that the Estate is exempt from the claims of General Creditors, the Tribal Court shall give notice to the public, the YAN Finance Department, Yavapai-Apache Nation Tribal Housing, and any known Creditors of Decedent for presentation of their claims against the Decedent's Estate. Such notice shall state:

- i. The name, date of death, and resident address of the Decedent at the time of his or her death;
- ii. The dates upon which the first notice was published and posted;
- iii. That all Persons having claims against the Estate are required to present such claims to the Administrator of the Estate, at a stated address, and file the claim with the Tribal Court within ninety (90) days after the first notice is given;
- iv. That a claim must include the name and address of the claimant, a statement of the facts or circumstances constituting the basis of the claim, and available documents evidencing the claim, and the amount of the claim; and,
- v. That, in the event no such claim is presented, it will forever be barred.

B. The Tribal Court shall cause notice to Creditors to be posted in at least three (3) conspicuous places on the Reservation and published for three (3) consecutive issues in a publication of general distribution on or near the Reservation.

C. The requirements of Section 10.08 (A) and (B) must be initiated within forty-five (45) days of the appointment of the Administrator.

D. The Tribal Court shall allow or reject, in whole or in part, all claims against the Estate timely presented. Within thirty (30) days of receipt of the claim, the Tribal Court shall provide notice to

the claimant at the address stated on the claim setting forth whether the claim has been allowed or rejected.

E. Within ten (10) days of allowing or rejecting any claim, the Tribal Court shall serve on any known Heirs and Creditors a notice setting forth the claims allowed or rejected and stating that 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 will be forever barred.

F. Payment to Creditors of the Decedent shall be made by the Administrator. All just claims of Creditors allowed by the Tribal Court shall be paid before distribution of the Estate as provided in Section 10.08 (I).

G. Objections to any denial of Creditor claims shall be governed by the process set forth in Section 15.03, Objection to Denial of Creditor Claims.

H. If a Creditor's claim is secured by any property of the Decedent, the Creditor may realize on the Creditor's security, whether or not the Creditor presented the claim as required by this Section, as provided under applicable law.

I. After payment of costs of Estate administration, the claims against or debts of the Estate shall be paid in the following order:

- i. Funeral expenses;
- ii. Claims of the family;
- iii. Claims of the Nation; and,
- iv. All other claims.

10.09 – Final Report of Administrator

A. Prior to the distribution of the Estate, the Administrator shall submit to the Tribal Court for approval a final report containing an accounting of all receipts and disbursements from the Estate, showing the following:

- i. The amount of any claims against the Estate and whether those claims have been allowed or rejected;
- ii. The amount necessary to pay debts or settle obligation against the Estate, pay expenses of administration, or an allowance to an Heir;
- iii. A detailed statement of the amount of property of the Estate;

iv. A detailed statement of all sums collected, and of all sums paid out, on behalf of the Estate, including documentation to support all sums paid out. This shall include whether any property of the Estate has been sold, mortgaged, leased, or exchanged, and the purpose of such action;

v. The proposed determination of Heirs, indicating the names, ages, addresses, and relationship to the Decedent and the proposed share and value thereof which each is to receive;

vi. A request for reasonable compensation to be paid to the Administrator, if any; and.

vii. A request that the Tribal Court set a hearing to approve the final report, to determine the Heirs of the Decedent and the share each is to receive, if any.

B. The Tribal Court shall serve a true and correct copy of the final report on each Heir of the Decedent at their last known address no later than five (5) days after the Administrator files the final report.

10.10 – Hearing Prior to Distribution of Estate

A. Upon the filing of the final report, the Tribal Court shall set a hearing for the approval of the Administrator’s final report. The hearing shall be set for a date no sooner than twenty (20) days following the Tribal Court’s receipt of the final report in order to allow the opportunity for objection.

B. On or before the time set for such hearing, any Heir, or other Person having an interest in the distribution of the Estate, may file an objection to the final report, or to the proposed determination of the Heirs or of the proposed share each Heir is to receive, stating the objections with specificity.

C. Objections to the final report shall be governed by the objection process set forth in Section 15.02.

10.11 – Order Allowing Distribution of Estate

A. After the hearing upon the final report, the Tribal Court shall enter an order:

i. Making determinations to any objections made to the final report under Section 15.02;

ii. Allowing the final report, either in whole or in part, as may be just and proper; and directing the Administrator to appropriate and expend funds to pay the unpaid claims, charges, or allowances against the Estate that were approved in the final report;

iii. Determining the Decedent's Heirs, indicating the names, ages, and addresses of each, and the share of the remaining Estate that each is to receive; and

iv. Directing the Administrator to distribute such share or shares to the Heirs entitled hereto.

10.12 – Closing the Estate

A. When the Estate is ready to be closed, the Administrator shall petition the Tribal Court for an order closing the Estate, discharging the administrator, and discharging the bond, if any. Such petition shall be accompanied by documentation supporting any sums paid since the order approving the final report and shall include a signed receipt for distributive share from each of the Heirs named in the order of distribution.

B. Upon finding that the Estate has been fully administered and is in a condition to be closed, the Tribal Court shall enter an order closing the Estate and discharging the Administrator.

10.13 – Reopening of Estate

A. An Estate may be reopened whenever necessary to dispose of a Decedent's property discovered after their Estate has been closed. The Tribal Court shall order distribution of the property to the Person or Persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the Estate.

B. An Estate may be reopened for good cause.

C. In the event that an Heir dies in the period of time between the initial closing of the Estate and the reopening of the Estate, the following process shall be followed:

i. In the event that the Heir leaves no Heirs of their own, the Heir shall be treated as predeceasing the Decedent for the purpose of the reopening of the Estate.

ii. In the event that the Heir leaves Heirs of their own, those Heirs shall inherit the portion of the reopened Estate that would have passed to the original Heir.

Article XI: Distribution of Intestate Estates

11.01 – Rules of Intestate Succession in Cases of a Distribution Plan

A. This Section applies where the Decedent dies Intestate and the Person(s) entitled to inherit from the Decedent under the laws of Intestate Succession set forth in Section 11.02 present an unanimously agreed-upon distribution plan to the Tribal Court.

B. The portion of the Estate of a Person dying Intestate, excluding any assets governed by Non-Testamentary Instruments, shall descend and be distributed in accordance with an unanimously agreed-upon distribution plan presented to the Tribal Court by the Person(s) entitled to inherit from the Decedent under the laws of Intestate Succession set forth in Section 11.02. The distribution plan may be informed by the culture and tradition of the Yavapai and Apache Peoples.

C. In the event that any Person(s) entitled to inherit from the Decedent under the laws of Intestate Succession set forth in Section 11.02 object, either verbally or in writing, before the Tribal Court, the provisions of Section 11.02 shall govern distribution.

11.02 – Rules of Intestate Succession In the Absence of a Distribution Plan

This Section applies where the Person(s) entitled to inherit from the Decedent under the laws of Intestate Succession set forth in this Section 11.02 have not presented an unanimously agreed-upon distribution plan to the Tribal Court. Subject to the provisions of this Probate Code, the portion of the Estate of a Person dying Intestate, excluding any assets governed by Non-Testamentary Instruments, shall descend and be distributed as follows:

A. If there is a surviving Spouse but no surviving Children, or if there are surviving Children all of whom are Children of the surviving Spouse and the Decedent, the surviving Spouse shall receive the entire Estate.

B. If there is a surviving Spouse and surviving Children, one or more of whom are not Children of the surviving Spouse, the Spouse shall receive one-half of the Estate and the surviving Children who are not Children of the surviving Spouse shall each take an equal share of the remaining one-half of the Estate.

C. If the Decedent leaves Children and no surviving Spouse, the Children shall each take an equal share of the entire Estate. If descendants of a deceased Child survive the Decedent, the share of that deceased Child's share shall go to his or her descendants in equal shares.

D. If the Decedent leaves no surviving Spouse, Children, or descendants of a deceased Child, the entire net Estate shall go to the first surviving relative(s) on the following list, in order of priority:

i. Parents in equal shares, except that a Parent whose parental rights over a Child has been lawfully terminated may not inherit from or through that Child.

ii. Siblings, in equal shares.

iii. Grandparents, in equal shares.

iv. Children of the grandparents, in equal shares.

v. Cousins in equal shares.

11.03 – Rules for Determining Decedent’s Children

A. A lawfully adopted Child shall be considered a Child of the adopted family in addition to the Child of his or her biological family unless the decree of adoption or tribal law provides otherwise.

B. A Child born after the death of Decedent is considered as living at time of the death of Decedent provided that the Child was conceived, or likely conceived, during the life of the Decedent.

C. For purposes of Intestate succession through, and from any Child, the effects and treatment of the Parent-Child relationship shall not depend on whether or not the Parents have been married. However, a Person born out of wedlock is not treated as the Child of the father unless the Person is openly and notoriously so treated by the father; unless paternity has been formally recognized during the life of the father by affidavit of Paternity, a Hospital Paternity Program Acknowledgement of Paternity, Court Order for Paternity, or Birth Certificate; or unless other clear and convincing evidence provided to the Tribal Court establishes paternity.

D. In the event that paternity is in question and proceedings begin to establish paternity, the Tribal Court shall stay Probate proceedings to allow paternity proceedings to be completed.

11.04 – A Beneficiary’s Failure to Survive Decedent

A. In the case of Intestate succession under this Probate Code, if a Beneficiary fails to survive the Decedent by at least 120 hours, as established by clear and convincing evidence:

i. The Beneficiary shall be deemed to have predeceased the Decedent for the purpose of Intestate succession; and

ii. The Heirs of the Decedent shall be determined in accordance with this Article XI.

11.05 – Decedent With No Surviving Relatives

If the Decedent leaves no surviving relatives identified in Section 11.02, the entire net Estate shall go to the Nation.

11.06 – Effect of Homicide

A. No Heir by Killing shall in any way acquire any interests in the Decedent’s property.

B. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the Decedent conclusively establishes the convicted Person as the Decedent's killer for purposes of this Probate Code.

C. In the absence of a conviction, the Tribal Court, on the petition of an Interested Party, shall determine whether, under the preponderance of evidence standard, the Person would be found

criminally accountable for the felonious and intentional killing of the Decedent. If the Tribal Court determines under that standard that the Person would be found criminally accountable for the felonious and intentional killing of the Decedent, the determination conclusively establishes that Person as the Decedent's killer for purposes of this Probate Code.

D. If either Section 11.06 (B) or (C) apply, then the Heir by Killing shall be considered to have predeceased the Decedent.

Article XII: Distribution of Testate Estates

12.01 – Duty to Present Will to Tribal Court

A. The Enrollment Department shall deliver a certified copy of the Will to the Tribal Court upon request of the Tribal Court.

B. Any Person who has custody of the Will shall deliver the Will to the Tribal Court upon request of the Tribal Court. Any failure of a Person to deliver the Will within thirty (30) days of a request of the Tribal Court shall render the custodian liable in Tribal Court for any damages caused by the failure to deliver the Will.

C. A Person who has custody of the Will shall deliver a copy of the Will to the Bureau of Indian Affairs in the event that the Decedent's Estate includes a Trust Asset.

12.02 – Proving the Will

A. A Will filed with the Tribal Court shall be considered self-proving if it is signed by the Testator and includes the notarized affidavit of two attesting witnesses that identifies such Will as being the Will which the Decedent executed and declared to be their last Will.

B. If the evidence of none of the attesting witnesses is available, the Tribal Court may allow proof of the Will by testimony, notary records, or other evidence that the signature of the Testator or at least one of the witnesses is genuine.

C. Any challenges to the validity of a Will shall take place within ninety (90) days after a Will has been admitted to Probate, or within such reduced time as the Tribal Court shall establish in the case of a small Estate. Any challenges to Will validity shall be governed by the process set forth in Section 15.05.

12.03 – Effect of Revocation

A. A Will, or any part thereof, shall be revoked by a subsequent, valid Will that revokes the previous Will, or part thereof, expressly or by inconsistency.

B. A Will shall be revoked by the destruction of the Will with the intent of revoking the Will by the Testator or by another Person who is both in the presence of and acting under the direction of the Testator.

C. In the event that a Testator revokes a Will and files a subsequent, valid Will with the Enrollment Department, the Enrollment Department shall return the revoked Will to the Testator. The Enrollment Department shall return the revoked Will to the Testator in-person, along with a copy of a receipt signed by both Enrollment Department personnel and Testator, at the time that the Testator files the subsequent, valid Will. The Enrollment Department shall retain the original return receipt in its records.

12.04 – Effect of Divorce on a Will

Unless a Will specifically provides otherwise, the finalization of a lawful divorce, subsequent to the execution of a Will, shall result in the Tribal Court deeming the divorced Spouse to have predeceased the Decedent. In the event that the Testator dies subsequent to the filing for divorce but prior to the finalization of the divorce, the Tribal Court shall consider the divorce to be finalized.

12.05 – Effect of a New Spouse after Execution of Will

A. If the surviving Spouse of a Testator married the Testator after the Testator executed his or her Will, the surviving Spouse shall receive the share in the Testator’s Estate that the Spouse would have received if the Testator had died Intestate unless:

- i. The Tribal Court finds, based on the Will and other evidence, that the Will was made in contemplation of the marriage of the Testator to the surviving Spouse;
- ii. The Will expresses the intention that the Will is to be effective notwithstanding any subsequent marriage; or
- iii. The Testator provided for the Spouse by a transfer of funds or property outside the Will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the Testator or through a reasonable inference based on the amount of the transfer or other evidence.

12.06 – Effect of an Omitted Spouse

A. If the surviving Spouse is omitted from the Will of the Testator, the surviving Spouse shall receive the Intestate share in the Testator’s Estate that the Spouse would have received if the Testator had died Intestate if:

- i. The Testator and surviving Spouse were continuously married without legal separation for the five-year period preceding the Decedent’s death; or

ii. The Testator and surviving Spouse have a surviving Child who is the Child of the Testator.

B. The provisions of Section 12.06 (A) shall not apply if the Tribal Court finds either of the following:

i. There is evidence that the Testator adequately provided for the surviving Spouse and any Minor Children by a transfer of share of the Estate outside of the Will; or

ii. The Will expressly states that the surviving Spouse is not to inherit from the Decedent's Estate.

12.07 – Effect of Omitted Children

A. If the Testator has no living Child mentioned in the Will when the Testator executed the Will, any omitted Child shall receive a share of the Estate equal to the value of the share of the Estate the omitted Child would have received had the Testator died Intestate unless the Tribal Court finds that one of the following apply:

i. There is evidence that the Testator adequately provided for the omitted Child by a transfer of share of the Estate outside of the Will; or

ii. The Testator's intent to omit the Child is established by express statement of the Testator.

B. If the Testator had one or more Children living when the Testator executed the Will and the Will devised property to one or more of the then-living Children, an omitted Child is entitled to a share of equal value to the shares received by the Children to whom devises were made under the Will unless the Tribal Court finds that one of the following apply:

i. There is evidence that the Testator adequately provided for the omitted Child by a transfer of share of the Estate outside of the Will, or

ii. The Testator's intent to omit the Child is established by express statement of the Testator.

C. The determination of whether a Child qualifies as an omitted Child shall not depend on whether or not the Parents have been married. However, a Person born out of wedlock is not treated as the Child of the father, including an omitted Child, unless the Person is openly and notoriously so treated by the father or unless paternity has been judicially determined during the life of the father or in some other manner which satisfies the Tribal Court by clear and convincing evidence that paternity has been conclusively established.

D. In the event that paternity is in question and proceedings begin to establish paternity, the Tribal Court shall stay Probate proceedings to allow paternity proceedings to be completed.

12.08 – Effect of Homicide

The provisions of Section 11.06 shall apply to the distribution of Testate Estates.

12.09 – Rules of Construction and Interpretation

A. The intention of the Testator, as expressed in the Testator’s Will, shall control the descent and distribution of the Testator’s Estate.

B. The following rules of construction apply unless a contrary intent is expressly included in the Will:

i. A Will shall apply to all Personal Property which the Testator owned at death, including any property acquired after the execution of the Will.

ii. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such “brothers,” “sisters,” “nieces,” or “nephews,” are construed to include both types of relationships.

iii. A Beneficiary must survive Testator by 120 hours. A Beneficiary who does not survive the Testator by 120 hours is treated as if they predeceased the Testator, unless the Testator’s Will contains language dealing explicitly with simultaneous deaths, including common disaster, or requiring that the Beneficiary survive the Testator or survive the Testator for a stated period in order to take under the Will.

iv. Property gifted by the Testator to a Beneficiary in the Testator’s lifetime shall be treated as a satisfaction of a devise to that Person, in whole or in part, only if the Will provides for deduction of the lifetime gift. For the purpose of partial satisfaction, property given during the lifetime is valued as of the time the Beneficiary came into possession or enjoyment of the property or as of the time of death of the Decedent, whichever comes first.

Article XIII: Distribution to Minors and Incompetent Persons

13.01 – Distribution to a Minor

A. When a Tribal Court order provides for distribution of an Estate, Home, or interest therein to a Minor, it shall be required that the Tribal Court appoint a Conservator, as set forth in Section 13.03, to oversee the Minor’s assets distributed pursuant to this Probate Code, including a Home if applicable, until the Minor becomes an Adult. The assets shall be paid or delivered to such Conservator prior to the discharge of the Administrator in the original Probate proceeding, if applicable.

B. Where a Successor Form or other Non-Testamentary Instrument provides for distribution of an Estate, Home, or interest therein to a Minor, and there is no Probate proceeding before the Tribal Court pertaining to the Decedent, an Interested Party may file a petition for the appointment of a Conservator to oversee the Minor's assets distributed pursuant to that Non-Testamentary Instrument until the Minor becomes an Adult.

C. A petition filed pursuant to Section 13.01 (B) shall set forth the name and address of the petitioner; the name, address, and date of birth of the Minor; the petitioner's relationship to the Minor; the name and address of the Minor's nearest relative(s) known to petitioner; a description of the Successor Form or other Non-Testamentary Instrument; and any relevant conditions and circumstances which warrant the appointment of a Conservator.

D. Upon receipt of a petition filed pursuant to Section 13.01 (B), the Tribal Court shall determine whether to appoint a Conservator. If the Tribal Court appoints a Conservator, it shall follow the appointment process set forth in Section 13.03 of this Probate Code.

13.02 – Distribution to an Adult Incompetent Person

When a Tribal Court order, Successor Form, or Non-Testamentary transfer provides for the distribution of an Estate, Home, or interest therein to an Adult Incompetent Person, the provisions of the Yavapai-Apache Nation Adult Guardianship Code, or the applicable law in the jurisdiction overseeing the Adult guardianship, shall govern. The Guardian appointed by the Tribal Court, or other court of competent jurisdiction, shall serve as the Conservator of the Adult Incompetent Person's assets distributed pursuant to this Probate Code.

13.03 – Appointment of Conservator of a Minor's Estate

A. The Tribal Court shall appoint a Person as Conservator of a Minor's Estate. The following are entitled to consideration for appointment:

- i. A Guardian of the Minor appointed by the Tribal Court pursuant to the Yavapai-Apache Nation Children and Families Code or by another court of competent jurisdiction.
- ii. A Parent of the Minor.
- iii. A Person nominated by the Will of the deceased Parent.
- iv. A permanent Foster Parent.
- v. Any relative of the Minor.
- vi. A Person who has been determined by Tribal Court to have a Significant Familial-Type Relationship to the Minor.

vii. A licensed Fiduciary.

B. With respect to the Persons listed in Section 13.03 (A), the Tribal Court shall select the one it determines is best qualified to serve.

C. For the purposes of 13.03 (B), “best qualified” includes, but is not limited to, a finding that it is in the physical, emotional, or financial best interest of the Minor and the Minor’s Estate to choose a certain Person to serve as Conservator.

D. Objections to the appointment of a Conservator shall be governed by the process set forth in Section 15.06.

13.04 – Appointment of Conservator of a Minor’s Estate in Cases Where the Minor has an Existing Guardian

A. If a Minor already has an existing Guardian and that existing Guardian is appointed Conservator, the Conservator’s duties set forth in Section 13.05 shall apply in addition to any duties required of the Guardian by the Children and Families Code or the applicable law in the jurisdiction overseeing the guardianship.

B. If a Minor already has an existing Guardian and that existing Guardian is not appointed Conservator, the appointed Conservator shall assume sole responsibility and fiduciary duty, as set forth in Section 13.05, for the expenditure and use of the Minor’s assets, Home, or income distributed pursuant to this Probate Code.

13.05 – Duties of Conservator of a Minor’s Estate

A. The Conservator shall deposit or invest any funds distributed to a Minor from a Decedent’s Estate in an account in an insured financial institution for the benefit of the Minor subject to withdrawal only upon the order of the Tribal Court until said Minor becomes an Adult.

B. In addition to the duty set forth in Section 13.05 (A) of this Probate Code, the Duties of the Conservator of a Minor’s Estate shall be the same as for Guardians in the Yavapai-Apache Nation Adult Guardianship Code, Chapter Three, Section 302, Annual Accounting, and Section 304, Powers and Duties of Guardian, as such duties relate to the oversight of the Minor’s assets distributed pursuant to this Probate Code.

13.06 – Discharge of Conservator of a Minor’s Estate

A. The Tribal Court may discharge the Conservator for a dereliction of the Conservator’s duties at any time. In the event the Tribal Court discharges the Conservator, the Tribal Court shall appoint a new Conservator in accordance with Section 13.03.

B. Unless discharged by the Tribal Court under Section 13.06 (A), the Conservator shall serve until the Minor becomes an Adult. When the Minor becomes an Adult, the Conservator shall turn over the balance of the assets to the Minor, petition the Tribal Court for discharge based on the Minor becoming an Adult, and provide a final accounting of the Estate.

Article XIV: Distribution of Cultural Items

Notwithstanding the provisions of this Probate Code related to the distribution of Estates, Cultural Items belonging to, or in the custody of, the Decedent shall be distributed in accordance with the directions left by the Decedent. If the Decedent leaves no directions, Cultural Items shall be distributed in accordance with the customs and traditions of the Yavapai or Apache Peoples.

Article XV: Objections, Challenges, and Appeals

15.01 – General

A. In the event of a timely objection or challenge governed by this Article XV, the Tribal Court shall not distribute the Estate until the challenge or objection has been finally resolved.

B. Except as otherwise provided in this Probate Code, the standard of proof required in a proceeding brought pursuant to this Article is the preponderance of evidence.

15.02 – Objections to Classification of Estate, Final Report, or Distributions

A. Following the timely submission of the objection to the classification of a small Estate or the distribution thereof pursuant to Section 9.02 (D) or the contents or validity of a Final Report submitted pursuant to Section 10.10 (B), the Tribal Court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected.

B. It is a rebuttable presumption that the Administrator has acted with full capacity and free from undue influence and duress in writing the Final Report.

C. The Person raising an objection to a classification of an Estate has the burden of providing evidence to show that the Estate was improperly classified.

D. An Interested Party that challenges the distribution of an Estate has the burden of establishing the invalidity of the proposed distribution due to undue influence, fraud, duress, mistake, revocation, or homicide.

15.03 – Objections to the Denial of Creditor Claims

- A. All objections to denial of Creditor claims made pursuant to Section 10.08 (G) shall be made directly to the Tribal Court within thirty (30) days of the denial. Any claim not brought within thirty (30) days is forever barred.
- B. Following the timely submission of the objection to the denial of a Creditor claim, the Tribal Court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected.
- C. The Person bringing the objection bears the burden of establishing the validity of the Creditor claim.

15.04 – Challenges to Successor Forms

- A. Any Person challenging the validity of a Successor Form pursuant to Section 6.02 (H) must bring such claim to Tribal Court within ninety (90) days of the death of Decedent or the claim is forever barred. In the event of a Successor Form contest, the Tribal Court shall take no further action with respect to the distribution of the Estate until a hearing has occurred.
- B. The Tribal Court shall set the matter for hearing as in other civil proceedings and determine whether the challenge to the validity of the Successor Form should be allowed or rejected.
- C. It is a rebuttable presumption that a Person who executes a Successor Form is presumed to have capacity to execute the governing instrument and to have done so free from undue influence and duress.
- D. An Interested Party that challenges the validity of a Successor Form has the burden of establishing the invalidity of that Successor Form due to of lack of intent or capacity, undue influence, fraud, duress, mistake, homicide, or revocation.
- E. Upon considering all relevant evidence concerning the Successor Form, the Tribal Court shall enter an order affirming the validity of the Successor Form or rejecting the Successor Form and ordering that the distribution of the Estate occur as if the Decedent had died without a Successor Form.

15.05 – Challenges to Wills

- A. Any challenges to the validity of a Will made pursuant to Section 12.02 (C) shall take place within ninety (90) days after a Will has been admitted to Probate, or within such reduced time as the Tribal Court shall establish in the case of a small Estate. In the event of a Will contest, the Tribal Court shall take no further action with respect to the Probate of the Estate but shall set a day and hour for hearing.

B. An Interested Party that challenges the validity of a Will has the burden of establishing the invalidity of that Will due to of lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, homicide, or revocation.

C. Relevant evidence shall be presented 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.

D. Upon considering all relevant evidence concerning the Will, the Tribal Court shall enter an order either affirming the admission of the will to Probate or rejecting such Will and ordering that the Probate of the Decedent's Estate proceed as if the Decedent had died Intestate.

15.06 – Objections to Appointment of a Conservator

On the request of a Person who was not selected to be a Conservator by the Tribal Court pursuant to Section 13.03, the Tribal Court shall make a specific finding regarding the Tribal Court's determination of best qualified and why the Person was not appointed. The request must be made within ten (10) days after the entry of the order.

15.07 – Appeals

Appeals from any decision of the Tribal Court issued under this Probate Code shall be made in accordance with the Yavapai-Apache Rules of Civil Procedure and Rules of the Appellate Court.