

**SOUTHERN UTE INDIAN TRIBAL CODE**

**TITLE 9**

**PROBATE CODE**

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## TITLE 9

### SOUTHERN UTE INDIAN TRIBAL CODE

#### PROBATE CODE

- 9-1-101. Short Title.** This code shall be known and may be cited as the Southern Ute Probate Code.
- 9-1-102. Purposes, Rules of Construction.** This code shall be liberally construed and applied to promote the underlying purposes and policies. The underlying purposes and policies of this code are:
- (1) To clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
  - (2) To discover and make effective the intent of a decedent and distribution of his property;
  - (3) To promote a speedy and efficient system for settling the estate of the decedent and making distribution to his successors;
  - (4) To facilitate use and enforcement of certain trusts; and
  - (5) To make uniform the law.
- 9-1-103. Effect of Fraud and Evasion.** Whenever fraud has been perpetrated or is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person or parent other than a bona fide purchaser (benefiting from the fraud) whether innocent or not. Any proceeding must be commenced within 2 years after discovery of the fraud.
- 9-1-104. Evidence as to Death.**
- (1) A certified or authenticated copy of the death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is on the face of it, proof of the fact, place, date and time of death, and the identity of the decedent.
  - (2) The death of a person who is absent for a continuous period of 7 years during which he has not been heard from or whose absence is not satisfactorily explained after diligent search or inquiry is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

**9-1-105. Jurisdiction.** The Southern Ute Indian Tribal Court shall have jurisdiction over:

- (1) The affairs and estates of decedents, missing persons, and persons to be protected who are residents on the Southern Ute Indian Reservation; and
- (2) The property of nonresidents which is located within the exterior boundaries of the Southern Ute Indian Reservation.

**9-1-106. Small Estates.**

- (1) **The Collection of Personal Property by Affidavit.** At any time 10 or more days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument mentioned above to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:
  - (a) The fair market value of the entire estate, wherever located less liens and encumbrances does not exceed \$1,000;
  - (b) At least 10 days have elapsed since the death of the decedent;
  - (c) No application or petition for appointment of personal representative is pending or has been granted in any jurisdiction; and
  - (d) The claiming successor is entitled to payment or delivery of the property.
  - (e) The affidavit shall provide the court with the names and addresses of all heirs, brothers and sisters over the age of eighteen, parents, grandparents and any other person of whom the petitioner has knowledge has an interest in the small estate. The clerk of the court shall send a copy of the affidavit to all listed persons. Thereafter, the clerk will send listed persons notification of any hearing and copies of all pleadings, motions and orders.
- (2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon presentation of an affidavit as provided in subsection (1) of this section.

**9-1-107. Effect of Affidavit.**

- (1) The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not

required to see the application of the personal property or evidence thereof, or to inquire into the truth of any statement in the affidavit.

- (2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the person entitled thereto.
- (3) Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable to any personal representative of the estate or to any other person having a superior right.

**9-1-108. Small Estate Administration.** If it appears from the inventory and appraisal that the value of the entire estate less liens and encumbrances does not exceed the value of personal property held by or in the possession of the person as fiduciary or trustee, exempt property allowance, cost and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative without giving notice to creditors may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided herein.

**9-1-109. Small Estate Closing Statement.**

- (1) Unless prohibited by order of the court, and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures herein by filing with the court at any time after disbursement and distribution of the estate a verified statement stating that:
  - (a) To the best knowledge of the personal representative the value of the entire estate less lands and encumbrances do not exceed cost and expenses of administration, reasonable and necessary medical hospital expenses of the last illness of the decedent;
  - (b) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and
  - (c) The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants (of whom he is aware) whose claims are neither paid nor barred, and has furnished a full account in writing of his administration to the distributees whose interests are affected.

- (2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of a personal representative terminates.
- (3) A closing statement filed under this section has the effect of closing the estate.

**9-1-110. Reference to Other Law.** The law of the State of Colorado relative to decedents' estates may be referred to and followed in situations where this Probate Code provides no guidance regarding the handling of decedents' estates or descent in distribution.

**9-1-111. Administration of Estates Other Than Small Estates.**

- (1) Any person claiming to be an heir or a creditor of any member of the Southern Ute Indian Tribe or any other person over whom the Southern Ute Indian Tribe has jurisdiction may file a petition for appointment as personal representative of an estate with the Clerk of the Southern Ute Indian Tribal Court.

The petition shall provide the court with the names and addresses of all heirs, brothers and sisters over the age of eighteen, parents, grandparents, and any other person of whom the petitioner has knowledge has an interest in the estate. The clerk of the court shall send a copy of the affidavit to all listed persons. Thereafter, the clerk will send listed persons notification of any hearing and copies of all pleadings, motions and orders.

- (2) All procedures shall be conducted in accordance with the civil procedure of this Code.
- (3) The court shall thereupon appoint a personal representative of the estate who shall take possession and control of the property of the decedent until the administration of the estate has been completed and he has been discharged by order of the court.
- (4) Upon his appointment, the personal representative will be issued Letters of Administration to give him the power to collect all personal property of the decedent and all deeds and other matters relating to real property of the decedent. This does not include any property within the federal trust relationship.
- (5) It shall be the duty of the personal representative to preserve and protect the property for the benefit of the estate and its heirs.
- (6) Prior to the appointment of the personal representative, the court shall have authority to take possession and control of the property.

- (7) The court, upon petition, may within reason allow any interested person to intervene in a probate action and thereafter to receive copies of all motions, pleadings and orders.
- (8) If a minor is an heir or listed person in a probate action, the court may allow the intervention of any person who in the court's discretion would be in the best interests of the child.

**9-1-112. Wills.**

- (1) **Lodging a Will.** Every custodian of a will shall deliver it to the Southern Ute Indian Tribal Court within 10 days after decedent's death.
- (2) **Who May Make a Will.** Anyone over 18 years of age or older may make a will if they are of sound mind and disposing memory.
- (3) **Will Contents.** A will in order to be valid should contain the following:
  - (a) The maker's name;
  - (b) A description of the property to be bequeathed and its location;
  - (c) The name of the person or persons to whom the property is to be left;
  - (d) The date;
  - (e) The maker of the will shall sign the will in front of 2 witnesses who will verify his signature or his mark; or if the will is written by the maker of a will or at his direction and is signed without witnesses, the signature may be proved and the will admitted to probate.
- (4) **Clerk of the Court to Keep Wills.** The clerk of the Southern Ute Indian Tribal Court is authorized to take wills and keep them in a safe place and issue a receipt in return. A will may be released only as follows:
  - (a) Upon presentation of the receipt by the person who lodged the will or if the receipt is unavailable upon written verified request by the person who lodged the will; or
  - (b) Upon request by the court or next of kin to lodge the will with a court of appropriate jurisdiction.
- (5) **Contested Will.**
  - (a) A will may be proven by the affidavit of the attesting witnesses identifying the signature of the testator and affirming that the will was executed by

decedent in the presence of witnesses and declared by him to be his last will and testament and that he was under no duress or fraud.

- (b) If there are no witnesses, a will may be proven if there is evidence that establishes the maker's writing and signature.
  - (c) In the event that any person contests the validity of a will, the court shall take no further action until a hearing has been held to establish the validity of the will.
  - (d) Upon completion of the hearing or hearings regarding the validity of the will, the judges of the tribal court shall either affirm the will and order it admitted to probate or reject the will and order the administration of the decedent's estate as if the decedent had died without executing a will.
- (6) **Revocation by Divorce.** If, after executing a will, the testator is divorced or his marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision preferring a general or a special power of appointment on the former spouse, and any nomination of the former spouse as personal representative, trustee, conservator, or guardian unless the will expressly provides otherwise.
- (7) **Simultaneous Death Clause.**
- (a) Where title to property or the devolution thereof depends upon priority of death, and there is no sufficient evidence that the persons have died other than simultaneously the property of each person shall be distributed as if he had survived except as provided otherwise.
  - (b) A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator unless the will of the decedent contains some language dealing explicitly with a stated period in order to take under the will.

**9-1-113. Claims.**

- (1) Creditors of the estate, who have claims against the decedent, shall file their claims with the clerk of the court.
- (2) It shall be the duty of the personal representative upon appointment, or the court if no personal representative is appointed, to give written notice in a newspaper of general circulation on the Southern Ute Indian Reservation, of the decedent's death and asking that all claims be filed with the clerk of the court prior to the scheduled probate hearing.

- (3) The court shall examine each claim filed and make a determination at the hearing whether or not each claim is accepted or rejected.
- (4) Claims shall be paid in the following order of preference:
  - (a) All expense of the last illness and burial.
  - (b) Inheritance taxes and money owed to one who has cared for the decedent during the last years, who is not a family member and who has a contract guaranteeing payment at decedent's death.
  - (c) Expenses of administration.
  - (d) All other claims.
  - (e) Any amount due the Southern Ute Indian Tribe.
- (5) Nothing in the preference of claims shall be construed as to defeat any secured valid security interest in any property which is in the decedent's estate.

**9-1-114. Distribution.**

- (1) Within 90 days after the appointment of a personal representative, he shall file a petition for the determination of heirs and distribution of estate.
- (2) The petition shall be filed in duplicate and shall be sworn to or affirmed and shall contain:
  - (a) The name of the decedent;
  - (b) The place and date of decedent's death and a certified copy of the death certificate;
  - (c) The names, ages, and relationships to the decedent of all heirs of decedent and if decedent died with a will, of all the beneficiaries under the will;
  - (d) The nature and extent of decedent's property and location of same; and
  - (e) The state of existence or absence of a will and attachment of original will if decedent died with a will.
- (3) Distribution to minors shall be governed as follows:
  - (a) Any person receiving money or property for a minor is obligated to apply the money to the support and education of the minor. Any balance not used shall be turned over to the minor when he attains the age of majority.



The court at any time may require the person overseeing the minor's assets to appear and make an accounting of the expenditures or care of the minor's real and/or personal property.

- (b) In determining who should have the care, custody and control of any assets of a minor, the court shall be guided by the best interests of the child.

**9-1-115. Descent and Distribution.** In the event there is no will admitted to probate, the estate shall be distributed by order of the court as follows:

- (1) All debts and claims shall be satisfied, as well as costs of probate.
- (2) If there is a surviving spouse, she will take everything if there are no surviving issue of the decedent.
- (3) If there are surviving issue of the decedent, then the surviving spouse shall take half and the surviving issue shall divide one-half of the estate. If there is no surviving spouse, all shall go to the surviving issue. If they are the same degree of kinship to the decedent, they shall take equally, but if they are unequal of degree, those of more remote degree shall take by representation.
- (4) If there are no surviving issue, then the parent or parents shall take equally.
- (5) If there are no surviving issue or parent, the issue of the parent or either of them if they are of the same degree of kinship to the decedent will take equally, but if unequal degree, then those of more remote degree will take by representation.
- (6) If there are no surviving parent or issue of a parent but 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 of the same degree of kinship to the deceased, but if they are unequal of degree, those of more remote degree shall take by representation.
- (7) If none of the relatives above enumerated be living, then to the nearest lineal ancestors and their descendants, the descendants collectively taking the share of their immediate ancestors, in equal parts.
- (8) If there is no survivor under the above provisions, then the estate shall pass to the tribe after an elapse of 10 years. Any such money shall be paid into the tribal treasury and, no claim therefor having been made and established by any person entitled thereto, said money shall become the property of the tribe and shall be transferred to any fund for any use the Tribal Council designates.

**9-1-116. Expenses and Fees of Probate.** After payment of all expenses in connection with distribution of the estate, the court may assess such probate fees as may be deemed proper, taking into account the size of the estate, number of heirs, and the number and size of claims.

**TITLE 9**  
**PROBATE CODE**

**History and Amendments<sup>1</sup>**

Title 9 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 20, 1981.

Title 9 revised by Tribal Resolution No. 82-100, signed on September 23, 1982.

Title 9 amended by Tribal Resolution No. 87-3, signed on January 15, 1987.

Sections 6(A)(5), 11(A)(new paragraph), 11(G), 11(H) and 14(C)(1)(2) added by Tribal Resolution No. 87-03, approved by the Bureau of Indian Affairs and effective on March 24, 1987.

Title 9 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, effective on March 21, 1989.

Section 9-1-113 Claims, amended by Resolution No. 94-11, approved by the Bureau of Indian Affairs and effective on April 29, 1994.

Resolution No. 2021-151 repealed and replaced prior versions of Title 9 – Probate Code - with a reformatted Probate Code for online publication approved by the Bureau of Indian Affairs on November 2, 2022.

Resolution No. 2023-079 authorized on-line publication of the 2021-151 Probate Code and provided an effective date of May 25, 2023.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.