

Report of Drafting Committee on Model Tribal Probate 2016 Uniform Law Commission Annual Meeting

The project to draft a Model Tribal Probate Code is an outgrowth of the work of a ULC Study Committee appointed in 2008. The Study Committee had a dual charge. First, the Committee was charged with studying the feasibility of drafting an act on the mortgaging and other collateralization of Indian lands. Second, the Committee was charged with studying the feasibility of drafting an act on tribal probate issues. The Study Committee concluded that the drafting of an effective act on the mortgaging and collateralization of real property would require significant changes in federal law. However, the Study Committee concluded that the drafting of a Model Probate Code was both feasible and would fill a significant need. To verify this need, the Study Committee requested and received numerous letters of support from tribal organizations and from the Advisory Council to the Special Trustee for American Indians of the Department of the Interior.

Based on this significant demonstration of interest, the ULC Executive Committee in 2014 approved the appointment of a drafting committee. Tim Berg, a Commissioner from Arizona, was appointed as Chair, and David English, a Commissioner from Missouri, and Katheleen Guzman of the University of Oklahoma, were appointed as Co-Reporters.

The Drafting Committee has met four times; in April 2014, April 2015, October 2015, and April 2016. The first meeting was strictly devoted to issues. The subsequent three meetings focused on actual drafts.

Indian titles are complicated. Real property held in trust or restricted form is subject to federal law. Real property held in fee and personal property is subject to the jurisdiction of the tribal government. The value of personal property can be quite significant and includes improvements on real property. Personal property may also include cultural artifacts of significant tribal and financial value.

Real property controlled by federal law passes at death under the provisions of the American Indian Probate Reform Act (AIPRA). The requirements for wills and the probate process for real property controlled by federal law is determined by the Department of the Interior. Tribal law controls the disposition of fee lands and personal property.

The drafting committee has determined that it will only address probate issues controlled by tribal, and not federal law. Therefore, assets controlled by federal law are excluded from the draft. But the drafting committee is proceeding with a keen awareness of the federal law. For example, under the current draft of the Tribal Probate Code, the requirements for executing a will are identical to those prescribed by the Department of the Interior for the disposition of real property controlled by federal law. That way, an individual Indian need execute only one will, not two.

Probate codes such as the Uniform Probate Code address many topics and tend to be very long. Responding to concerns from tribal organizations, the drafting committee is attempting to draft a shorter probate code. The current draft consists of four articles. Following general provisions in

Article 1, Article 2 deals with the law of intestate succession and wills. Article 3 address the process for administering a decedent's estate, and Article 4 deals with transfer on death deeds, particularly of real property. Unlike a typical state probate code, there is no effort here to address guardianship or conservatorship, trusts, accounts at financial institutions, or transfer on death designations on securities. Also, within the topics the drafting committee has decided to address, there is an effort to keep things simple. For example, under the Uniform Probate Code, there are two different ways to open an estate, two different ways to administer an estate, and three different methods for closing an estate. Under the current draft of the Tribal Probate Code, there is only one method for opening, administering, and closing an estate.

In preparing the drafts, existing tribal probate codes have been examined with care. Selected provisions of state probate law, particularly provisions based on the Uniform Probate Code, have also been examined.

There are over 500 recognized Indian tribes in the US. The laws governing individual tribes vary greatly and certain issues are more important to some tribal governments than to others. For this reason, the drafting committee is drafting a Model Act. The objective is to provide the tribes with a set of provisions among which tribes may pick and choose and adapt for their particular circumstances. Similar to the Model Tribal Secured Transactions Act, the Act, when completed, will be accompanied by an Implementation Guide designed to provide guidance on how the Act can be utilized best for the particular needs of the tribe.

The most recent draft of the Model Tribal Probate Code can be found at [http://www.uniformlaws.org/Committee.aspx?title=Tribal Probate Code](http://www.uniformlaws.org/Committee.aspx?title=Tribal%20Probate%20Code). Also located on that webpage are previous drafts and issues lists that have guided the Committee's discussions.