

Chapter 28

INHERITANCE

- Sec. 28-1. Inheritance laws of North Carolina adopted.
- Sec. 28-2. First Generation heirs.

Sec. 28-1. Inheritance laws of North Carolina adopted.

(a) For purposes of determining the identity of the lawful heirs of Tribal members for the inheritance of both personal and real property, the Tribal Council does hereby adopt the laws of intestate succession and other inheritance laws of the State of North Carolina. Exception to North Carolina inheritance law: The Tribe follows "per stirpes" distribution rather than the North Carolina rule of per capita distribution.

(b) Upon written request from the Cherokee Court or the BIA Realty Program, the Tribal Enrollment Office shall provide a list of the descendants of a deceased enrolled member. Such list shall be based on documentation on file with the Enrollment Office and shall not include descendants who are not recognized as heirs under North Carolina law, including the following:

- (1) Children who have been formally adopted are not the heirs of their birth parents, but are the heirs of their adoptive parents.
- (2) Children born out of wedlock are not the heirs of a putative father, unless they have been recognized as his children by a court order or by a formal acknowledgment duly executed by the putative father.

The Enrollment Office shall consult with the Office of the Attorney General when in doubt about whether the documentation on file establishes that a descendant is an heir.

(c) The Cherokee Court and BIA Realty shall establish such procedures as are necessary to ensure that:

- (1) A surviving spouse married to the decedent at the time of his or her death is included as an heir, and
- (2) Notice of the descendant list is posted or published for at least 10 days to allow any potential heir who is not listed the opportunity to present documentation proving that s/he is an heir.

The final determination regarding the heirs of a deceased enrolled member shall be made by the

Cherokee Court for personal property and by the Tribal Council for real property. Decisions of the Cherokee Court may be appealed to the Cherokee Supreme Court; decisions of the Tribal Council are not subject to appeal to the Cherokee Supreme Court.

(Res. No. 10, 10-11-1935; Res. No. 57, 11-2-1937; Ord. No. 113, 2-28-2000; Ord. No. 109, 8-14-2004)

Sec. 28-2. First Generation heirs.

(a) *Definition.* The Charter and Governing Document of the Eastern Band of Cherokee Indians, as enacted and adopted May 8, 1986, and amended by Tribal referendum on October 8, 1987, provides in section 16 for the First Generation of an enrolled member to enjoy all property, both real and personal, that is held in an enrolled member's possession at their death. By definition in the Charter, a First Generation Descendent shall include all children born to or adopted by an enrolled member.

(b) *Use.* A First Generation Descendent of an enrolled member of the Eastern Band of Cherokee Indians shall be allowed to use or occupy Cherokee trust lands that were validly assigned to their enrolled parent on the date of their death. Such use shall be permitted only if the enrolled parent assigns such right to a non-enrolled child by a valid written will. Use or occupancy shall include, but not be limited to: the right to occupy a house or dwelling, to operate a business owned or operated by an enrolled parent and located on lands assigned to them by the Tribe, to make agricultural use of lands assigned to such enrolled parent.

(c) *Prohibited use.* A First Generation Descendant shall not be authorized to decrease the value of their parents holding by either altering or removing permanent improvements, by selling or depleting any minerals, or by selling or cutting timber. First Generation Descendants shall have the right to cut wood for their personal non-business use.

(d) *Transfer valuation.*

- (1) A First Generation Descendant shall have the right to rent, lease, or transfer a possessory holding to an enrolled member.

- (2) All such rentals, leases or transfers must be approved by the Tribe and must be at fair market value. The Business Committee shall not approve a lease of such property for a First Generation Descendant for a period of time longer than the actuarial life expectancy of any individual descendant lessor.

(e) *Determination of value.* In the event of a dispute concerning the fair market rental value of property to be rented, leased, or transferred by a non-enrolled First Generation Descendant, the value shall be established by professional appraisal. In the event the appraisal value is not agreed upon by the Descendant, the Tribe and the BIA, the fair market value shall be established by arbitration, with the costs of arbitration to be shared equally between the descendants and the Tribe.

(f) *Certificate.* The Realty Office shall issue a certificate for use of trust lands to be identified as "First Generation Heir Certificate," to each such Descendant who applies and qualifies. The issuance of each certificate must be specifically approved by the Tribal Business Committee, as well as all leases entered with First Generation Descendants as lessors. The forms of the certificate itself shall be approved by the Business Committee, which shall contain the pertinent provisions of this chapter on the reverse side of the certificate form.

(Ord. No. 365, 7-19-1989)