

WAGANAKISING ODAWAK STATUTE 2010-018
PROBATE CODE for SMALL ESTATES

SECTION I. PURPOSE

The purpose of this Statute is to provide for the distribution of small estates upon the death of Tribal Citizens and others within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians ("LTBB").

SECTION II. JURISDICTION

Upon the death of a Tribal Citizen, or of any person within the Tribe's jurisdiction, may petition the Tribal Court to determine the heirs of the decedent, the claims of creditors, and the distribution of property under this Statute. The Court's jurisdiction in probate matters shall cover all of the decedent's real and personal property, including that which is located outside of the Reservation, and any debts owed to the decedent.

SECTION III. COVERAGE OF THIS STATUTE

The provisions of this Statute shall be used to distribute the assets of any person domiciled on the Reservation owning assets valued at less than \$15,000.00 (fifteen thousand dollars).

SECTION IV. DEFINITIONS

For purposes of this Statute, the terms below are defined as follows:

- A.** “Beneficiary” means a person who is designated to receive something from a legal arrangement or instrument, for example, property designated pursuant to a decedent’s valid will, income from a trust, or the proceeds from an insurance policy.
- B.** “Decedent” means a deceased person with interests to be determined as demonstrated within this Statute.
- C.** “Heir” means a person who is entitled under this Statute, based upon a family relationship to the decedent, to receive the property of a decedent who dies without a will.
- D.** “Holographic will” means a will that is written entirely by the decedent that is not witnessed or otherwise does not fully comply with the requirements for a will under this Statute.
- E.** “Immediate Family” means family members generally comprised of the surviving spouse, parents, grandparents, son(s), daughter(s), brother(s) and sister(s) of the decedent.
- F.** “Intestate” means dying without leaving a will or leaving an invalid will so that the property of the estate passes by the laws of succession rather than by the direction of the deceased.
- G.** “Legally Incompetent” means a person determined by a court to be mentally or physically unable or unfit to comprehend the nature and consequences of legal proceedings.
- H.** “Minor” means person who has not reached age eighteen (18).
- I.** “Marriage” means the legal union of a man and a woman as husband and wife, generally pursuant to a Tribal or state license, and made official by a formal ceremony.
- J.** “Probate” means the legal process by which applicable Tribal common and written law, state law, or federal law that affects the distribution of the decedent’s estate is applied to determine the decedent’s heirs, approve wills and beneficiaries, and transfer any personal or real property held in trust by a trustee for a decedent to the heirs, beneficiaries, or other persons or

entities entitled by law.

K. “Real Property” means property including all improvements and fixtures upon land; that which is incidental and appurtenant to land; all rights, interests, privileges, easements, and encumbrances relating to land, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these, except that such term shall never include subsurface rights or the title or ownership interest in tribal, trust, or otherwise restricted land.

L. “Testator” means a person who has written a will.

M. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

N. “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

O. “Will” means the legal instrument that permits a person, the testator, to make decisions on how his or her estate will be managed after death.

SECTION V. LIMITED JURISDICTION OVER TRANSFERS INVOLVING REAL PROPERTY

A. The Court may effectuate transfers of land assignments or permanent structures affixed to the land, in accordance with codified Tribal Property and Housing law.

B. Once the transfer is complete, the Court shall forward a copy of the "transfer" to the Executive Branch for record-keeping purposes. The Court may only effectuate transfer title of real property if the decedent owned the property in fee, with no tribal or federal ownership interests or restrictions.

SECTION VI. PETITION FOR SMALL ESTATE

Probate Code for Small Estate

A. Filing. The surviving spouse, or if none, any family member of the decedent, the personal representative as designated in decedent will, or a creditor of the decedent may file a petition for small estate. In the case of an unmarried minor, a legal guardian, or person appointed by the Court if a ward of the Court, may file the petition.

B. Time for Filing. The petition should normally be filed within sixty (60) days of the death of decedent.

C. Form of Filing. The petition shall contain the following information:

1. The date and location of death of decedent and age of decedent at time of death;
2. A statement of the decedent's tribal affiliation, if any;
3. The name of the person filing the petition, tribal enrollment number, if any, age, residence, and relationship to the decedent;
4. A statement that the decedent left no will, or that the will is filed with the petition and offered for probate;
5. The names, ages, and relationship to the decedent of all known heirs of decedent, and if decedent dies with a will, the names, ages, and relationship, if any, of all beneficiaries under the will;
6. An inventory list that includes a detailed statement of assets and approximate value of each;
7. A list of names and addresses of the decedent's creditors, including all possible creditors that the petitioner can reasonably determine by reviewing the decedent's financial records and papers; and
8. A general list of items that were buried/burned with decedent not to be

distributed.

9. A request to designate a person as the personal representative if one is not identified in the will or the person identify in the will is unable or unwilling to serve as the personal representative.

D. Minor or Legally Incompetent Heirs. Upon the filing of the petition for administration, the Court shall ascertain whether or not there are any heirs, legatees, or devisees under the age of eighteen (18) years or legally incompetent heirs. If so, the Court shall appoint a guardian ad litem to represent the minor or legally incompetent heir's interests until the determination of distribution of belongings is final. The Court will give careful attention to all actions concerning that of a minor individual less than eighteen (18) years of age or a legally incompetent heir.

SECTION VII. APPOINTMENT OF PERSONAL REPRESENTATIVE

The Court shall appoint a person as the Personal Representative.

SECTION VIII. VALUE OF PROPERTY

The Personal Representative shall file with the Court a final inventory list of the entire estate. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, family allowance, exempt property, administration costs and expenses, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in Section XII.

SECTION IX. HOMESTEAD ALLOWANCE

- A.** A decedent's surviving spouse is entitled to a homestead allowance of \$15,000.00.
- B.** If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance equal to \$15,000.00 divided by the number of the decedent's minor and dependent children.
- C.** The homestead allowance is exempt from and has priority over all claims against the estate, except administration costs and expenses and reasonable funeral and burial expenses.
- D.** A homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by elective share.

SECTION X. ASSET DISTRIBUTION

- A.** Upon a showing of evidence, satisfactory to the court, of payment of the expenses for the decedent's funeral and burial and if the balance of a decedent's gross estate consists of property of the value of \$15,000.00 or less, the court may order that the Personal Representative to distribute the property to the decedent's heirs in accordance with the Will or by intestate.
- B.** Upon a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, and if the balance of the gross estate after payment of the expenses would consist of property of the value of \$15,000.00 or less, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the Personal Representative to distribute to the decedent's heirs in accordance with the Will or by intestate.

C. Other than a surviving spouse who qualifies for allowances under this Statute or the decedent's minor children, an heir who receives property through an order under this section is responsible, for 63 days after the date of the order, for any unsatisfied debt of the decedent up to the value of the property received through the order. The court shall state this condition in the order.

D. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in this Statute.

SECTION XI. PRIORITY OF CLAIMS

A. If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- 1.** Costs and expenses of administration.
- 2.** Reasonable funeral and burial expenses.
- 3.** Homestead allowance.
- 4.** Family allowance.
- 5.** Exempt property.

6. Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.
7. Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.
8. Court costs for actual notice and publication for creditor's claims, and actual notice and publication for determining heirs.
9. Claims of indebtedness to the Little Traverse Bay Bands of Odawa Indians.
10. Debts and taxes to other local or state governmental entities.
11. Debts owing to Citizens of the Little Traverse Bay Bands of Odawa Indians.
12. Claims of all other creditors.

B. A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference, over a claim not due.

C. If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each non-probate transfer, including those made under a trust, bears a proportionate share or equitable share of the total burden.

SECTION XII. CLOSING STATEMENT

A. Unless prohibited by court order or the estate value is more than \$15,000 after all listed costs and distributions have been made under subsection (1), a personal representative may close

a small estate at any time after disbursement and distribution of the estate, a sworn statement stating all of the following:

1. To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness.

2. The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled to the estate.

3. The personal representative has sent a copy of the closing statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, and has furnished a full account in writing of the estate administration to the distributees whose interests are affected.

B. Any objection to the closing statement must be filed with the Court within twenty-eight (28) days of the filing of the closing statement. If there are no objections, then the Personal Representative shall receive a certificate of completion.

C. If an action or proceeding involving the personal representative is not pending in the court within one (1) year after the closing statement is filed under this section, the personal representative's appointment terminates.

SECTION XIII. EXEMPTIONS

A. The Tribe recognizes and adopts the following State of Michigan laws that provide for assets owned by the decedent to pass to the decedent's heirs without the necessity of probate:

1. MCL 257.236 provides that the title to motor vehicles of a decedent whose total value does not exceed \$60,000 may be transferred to the heirs by the Michigan Department of State if there are no other assets requiring probate. The Secretary of State must be furnished with proof of death of the registered owner and a certificate setting forth the fact that the applicant is the surviving husband or wife or the applicants are the heirs of the decedent. This is accomplished by filing the papers at the Secretary of State Office.

2. MCL 324.80312 provides for the transfer of water craft without probate proceedings if there are no other assets requiring probate and the value of the water craft is less than \$100,000. This is accomplished by filing the proper papers at the Secretary of State Office.

3. MCL 408.480 provides that wages or fringe benefits in any amount may be delivered to the heirs of the decedent in order of priority as follows: surviving spouse, surviving children, surviving mother or father, and surviving sister or brother.

4. MCL 700.3981 provides that a hospital, convalescent or nursing home, morgue, or law enforcement agency holding cash not exceeding \$500 and wearing apparel of a decedent may deliver the cash and wearing apparel to a person furnishing identification and an affidavit that the person is the spouse, child, or parent of the decedent and that an estate of the decedent is not pending.

B. Monies held by the Tribe either in the form of Per capita payments, payroll wages or fringe, or other Tribal distributions may be delivered to the Decedent's heirs in priority as follows: surviving spouse, surviving children, surviving mother or father, and surviving sister or brother.

C. Individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent's estate appointed after the delivery.

SECTION XIV. APPROVAL OF WILLS

A. When any member of the LTBB Community dies, the Tribal Court shall at the request of any interested party determine the validity of the will after giving notice and full opportunity to appear in Court to tell all persons who might be beneficiaries of the decedent.

B. Where the Court finds that the decedent's will is invalid, the Court shall order the administration of decedent's estate as if the decedent had died without a will.

C. Where the Court finds that there is property of the decedent that was left out of a valid will and no other lawful instrument designates a beneficiary, the Court shall order distribution of the undesignated property, by following the procedures under this Statute where the decedent dies without a will.

SECTION XV. LAWS OF SUCCESSION

A. If the Decedent dies intestate, then the Personal Representative shall distribute the decedent's assets remaining after satisfaction of the debts and expenses of the estate by the following law of succession:

- 1.** If a spouse survives decedent, all assets shall be distributed to the surviving spouse;
- 2.** If there is no surviving spouse, all assets shall be distributed equally to decedent's surviving children;
- 3.** If there is no surviving spouse or children, all assets shall be distributed to decedent's surviving parent/s;
- 4.** If there is no surviving spouse, children or parents, all assets shall be distributed

equally among decedent's grand-children;

5. If there are no surviving persons listed in 1-4, all assets shall be distributed equally among decedent's surviving sibling/s;

6. If there are no surviving persons listed in 1-5, all assets shall be distributed equally to decedent's surviving first cousin/s;

7. If there are no surviving persons listed in 1-6, any real property in the Reservation shall escheat to LTBB; any other assets shall be distributed as the Court deems equitable to close friends or caretakers of the decedent.

B. In the case of a decedent without a will, the Court will make such inquiries of the petitioner, family members, the Enrollment Office or other sources as it deems necessary to make sure the list of heirs is submitted with the petition is complete.

C. Beneficiary Criminally Responsible for the Death of the Decedent. Any beneficiary or any heir of the decedent found to be criminally responsible for the death of the decedent shall not be entitled to inherit or receive any interest of the decedent's estate.

SECTION XVI. NOTICE TO CREDITORS

A. The Personal Representative shall file with the Court a final inventory list of the entire estate. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, exceed homestead allowance, family allowance, exempt property, administration costs and expenses, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, notice shall be giving to the creditors. For creditors who may be unknown or are not reasonably ascertainable, the Court shall issue a notice to creditors by publication. The notice shall be published on the Tribal website, in a Tribal newspaper and in one other local newspaper of general circulation for two consecutive publication dates and proof of publication shall be filed

in the case record.

B. The last date for creditors to file claims against the estate shall be forty--five (45) days from receipt of notice or from the second date of publication, and are thereafter barred from any claim.

SECTION XVII. PAYMENT OF CREDITOR'S CLAIMS

A. All tangible personal property of the decedent that is of a unique keepsake nature, such as art, family heirlooms and photographs, is exempt from sale to pay for claims of creditors. The Court shall not order sale of such tangible personal property of the decedent to satisfy any liens or judgments of creditors.

SECTION XVIII. FORM OF PROBATE PLEADINGS

The Tribal Court shall determine what documents must be filed in a small estate case.

SECTION XIX. SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute shall continue in full force and effect.

SECTION XX. EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

Probate Code for Small Estate

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on December 5, 2010 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Marvin Mulholland	_____	_____	_____	X
Belinda Bardwell	X	_____	_____	_____
Melvin L. Kiogima	X	_____	_____	_____
Gerald V. Chingwa	X	_____	_____	_____
Rita Shananaquet	X	_____	_____	_____
Aaron Otto	X	_____	_____	_____
John Bott	X	_____	_____	_____
Regina Gasco Bentley	X	_____	_____	_____
Julie Shananaquet	X	_____	_____	_____

Date: _____

 Julie A. Shananaquet, Legislative Leader

Date: _____

 Regina Gasco Bentley, Secretary

Received by the Executive Office on _____ by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: _____

 Ken Harrington, Tribal Chairperson