

## Chapter 90

### **BURIAL\***

- Sec. 90-1. Expenses.
- Sec. 90-2. Burial prohibited on certain property.
- Sec. 90-3. Public access to graves and cemeteries on possessory holdings.

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\***Cross references**—Real property, ch. 47; zoning, ch. 61; skeletal remains and burial site preservation, ch. 70.

**Sec. 90-1. Expenses.**

(a) The Tribe shall contribute the sum of \$500.00 toward the burial expenses of Tribal members who are at least 65 years old, who are indigent and without an estate adequate to pay for their burial.

(b) For purposes of this section, the term "indigent" shall mean without resources or financial means to pay for burial. Persons with property, income, assets or an estate sufficient to pay for burial expense shall not be deemed to be indigent.

(c) In the case of indigent members who die while living away from the Reservation but whose family desire an on-Reservation burial, the Tribe shall also pay reasonable transportation expenses to return the deceased member to the Reservation.

(Res. No. 35, 10-18-1948; Res. No. 62, 10-24-1950; Res. No. 899, 9-21-1965; Res. No. 82, 10-30-1981)

**Sec. 90-2. Burial prohibited on certain property.**

(a) It is unlawful to bury a deceased person on property assigned to or leased from the tribe or a tribal entity, or on property that is subject to a mortgage, deed of trust or loan guarantee provided by the Tribe, a tribal entity or a commercial lender.

(b) It is unlawful to bury a deceased person on the possessory interest of another without the prior written consent of the holder of that possessory interest. This paragraph does not apply if the burial is in an established cemetery identified and surveyed separately on a survey map and described separately in a property description, and to which public access is provided in the property description or by tribal ordinance.

(c) It is unlawful to build or place a road, driveway, home or other fixture within 10 feet of a known human grave.

(d) A violation of this section is also a violation of Cherokee Code Sec. 14-10.11 (injuring real property), and may constitute a violation of other sections of the Cherokee Code, as circumstances indicate.

(e) The Cherokee Court shall order the violator of this section to move the deceased person at the violator's expense if movement is requested in writing by the injured party delivered to the violator within two years of burial, and the injured party proves to the court by a preponderance of evidence and by virtue of a complaint and evidence provided to the Court, that the violator was responsible for having the deceased buried in the offending location and did so without permission of the person holding or entitled to possession of that possessory interest. In addition, the Court may order the violator to pay the injured party \$1,000 for diminution in value of the property. A deceased person buried in violation of this section shall be moved notwithstanding the prohibitions expressed in Cherokee Code Chapter 70 or those that may be imposed by Tribal custom. The court shall order the deceased to be moved upon a showing that this section was violated.

(f) The remedies provided in this section are not exclusive and may be imposed in addition to other remedies provided in the Cherokee Code for violation of Tribal law.

(g) A person or entity, other than the violator, that physically digs the grave and interrs the deceased is exempt from liability in this section if it did not select the burial site and is merely acting at the request of the violator, and did not know or have reason to know that permission to bury at that site was not obtained by the violator. (Ord. No. 96, 6-28-2004; Ord. No. 625, 2-23-2005)

**Sec. 90-3. Public access to graves and cemeteries on possessory holdings.**

(a) The persons enumerated in this Section shall have a right to access graves, gravesites, burial sites and cemeteries (collectively "gravesites") located on any possessory holding on Tribal trust land, subject to the provisions of this Section.

(b) Any person who has the written permission of the person who owns the possessory holding on which the subject gravesite is located may access the site as agreed by the parties.

(c) If a person does not have the permission of the person who owns the possessory holding at issue, only the following persons may enter the possessory holding to restore, maintain or visit a gravesite:

- (1) A family member or descendant of the person whose remains are reasonably believed to be interred at the site;
- (2) A family member's designee; or
- (3) An employee of the Tribal government, or its contractors, performing official Tribal government business. All reasonable attempts to contact the possessory holder will be made prior to entering upon the possessory holder's property.

(d) Regardless of who is seeking access, individual possessory holders may restrict access across their property to certain times during daylight hours to protect their property and privacy. Nothing in this Section shall be construed to limit the authority of a possessory holder to use and improve their holding as allowed under Tribal law; provided, however, that the right of access guaranteed in this Section may not be diminished, and if an established access route is permanently blocked or made unusable, the possessory holder shall, allow access via an alternative route; provided further that the possessory holder is not required to physically create the alternative route, but must allow access over it.

(e) Access must be performed via routes, if any, established on or before October 1, 2007. New routes created after that date may be created only with the permission of the possessory holder who owns the holding on which the gravesite is located. Access routes cannot be changed or expanded without permission of the possessory holder who owns the holding at issue.

(f) It shall be unlawful for any person to do any of the following:

- (1) Destroy, mutilate, deface, inure or remove any of the following:
  - a. Any tomb, monument, gravestone or other structure or thing placed at any gravesite;

- b. Any fence, railing or other structure or thing placed in any gravesite;
- c. Any fence, railing or other work used for the protection or ornamentation of any tomb, monument, gravestone or other structure or for the ornamentation or protection of any gravesite.

- (2) Willfully destroy, cut, break, remove or injure any tree, flower shrub or plant planted or growing in any gravesite, except as such action may be reasonably interpreted to be for the maintenance or improvement of the gravesite.
- (3) Take away, disturb, vandalize, destroy, tamper with or deface any tombstone, headstone, monument, grave marker, grave ornamentation, grave artifacts, shrubbery, flowers, plants or other articles within any gravesite erected or placed to designate where a body is interred or to preserve and perpetuate the memory and name of any person, except as such action may be reasonably interpreted to be for the maintenance or improvement of the gravesite.
- (4) Throw, place or put any refuse, garbage or trash in, on or around any gravesite.
- (5) Commit any other depredation within the limits of any gravesite.

(g) *Enforcement.* The Cherokee Tribal Court may take all actions necessary and proper to enforce compliance with this Section including, but not limited to, prohibiting the performance of acts within the purview of this Section, imposing fines, issuing temporary injunctions or stop orders and directing that any approval be suspended or revoked.

(h) *Fine.* Any person or entity that violates this section may be fined an amount not to exceed \$50.00 per day for each day the violation occurs.

(i) *Unlawful conduct.* Activities governed by this section must be performed in compliance with applicable law including, but not limited to, restrictions on the use of real property expressed

in Cherokee Code Chapter 47; restrictions on burial expressed in Chapter 90, and restrictions on criminal activities expressed in Chapter 14.

(j) *Remedies not exclusive.* Any right or remedy expressed in this Section is not exclusive. The Tribe reserves the right to enforce compliance with this Section by any and all actions available under law, including but not limited to civil and criminal actions.

(Ord. No. 189, 4-6-2008)