

DRAFT
FOR DISCUSSION ONLY

MODEL TRIBAL PROBATE CODE

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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March 27, 2015

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1 **MODEL TRIBAL PROBATE CODE**

2 **ARTICLE I**

3 **GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF**
4 **COURT**

5 **PART 1**

6 **SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS**

7 **SECTION 1-101. SHORT TITLE.** This [act] shall be known and may be cited as the
8 Model Tribal Probate Code.

9 **SECTION 1-102. PURPOSES; RULE OF CONSTRUCTION.**

10 (a) This [code] shall be liberally construed and applied to promote its underlying
11 purposes and policies.

12 (b) The underlying purposes and policies of this [code] are:

13 (1) to simplify and clarify the law concerning the affairs of decedents, missing
14 persons, protected persons, minors and incapacitated persons;

15 (2) to discover and make effective the intent of a decedent in distribution of
16 property;

17 (3) to promote a speedy and efficient system for liquidating the estate of the
18 decedent and making distribution to the decedent's successors;

19 (4) to promote the culture and the values of the _____ Tribe,
20 specifically [].

21 **SECTION 1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW**

22 **APPLICABLE.** Unless displaced by the particular provisions of this [code], the principles of
23 law and equity supplement its provisions.

1 **SECTION 1-104. SEVERABILITY.** If any provision of this [code] or the application
2 thereof to any person or circumstances is held invalid, the invalidity shall not affect other
3 provisions or applications of the [code] which can be given effect without the invalid provision
4 or application, and to this end the provisions of this [code] are declared to be severable.

5 **SECTION 1-105. CONSTRUCTION AGAINST IMPLIED REPEAL.** This [code]
6 is a general act intended as a unified coverage of its subject matter and no part of it shall be
7 deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

8 **SECTION 1-106. EVIDENCE OF DEATH OR STATUS.** In addition to the rules of
9 evidence in courts of general jurisdiction, the following rules relating to a determination of death
10 and status apply:

11 (1) Death occurs when an individual [is determined to be dead under the Uniform
12 Determination of Death Act (1978/1980)] [has sustained either (i) irreversible cessation of
13 circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire
14 brain, including the brain stem. A determination of death must be made in accordance with
15 accepted medical standards].

16 (2) A certified or authenticated copy of a death certificate purporting to be issued by an
17 official or agency of the place where the death purportedly occurred is prima facie evidence of
18 the fact, place, date, and time of death and the identity of the decedent.

19 (3) A certified or authenticated copy of any record or report of any tribal, state, or other
20 governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive
21 is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the
22 record or report.

23 (4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of

1 death may be established by clear and convincing evidence, including circumstantial evidence.

2 (5) An individual whose death is not established under the preceding paragraphs who is
3 absent for a continuous period of five years, during which the individual has not been heard
4 from, and whose absence is not satisfactorily explained after diligent search or inquiry, is
5 presumed to be dead. The decedent's death is presumed to have occurred at the end of the period
6 unless there is sufficient evidence for determining that death occurred earlier.

7 (6) In the absence of evidence disputing the time of death stated on a document described
8 in paragraph (2) or (3), a document described in paragraph (2) or (3) that states a time of death
9 120 hours or more after the time of death of another individual, however the time of death of the
10 other individual is determined, establishes by clear and convincing evidence that the individual
11 survived the other individual by 120 hours.

12 **PART 2**

13 **DEFINITIONS**

14 **SECTION 1-201. GENERAL DEFINITIONS.** [subject to additional definitions
15 contained in the subsequent [articles] that are applicable to specific [articles,] [parts,] or sections
16 and unless the context otherwise requires, in this [code]: [presently defer]

17 **PART 3**

18 **SCOPE, JURISDICTION AND COURTS**

19 **SECTION 1-301. TERRITORIAL APPLICATION.** Except as otherwise provided in
20 this [code], this [code] applies to:

21 (1) the affairs and estates of decedents, missing persons, and persons to be protected, with
22 respect to any property, real or personal, that is subject to the laws of the [Tribe], excluding
23 trust or restricted property governed by federal law.

1 **SECTION 1-302. SUBJECT MATTER JURISDICTION.**

2 (a) To the full extent permitted by the tribal and federal constitution, the court has
3 jurisdiction over all subject matter relating to

4 (1) estates of decedents, including construction of wills and determination of heirs
5 and successors of decedents, and estates of minor, incapacitated, and protected persons; and

6 (2) trusts.

7 (b) The court has full power to make orders, judgments and decrees and take all other
8 action necessary and proper to administer justice in the matters which come before it.

9 **SECTION 1-303. VENUE; MULTIPLE PROCEEDINGS; TRANSFER.**

10 (a) Where a proceeding under this [code] could be maintained in more than one tribal
11 court, the court in which the proceeding is first commenced has the exclusive right to proceed.

12 (b) If proceedings concerning the same estate, protected person, ward, or trust are
13 commenced in more than one court of this tribe, the court in which the proceeding was first
14 commenced shall continue to hear the matter, and the other courts shall hold the matter in
15 abeyance until the question of venue is decided, and if the ruling court determines that venue is
16 properly in another court, it shall transfer the proceeding to the other court.

17 (c) If a court finds that in the interest of justice a proceeding or a file should be located in
18 another court of this tribe, the court making the finding may transfer the proceeding or file to the
19 other court.

20 **SECTION 1-304. PRACTICE IN COURT.** Unless specifically provided to the
21 contrary in this [code] or unless inconsistent with its provisions, the tribal code rules of civil
22 procedure including the rules concerning vacation of orders and appellate review govern
23 proceedings under this [code].

1 **SECTION 1-305. RECORDS AND CERTIFIED COPIES.** The [Clerk of Court]
2 shall keep a record for each decedent, ward, protected person or trust involved in any document
3 which may be filed with the court under this [code], including petitions and applications,
4 demands for notices or bonds, trust registrations, and of any orders or responses relating thereto
5 by the Registrar or court, and establish and maintain a system for indexing, filing or recording
6 which is sufficient to enable users of the records to obtain adequate information. Upon payment
7 of the fees required by law the clerk must issue certified copies of any probated wills, letters
8 issued to personal representatives, or any other record or paper filed or recorded. Certificates
9 relating to probated wills must indicate where the decedent was domiciled and whether the
10 probate was formal or informal. Certificates relating to letters must show the date of
11 appointment.

12 **SECTION 1-306. APPEALS.** Appellate review, including the right to appellate review,
13 interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review,
14 record on appeal, briefs, arguments and power of the appellate court, is governed by the rules
15 applicable to the appeals to the [Supreme Court] in equity cases from the [court of general
16 jurisdiction], except that in proceedings where jury trial has been had as a matter of right, the
17 rules applicable to the scope of review in jury cases apply.

18 **SECTION 1-307. OATH OR AFFIRMATION ON FILED DOCUMENTS.** Except
19 as otherwise specifically provided in this [code] or by rule, every document filed with the court
20 under this [code] including applications, petitions, and demands for notice, shall be deemed to
21 include an oath, affirmation, or statement to the effect that its representations are true as far as
22 the person executing or filing it knows or is informed, and penalties for perjury may follow
23 deliberate falsification therein.

1 **PART 4**

2 **NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION**

3 **AND OTHER MATTERS**

4 **SECTION 1-401. NOTICE; METHOD AND TIME OF GIVING.**

5 (a) If notice of a hearing on any petition is required and except for specific notice
6 requirements as otherwise provided, the petitioner shall cause notice of the time and place of
7 hearing of any petition to be given to any interested person or that person's attorney if the
8 petitioner has appeared by attorney or requested that notice be sent to the attorney. Notice shall
9 be given:

10 (1) by mailing a copy thereof at least 14 days before the time set for the hearing
11 by certified, registered or ordinary first class mail addressed to the person being notified at the
12 post office address given in the demand for notice, if any, or at the office or place of residence, if
13 known;

14 (2) by delivering a copy thereof to the person being notified personally at least 14
15 days before the time set for the hearing; or

16 (3) if the address, or identity of any person is not known and cannot be
17 ascertained with reasonable diligence, by publishing at least once a week for three consecutive
18 weeks, a copy thereof in both the tribal newspaper and in any newspaper having general
19 circulation in the county where the hearing is to be held, the last publication of which is to be at
20 least 10 days before the time set for the hearing.

21 (b) The court for good cause shown may provide for a different method or time of giving
22 notice for any hearing.

23 (c) Proof of the giving of notice shall be made on or before the hearing and filed in the

1 proceeding.

2 **SECTION 1-402. NOTICE; WAIVER.** A person, including a guardian ad litem,
3 conservator or other fiduciary, may waive notice by a writing signed by that person or that
4 person's attorney and filed in the proceeding. A person for whom a guardianship or other
5 protective order is sought, a ward, or a protected person may not waive notice.

6 **SECTION 1-403. PLEADINGS; WHEN PARTIES BOUND BY OTHERS;**

7 **NOTICE.** In formal proceedings involving trusts or estates of decedents, minors, protected
8 persons, or incapacitated persons, and in judicially supervised settlements, the following rules
9 apply:

10 (1) Interests to be affected must be described in pleadings that give reasonable
11 information to owners by name or class, by reference to the instrument creating the interests or in
12 another appropriate manner.

13 (2) Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained
14 person is bound by an order to the extent the person's interest is adequately represented by
15 another party having a substantially identical interest in the proceeding.

16 (3) If no conservator or guardian has been appointed, a parent may represent a minor
17 child.

18 (4) Notice is required as follows:

19 (A) The notice prescribed by Section [] must be given to every interested person
20 or to one who can bind an interested person. Notice may be given both to a person and to
21 another who may bind the person.

22 (B) Notice is given to unborn or unascertained persons by giving notice to all
23 known persons whose interests in the proceedings are substantially identical to those of the

1 unborn or unascertained persons.

2 (5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the
3 interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity
4 or address is unknown, if the court determines that representation of the interest otherwise would
5 be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to
6 represent several persons or interests. The court shall state its reasons for appointing a guardian
7 ad litem as a part of the record of the proceeding.

8 **ARTICLE 2**

9 **PROBATE OF WILLS AND ADMINISTRATION**

10 **PART 1**

11 **GENERAL PROVISIONS**

12 **SECTION 2-101. DEVOLUTION OF ESTATE AT DEATH; RESTRICTIONS.**

13 The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to
14 the decedent's property are subject to the restrictions and limitations contained in this [code] to
15 facilitate the prompt settlement of estates. Upon the death of a person, the decedent's real and
16 personal property devolves to the persons to whom it is devised by the decedent's last will or to
17 those indicated as substitutes for them in cases involving lapse, renunciation, or other
18 circumstances affecting the devolution of testate estate, or in the absence of testamentary
19 disposition, to the decedent's heirs, or to those indicated as substitutes for them in cases
20 involving renunciation or other circumstances affecting devolution of intestate estates, subject to
21 [here insert references to statutory allowances of spouse and children], to rights of creditors,
22 elective share of the surviving spouse, and to administration.

1 **SECTION 2-102. NECESSITY OF ORDER OF PROBATE FOR WILL.** Except as
2 provided in Section [], to be effective to prove the transfer of any property or to nominate an
3 executor, a will must be declared to be valid by an adjudication of probate by the court.

4 **SECTION 2-103. NECESSITY OF APPOINTMENT FOR ADMINISTRATION.**
5 Except as otherwise provided in [Article] IV, to acquire the powers and undertake the duties and
6 liabilities of a personal representative of a decedent, a person must be appointed by order of the
7 court, qualify and be issued letters. Administration of an estate is commenced by the issuance of
8 letters.

9 **SECTION 2-104. CLAIMS AGAINST DECEDENT; NECESSITY OF**
10 **ADMINISTRATION.** No proceeding to enforce a claim against the estate of a decedent or the
11 decedent's successors may be revived or commenced before the appointment of a personal
12 representative. After the appointment and until distribution all proceedings and actions to
13 enforce a claim against the estate are governed by the procedure prescribed by this [article].
14 After distribution a creditor whose claim has not been barred may recover from the distributees
15 as provided in Section [] or from a former personal representative individually liable as provided
16 in Section []. This section has no application to a proceeding by a secured creditor of the
17 decedent to enforce a right to the security except as to any deficiency judgment which might be
18 sought therein.

19 **SECTION 2-105. PROCEEDINGS AFFECTING DEVOLUTION AND**
20 **ADMINISTRATION; JURISDICTION OF SUBJECT MATTER.** Persons interested in
21 decedents' estates may petition the court for orders in proceedings within the court's jurisdiction
22 including but not limited to those described in this [article]. The court has exclusive jurisdiction
23 of proceedings to determine how decedents' estates subject to the laws of this [tribal jurisdiction]

1 are to be administered, expended and distributed. The court has concurrent jurisdiction of any
2 other action or proceeding concerning a succession or to which an estate, through a personal
3 representative, may be a party, including actions to determine title to property, and of any action
4 or proceeding in which property distributed by a personal representative or its value is sought to
5 be subjected to rights of creditors or successors of the decedent.

6 **SECTION 2-106. PROCEEDINGS WITHIN THE EXCLUSIVE JURISDICTION**
7 **OF COURT; SERVICE; JURISDICTION OVER PERSONS.** In proceedings within the
8 exclusive jurisdiction of the court where notice is required by this [code] or by rule, and in
9 proceedings to construe probated wills or determine heirs which concern estates that have not
10 been and cannot now be opened for administration, interested persons may be bound by the
11 orders of the court in respect to property in or subject to the laws of this [tribal jurisdiction] by
12 notice in conformity with Section []. An order is binding as to all who are given notice of the
13 proceeding though less than all interested persons are notified.

14 **SECTION 2-107. SCOPE OF PROCEEDINGS; PROCEEDINGS**
15 **INDEPENDENT; EXCEPTION.** Unless supervised administration as described in [Part] 5 is
16 involved,

17 (1) each proceeding before the court is independent of any other proceeding involving the
18 same estate;

19 (2) petitions for orders of the court may combine various requests for relief in a single
20 proceeding if the orders sought may be finally granted without delay. Except as required for
21 proceedings which are particularly described by other sections of this [article], no petition is
22 defective because it fails to embrace all matters which might then be the subject of a final order;

23 (3) proceedings for probate of wills or adjudications of no will may be combined with

1 proceedings for appointment of personal representatives; and

2 (4) a proceeding for appointment of a personal representative is concluded by an order
3 making or declining the appointment.

4 **SECTION 2-108. STATUTES OF LIMITATION ON DECEDENT'S CAUSE OF**
5 **ACTION.** No statute of limitation running on a cause of action belonging to a decedent which
6 had not been barred as of the date of the decedent's death, shall apply to bar a cause of action
7 surviving the decedent's death sooner than four months after death. A cause of action which, but
8 for this section, would have been barred less than four months after death, is barred after four
9 months unless tolled.

10 **PART 2**

11 **PRIORITY TO ADMINISTER; DEMAND FOR NOTICE**

12 **SECTION 2-201. LOCATION OF PROPERTY.** For the purpose of aiding
13 determinations concerning location of assets which may be relevant in cases involving non-
14 domiciliaries, a debt, other than one evidenced by investment or commercial paper or other
15 instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a
16 person other than an individual, at the place where it has its principal office. Commercial paper,
17 investment paper and other instruments are located where the instrument is. An interest in
18 property held in trust is located where the trustee may be sued.

19 **SECTION 2-202. APPOINTMENT OR TESTACY PROCEEDINGS;**
20 **CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE.** If conflicting claims as
21 to the domicile of a decedent are made in a testacy or appointment proceeding commenced in
22 this [tribal jurisdiction], and in a testacy or appointment proceeding after notice pending at the
23 same time in another state, the court of this [tribal jurisdiction] must stay, dismiss, or permit

1 suitable amendment in, the proceeding here unless it is determined that the local proceeding was
2 commenced before the proceeding elsewhere. The determination of domicile in the proceeding
3 first commenced must be accepted as determinative in the proceeding in this [tribal jurisdiction].

4 **SECTION 2-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS**
5 **PERSONAL REPRESENTATIVE.**

6 (a) Persons who are not disqualified have priority for appointment in the following order:

7 (1) the person with priority as determined by a probated will including a person
8 nominated by a power conferred in a will;

9 (2) the surviving spouse of the decedent who is a devisee of the decedent;

10 (3) other devisees of the decedent;

11 (4) the surviving spouse of the decedent;

12 (5) other heirs of the decedent;

13 (6) 45 days after the death of the decedent, any creditor.

14 (b) In case of objection the priorities stated in subsection (a) apply except that

15 (1) if the estate appears to be more than adequate to meet exemptions and costs of
16 administration but inadequate to discharge anticipated unsecured claims, the court, on petition of
17 creditors, may appoint any qualified person;

18 (2) in case of objection to appointment of a person other than one whose priority
19 is determined by will by an heir or devisee appearing to have a substantial interest in the estate,
20 the court may appoint a person who is acceptable to heirs and devisees whose interests in the
21 estate appear to be worth in total more than half of the probable distributable value, or, in default
22 of this accord any suitable person.

23 (c) A person entitled to letters under paragraphs (2) through (5) of subsection (a) above

1 may nominate a qualified person to act as personal representative. Any person may renounce a
2 right to nominate or to an appointment by appropriate writing filed with the court.

3 (d) Conservators of the estates of protected persons, or if there is no conservator, any
4 guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same
5 right to nominate, to object to another's appointment, or to participate in determining the
6 preference of a majority in interest of the heirs and devisees that the protected person or ward
7 would have if qualified for appointment.

8 (e) Before appointing one without priority, the court must determine that those having
9 priority although given notice of the proceedings have failed to request appointment or to
10 nominate another for appointment, and that administration is necessary.

11 (f) No person is qualified to serve as a personal representative who is:

12 (1) under the age of [18];

13 (2) a person whom the court finds unsuitable.

14 (g) A personal representative appointed by a court of the decedent's domicile has priority
15 over all other persons except where the decedent's will nominates different persons to be
16 personal representative in this [tribal jurisdiction] and in the jurisdiction of domicile. The
17 domiciliary personal representative may nominate another, who shall have the same priority as
18 the domiciliary personal representative.

19 (h) This section governs priority for appointment of a successor personal representative
20 but does not apply to the selection of a special administrator.

21 **SECTION 2-204. DEMAND FOR NOTICE OF ORDER OR FILING**

22 **CONCERNING DECEDENT'S ESTATE.** Any person desiring notice of any order or filing
23 pertaining to a decedent's estate in which the person has a financial or property interest, may file

1 a demand for notice with the court at any time after the death of the decedent stating the name of
2 the decedent, the nature of the demandant's interest in the estate, and the demandant's address or
3 that of the demandant's attorney. The clerk shall mail a copy of the demand to the personal
4 representative, if one has been appointed. After filing of a demand, no order or filing to which
5 the demand relates shall be made or accepted without notice as prescribed in Section [] to the
6 demandant or the demandant's attorney. The validity of an order which is issued or filing which
7 is accepted without compliance with this requirement shall not be affected by the error, but the
8 petitioner receiving the order or the person making the filing may be liable for any damage
9 caused by the absence of notice. The requirement of notice arising from a demand under this
10 provision may be waived in writing by the demandant and shall cease upon the termination of the
11 demandant's interest in the estate.

12 **PART 3**

13 **TESTACY AND APPOINTMENT PROCEEDINGS**

14 **SECTION 2-301. TESTACY PROCEEDINGS; NATURE; WHEN**

15 **COMMENCED.** A testacy proceeding is a proceeding conducted before the court to establish a
16 will or determine intestacy. A testacy proceeding may be commenced by an interested person
17 filing a petition as described in Section [] in which the person requests that the court, after notice
18 and hearing, enter an order probating a will, or a petition in accordance with Section [] for an
19 order that the decedent died intestate.

20 A testacy proceeding may, but need not, involve a request for appointment of a personal
21 representative.

22 A previously appointed personal representative, after receipt of notice of the
23 commencement of a testacy proceeding, must refrain from exercising the power to make any

1 further distribution of the estate during the pendency of the proceeding. A petitioner who seeks
2 the appointment of a different personal representative may request an order restraining the acting
3 personal representative from exercising any of the powers of the office and requesting the
4 appointment of a special administrator. In the absence of a request, or if the request is denied,
5 the commencement of a proceeding has no effect on the powers and duties of a previously
6 appointed personal representative other than those relating to distribution.

7 **SECTION 2-302. TESTACY OR APPOINTMENT PROCEEDINGS; PETITION;**
8 **CONTENTS.**

9 (a) Petitions for probate of a will, or for adjudication of intestacy with or without request
10 for appointment of a personal representative, must be directed to the court, request a judicial
11 order after notice and hearing and contain further statements as indicated in this section. A
12 petition for probate of a will

13 (1) requests an order as to the testacy of the decedent in relation to a particular
14 instrument and determining the heirs,

15 (2) contains the following statements:

16 (A) the interest of the applicant;

17 (B) the name, date of death of the decedent, the decedent's age, and the
18 location of the decedent's domicile at the time of death, and the names and addresses of the
19 spouse children, heirs and devisees and the ages of any who are minors so far as known or
20 ascertainable with reasonable diligence by the applicant;

21 (C) if the decedent was not domiciled in this [tribal jurisdiction] at the
22 time of death, a statement showing jurisdiction;

23 (D) a statement identifying and indicating the address of any personal

1 representative of the decedent appointed in this [tribal jurisdiction] or elsewhere whose
2 appointment has not been terminated;

3 (E) a statement indicating whether the applicant has received a demand for
4 notice, or is aware of any demand for notice or any probate or appointment proceeding
5 concerning the decedent that may have been filed in this [tribal jurisdiction] or elsewhere;

6 (F) that the applicant, to the best of the applicant's knowledge, believes
7 the will to have been validly executed;

8 (G) that after the exercise of reasonable diligence, the applicant is unaware
9 of any instrument revoking the will, and that the applicant believes that the instrument which is
10 the subject of the application is the decedent's last will; and

11 (3) states whether the original of the last will of the decedent is in the possession
12 of the court or accompanies the petition.

13 If the original will is neither in the possession of the court nor accompanies the
14 petition and no authenticated copy of a will probated in another jurisdiction accompanies the
15 petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed,
16 or otherwise unavailable.

17 (b) A petition for adjudication of intestacy and appointment of an administrator in
18 intestacy must request a judicial finding and order that the decedent left no will and determining
19 the heirs, must indicate whether supervised administration is sought, and must contain the
20 following statements:

21 (1) the interest of the applicant;

22 (2) the name, date of death of the decedent, the decedent's age, and the location
23 of the decedent's domicile at the time of death, and the names and addresses of the spouse

1 children, heirs and devisees and the ages of any who are minors so far as known or ascertainable
2 with reasonable diligence by the applicant;

3 (3) if the decedent was not domiciled in this [tribal jurisdiction] at the time of
4 death, a statement showing jurisdiction;

5 (4) a statement identifying and indicating the address of any personal
6 representative of the decedent appointed in this [tribal jurisdiction] or elsewhere whose
7 appointment has not been terminated;

8 (5) a statement indicating whether the applicant has received a demand for notice, or is
9 aware of any demand for notice or any probate or appointment proceeding concerning the
10 decedent that may have been filed in this [tribal jurisdiction] or elsewhere;

11 (6) that after the exercise of reasonable diligence, the applicant is unaware of any
12 unrevoked testamentary instrument relating to property having a situs in this [tribal jurisdiction]
13 under Section [], or, a statement why any such instrument of which the applicant may be aware is
14 not being probated;

15 (7) the priority of the person whose appointment is sought and the names of any other
16 persons having a prior or equal right to the appointment under Section [].

17 A petition may request an order determining intestacy and heirs without requesting the
18 appointment of an administrator, in which case, the statements required by subparagraph (6) ad
19 (7) of this subsection may be omitted.

20 **SECTION 2-303. TESTACY PROCEEDINGS; NOTICE OF HEARING ON**
21 **PETITION.**

22 (a) Upon commencement of a testacy proceeding, the court shall fix a time and place of
23 hearing. Notice shall be given in the manner prescribed by Section [] by the petitioner to the

1 persons herein enumerated and to any additional person who has filed a demand for notice under
2 Section [] of this [code].

3 Notice shall be given to the following persons: the surviving spouse, children, and other
4 heirs of the decedent, the devisees and executors named in any will that is being, or has been,
5 probated, or offered for probate in the [tribal jurisdiction], or that is known by the petitioner to
6 have been probated, or offered for probate elsewhere, and any personal representative of the
7 decedent whose appointment has not been terminated. Notice may be given to other persons.

8 In addition, the petitioner shall give notice by publication to all unknown persons and to all
9 known persons whose addresses are unknown who have any interest in the matters being
10 litigated.

11 (b) If it appears by the petition or otherwise that the fact of the death of the alleged
12 decedent may be in doubt, or on the written demand of any interested person, a copy of the
13 notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at
14 the alleged decedent's last known address. The court shall direct the petitioner to report the
15 results of, or make and report back concerning, a reasonably diligent search for the alleged
16 decedent in any manner that may seem advisable, including any or all of the following methods:

17 (1) by inserting in one or more suitable periodicals a notice requesting information from
18 any person having knowledge of the whereabouts of the alleged decedent;

19 (2) by notifying law enforcement officials and public welfare agencies in appropriate
20 locations of the disappearance of the alleged decedent;

21 (3) by engaging the services of an investigator.

22 The costs of any search so directed shall be paid by the petitioner if there is no administration or
23 by the estate of the decedent in case there is administration.

1 **SECTION 2-304. TESTACY PROCEEDINGS; WRITTEN OBJECTIONS TO**
2 **PROBATE.** Any party to a proceeding who opposes the probate of a will for any reason shall
3 state in the party's pleadings the party's objections to probate of the will.

4 **SECTION 2-305. TESTACY PROCEEDINGS; UNCONTESTED CASES;**
5 **HEARINGS AND PROOF.** If a petition in a testacy proceeding is unopposed, the court may
6 order probate or intestacy on the strength of the pleadings if satisfied that the conditions of
7 Section [] have been met, or conduct a hearing in open court and require proof of the matters
8 necessary to support the order sought. If evidence concerning execution of the will is necessary,
9 the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the
10 affidavit or testimony of an attesting witness is not available, execution of the will may be
11 proved by other evidence or affidavit.

12 **SECTION 2-306. TESTACY PROCEEDINGS; CONTESTED CASES.** In a
13 contested case in which the proper execution of a will is at issue, the following rules apply:

14 (1) If the will is self-proved, the will satisfies the requirements for execution without the
15 testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits
16 annexed or attached to it, unless there is evidence of fraud or forgery affecting the
17 acknowledgment or affidavit.

18 (2) If the will is witnessed but not self-proved, the testimony of at least one of the
19 attesting witnesses is required to establish proper execution if the witness is within this state,
20 competent, and able to testify. Proper execution may be established by other evidence, including
21 an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses
22 raises a rebuttable presumption that the events recited in the clause occurred.

1 **SECTION 2-307. TESTACY PROCEEDINGS; BURDENS IN CONTESTED**

2 **CASES.** In contested cases, petitioners who seek to establish intestacy have the burden of
3 establishing prima facie proof of death, venue, and heirship. Proponents of a will have the
4 burden of establishing prima facie proof of due execution in all cases, and, if they are also
5 petitioners, prima facie proof of death and venue. Contestants of a will have the burden of
6 establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or
7 revocation. Parties have the ultimate burden of persuasion as to matters with respect to which
8 they have the initial burden of proof. If a will is opposed by the petition for probate of a later
9 will revoking the former, it shall be determined first whether the later will is entitled to probate,
10 and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first
11 whether the will is entitled to probate.

12 **SECTION 2-308. TESTACY PROCEEDINGS; WILL CONSTRUCTION;**

13 **EFFECT OF FINAL ORDER IN ANOTHER JURISDICTION.** A final order of a court of
14 another jurisdiction determining testacy, the validity or construction of a will, made in a
15 proceeding involving notice to and an opportunity for contest by all interested persons must be
16 accepted as determinative by the courts of this [tribal jurisdiction] if it includes, or is based upon,
17 a finding that the decedent was domiciled at the decedent's death in the jurisdiction where the
18 order was made.

19 **SECTION 2-309. TESTACY PROCEEDINGS; ORDER; FOREIGN WILL.** After

20 the time required for any notice has expired, upon proof of notice, and after any hearing that may
21 be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding
22 was commenced within the limitation prescribed by Section [], it shall determine the decedent's
23 domicile at death, the decedent's heirs and the decedent's testacy status. Any will found to be

1 valid and unrevoked shall be probated. The petition shall be dismissed or appropriate amendment
2 allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which
3 does not provide for probate of a will after death, may be proved for probate in this [tribal
4 jurisdiction] by a duly authenticated certificate of its legal custodian that the copy introduced is a
5 true copy and that the will has become effective under the law of the other place.

6 **SECTION 2-310. TESTACY PROCEEDINGS; PROBATE OF MORE THAN**
7 **ONE INSTRUMENT.** If two or more instruments are offered for probate before a final order is
8 entered in a testacy proceeding, more than one instrument may be probated if neither expressly
9 revokes the other or contains provisions which work a total revocation by implication. If more
10 than one instrument is probated, the order shall indicate what provisions control in respect to the
11 nomination of an executor, if any. The order may, but need not, indicate how many provisions
12 of a particular instrument are affected by the other instrument. After a final order in a testacy
13 proceeding has been entered, no petition for probate of any other instrument of the decedent may
14 be entertained, except incident to a petition to vacate or modify a previous probate order and
15 subject to the time limits of Section [].

16 **SECTION 2-311. TESTACY PROCEEDINGS; PARTIAL INTESTACY.** If it
17 becomes evident in the course of a testacy proceeding that, though one or more instruments are
18 entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter
19 an order to that effect.

20 **SECTION 2-312. TESTACY PROCEEDINGS; EFFECT OF ORDER;**
21 **VACATION.** Subject to appeal and subject to vacation as provided in this section and in
22 Section [], a testacy order under Sections [] – [], including an order that the decedent left no valid
23 will and determining heirs, is final as to all persons who were properly notified of the

1 proceeding, or who are otherwise bound as provided in Section [], with respect to all issues
2 concerning the decedent's estate that the court considered or might have considered incident to
3 its rendition relevant to the question of whether the decedent left a valid will, and to the
4 determination of heirs, except that:

5 (1) The court shall entertain a petition for modification or vacation of its order and
6 probate of another will of the decedent if it is shown that the proponents of the later-offered will:
7 (i) were unaware of its existence at the time of the earlier proceeding; or (ii) were unaware of the
8 earlier proceeding and were given no notice thereof, except by publication.

9 (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of
10 the decedent may be reconsidered if it is shown that one or more persons were omitted from the
11 determination and it is also shown that the persons were unaware of their relationship to the
12 decedent, were unaware of the decedent's death or were given no notice of any proceeding
13 concerning the decedent's estate, except by publication.

14 (3) A petition for vacation under paragraph (1) or (2) must be filed prior to the earlier of
15 the following time limits:

16 (A) if a personal representative has been appointed for the estate, the time of entry
17 of any order approving final distribution of the estate, or, if the estate is closed by statement, six
18 months after the filing of the closing statement;

19 (B) whether or not a personal representative has been appointed for the estate of
20 the decedent, the time prescribed by Section 3-108 when it is no longer possible to initiate an
21 original proceeding to probate a will of the decedent; or

22 (C) twelve months after the entry of the order sought to be vacated.

23 (4) The order originally rendered in the testacy proceeding may be modified or vacated, if

1 appropriate under the circumstances, by the order of probate of the later-offered will or the order
2 determining heirs.

3 (5) The finding of the fact of death is conclusive as to the alleged decedent only if notice
4 of the hearing on the petition in the testacy proceeding was sent by registered or certified mail
5 addressed to the alleged decedent at the alleged decedent's last known address and the court
6 finds that a search under Section [] was made.

7 If the alleged decedent is not dead, even if notice was sent and search was made, the
8 alleged decedent may recover estate assets in the hands of the personal representative. In
9 addition to any remedies available to the alleged decedent by reason of any fraud or intentional
10 wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is
11 in their hands, or the value of distributions received by them, to the extent that any recovery from
12 distributees is equitable in view of all of the circumstances.

13 **SECTION 2-313. TESTACY PROCEEDINGS; VACATION OF ORDER FOR**
14 **OTHER CAUSE.** For good cause shown, an order in a testacy proceeding may be modified or
15 vacated within the time allowed for appeal.

16 **SECTION 2-314. PROCEEDINGS CONCERNING APPOINTMENT OF**
17 **PERSONAL REPRESENTATIVE.**

18 (a) A proceeding for adjudication regarding the priority or qualification of one who is an
19 applicant for appointment as personal representative, or of one who previously has been
20 appointed personal representative, if an issue concerning the testacy of the decedent is or may be
21 involved, is governed by Section [], as well as by this section. In other cases, the petition shall
22 contain or adopt the statements required by Section [] and describe the question relating to
23 priority or qualification of the personal representative which is to be resolved. If the proceeding

1 is commenced after appointment, the previously appointed personal representative, after receipt
2 of notice thereof, shall refrain from exercising any power of administration except as necessary
3 to preserve the estate or unless the court orders otherwise.

4 (b) After notice to interested persons, including all persons interested in the
5 administration of the estate as successors under the applicable assumption concerning testacy,
6 any previously appointed personal representative and any person having or claiming priority for
7 appointment as personal representative, the court shall determine who is entitled to appointment
8 under Section [], make a proper appointment and, if appropriate, terminate any prior appointment
9 found to have been improper as provided in cases of removal under Section [].

10 **PART 4**

11 **SUPERVISED ADMINISTRATION**

12 **SECTION 2-401. SUPERVISED ADMINISTRATION; NATURE OF**

13 **PROCEEDING.** Supervised administration is a single in rem proceeding to secure complete
14 administration and settlement of a decedent's estate under the continuing authority of the court
15 which extends until entry of an order approving distribution of the estate and discharging the
16 personal representative, or other order terminating the proceeding. A supervised personal
17 representative is responsible to the court, as well as to the interested persons, and is subject to
18 directions concerning the estate made by the court on its own motion or on the motion of any
19 interested party. Except as otherwise provided in this [part], or as otherwise ordered by the
20 court, a supervised personal representative has the same duties and powers as a personal
21 representative who is not supervised.

22 **SECTION 2-402. SUPERVISED ADMINISTRATION; PETITION; ORDER. A**

23 petition for supervised administration may be filed by any interested person or by a personal

1 representative at any time or the prayer for supervised administration may be joined with a
2 petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority
3 and qualification of any personal representative have not been adjudicated previously, the
4 petition for supervised administration shall include the matters required of a petition in a testacy
5 proceeding and the notice requirements and procedures applicable to a testacy proceeding apply.
6 If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions
7 relating to the priority and qualifications of the personal representative in any case involving a
8 request for supervised administration, even though the request for supervised administration may
9 be denied. After notice to interested persons, the court shall order supervised administration of a
10 decedent's estate:

11 (1) if the decedent's will directs supervised administration, it shall be ordered unless the
12 court finds that circumstances bearing on the need for supervised administration have changed
13 since the execution of the will and that there is no necessity for supervised administration;

14 (2) if the decedent's will directs unsupervised administration, supervised administration
15 shall be ordered only upon a finding that it is necessary for protection of persons interested in the
16 estate; or

17 (3) in other cases if the court finds that supervised administration is necessary under the
18 circumstances.

19 **SECTION 2-403. SUPERVISED ADMINISTRATION; EFFECT ON OTHER**
20 **PROCEEDINGS.** After the personal representative has received notice of the filing of a
21 petition for supervised administration, a personal representative who has been appointed
22 previously shall not exercise the power to distribute any estate. The filing of the petition does
23 not affect the personal representative's other powers and duties unless the court restricts the

1 **SECTION 2-502. ACCEPTANCE OF APPOINTMENT; CONSENT TO**

2 **JURISDICTION.** By accepting appointment, a personal representative submits personally to
3 the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any
4 interested person. Notice of any proceeding shall be delivered to the personal representative, or
5 mailed to the personal representative by ordinary first class mail at the address as listed in the
6 application or petition for appointment or as thereafter reported to the court and to the personal
7 representative's address as then known to the petitioner.

8 **SECTION 2-503. BOND NOT REQUIRED WITHOUT COURT ORDER,**

9 **EXCEPTIONS.** Bond may be required by court order at the time of appointment of a personal
10 representative except that bond is not required of a personal representative if the will relieves the
11 personal representative of bond, unless bond has been requested by an interested party and the
12 court is satisfied that it is desirable. Bond required by any will may be dispensed with upon
13 determination by the court that it is not necessary. No bond is required of any personal
14 representative who, pursuant to statute, has deposited cash or collateral with an agency of this
15 [tribal jurisdiction] to secure performance of the personal representative's duties.

16 **SECTION 2-504. ORDER RESTRAINING PERSONAL REPRESENTATIVE.**

17 (a) On petition of any person who appears to have an interest in the estate, the court by
18 temporary order may restrain a personal representative from performing specified acts of
19 administration, disbursement or distribution, or exercise of any powers or discharge of any duties
20 of the office, or make any other order to secure proper performance of the personal
21 representative's duty, if it appears to the court that the personal representative otherwise may
22 take some action which would jeopardize unreasonably the interest of the applicant or of some
23 other interested person. Persons with whom the personal representative may transact business

1 may be made parties.

2 (b) The matter shall be set for hearing at such time and with such notice as the court shall
3 direct.

4 **SECTION 2-505. TERMINATION OF APPOINTMENT; GENERAL.** Termination
5 of appointment of a personal representative occurs as indicated in Sections [] – [] inclusive.
6 Termination ends the right and power pertaining to the office of personal representative as
7 conferred by this [code] or any will, except that a personal representative, at any time prior to
8 distribution or until restrained or enjoined by court order, may perform acts necessary to protect
9 the estate and may deliver the assets to a successor representative. Termination does not
10 discharge a personal representative from liability for transactions or omissions occurring before
11 termination, or relieve the personal representative of the duty to preserve assets subject to the
12 representative’s control, to account therefore and to deliver the assets. Termination does not
13 affect the jurisdiction of the court over the personal representative, but terminates the
14 representative’s authority to represent the estate in any pending or future proceeding.

15 **SECTION 2-506. TERMINATION OF APPOINTMENT; DEATH OR**
16 **INCAPACITY.** The death of a personal representative or the appointment of a conservator for
17 the estate of a personal representative, terminates the representative’s appointment. Unless a co-
18 representative remains in office, termination by death or appointment of a conservator imposes
19 upon the personal representative of the deceased personal representative, of the conservator
20 appointed for a living personal representative, the duty to protect the estate possessed and being
21 administered at the time of termination, and confers the power to perform acts necessary for
22 protection and shall account for and deliver the estate assets to a successor or special personal
23 representative upon that representative’s appointment and qualification.

1 **SECTION 2-507. TERMINATION OF APPOINTMENT; VOLUNTARY.**

2 (a) An appointment of a personal representative terminates as provided in Section 3-
3 1003, one year after the filing of a closing statement.

4 (b) An order closing an estate as provided in Section [] terminates an appointment of a
5 personal representative.

6 (c) A personal representative may resign the position by filing a written statement of
7 resignation with the clerk after the personal representative has given at least 14 days written
8 notice to the persons known to be interested in the estate. If no one applies or petitions for
9 appointment of a successor representative within the time indicated in the notice, the filed
10 statement of resignation is ineffective as a termination of appointment, and in any event is
11 effective only upon the appointment and qualification of a successor representative and delivery
12 of the assets to the successor representative. If the person resigning is a co-representative, the
13 resignation is effective only upon delivery of assets in the representative's possession to the co-
14 representative remaining in office.

15 **SECTION 2-508. TERMINATION OF APPOINTMENT BY REMOVAL;**
16 **CAUSE; PROCEDURE.**

17 (a) A person interested in the estate may petition for removal of a personal representative
18 for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing.
19 Notice shall be given by the petitioner to the personal representative, and to other persons as the
20 court may order. Except as otherwise ordered as provided in Section [], after receipt of notice of
21 removal proceedings, the personal representative shall not act except to account, to correct
22 maladministration or preserve the estate. If removal is ordered, the court also shall direct by
23 order the disposition of the assets remaining in the name of, or under the control of, the personal

1 representative being removed.

2 (b) Cause for removal exists when removal would be in the best interests of the estate, or
3 if it is shown that a personal representative or the person seeking the personal representative's
4 appointment, intentionally misrepresented material facts in the proceedings leading to the
5 appointment, or that the personal representative has disregarded an order of the court, has
6 become incapable of discharging the duties of the office, or has mismanaged the estate or failed
7 to perform any duty pertaining to the office. Unless the decedent's will directs otherwise a
8 personal representative appointed at the decedent's domicile, incident to securing appointment of
9 the personal representative or the personal representative's nominee as ancillary personal
10 representative, may obtain removal of another who was appointed personal representative in this
11 [tribal jurisdiction] to administer local assets.

12 **SECTION 2-509. TERMINATION OF APPOINTMENT; CHANGE OF**
13 **TESTACY STATUS.** Except as otherwise ordered by the court, the probate of a will
14 subsequent to the appointment of a personal representative in intestacy or under a will which is
15 superseded by probate of another will does not terminate the appointment of the personal
16 representative although the representative's powers may be reduced as provided in Section [].
17 Termination occurs upon appointment in a proceeding of a person entitled to appointment under
18 the later assumption concerning testacy. If no request for new appointment is made within 30
19 days after expiration of time for appeal from the order in testacy proceedings changing the
20 assumption concerning testacy, the previously appointed personal representative upon request
21 may be appointed personal representative under the subsequently probated will, or as in intestacy
22 as the case may be.

1 **SECTION 2-510. SUCCESSOR PERSONAL REPRESENTATIVE.** [Part] __ of this
2 [article] governs proceedings for appointment of a personal representative to succeed one whose
3 appointment has been terminated. After appointment and qualification, a successor personal
4 representative may be substituted in all actions and proceedings to which the former personal
5 representative was a party, and no notice, process or claim which was given or served upon the
6 former personal representative need be given to or served upon the successor in order to preserve
7 any position or right the person giving the notice or filing the claim may thereby have obtained
8 or preserved with reference to the former personal representative.

9 **SECTION 2-511. SPECIAL ADMINISTRATOR; APPOINTMENT.** A special
10 administrator may be appointed by order of the court on the petition of any interested person and
11 finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure
12 its proper administration including its administration in circumstances where a general personal
13 representative cannot or should not act. If it appears to the court that an emergency exists,
14 appointment may be ordered without notice.

15 **SECTION 2-512. SPECIAL ADMINISTRATOR; WHO MAY BE APPOINTED.**

16 (a) If a special administrator is to be appointed pending the probate of a will which is the
17 subject of a pending application or petition for probate, the person named executor in the will
18 shall be appointed if available, and qualified.

19 (b) In other cases, any proper person may be appointed special administrator.

20 **SECTION 2-513. SPECIAL ADMINISTRATOR; PROCEEDINGS; POWER AND**
21 **DUTIES.** A special administrator has the power of a general personal representative except as
22 limited in the appointment and duties as prescribed in the order. The appointment may be for a
23 specified time, to perform particular acts or on other terms as the court may direct.

1 **SECTION 2-603. GENERAL DUTIES; RELATION AND LIABILITY TO**
2 **PERSONS INTERESTED IN ESTATE; STANDING TO SUE.**

3 (a) A personal representative is a fiduciary who shall observe the standards of care
4 applicable to trustees. A personal representative is under a duty to settle and distribute the estate
5 of the decedent in accordance with the terms of any probated and effective will and this [code],
6 and as expeditiously and efficiently as is consistent with the best interests of the estate. A
7 personal representative shall use the authority conferred upon the personal representative by this
8 [code], the terms of the will, if any, and any order in proceedings to which the personal
9 representative is party for the best interests of successors to the estate.

10 (b) A personal representative may not be surcharged for acts of administration or
11 distribution if the conduct in question was authorized at the time. An order of appointment of a
12 personal representative is authority to distribute apparently intestate assets to the heirs of the
13 decedent if, at the time of distribution, the personal representative is not aware of a pending
14 testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a
15 proceeding questioning the personal representative's appointment or fitness to continue, or a
16 supervised administration proceeding. This section does not affect the duty of the personal
17 representative to administer and distribute the estate in accordance with the rights of claimants
18 whose claims have been allowed, the surviving spouse, any minor and dependent children and
19 any pretermitted child of the decedent as described elsewhere in this [code].

20 (c) Except as to proceedings which do not survive the death of the decedent, a personal
21 representative of a decedent domiciled in this [tribal jurisdiction] at death has the same standing
22 to sue and be sued in the courts of this [tribal jurisdiction] and the courts of any other jurisdiction
23 as the decedent had immediately prior to death.

1 **SECTION 2-604. PERSONAL REPRESENTATIVE TO PROCEED WITHOUT**
2 **COURT ORDER; EXCEPTION.** A personal representative shall proceed expeditiously with
3 the settlement and distribution of a decedent’s estate and, except as otherwise specified or
4 ordered in regard to a supervised personal representative, do so without adjudication, order, or
5 direction of the court, but a personal representative may invoke the jurisdiction of the court, in
6 proceedings authorized by this [code], to resolve questions concerning the estate or its
7 administration.

8 **SECTION 2-605. DUTY OF PERSONAL REPRESENTATIVES:**
9 **INFORMATION TO HEIRS AND DEVISEES.** Not later than 30 days after appointment
10 every personal representative, except any special administrator, shall give information of the
11 appointment to the heirs and devisees, including, if there has been no testacy proceeding and if
12 the personal representative was appointed on the assumption that the decedent died intestate, the
13 devisees in any will mentioned in the application for appointment of a personal representative.
14 The information shall be delivered or sent by ordinary mail to each of the heirs and devisees
15 whose address is reasonably available to the personal representative. The duty does not extend
16 to require information to persons who have been adjudicated in a prior testacy proceeding to
17 have no interest in the estate. The information shall include the name and address of the personal
18 representative, indicate that it is being sent to persons who have or may have some interest in the
19 estate being administered, indicate whether bond has been filed, and describe the court where
20 papers relating to the estate are on file. The information shall state that the estate is being
21 administered by the personal representative under the [Tribal Jurisdiction] Probate Code without
22 supervision by the court but that recipients are entitled to information regarding the
23 administration from the personal representative and can petition the court in any matter relating

1 to the estate, including distribution of assets and expenses of administration. The personal
2 representative's failure to give this information is a breach of the personal representative's duty
3 to the persons concerned but does not affect the validity of the personal representative's
4 appointment, powers or other duties. A personal representative may inform other persons of the
5 appointment.

6 **SECTION 2-606. DUTY OF PERSONAL REPRESENTATIVE; INVENTORY**
7 **AND APPRAISEMENT.** Within three months after appointment, a personal representative,
8 who is not a special administrator or a successor to another representative who has previously
9 discharged this duty, shall prepare and file an inventory of property owned by the decedent at the
10 time of the decedent's death, listing it with reasonable detail, and indicating as to each listed
11 item, its fair market value as of the date of the decedent's death, and the type and amount of any
12 encumbrance that may exist with reference to any item.

13 The personal representative shall send a copy of the inventory to interested persons who
14 request it. The personal representative shall also file the original of the inventory with the court.

15 **SECTION 2-607. EMPLOYMENT OF APPRAISERS.** The personal representative
16 may employ a qualified and disinterested appraiser to assist the personal representative in
17 ascertaining the fair market value as of the date of the decedent's death of any asset the value of
18 which may be subject to reasonable doubt. Different persons may be employed to appraise
19 different kinds of assets included in the estate. The names and addresses of any appraiser shall
20 be indicated on the inventory with the item or items appraised.

21 **SECTION 2-608. DUTY OF PERSONAL REPRESENTATIVE;**
22 **SUPPLEMENTARY INVENTORY.** If any property not included in the original inventory
23 comes to the knowledge of a personal representative or if the personal representative learns that

1 the value or description indicated in the original inventory for any item is erroneous or
2 misleading, the personal representative shall make a supplementary inventory or appraisalment
3 showing the market value as of the date of the decedent's death of the new item or the revised
4 market value or descriptions, and the appraisers or other data relied upon, if any, and file it with
5 the court if the original inventory was filed, or furnish copies thereof or information thereof to
6 persons sent a copy of the original inventory and to other persons who request it.

7 **SECTION 2-609. DUTY OF PERSONAL REPRESENTATIVE; POSSESSION OF**
8 **ESTATE.** Except as otherwise provided by a decedent's will, every personal representative has
9 a right to, and shall take possession or control of the decedent's property, except that any real
10 property or tangible personal property may be left with or surrendered to the person
11 presumptively entitled thereto unless or until, in the judgment of the personal representative,
12 possession of the property by the personal representative will be necessary for purposes of
13 administration. The request by a personal representative for delivery of any property possessed
14 by an heir or devisee is conclusive evidence, in any action against the heir or devisee for
15 possession thereof, that the possession of the property by the personal representative is necessary
16 for purposes of administration. The personal representative shall pay taxes on, and take all steps
17 reasonably necessary for the management, protection and preservation of, the estate in the
18 personal representative's possession. The personal representative may maintain an action to
19 recover possession of property or to determine the title thereto.

20 **SECTION 2-610. POWER TO AVOID TRANSFERS.** The property liable for the
21 payment of unsecured debts of a decedent includes all property transferred by the decedent by
22 any means which is in law void or voidable as against the decedent's creditors, and subject to
23 prior liens, the right to recover this property, so far as necessary for the payment of unsecured

1 debts of the decedent, is exclusively in the personal representative.

2 **SECTION 2-611. POWERS OF PERSONAL REPRESENTATIVES; IN**
3 **GENERAL.** Until termination of the personal representative’s appointment a personal
4 representative has the same power over the title to property of the estate that an absolute owner
5 would have, in trust however, for the benefit of the creditors and others interested in the estate.
6 This power may be exercised without notice, hearing, or order of court.

7 **SECTION 2-612. IMPROPER EXERCISE OF POWER; BREACH OF**
8 **FIDUCIARY DUTY.** If the exercise of power concerning the estate is improper, the personal
9 representative is liable to interested persons for damage or loss resulting from breach of the
10 fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and
11 others dealing with a personal representative shall be determined as provided in Sections [] and
12 [].

13 **SECTION 2-613. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING**
14 **CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS.** Any sale or encumbrance to the
15 personal representative, the personal representative’s spouse, agent or attorney, or any
16 corporation or trust in which the personal representative has a substantial beneficial interest, or
17 any transaction which is affected by a substantial conflict of interest on the part of the personal
18 representative, is voidable by any person interested in the estate except one who has consented
19 after fair disclosure, unless
20 (1) the will or a contract entered into by the decedent expressly authorized the transaction; or
21 (2) the transaction is approved by the court after notice to interested persons.

22 **SECTION 2-614. PERSONS DEALING WITH PERSONAL REPRESENTATIVE;**
23 **PROTECTION.** A person who in good faith either assists a personal representative or deals

1 with the personal representative for value is protected as if the personal representative properly
2 exercised the personal representative's power. The fact that a person knowingly deals with a
3 personal representative does not alone require the person to inquire into the existence of a power
4 or the propriety of its exercise. Except for restrictions on powers of supervised personal
5 representatives which are endorsed on letters as provided in Section [] no provision in any will or
6 order of court purporting to limit the power of a personal representative is effective except as to
7 persons with actual knowledge thereof. A person is not bound to see to the proper application of
8 estate assets paid or delivered to a personal representative. The protection here expressed
9 extends to instances in which some procedural irregularity or jurisdictional defect occurred in
10 proceedings leading to the issuance of letters, including a case in which the alleged decedent is
11 found to be alive. The protection here expressed is not by substitution for that provided by
12 comparable provisions of the laws relating to commercial transactions and laws simplifying
13 transfers of securities by fiduciaries.

14 **SECTION 2-615. TRANSACTIONS AUTHORIZED FOR PERSONAL**

15 **REPRESENTATIVES; EXCEPTIONS.** Except as restricted or otherwise provided by the will
16 or by an order in a proceeding and subject to the priorities stated in Section [], a personal
17 representative, acting reasonably for the benefit of the interested persons, may properly:

18 (1) retain assets owned by the decedent pending distribution or liquidation including
19 those in which the representative is personally interested or which are otherwise improper for
20 trust investment;

21 (2) receive assets from fiduciaries, or other sources;

22 (3) perform, compromise or refuse performance of the decedent's contracts that continue
23 as obligations of the estate, as the personal representative may determine under the

1 circumstances. In performing enforceable contracts by the decedent to convey or lease land, the
2 personal representative, among other possible courses of action, may:

3 (A) execute and deliver a deed of conveyance, for cash payment of all sums
4 remaining due, or the purchaser's note for the sum remaining due secured by a mortgage or deed
5 of trust on the land; or

6 (B) deliver a deed in escrow with directions that the proceeds, when paid in
7 accordance with the escrow agreement, be paid to the successors of the decedent, as designated
8 in the escrow agreement;

9 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges
10 constituted binding obligations of the decedent or were properly presented as claims if, in the
11 judgment of the personal representative, the decedent would have wanted the pledges completed
12 under the circumstances;

13 (5) if funds are not needed to meet debts and expenses currently payable and are not
14 immediately distributable, deposit or invest liquid assets of the estate, including moneys received
15 from the sale of other assets, in federally insured interest-bearing accounts, readily marketable
16 secured loan arrangements or other prudent investments which would be reasonable for use by
17 trustees generally;

18 (6) acquire or dispose of an asset, including land in this or another state, for cash or on
19 credit, at public or private sale; and manage, develop, improve, exchange, partition, change the
20 character of, or abandon an estate asset;

21 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures,
22 demolish any improvements, raze existing or erect new party walls or buildings;

23 (8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats

1 and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or
2 receiving considerations; or dedicate easements to public use without consideration;

3 (9) enter for any purpose into a lease as lessor or lessee, with or without option to
4 purchase or renew, for a term within or extending beyond the period of administration;

5 (10) enter into a lease or arrangement for exploration and removal of minerals or other
6 natural resources or enter into a pooling or unitization agreement;

7 (11) abandon property when, in the opinion of the personal representative, it is valueless,
8 or is so encumbered, or is in condition that it is of no benefit to the estate;

9 (12) vote stocks or other securities in person or by general or limited proxy;

10 (13) pay calls, assessments, and other sums chargeable or accruing against or on account
11 of securities, unless barred by the provisions relating to claims;

12 (14) hold a security in the name of a nominee or in other form without disclosure of the
13 interest of the estate but the personal representative is liable for any act of the nominee in
14 connection with the security so held;

15 (15) insure the assets of the estate against damage, loss and liability and the personal
16 representative against liability as to third persons;

17 (16) borrow money with or without security to be repaid from the estate assets or
18 otherwise; and advance money for the protection of the estate;

19 (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew
20 or in any manner modify the terms of any obligation owing to the estate. If the personal
21 representative holds a mortgage, pledge or other lien upon property of another person, the
22 personal representative may, in lieu of foreclosure, accept a conveyance or transfer of
23 encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

1 (18) pay taxes, assessments, compensation of the personal representative, and other
2 expenses incident to the administration of the estate;

3 (19) sell or exercise stock subscription or conversion rights; consent, directly or through a
4 committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation
5 of a corporation or other business enterprise;

6 (20) allocate items of income or expense to either estate income or principal, as permitted
7 or provided by law;

8 (21) employ persons, including attorneys, auditors, investment advisors, or agents, even if
9 they are associated with the personal representative, to advise or assist the personal
10 representative in the performance of the personal representative's administrative duties; act
11 without independent investigation upon their recommendations; and instead of acting personally,
12 employ one or more agents to perform any act of administration, whether or not discretionary;

13 (22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of
14 the estate and of the personal representative in the performance of the personal representative's
15 duties;

16 (23) sell, mortgage, or lease any real or personal property of the estate or any interest
17 therein for cash, credit, or for part cash and part credit, and with or without security for unpaid
18 balances;

19 (24) continue or participate in the operation of or incorporate any unincorporated
20 business or other enterprise in which the decedent was engaged at the time of the decedent's
21 death;

22 (26) provide for exoneration of the personal representative from personal liability in any
23 contract entered into on behalf of the estate;

1 (27) satisfy and settle claims and distribute the estate as provided in this [code].

2 **SECTION 2-616. POWERS AND DUTIES OF SUCCESSOR PERSONAL**

3 **REPRESENTATIVE.** A successor personal representative has the same power and duty as the
4 original personal representative to complete the administration and distribution of the estate, as
5 expeditiously as possible, but the successor personal representative shall not exercise any power
6 expressly made personal to the executor named in the will.

7 **SECTION 2-617. CO-REPRESENTATIVES; WHEN JOINT ACTION**

8 **REQUIRED.** If two or more persons are appointed co-representatives and unless the will
9 provides otherwise, the concurrence of all is required on all acts connected with the
10 administration and distribution of the estate. This restriction does not apply when any co-
11 representative receives and receipts for property due the estate, when the concurrence of all
12 cannot readily be obtained in the time reasonably available for emergency action necessary to
13 preserve the estate, or when a co-representative has been delegated to act for the others. Persons
14 dealing with a co-representative if actually unaware that another has been appointed to serve or if
15 advised by the personal representative with whom they deal that the personal representative has
16 authority to act alone for any of the reasons mentioned herein, are as fully protected as if the
17 person with whom they dealt had been the sole personal representative.

18 **SECTION 2-618. POWERS OF SURVIVING PERSONAL REPRESENTATIVE.**

19 Unless the terms of the will otherwise provide, every power exercisable by personal co-
20 representatives may be exercised by the one or more remaining after the appointment of one or
21 more is terminated, and if one of two or more nominated as co-executors is not appointed, those
22 appointed may exercise all the powers incident to the office.

1 **SECTION 2-619. COMPENSATION OF PERSONAL REPRESENTATIVE.** A

2 personal representative is entitled to reasonable compensation for all services. If a will provides
3 for compensation of the personal representative and there is no contract with the decedent
4 regarding compensation, the personal representative may renounce the provision before
5 qualifying and be entitled to reasonable compensation. A personal representative also may
6 renounce the right to all or any part of the compensation. A written renunciation of fee may be
7 filed with the court.

8 **SECTION 2-620. EXPENSES IN ESTATE LITIGATION.** If any personal

9 representative or person nominated as personal representative defends or prosecutes any
10 proceeding in good faith whether successful or not, the personal representative is entitled to
11 receive from the estate necessary expenses and disbursements including reasonable attorneys'
12 fees incurred.

13 **SECTION 2-621. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF**
14 **AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND**

15 **EMPLOYEES OF ESTATE.** After notice to all interested persons or on petition of an
16 interested person or on appropriate motion if administration is supervised, the propriety of
17 employment of any person by a personal representative including any attorney, auditor,
18 investment advisor or other specialized agent or assistant, the reasonableness of the
19 compensation of any person so employed, or the reasonableness of the compensation determined
20 by the personal representative for the personal representative's own services, may be reviewed
21 by the court. Any person who has received excessive compensation from an estate for services
22 rendered may be ordered to make appropriate refunds.

1 **PART 7**

2 **CREDITOR'S CLAIMS**

3 **SECTION 2-701. NOTICE TO CREDITORS.**

4 (a) Unless notice has already been given under this section, a personal representative
5 upon appointment shall publish a notice to creditors once a week for three successive weeks in a
6 newspaper of general circulation in the [tribal jurisdiction] announcing the appointment and the
7 personal representative's address and notifying creditors of the estate to present their claims
8 within four months after the date of the first publication of the notice or be forever barred.

9 (b) A personal representative may give written notice by mail or other delivery to a
10 creditor, notifying the creditor to present any claim within four months after the published notice,
11 if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the
12 notice, whichever is later, or be forever barred. Written notice must be the notice described in
13 subsection (a) above or a similar notice.

14 (c) The personal representative is not liable to a creditor or to a successor of the decedent
15 for giving or failing to give notice under this section.

16 **SECTION 2-702. STATUTES OF LIMITATIONS.**

17 (a) Unless an estate is insolvent or would thereby be rendered insolvent, the personal
18 representative, with the consent of all successors whose interests would be affected, may waive
19 any defense of limitations available to the estate. If the defense is not waived, no claim barred
20 by a statute of limitations at the time of the decedent's death may be allowed or paid.

21 (b) The running of a statute of limitations measured from an event other than death or the
22 giving of notice to creditors is suspended for four months after the decedent's death, but resumes
23 thereafter as to claims not otherwise barred.

1 (c) For purposes of a statute of limitations, the presentation of a claim pursuant to Section
2 [] is equivalent to commencement of a proceeding on the claim.

3 **SECTION 2-703. LIMITATIONS ON PRESENTATION OF CLAIMS.**

4 (a) All claims against a decedent's estate which arose before the death of the decedent,
5 including claims of the [tribal jurisdiction] and any political subdivision thereof, whether due or
6 to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or
7 other legal basis, if not barred earlier by another statute of limitations or non-claim statute, are
8 barred against the estate, the personal representative, the heirs and devisees, and nonprobate
9 transferees of the decedent, unless presented within the earlier of the following:

10 (1) one year after the decedent's death; or

11 (2) the time provided by Section [] for creditors who are given actual notice, and
12 within the time provided in Section [] for all creditors barred by publication.

13 (b) A claim described in subsection (a) which is barred by the non-claim statute of the
14 decedent's domicile before the giving of notice to creditors in this [tribal jurisdiction] is barred in
15 this state.

16 (c) All claims against a decedent's estate which arise at or after the death of the decedent,
17 including claims of the [tribal jurisdiction] and any subdivision thereof, whether due or to
18 become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or
19 other legal basis, are barred against the estate, the personal representative, and the heirs and
20 devisees of the decedent, unless presented as follows:

21 (1) a claim based on a contract with the personal representative, within four
22 months after performance by the personal representative is due; or

23 (2) any other claim, within the later of four months after it arises, or at the time

1 specified in subsection (a)(1).

2 (d) Nothing in this section affects or prevents:

3 (1) any proceeding to enforce any mortgage, pledge, or other lien upon property
4 of the estate;

5 (2) to the limits of the insurance protection only, any proceeding to establish
6 liability of the decedent or the personal representative for which the decedent or the personal
7 representative is protected by liability insurance; or

8 (3) collection of compensation for services rendered and reimbursement for expenses
9 advanced by the personal representative or by the attorney or accountant for the personal
10 representative of the estate.

11 **SECTION 2-704. MANNER OF PRESENTATION OF CLAIMS.** Claims against a
12 decedent's estate may be presented as follows:

13 (1) The claimant may deliver or mail to the personal representative a written statement of
14 the claim indicating its basis, the name and address of the claimant, and the amount claimed or
15 may file a written statement of the claim, in the form prescribed by rule, with the clerk of the
16 court and mail or deliver a copy thereof to the personal representative. The claim is deemed
17 presented on the first to occur of receipt of the written statement of claim by the personal
18 representative, or the filing of the claim with the court. If a claim is not yet due, the date when it
19 will become due shall be stated. If the claim is contingent or unliquidated, the nature of the
20 uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to
21 describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet
22 due does not invalidate the presentation made.

23 (2) The claimant may commence a proceeding against the personal representative in any

1 court where the personal representative may be subjected to jurisdiction, to obtain payment of
2 the claim against the estate, but the commencement of the proceeding must occur within the time
3 limited for presenting the claim. No presentation of claim is required in regard to matters
4 claimed in proceedings against the decedent which were pending at the time of death.

5 (3) If a claim is presented under paragraph (1), no proceeding thereon may be
6 commenced more than 60 days after the personal representative has mailed or delivered a notice
7 of disallowance; but, in the case of a claim which is not presently due or which is contingent or
8 unliquidated, the personal representative may consent to an extension of the 60 day period, or to
9 avoid injustice the court, on petition, may order an extension of the 60 day period, but in no
10 event shall the extension run beyond the applicable statute of limitations.

11 **SECTION 2-705. CLASSIFICATION OF CLAIMS.**

12 (a) If the applicable assets of the estate are insufficient to pay all claims in full, the
13 personal representative shall make payment in the following order:

- 14 (1) costs and expenses of administration;
- 15 (2) reasonable funeral expenses;
- 16 (3) debts and taxes with preference under federal law;
- 17 (4) reasonable and necessary medical and hospital expenses of the last illness of
18 the decedent, including compensation of persons attending the decedent;
- 19 (5) debts and taxes with preference under other laws of this state;
- 20 (6) all other claims.

21 (b) No preference shall be given in the payment of any claim over any other claim of the
22 same class, and a claim due and payable shall not be entitled to a preference over claims not due.

1 **SECTION 2-706. ALLOWANCE OF CLAIMS.**

2 (a) As to claims presented in the manner described in Section [] within the time limit
3 prescribed in 3-803, the personal representative may mail a notice to any claimant stating that the
4 claim has been disallowed. Every claim which is disallowed in whole or in part by the personal
5 representative is barred so far as not allowed unless the claimant files a petition for allowance in
6 the court or commences a proceeding against the personal representative not later than 60 days
7 after the mailing of the notice of disallowance or partial allowance if the notice warns the
8 claimant of the impending bar. Failure of the personal representative to mail notice to a claimant
9 of action on a claim for 60 days after the time for original presentation of the claim has expired
10 has the effect of a notice of allowance.

11 (b) The personal representative may prior to payment change the allowance to a
12 disallowance in whole or in part, but not after allowance by a court order or judgment or an order
13 directing payment of the claim. The personal representative shall notify the claimant of the
14 change to disallowance, and the disallowed claim is then subject to bar as provided in subsection

15 (a). The personal representative may change a disallowance to an allowance, in whole or in part,
16 until it is barred under subsection (a); after it is barred, it may be allowed and paid only if the
17 estate is solvent and all successors whose interests would be affected consent.

18 (c) Upon the petition of the personal representative or of a claimant in a proceeding for
19 the purpose, the court may allow in whole or in part any claim or claims presented to the
20 personal representative or filed with the clerk of the court in due time and not barred by
21 subsection (a). Notice in this proceeding shall be given to the claimant, the personal
22 representative and those other persons interested in the estate as the court may direct by order
23 entered at the time the proceeding is commenced.

1 (d) A judgment in a proceeding in any court against a personal representative to enforce a
2 claim against a decedent's estate is an allowance of the claim.

3 (e) Unless otherwise provided in any judgment in any court entered against the personal
4 representative, allowed claims bear interest at the legal rate for the period commencing 60 days
5 after the time for original presentation of the claim has expired unless based on a contract
6 making a provision for interest, in which case they bear interest in accordance with that
7 provision.

8 **SECTION 2-707. PAYMENT OF CLAIMS.**

9 (a) Upon the expiration of the earlier of the time limitations provided in Section [] for the
10 presentation of claims, the personal representative shall proceed to pay the claims allowed
11 against the estate in the order of priority prescribed, after making provision for homestead,
12 family and support allowances, for claims already presented that have not yet been allowed or
13 whose allowance has been appealed, and for unbarred claims that may yet be presented,
14 including costs and expenses of administration. By petition to the court in a proceeding for the
15 purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has
16 been allowed but not paid may secure an order directing the personal representative to pay the
17 claim to the extent funds of the estate are available to pay it.

18 (b) The personal representative at any time may pay any valid claim that has not been
19 barred, with or without formal presentation, but is personally liable to any other claimant whose
20 claim is allowed and who is injured by its payment if:

21 (1) payment was made before the expiration of the time limit stated in subsection
22 (a) and the personal representative failed to require the payee to give adequate security for the
23 refund of any of the payment necessary to pay other claimants; or

1 (2) payment was made, due to negligence or willful fault of the personal
2 representative, in such manner as to deprive the injured claimant of priority.

3 **SECTION 2-708. INDIVIDUAL LIABILITY OF PERSONAL**
4 **REPRESENTATIVE.**

5 (a) Unless otherwise provided in the contract, a personal representative is not individually
6 liable on a contract properly entered into in the personal representative's fiduciary capacity in the
7 course of administration of the estate unless the personal representative fails to reveal the
8 representative capacity and identify the estate in the contract.

9 (b) A personal representative is individually liable for obligations arising from ownership
10 or control of the estate or for torts committed in the course of administration of the estate only if
11 the personal representative is personally at fault.

12 (c) Claims based on contracts entered into by a personal representative in a fiduciary
13 capacity, on obligations arising from ownership or control of the estate or on torts committed in
14 the course of estate administration may be asserted against the estate by proceeding against the
15 personal representative in a the representative's fiduciary capacity, whether or not the personal
16 representative is individually liable therefor.

17 (d) Issues of liability as between the estate and the personal representative individually
18 may be determined in a proceeding for accounting, surcharge or indemnification or other
19 appropriate proceeding.

20 **SECTION 2-709. SECURED CLAIMS.** Payment of a secured claim is upon the basis
21 of the amount allowed if the creditor surrenders the security; otherwise payment is upon the basis
22 of one of the following:

23 (1) if the creditor exhausts the security before receiving payment, [unless precluded by

1 other law] upon the amount of the claim allowed less the fair value of the security; or
2 (2) if the creditor does not have the right to exhaust the security or has not done so, upon
3 the amount of the claim allowed less the value of the security determined by converting it into
4 money according to the terms of the agreement pursuant to which the security was delivered to
5 the creditor, or by the creditor and personal representative by agreement, arbitration, compromise
6 or litigation.

7 **SECTION 2-710. CLAIMS NOT DUE AND CONTINGENT OR**
8 **UNLIQUIDATED CLAIMS.**

9 (a) If a claim which will become due at a future time or a contingent or unliquidated
10 claim, becomes due, or certain, before the distribution of the estate, and if the claim has been
11 allowed it is paid in the same manner as presently due and absolute claims of the same class.

12 (b) In other cases the personal representative or, on petition of the personal representative
13 or the claimant in a special proceeding for the purpose, the court, may provide for payment as
14 follows:

15 (1) if the claimant consents, the claimant may be paid the present or agreed value
16 of the claim, taking any uncertainty into account;

17 (2) arrangement for future payment or possible payment on the happening of the
18 contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a
19 bond or security from a distributee or otherwise.

20 **SECTION 2-711. COUNTERCLAIMS.** In allowing a claim the personal
21 representative may deduct any counterclaim which the estate has against the claimant. In
22 determining a claim against an estate a court shall reduce the amount allowed by the amount of
23 any counterclaims and, if the counterclaims exceed the claim, render a judgment against the

1 claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from
2 a transaction other than that upon which the claim is based. A counterclaim may give rise to
3 relief exceeding in amount or different in kind from that sought in the claim.

4 **SECTION 2-712. EXECUTION AND LEVIES PROHIBITED.** No execution may
5 issue upon nor may any levy be made against any property of the estate under any judgment
6 against a decedent or a personal representative, but this section shall not be construed to prevent
7 the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate
8 proceeding.

9 **SECTION 2-713. COMPROMISE OF CLAIMS.** When a claim against the estate has
10 been presented in any manner, the personal representative may, if it appears for the best interest
11 of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or
12 unliquidated.

13 **SECTION 2-714. ENCUMBERED ASSETS.** If any assets of the estate are
14 encumbered by mortgage, pledge, lien or other security interest, the personal representative may
15 pay the encumbrance or any part thereof, renew or extend any obligation secured by the
16 encumbrance or convey or transfer the assets to the creditor in satisfaction of the creditor's lien,
17 in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it
18 appears to be for the best interest of the estate. Payment of an encumbrance does not increase
19 the share of the distributee entitled to the encumbered assets unless the distributee is entitled to
20 exoneration.

21 **SECTION 2-715. FINAL DISTRIBUTION TO DOMICILIARY**
22 **REPRESENTATIVE.** The estate of a non-resident decedent being administered by a personal
23 representative appointed in this [tribal jurisdiction] shall, if there is a personal representative of

1 the decedent's domicile willing to receive it, be distributed to the domiciliary personal
2 representative for the benefit of the successors of the decedent unless (i) by virtue of the
3 decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant
4 to the local law of this [tribal jurisdiction] without reference to the local law of the decedent's
5 domicile; (ii) the personal representative of this state, after reasonable inquiry, is unaware of the
6 existence or identity of a domiciliary personal representative; or (iii) the court orders otherwise
7 in a proceeding for a closing order under Section []or incident to the closing of a supervised
8 administration. In other cases, distribution of the estate of a decedent shall be made in
9 accordance with the other [parts] of this [article].

10 **PART 8**

11 **SPECIAL PROVISIONS RELATING TO DISTRIBUTION**

12 **SECTION 2-801. SUCCESSORS' RIGHTS IF NO ADMINISTRATION.** In the

13 absence of administration, the heirs and devisees are entitled to the estate in accordance with the
14 terms of a probated will or the laws of intestate succession. Devisees may establish title by the
15 probated will to devised property. Persons entitled to property by homestead allowance,
16 exemption or intestacy may establish title thereto by proof of the decedent's ownership, the
17 decedent's death, and their relationship to the decedent. Successors take subject to all charges
18 incident to administration, including the claims of creditors and allowances of surviving spouse
19 and dependent children, and subject to the rights of others resulting from abatement, retainer,
20 advancement and ademption.

21 **SECTION 2-802. DISTRIBUTION; ORDER IN WHICH ASSETS**

22 **APPROPRIATED; ABATEMENT.**

23 (a) Except as provided in subsection (b) and except as provided in connection with the

1 share of the surviving spouse who elects to take an elective share, shares of distributees abate,
2 without any preference or priority as between real and personal property, in the following order:
3 (i) property not disposed of by the will; (ii) residuary devises; (iii) general devises; (iv) specific
4 devises. For purposes of abatement, a general devise charged on any specific property or fund is
5 a specific devise to the extent of the value of the property on which it is charged, and upon the
6 failure or insufficiency of the property on which it is charged, a general devise to the extent of
7 the failure or insufficiency. Abatement within each classification is in proportion to the amounts
8 of property each of the beneficiaries would have received, if full distribution of the property had
9 been made in accordance with the terms of the will.

10 (b) If the will expresses an order of abatement, or if the testamentary plan or the express
11 or implied purpose of the devise would be defeated by the order of abatement stated in
12 subsection (a), the shares of the distributees abate as may be found necessary to give effect to the
13 intention of the testator.

14 (c) If the subject of a preferred devise is sold or used incident to administration,
15 abatement shall be achieved by appropriate adjustments in, or contribution from, other interests
16 in the remaining assets.

17 (d) If the subject of a preferred devise is sold or used incident to administration,
18 abatement shall be achieved by appropriate adjustments in, or contribution from, other interests
19 in the remaining assets.

20 **SECTION 2-803. RIGHT OF RETAINER.** The amount of a non-contingent
21 indebtedness of a successor to the estate if due, or its present value if not due, shall be offset
22 against the successor's interest; but the successor has the benefit of any defense which would be
23 available to the successor in a direct proceeding for recovery of the debt.

1 **SECTION 2-804. INTEREST ON GENERAL PECUNIARY DEVISE.** General

2 pecuniary devises bear interest at the legal rate beginning one year after the first appointment of
3 a personal representative until payment, unless a contrary intent is indicated by the will.

4 **SECTION 2-805. PENALTY CLAUSE FOR CONTEST.** A provision in a will

5 purporting to penalize any interested person for contesting the will or instituting other
6 proceedings relating to the estate is unenforceable if probable cause exists for instituting
7 proceedings.

8 **SECTION 2-806. DISTRIBUTION IN KIND; VALUATION; METHOD.**

9 (a) Unless a contrary intention is indicated by the will, the distributable assets of a
10 decedent's estate shall be distributed in kind to the extent possible through application of the
11 following provisions:

12 (1) A specific devisee is entitled to distribution of the thing devised ~~to him~~, and a
13 spouse or child who has selected particular assets of an estate as provided in Section [] shall
14 receive the items selected.

15 (2) Any [statutory allowance of the spouse of children] or devise of a stated sum
16 of money may be satisfied in kind provided

17 (A) the person entitled to the payment has not demanded payment in cash;

18 (B) the property distributed in kind is valued at fair market value as of the
19 date of its distribution, and

20 (C) no residuary devisee has requested that the asset in question remain a
21 part of the residue of the estate.

22 (3) For purposes of facilitating distribution, the personal representative may
23 ascertain the value of the assets as of the time of the proposed distribution in any reasonable way,

1 including the employment of qualified appraisers, even if the assets may have been previously
2 appraised.

3 (4) The residuary estate shall be distributed in any equitable manner.

4 (b) After the probable charges against the estate are known, the personal representative
5 may mail or deliver a proposal for distribution to all persons who have a right to object to the
6 proposed distribution. The right of any distributee to object to the proposed distribution on the
7 basis of the kind or value of asset the distributee is to receive if not waived earlier in writing,
8 terminates if the distributee fails to object in writing received by the personal representative
9 within 30 days after mailing or delivery of the proposal.

10 **SECTION 2-807. DISTRIBUTION IN KIND; EVIDENCE.** If distribution in kind is
11 made, the personal representative shall execute an instrument or deed of distribution assigning,
12 transferring or releasing the assets to the distributee as evidence of the distributee's title to the
13 property.

14 **SECTION 2-808. DISTRIBUTION; RIGHT OR TITLE OF DISTRIBUTE.** Proof
15 that a distributee has received an instrument or deed of distribution of assets in kind, or payment
16 in distribution, from a personal representative, is conclusive evidence that the distributee has
17 succeeded to the interest of the estate in the distributed assets, as against all persons interested in
18 the estate, except that the personal representative may recover the assets or their value if the
19 distribution was improper.

20 **SECTION 2-809. IMPROPER DISTRIBUTION; LIABILITY OF DISTRIBUTE.**
21 Unless the distribution or payment no longer can be questioned because of adjudication,
22 estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who
23 was improperly paid, is liable to return the property improperly received and its income since

1 distribution if the distributee or claimant has the property. If the distributee or ~~the~~ claimant does
2 not have the property, then the distributee or ~~the~~ claimant is liable to return the value as of the
3 date of disposition of the property improperly received and its income and gain received by the
4 distributee or claimant.

5 **SECTION 2-810. PURCHASERS FROM DISTRIBUTEES PROTECTED.** If
6 property distributed in kind or a security interest therein is acquired for value by a purchaser
7 from or lender to a distributee who has received an instrument or deed of distribution from the
8 personal representative, or is so acquired by a purchaser from or lender to a transferee from such
9 distributee, the purchaser or lender takes title free of rights of any interested person in the estate
10 and incurs no personal liability to the estate, or to any interested person, whether or not the
11 distribution was proper or supported by court order or the authority of the personal representative
12 was terminated before execution of the instrument or deed. This section protects a purchaser
13 from or lender to a distributee who, as personal representative, has executed a deed of
14 distribution in the distributee's own favor, as well as a purchaser from or lender to any other
15 distributee or distributee's transferee. To be protected under this provision, a purchaser or lender
16 need not inquire whether a personal representative acted properly in making the distribution in
17 kind, even if the personal representative and the distributee are the same person, or whether the
18 authority of the personal representative had terminated before the distribution. Any recorded
19 instrument described in this section on which a [tribal jurisdiction] documentary fee is noted
20 pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was
21 made for value.

22 **SECTION 2-811. PARTITION FOR PURPOSE OF DISTRIBUTION.** When two or
23 more heirs or devisees are entitled to distribution of undivided interests in any real or personal

1 property of the estate, the personal representative or one or more of the heirs or devisees may
2 petition the court prior to the formal or informal closing of the estate, to make partition. After
3 notice to the interested heirs or devisees, the court shall partition the property in the same manner
4 as provided by the law for civil actions of partition. The court may direct the personal
5 representative to sell any property which cannot be partitioned without prejudice to the owners
6 and which cannot conveniently be allotted to any one party.

7 **SECTION 2-812. PRIVATE AGREEMENTS AMONG SUCCESSORS TO**
8 **DECEDENT BINDING ON PERSONAL REPRESENTATIVE.** Subject to the rights of
9 creditors and taxing authorities, competent successors may agree among themselves to alter the
10 interests, shares, or amounts to which they are entitled under the will of the decedent, or under
11 the laws of intestacy, in any way that they provide in a written contract executed by all who are
12 affected by its provisions. The personal representative shall abide by the terms of the agreement
13 subject to the obligation to administer the estate for the benefit of creditors, to pay all taxes and
14 costs of administration, and to carry out the responsibilities of the office for the benefit of any
15 successors of the decedent who are not parties. Personal representatives of decedents' estates are
16 not required to see to the performance of trusts if the trustee thereof is another person who is
17 willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the
18 purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of
19 trusts.

20 **SECTION 2-813. DISPOSITION OF UNCLAIMED ASSETS.** If an heir, devisee or
21 claimant cannot be found, the personal representative shall distribute the share of the missing
22 person to the person's conservator, if any, otherwise to the [state treasurer] to become a part of
23 the [tribal jurisdiction escheat fund].

1 **SECTION 2-814. DISTRIBUTION TO INCAPACITATED PERSON.**

2 (a) A personal representative may discharge an obligation to distribute to any person who
3 is a minor or incapacitated person by distributing in a manner expressly provided in the will.

4 (b) Unless contrary to an express provision in the will, the personal representative may
5 discharge an obligation to distribute to a minor or incapacitated person as authorized by other
6 statute. If the personal representative knows that a conservator has been appointed or that a
7 proceeding for appointment of a conservator is pending, the personal representative is authorized
8 to distribute only to the conservator.

9 (c) If the heir or devisee has an incapacity other than minority, the personal representative
10 is authorized to distribute to:

11 (1) an attorney in fact who has authority under a power of attorney to receive
12 property for that person; or

13 (2) the spouse, parent or other close relative with whom the incapacitated person
14 resides if the distribution is of amounts not exceeding [\$10,000] a year, or property not
15 exceeding [\$50,000] in value, unless the court authorizes a larger amount or greater value.

16 Persons receiving money or property for the incapacitated person are obligated to apply
17 the money or property to the support of that person, but may not pay themselves except by way
18 of reimbursement for out-of-pocket expenses for goods and services necessary for the person's
19 support. Excess sums must be preserved for future support of the incapacitated person. The
20 personal representative is not responsible for the proper application of money or property
21 distributed pursuant to this subsection.

1 **PART 9**

2 **CLOSING ESTATES**

3 **SECTION 2-901. PROCEEDINGS TERMINATING ADMINISTRATION;**
4 **TESTATE OR INTESTATE; ORDER OF GENERAL PROTECTION.**

5 (a) A personal representative or any interested person may petition for an order of
6 complete settlement of the estate. The personal representative may petition at any time, and any
7 other interested person may petition after one year from the appointment of the original personal
8 representative except that no petition under this section may be entertained until the time for
9 presenting claims which arose prior to the death of the decedent has expired. The petition may
10 request the court to determine testacy, if not previously determined, to consider the final account
11 or compel or approve an accounting and distribution, to construe any will or determine heirs and
12 adjudicate the final settlement and distribution of the estate. After notice to all interested persons
13 and hearing the court may enter an order or orders, on appropriate conditions, determining the
14 persons entitled to distribution of the estate, and, as circumstances require, approving settlement
15 and directing or approving distribution of the estate and discharging the personal representative
16 from further claim or demand of any interested person.

17 (b) If one or more heirs or devisees were omitted as parties in, or were not given notice
18 of, a previous testacy proceeding, the court, on proper petition for an order of complete
19 settlement of the estate under this section, and after notice to the omitted or unnotified persons
20 and other interested parties determined to be interested on the assumption that the previous order
21 concerning testacy is conclusive as to those given notice of the earlier proceeding, may
22 determine testacy as it affects the omitted persons and confirm or alter the previous order of
23 testacy as it affects all interested persons as appropriate in the light of the new proofs. In the

1 absence of objection by an omitted or unnotified person, evidence received in the original testacy
2 proceeding shall constitute prima facie proof of due execution of any will previously admitted to
3 probate, or of the fact that the decedent left no valid will if the prior proceedings determined this
4 fact.

5 (c) An order of complete settlement may be conclusive as to all matters determined on all
6 persons given notice, subject only to being reversed, set aside or modified on appeal.

7 **SECTION 2-902. CLOSING ESTATES; BY SWORN STATEMENT OF**
8 **PERSONAL REPRESENTATIVE.**

9 (a) Unless prohibited by order of the court and except for estates being administered in
10 supervised administration proceedings, a personal representative may close an estate by filing
11 with the court no earlier than six months after the date of original appointment of a general
12 personal representative for the estate, a verified statement stating that the personal representative,
13 or a previous personal representative, has:

14 (1) determined that notice to creditors was properly given and that the time limited
15 for presentation of creditors' claims has expired;

16 (2) fully administered the estate of the decedent by making payment, settlement,
17 or other disposition of all claims that were presented, expenses of administration and estate,
18 inheritance and other death taxes, except as specified in the statement, and that the assets of the
19 estate have been distributed to the persons entitled. If any claims remain undischarged, the
20 statement must state whether the personal representative has distributed the estate subject to
21 possible liability with the agreement of the distributees, or state in detail other arrangements that
22 have been made to accommodate outstanding liabilities; and

23 (3) sent a copy of the statement to all distributees of the estate and to all creditors

1 or other claimants of whom the personal representative is aware whose claims are neither paid
2 nor barred and has furnished a full account in writing of the personal representative's
3 administration to the distributees whose interests are affected thereby.

4 (b) If no proceedings involving the personal representative are pending in the court one
5 year after the closing statement is filed the appointment of the personal representative terminates.

6 **SECTION 2-903. LIABILITY OF DISTRIBUTEES TO CLAIMANTS.** After assets
7 of an estate have been distributed and subject to Section [], an undischarged claim not barred
8 may be prosecuted in a proceeding against one or more distributees. No distributee shall be
9 liable to claimants for amounts received as [statutory allowances for spouse and children], or for
10 amounts in excess of the value of the distribution as of the time of distribution. As between
11 distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been
12 satisfied in the course of administration. Any distributee who shall have failed to notify other
13 distributees of the demand made upon the distributee by the claimant in sufficient time to permit
14 them to join in any proceeding in which the claim was asserted against the distributee loses the
15 right of contribution against other distributees.

16 **SECTION 2-904. LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL**
17 **REPRESENTATIVE.** Unless previously barred by adjudication and except as provided in the
18 closing statement, the rights of successors and of creditors whose claims have not otherwise been
19 barred against the personal representative for breach of fiduciary duty are barred unless a
20 proceeding to assert the same is commenced within six months after the filing of the closing
21 statement. The rights thus barred do not include rights to recover from a personal representative
22 for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's
23 estate.

1 **SECTION 2-905. LIMITATIONS ON ACTIONS AND PROCEEDINGS**

2 **AGAINST DISTRIBUTEES.** Unless previously adjudicated in a testacy proceeding or in a
3 proceeding settling the accounts of a personal representative or otherwise barred, the claim of a
4 claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or
5 devisee, or of a successor personal representative acting in their behalf, to recover property
6 improperly distributed or its value from any distributee is forever barred at the later of three
7 years after the decedent's death or one year after the time of its distribution, but all claims of
8 creditors of the decedent are barred one year after the decedent's death. This section does not
9 bar an action to recover property or value received as a result of fraud.

10 **SECTION 2-906. CERTIFICATE DISCHARGING LIENS SECURING**

11 **FIDUCIARY PERFORMANCE.** After the personal representative's appointment has
12 terminated, the personal representative, the personal representative's sureties, or any successor of
13 either, upon the filing of a verified application showing so far as is known by the applicant, that
14 no action concerning the estate is pending in any court, is entitled to receive a certificate from the
15 clerk that the personal representative appears to have fully administered the estate in question.
16 The certificate evidences discharge of any lien on any property given to secure the obligation of
17 the personal representative in lieu of bond or any surety, but does not preclude action against the
18 personal representative or the surety.

19 **SECTION 2-907. SUBSEQUENT ADMINISTRATION.** If other property of the

20 estate is discovered after an estate has been settled and the personal representative discharged or
21 after one year after a closing statement has been filed, the court upon petition of any interested
22 person and upon notice as it directs may appoint the same or a successor personal representative
23 to administer the subsequently discovered estate. If a new appointment is made, unless the court

1 orders otherwise, the provisions of this [code] apply as appropriate; but no claim previously
2 barred may be asserted in the subsequent administration.

3 **PART 10**

4 **COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY**

5 **ADMINISTRATION PROCEDURE FOR SMALL ESTATES**

6 **SECTION 2-1001. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.**

7 (a) Thirty days after the death of a decedent, any person indebted to the decedent or
8 having possession of tangible personal property or an instrument evidencing a debt, obligation,
9 stock or chose in action belonging to the decedent shall make payment of the indebtedness or
10 deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or
11 chose in action to a person claiming to be the successor of the decedent upon being presented an
12 affidavit made by or on behalf of the successor stating that:

13 (1) the value of the entire estate, wherever located, less liens and encumbrances,
14 does not exceed \$25,000; and

15 (2) 30 days have elapsed since the death of the decedent; and

16 (3) no application or petition for the appointment of a personal representative is
17 pending or has been granted in any jurisdiction; and

18 (4) the claiming successor is entitled to payment or delivery of the property.

19 (b) A transfer agent of any security shall change the registered ownership on the books of
20 a corporation from the decedent to the successor or successors upon the presentation of an
21 affidavit as provided in subsection (a).

22 **SECTION 2-1002. EFFECT OF AFFIDAVIT.**

23 (a) The person paying, delivering, transferring, or issuing personal property or the

1 evidence thereof pursuant to affidavit is discharged and released to the same extent as if the
2 person dealt with a personal representative of the decedent. The person is not required to see to
3 the application of the personal property or evidence thereof or to inquire into the truth of any
4 statement in the affidavit.

5 (b) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or
6 issue any personal property or evidence thereof, it may be recovered or its payment, delivery,
7 transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose
8 by or on behalf of the persons entitled thereto.

9 (c) Any person to whom payment, delivery, transfer or issuance is made is answerable
10 and accountable therefor to any personal representative of the estate or to any other person
11 having a superior right.

12 **SECTION 2-1003. SMALL ESTATES; SUMMARY ADMINISTRATION**

13 **PROCEDURE.** If it appears from the inventory and appraisal that the value of the entire estate,
14 less liens and encumbrances, does not exceed homestead allowance, exempt property, family
15 allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable
16 and necessary medical and hospital expenses of the last illness of the decedent, the personal
17 representative may, without giving notice to creditors, immediately disburse and distribute the
18 estate to the persons entitled thereto, and file a closing statement as provided in Section [].

19 **SECTION 2-1004. SMALL ESTATES; CLOSING BY SWORN STATEMENT OF**
20 **PERSONAL REPRESENTATIVE.**

21 (a) Unless prohibited by order of the court and except for estates being administered by
22 supervised personal representatives, a personal representative may close an estate administered
23 under the summary procedures of Section [] by filing with the court, at any time after

1 disbursement and distribution of the estate, a verified statement stating that:

2 (1) to the best knowledge of the personal representative, the value of the entire
3 estate, less liens and encumbrances, did not exceed homestead allowance, exempt property,
4 family allowance, costs and expenses of administration, reasonable funeral expenses, and
5 reasonable, necessary medical and hospital expenses of the last illness of the decedent;

6 (2) the personal representative has fully administered the estate by disbursing and
7 distributing it to the persons entitled thereto; and

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

13 (b) If no actions or proceedings involving the personal representative are pending in the
14 court one year after the closing statement is filed, the appointment of the personal representative
15 terminates.

16 (c) A closing statement filed under this section has the same effect as one filed under
17 Section [].

18 **PART 11**

19 **FOREIGN PERSONAL REPRESENTATIVES; REPRESENTATIVES; ANCILLARY**

20 **ADMINISTRATION**

21 **SECTION 2-1101. DEFINITIONS.** In this [article]

22 (1) "local administration" means administration by a personal representative appointed in
23 this tribal jurisdiction pursuant to appointment proceedings described in [Article] [].

1 (2) “local personal representative” includes any personal representative appointed in this
2 tribal jurisdiction pursuant to appointment proceedings described in [Article] [].

3 (3) “resident creditor” means a person domiciled in, or doing business in this tribal
4 jurisdiction, who is, or could be, a claimant against an estate of a non-resident decedent.

5 **SECTION 2-1102. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO**
6 **DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL**

7 **ADMINISTRATION.** At any time after the expiration of 60 days from the death of a
8 nonresident decedent, any person indebted to the estate of the nonresident decedent or having
9 possession or control of personal property, or of an instrument evidencing a debt, obligation,
10 stock or chose in action belonging to the estate of the non-resident decedent may pay the debt,
11 deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in
12 action, to the domiciliary foreign personal representative of the nonresident decedent upon being
13 presented with proof of the representative’s appointment and an affidavit made by or on behalf
14 of the representative stating:

- 15 (1) the date of the death of the nonresident decedent,
16 (2) that no local administration, or application or petition therefor, is pending in this state,
17 (3) that the domiciliary foreign personal representative is entitled to payment or delivery.

18 **SECTION 2-1103. PAYMENT OR DELIVERY DISCHARGES.** Payment or
19 delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor
20 or person having possession of the personal property or of the instrument evidencing a debt,
21 obligation, stock, or chose in action to the same extent as if payment or delivery had been made
22 to a local personal representative.

1 **SECTION 2-1104. RESIDENT CREDITOR NOTICE.** Payment or delivery under
2 Section [] may not be made if a resident creditor of the nonresident decedent has notified the
3 debtor of the nonresident decedent or the person having possession of the personal property or of
4 the instrument evidencing a debt, obligation, stock, or chose in action belonging to the
5 nonresident decedent that the debt should not be paid nor the property delivered to the
6 domiciliary foreign personal representative.

7 **SECTION 2-1105. PROOF OF AUTHORITY-BOND.** If no local administration of
8 application or petition therefor is pending in this tribal jurisdiction a domiciliary personal
9 representative may file with a court in this [tribal jurisdiction] authenticated copies of the foreign
10 personal representative’s appointment and of any official bond the representative has given.

11 **SECTION 2-1106. POWER OF REPRESENTATIVES IN TRANSITION.** The
12 power of a domiciliary foreign personal representative under Section [] shall be exercised only if
13 there is no administration or application therefor pending in this state.

14 **SECTION 2-1107. ANCILLARY AND OTHER LOCAL ADMINISTRATIONS;**
15 **PROVISIONS GOVERNING.** In respect to a nonresident decedent, the provisions of [Article]
16 [] of this [code] govern:

17 (1) proceedings, if any, in a court of this tribal jurisdiction for probate of the will,
18 appointment, removal, supervision, and discharge of the local personal representative, and any
19 other order concerning the estate; and

20 (2) the status, powers, duties and liabilities of any local personal representative and the
21 rights of claimants, purchasers, distributees and others in regard to a local administration.

22 **SECTION 2-1108. JURISDICTION BY ACT OF FOREIGN PERSONAL**
23 **REPRESENTATIVE.** A foreign personal representative, submits personally to the jurisdiction

1 of the courts of this tribal jurisdiction in any proceeding relating to the estate by (i) filing
2 authenticated copies of the representative's appointment as provided in Section [], (ii) receiving
3 payment of money or taking delivery of personal property under Section [], or (iii) doing any act
4 as a personal representative in this jurisdiction which would have given the tribe jurisdiction over
5 the representative as an individual. Jurisdiction under clause (ii) is limited to the money or value
6 of personal property collected.

7 **SECTION 2-1109. JURISDICTION BY ACT OF DECEDENT.** In addition to
8 jurisdiction conferred by Section [], a foreign personal representative is subject to the jurisdiction
9 of the courts of this tribal jurisdiction to the same extent that the decedent was subject to
10 jurisdiction immediately prior to death.

11 **SECTION 2-1110. SERVICE ON FOREIGN PERSONAL REPRESENTATIVE.**
12 Notice shall be given to a foreign personal representative in the manner prescribed by Section [].