

**TITLE 5 – CIVIL CODE
CHAPTER 4 – PROBATE**

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SUBCHAPTER A GENERAL PROVISIONS

Section 10 Definitions (5 PYTC § 4-10)

- (A) Beneficiary - Includes a person who has any present or future interest, vested or contingent, or a charitable trust.
- (B) Child - Includes any individual entitled to take as a child by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.
- (C) Claims - In respect to estates, includes liabilities of the decedent whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, or after the appointment of a conservator, including funeral expenses and expenses of administration.
- (D) Conservator - A person who is appointed by a Court to manage the estate of a protected person.
- (E) Court - means the Pascua Yaqui Tribal Court unless otherwise specified.
- (F) Decedent - Is any deceased person testate or intestate.
- (G) Devise - Means a testamentary distribution of real or personal property.
- (H) Estate - Includes the property of the decedent, real or personal property or in trust.
- (I) Fiduciary - Includes personal representative, guardian, conservator and trustee.
- (J) Guardian - Means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or Court appointment.
- (K) Heirs - Includes the surviving spouse or persons who are entitled under the statutes of intestate succession to the property of a decedent.
- (L) Interested Person - Includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent.
- (M) Minor - Means a person who is under 18 years of age.
- (N) Personal Representative - Includes executor, administrator and special administrator.

- (O) Property - Includes both real and personal property and anything that may be subject of ownership.
- (P) Protected Person - means a minor or any other person for whom a conservator has been appointed or any other protective order has been made.
- (Q) Security - Includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, in general, any interest or instrument commonly known as security.
- (R) Successors - Means those persons, other than creditors, who are entitled to property of a decedent under his will.
- (S) Will - Includes a codicil and any testamentary instrument.

Section 20 Territorial Application (5 PYTC § 4-20)

Except as otherwise provided, the Probate provisions apply to (1) the affairs and estates of decedents, missing persons, and persons to be protected, (2) the property of non-residents located on the Pascua Yaqui Reservation or property coming into the control of a fiduciary who is subject to the laws of the Pascua Yaqui Reservation, (3) incapacitated persons and minors of the Pascua Yaqui Reservation, (4) survivorship, trusts and related accounts subject to administration.

Section 30 Subject Matter Jurisdiction (5 PYTC § 4-30)

To the full extent permitted by the constitution, the Court has jurisdiction over all subject matter relating to:

- (A) Estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons.
- (B) Protection of minors and incapacitated persons.
- (C) Trusts.
 - (1) The Court has full power to make Orders, Judgments and Decrees and take all other action necessary and proper to administer justice.
 - (2) The Court has jurisdiction over protective proceedings and guardianship proceedings.

Section 40 Rules of Procedure (5 PYTC § 4-40)

Unless specifically provided to the contrary, the rules of civil procedure will govern formal proceedings.

Section 50 Records (5 PYTC § 4-50)

The Court Clerk shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the Court, including petitions and applications, and any Orders or responses relating thereto. The Clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded.

Section 60 Notice (5 PYTC § 4-60)

If notice of a hearing on any petition is required, the petitioner shall cause notice of the time and place of the hearing of any petition to be given to any interested person or his attorney or if a party has requested that notice be sent. Notice shall be given:

- (A) By mailing a copy thereof at least ten days before the time set for the hearing by certified mail to the person being notified at the address given on his demand for notice.
- (B) If the address or identity of a person is not known and cannot be ascertained with reasonable diligence, service may be made by publication pursuant to the rules of civil procedure.

Section 70 Guardian Ad Litem, Appointment (5 PYTC § 4-70)

At any point in a proceeding, the Court may appoint a guardian *ad litem* to represent the interest of a minor, unborn child, or incapacitated person, if the Court determines that is in said person's best interest.

Section 80 Evidence of Death (5 PYTC § 4-80)

In proceedings under this chapter, a determination of death may be shown through an authenticated copy of a death certificate, or authenticated copy of a governmental agency report that a person is missing or dead. A person who is absent for a continued period of seven years, during which he has not been heard from and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead.

SUBCHAPTER B INTESTATE SUCCESSION AND WILLS

Section 90 Intestate Shares (5 PYTC § 4-90)

Any part of the estate of a decedent not disposed of by contract or a will passes to the heirs as follows:

- (A) If there is no surviving issue, the entire estate shall go to the surviving spouse.
- (B) If there is surviving issue, one-half shall be divided in equal shares, with one-half to the surviving spouse.
- (C) If there is no surviving spouse, the estate shall be divided equally among the surviving issue.
- (D) If there is no surviving issue, the estate may be distributed to the surviving parents or grandparents.
- (E) If there are no surviving heirs, the estate shall pass to the Tribe.

Section 100 After-born Heirs (5 PYTC § 4-100)

Issue of the decedent conceived before his death but born thereafter; inherit as if they had been born in the lifetime of the decedent.

Section 110 Meaning of Child (5 PYTC § 4-110)

If for purposes of intestate succession, a relationship of parent and child must be established to determine succession:

- (A) An adopted person is the child of an adopting parent and not of the natural parents.

- (B) A person is the child of its parents regardless of the marital status of its parents.
- (C) A person born out of wedlock is a child of the mother. That person is also a child of the father if paternity is established by adjudication before the death of the father, or is established thereafter by clear and convincing proof.

Section 120 Omitted Spouse (5 PYTC § 4-120)

If a testator fails to provide by will for his surviving spouse, who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he/she would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by other evidence.

Section 130 Pretermitted Children (5 PYTC § 4-130)

If a testator fails to provide for any of his children, born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

- (A) It appears that the omission was intentional.
- (B) When the will was executed the testator had one or more children and devised substantially all of his estate to the other parent of the omitted child, or
- (C) The testator provided for the child by transfer outside the will and the intent was for transfer to be in lieu of a testamentary provision.

Section 140 Family Allowance – Exempt Property (5 PYTC § 4-140)

The surviving spouse and minor children whom the decedent was obligated to support and children who were being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration. The allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims.

Section 150 Wills (5 PYTC § 4-150)

Any person who is of sound mind may make a will. Every will shall be in writing, signed by the testator or by some other person in the testator's presence and by their direction. The will shall be signed by two persons witnessing the signing of the will. Said witnesses shall not have an interest in the estate.

Section 160 Holographic Wills (5 PYTC § 4-160)

A will which does not comply with Section 150 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 170 Validity of the Will (5 PYTC § 4-170)

A written will is valid if executed in compliance with Section 150 and Section 160, or if its execution complies with the law at the time of execution of the place where the will was executed.

Section 180 Revocation (5 PYTC § 4-180)

A will or any part thereof is revoked by a subsequent will, which revokes the prior will or identifies specific sections to be revoked.

Section 190 Deceased Devisee (5 PYTC § 4-190)

If a devisee of the testator is dead at the time of execution of the will, or fails to survive the testator, the issue of the deceased devisee may be treated as a class devisee.

Section 200 Renunciation (5 PYTC § 4-200)

A person or the representative of an incapacitated or protected person, who is a devisee under a testamentary instrument, may renounce in whole or in part the right of succession to any property or interest therein, including a future interest by filing a written renunciation.

The instrument shall:

- (A) Describe the property or interest renounced.
- (B) Declare the renunciation and extent thereof.
- (C) Be signed by the person renouncing, and
- (D) Be duly notarized.

Section 210 Effect of Divorce, Decree of Separation (5 PYTC § 4-210)

A person who is divorced from the decedent is not a surviving spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

Section 220 Effect of Homicide (5 PYTC § 4-220)

A surviving spouse, heir, or devisee that feloniously kills the decedent is not entitled to any benefits under the will. A final judgment of conviction of felonious killing is conclusive for purposes of this section.

Section 230 Deposit of Will (5 PYTC § 4-230)

- (A) A will may be deposited by the testator with the Court for safekeeping. The will shall be kept confidential. During a testator's lifetime, a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will.
- (B) Upon being informed of the testator's death, the Court shall notify any person designated to receive the will and deliver it to him on request or to the appropriate Court.

SUBCHAPTER C PROBATE OF WILLS AND ADMINISTRATION

Section 240 Devolution of Estate (5 PYTC § 4-240)

Upon the death of a person, the deceased's separate property devolves to the person to whom it is devised by the deceased's last will, or to those indicated as substitutes for them in cases involving lapse, renunciation or other circumstances affecting the devolution of testate estates, or in the absence of

testamentary disposition, to the heirs' decedents, or other circumstances affecting the devolution of intestate estates.

Section 250 Determination of Heirs – Petition (5 PYTC § 4-250)

When any member of the Tribe dies leaving property other than an allotment or other trust property subject to the United States, any member claiming to be an heir to the decedent may bring suit in the Pascua Yaqui Tribal Court to have the Court determine the heirs of the decedent and to divide among the heirs such property of decedent. No determination of the heirs shall be made unless all the heirs known to the Court, and to the claimant, have been given notice of the proceeding and have been given reasonable opportunity to appear in the proceeding. Heirs who are not residents of this Reservation shall be notified and a copy of the notice mailed to them shall be retained in the record.

Section 260 Approval of Wills (5 PYTC § 4-260)

When any member of the Pascua Yaqui Tribe dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, or the Pascua Yaqui Tribe, the Court shall determine the validity of the will after giving notice and reasonable opportunity to appear in the proceedings to all interested persons. A will shall be deemed valid if the decedent was of sound mind, understood the nature of this act when he made the will, was not subject to duress or undue influence, the will was in writing and signed by the decedent in the presence of two witnesses who signed the will. If the Court finds that the will was validly executed, it shall order the property distributed to the persons named in the will or to their heirs.

Section 270 Procedure by Court (5 PYTC § 4-270)

- (A) In the determination of heirs, the Court may apply the laws of the State of Arizona. The Court shall also be empowered to appoint a temporary custodian or administrator to supervise and protect the assets of the estate. The Court may issue orders to sell such property as may be necessary before determination and the division of the property. The Court may require a bond from the custodian or administrator for the fulfillment of his duties and may fix the fee, which shall not exceed one percent of the appraised value of the estate. No sale of property shall be made for less than the appraised value.
- (B) In the absence of specific direction, the laws of the State of Arizona shall apply.

Section 280 Priority among Persons Seeking Appointment as Personal Representative (5 PYTC § 4-280)

Whether the proceedings are formal or informal, persons who are not disqualified have priority in the following order:

- (A) The person nominated by a power conferred in a will.
- (B) The surviving spouse of the decedent.
- (C) Other heirs.
- (D) Other devisees.

Section 290 Appointment Proceedings, Application (5 PYTC § 4-290)

Applications for probate of a will or appointment of a personal representative shall contain the following:

- (A) A statement of interest of the applicant.
- (B) The name, age and date of death of the decedent.
- (C) The names and addresses of the spouse, children, heirs and devisees, and the ages of any who are minors.
- (D) Identification of any personal representative of the decedent appointed in this state or elsewhere.
- (E) The priority of the person whose appointment is sought, and the names of any other persons having a prior or equal right to appointment.
- (F) The original of the decedent's will must accompany the application, or an authenticated copy of a will probated in another jurisdiction.

Section 300 Personal Representative – Duties (5 PYTC § 4-300)

A person who has been appointed as personal representative of an estate shall be issued a letter of appointment by the Court. A personal representative shall submit a written inventory of the estate to the Court within 30 days from said appointment. A personal representative shall settle debts and provide for the distribution of the decedent's estate, except as otherwise ordered or directed by the Court.

Section 310 Objections to Probate (5 PYTC § 4-310)

Any party to a formal proceeding who opposes the probate of a will shall state their objections in their pleadings.

- (A) If evidence concerning execution of an attested will, which is not self-proved, is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the Reservation, is required. Due execution of an attested or unattested will may be proved by other evidence.
- (B) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and acknowledgment and affidavits annexed thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

Section 320 Burden in Contested Cases (5 PYTC § 4-320)

In contested cases, the contesting petitioner has the burden of establishing prima facie proof of death and heirship, lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation.

Section 330 Probate of More Than One Instrument (5 PYTC § 4-330)

If two or more instruments are offered for probate before a final order is entered, the instruments may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument.

Section 340 Housing, Community Property (5 PYTC § 4-340)

Where a husband and wife have died leaving community property, and have died simultaneously, one-half of the husband's and wife's community property shall pass as if the husband or wife had survived.

Section 350 Insurance Policies (5 PYTC § 4-350)

Where the insured and the beneficiary in a policy of life or accident insurance have died, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. If there is no alternative beneficiary, except the estate or personal representative of the insured, the proceeds shall be distributed as community property or personal property.

Section 360 Failure of Testamentary Provision (5 PYTC § 4-360)

If a devise fails for any reason, it becomes part of the residue.

Section 370 Collection of Personal Property by Certified Affidavit (5 PYTC § 4-370)

In cases where the estate of the decedent is less than \$25,000 of personal property, the following procedure is authorized:

- (A) 20 days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property, other than an assignment of real property, or an instrument evidencing a debt, obligation, stock or claim belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or claim to a person claiming to be the successor of the decedent upon being presented an affidavit, certified by the clerk of the court, made by or on behalf of the successor and stating that all of the following are true:
 - (1) 20 days have elapsed since the death of the decedent.
 - (2) Either:
 - (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in the Pascua Yaqui Tribal Court and the value of all personal property (excluding automobiles and life insurance) in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$25,000 as valued as of the date of death; or
 - (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$25,000 as valued as of the date of the affidavit.
 - (3) The claiming successor(s) is/are entitled to payment or delivery of the personal property.
- (B) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon presentation of an affidavit pursuant to subsection A of this section.
 - (1) 20 days have elapsed since the death of the decedent as shown in a certified copy of the decedent's death certificate attached to the affidavit.
 - (2) No other person has a right to the interest of the decedent in the described property.
- (C) The filing fee for the certification of an affidavit under subsection (A) of this section shall be \$25. On receipt of an affidavit made under this section and after determining that the affidavit is

complete, the Tribal court clerk shall cause to be issued a certified copy of the affidavit without attachments.

- (D) Nothing in this section shall limit the rights of heirs and devisees under tribal law.
- (E) The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person, other than a Tribal official acting in his/her official capacity, to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought in the Tribal Court for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefore to any personal representative of the estate or to any other person having a superior right.

SUBCHAPTER D SUPERVISED ADMINISTRATION

Section 380 Petition for Supervised Administration (5 PYTC § 4-380)

A petition for supervised administration may be filed by an interested person or by a personal representative at any time. After notice to interested persons, the Court shall order supervised administration of a decedent's estate:

- (A) If the decedent's will directs supervised administration, it shall be ordered unless the Court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and there is no need for supervised administration; or
- (B) If the decedent's will directs unsupervised administration or is silent on administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or
- (C) If the Court finds that supervised administration is necessary under the circumstances.

Section 390 Supervised Administration, Powers of Personal Representative, Termination (5 PYTC § 4-390)

- (A) Unless restricted by the Court, a personal representative has all powers of a personal representative, but he shall not exercise his power to make any distribution of the estate without prior order of the Court. Any other restrictions on the power of a personal representative which may be ordered by the Court must be endorsed on his letters of appointment. The appointed personal representative shall serve without bond, unless the Court in its discretion deems bond necessary.
- (B) Unless otherwise ordered by the Court, supervised administration is terminated by order in accordance with time restrictions or final settlement of the estate. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefore, and to deliver the assets.

SUBCHAPTER E CLAIMS; DISTRIBUTIONS

Section 400 Presentation of Claims (5 PYTC § 4-400)

Claims against a decedent's estate may be delivered to the personal representative or filed with the Clerk of the Court. A written statement of the claim must indicate the basis of the claim, the name and address of the claimant, and the amount claimed. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured the security shall be described.

Section 410 Classification of Claims (5 PYTC § 4-410)

If the assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (A) Costs and expenses of administration.
- (B) Reasonable funeral expenses.
- (C) Debts and taxes.
- (D) Reasonable and necessary medical and hospital expenses of the last illness of the decedent.
- (E) All other claims.

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

Section 420 Successor Rights, Traditional Custom (5 PYTC § 4-420)

- (A) In the absence of court administration, the heirs and devisees are entitled to the estate in accordance to distribution by Yaqui tradition and custom. Cultural, religious paraphernalia shall be distributed by immediate family consensus.
- (B) Successors take subject to all charges incident to administration including claims of creditors.

SUBCHAPTER F CLOSING ESTATES

Section 425 Closing Estates (5 PYTC § 4-425)

- (A) A personal representative or interested person may petition for an order of completed settlement of the estate. After notice to all interested persons and hearing, the Court may enter an order determining persons entitled to distribution of the estate and approving settlement or distribution of the estate and discharging the personal representative.
- (B) A personal representative shall submit a verified statement declaring the estate has been fully administered by making payment, settlement or other disposition of all claims, expenses of administration, and distribution to persons entitled.
- (C) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to the missing person's conservator, if any, otherwise it becomes a part of the Tribal fund. If property reverts to the Tribe, the Tribe may auction said property and deposit funds into the Tribal fund.

SUBCHAPTER G MISCELLANEOUS PROVISIONS

Section 430 Burial Responsibility (5 PYTC § 4-430)

- (A) The duty of burying the body of a dead person devolves in the following manner:
- (1) If the deceased was married, upon the surviving spouse.
 - (2) If the deceased was not married but left kindred, upon the nearest of kin to the deceased, of an adult age and a member of the Pascua Yaqui Tribe who has sufficient means to defray the necessary expenses of burial.
 - (3) If the deceased left neither spouse nor qualified kindred, then the duty of burial shall rest with the Tribal Council. The Tribal Council shall decide as to the disposition of the body.

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