



KIOWA TRIBE

P.O. Box 369 • Carnegie, Oklahoma • 73015
Phone: (580) 654-6338 • Fax: (580) 654-1788
OFFICE OF THE LEGISLATURE

KIOWA TRIBE RESOLUTION NO. KL-CY-2026-0XX

KIOWA PROBATE ACT OF 2026

At a duly called Legislative Regular Session _____ of the Legislature of the Kiowa Tribe held this _____ day of _____, 2026, the following resolution, was adopted.

WHEREAS, the Kiowa Tribe is a sovereign nation and has been so since time immemorial; and,

WHEREAS, the Tribe exercises full enjoyment of the inherent powers of government, including self-determination and autonomy over internal affairs encompassing Tribe citizens, lands, and resources; and,

WHEREAS, on April 17, 2017, qualified voters of the Tribe ratified the Kiowa Constitution as “the supreme law of the land;” and,

WHEREAS, the Kiowa Legislature’s duties include monitoring the actions of the government, assessing the needs of the People, and making laws toward better government to address the needs of the People under Article VI, Section 1 of the Kiowa Constitution; and,

WHEREAS, the Kiowa Legislature is vested with the authority to pass laws and resolutions pursuant to Article VI, Section 6(a) of same Constitution; and,

WHEREAS, the Legislature finds that it is of paramount importance to encourage the preparation of wills or other estate plans for the transfer of property upon death, to carry out the intent of the decedent, and to provide a speedy, efficient and user-friendly system for the administration of all aspects of decedent estates, including all types of real and personal property.

NOW THEREFORE BE IT RESOLVED, that the Legislature of the Kiowa Tribe hereby adopts the **Kiowa Probate Act of 2026**, as attached hereto.

C E R T I F I C A T I O N

The foregoing resolution **KL-CY-2026-0XX** was duly voted upon by the Legislature on _____, 2026, at a Legislative Regular Session ____-(), with a vote of () in favor and () opposed, () abstain, and () absent, pursuant to the authority vested in the Legislature by the Constitution of the Kiowa Tribe.

Michael Q. Primus II
Speaker of the Legislature

LEGISLATURE - RESOLUTION NO. KL-CY-2026-0XX:

SPONSOR: Warren Queton, District 7

CO-SPONSOR(S):

LEGISLATORS	YES Hàu	NO Hàu:né	ABSTAIN Háun á	ABSENT Héñgyádàu
Ronnie Satepauhoodle District 1				
Michael Q. Primus II District 2				
Jolene Beartrack District 3				
Cole Kickingbird-DeLaune District 4				
Tiya Rosario District 5				
Ben Wolf District 6				
Warren Queton District 7				

DELIVERY OF THE RESOLUTION AND LAW TO THE CHAIRMAN

Resolution No. KL-CY-2026-0XX was presented to the Chairman of the Kiowa Tribe on the ____ day of _____, 2026, pursuant to the Article VI, Section 8(a)(iv) of the Constitution of the Kiowa Tribe and will become effective after signature by the Chairman or veto override by the Legislature, and as otherwise required by the Constitution.

Michael Q. Primus II
Speaker of the Legislature

CHAIRMAN’S ACTION:

☐ APPROVED

☐ VETO - RETURNED TO LEGISLATURE WITH EXPLANATION:

On this ____ day of _____, 2026.

David B. Sullivan
Chairman of the Kiowa Tribe

Presented by the Chairman to the Legislature on the ____ day of _____, 2026.

LEGISLATURE’S ACTION:

Override of Chairman’s veto:

☐ YES

☐ NO

CERTIFICATION

The foregoing resolution Legislative Override Order KLO-CY-2026-00X was duly voted upon by the Legislature on _____, 2026, at a Legislative Order Session () with a vote of _____ in favor and _____ opposed, and _____ abstaining, and _____ absent. Pursuant to the authority vested in the Legislature by the Constitution of the Kiowa Tribe.

Michael Q. Primus II
Speaker of the Legislature

Override Order KLO-CY-2026-00X

LEGISLATORS	YES Hàu	NO Hàu:né	ABSTAIN Háun á	ABSENT Héñgyádàu
Ronnie Satepauhoodle District 1				
Michael Q. Primus II District 2				
Jolene Beartrack District 3				
Cole Kickingbird-DeLaune District 4				
Tiya Rosario District 5				
Ben Wolf District 6				
Warren Queton District 7				

CHAPTER I

GENERAL PROVISIONS

Section 101. Title. This Act shall be known as the “Kiowa Probate Act of 2026.”

Section 102. Authority. This Act is enacted pursuant to the inherent sovereign authority of the Kiowa Tribe and pursuant to the 2017 Constitution of the Kiowa Tribe, which empowers the Kiowa Legislature to “makes laws and resolutions in accordance with the requirements of the Constitution” (Article VI, §6(a)); and to “monitor the actions of the government, access the needs of the People, and make laws toward better government to address the needs of the People” (Article VI, § 1).

Section 103. Purpose and Findings. The Kiowa Tribe finds and declares that:

- (a) It is of paramount importance to encourage the preparation of wills or other estate plans for the transfer of property upon death, to carry out the intent of the decedent, and to provide a speedy, efficient and user-friendly system for the administration of all aspects of decedent estates, including all types of real and personal property;
- (b) It is important to provide the opportunity to prepare for catastrophic and end of life events by creating a health care directive and durable powers of attorney;
- (c) Preservation of the land base of the Tribe is critical to the vitality of the sovereignty, environment, and economy of the Tribe;
- (d) It is important to encourage and consolidate Tribal and Tribal members’ ownership of Kiowa lands;
- (e) It is important to prevent the transfer of land out of Tribal ownership and control;
- (f) The transfer or devise of interests in individually owned trust land upon the death of any individual owner could lead to fractionation or nonmember ownership of Kiowa land;
- (g) By adopting this Act, the Tribe intends to foster a uniform system to facilitate the probate process in a cost-efficient manner and to maintain and enhance its self-sufficiency, self-determination, and sovereignty.

Section 104. Scope.

- (a) This Act applies retroactively to the estate of a decedent as defined herein.
- (b) This Act applies to:
 - (1) members of the Kiowa Tribe regardless of domicile; and
 - (2) all enrolled members of a federally recognized Indian Tribe, and all persons eligible for enrollment in a federally recognized Indian Tribe, or who

otherwise meet the definition of “Indian” under this Act who have an interest in real or personal property or trust land subject to this Act.

(c) *Jurisdiction of the Trial Court.*

- (1) The Kiowa Trial Court shall have all authority necessary to take evidence and determine the validity of any will or other document, the qualification of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent’s estate under this Act. The Trial Court shall have the broadest possible authority to execute its duties and responsibilities under this Act. It shall have authority to probate all estate interest subject to this Act which does not come within the exclusive jurisdiction of the United States, including overall real or personal property except trust land, restricted land and trust personalty.
- (2) Except to the extent the descent and distribution of real or personal property is governed by federal law, this Act governs the descent and distribution of real property that is within the Kiowa Tribe and personal property of any person within the scope of this Act.
- (3) Unless the American Indian Probate Reform Act (AIPRA) is amended to allow Tribes to carry out probate of trust land, restricted land and trust personalty, the United States shall carry out the probate of such property, as currently set out in 25 C.F.R. Part 15 and other applicable law.
- (4) The Trial Court shall have all authority necessary to conduct probate of funds from the trust accounts established by law for members of the Kiowa Tribe.

Section 105. Effective Date. The provisions of this Act shall be effective after enactment by the Legislature of the Kiowa Tribe, and upon the date signed by the Chairman of the Kiowa Tribe (or the override of the Chairman’s veto by the Legislature).

Section 106. Interpretation. The provisions of this Act shall be interpreted to be in accordance with tribal customary law. Whenever there is uncertainty or a question as to the interpretation of certain provisions of this Act, tribal law and custom shall be controlling, and where appropriate, may be based on the written or oral testimony of a qualified tribal elder, tribal historian, or tribal representative. If the traditions and customs of the Tribe are inconclusive in any matter, the Court shall construe it consistently with applicable textual tribal law. In the absence of applicable tribal customary law or textual tribal law, the Court shall construe it consistently with applicable federal law.

Section 107. Severability and Non-Liability. If any section, provision, or portion of this Act is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Act shall not be affected thereby.

Section 108. Definitions. Any term not defined in this Section shall be given its ordinary meaning. The following terms, wherever used in this Act, shall be construed to apply as follows, except where the context indicates otherwise:

- (a) “Child” or “children” means the lineal descendants of the decedent including all lawfully adopted children and all children born after death of decedent.
- (b) “Codicil” means a supplement to a will, executed with the same formalities as a will, that modifies or partially revokes an existing earlier will.
- (c) “Court” means the Kiowa Trial Court.
- (d) “Cultural patrimony” means an object having ongoing historical, traditional, or cultural importance central to the Tribe, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Tribe and such object shall have been considered inalienable by Tribe at the time the object was separated from Tribe (consistent with 25 U.S.C. § 3001(3)(D)).
- (e) *Customary Marriage*. The Kiowa Tribe recognizes native customary marriages. The Court may appoint an expert to advise the Court on the specific laws of said customary marriage should the Court, in the Court’s discretion, need the assistance of such expert. The Court will make every effort to appoint an expert with specific knowledge about a decedent’s tribe. Any expert appointed will be a noninterested party, meaning that they shall not have a personal interest in the distribution of the estate. The Court’s determination of whether or not a customary marriage exists is limited to the probate proceeding and this Act.
- (f) “Decedent” means a deceased person. Evidence of the death of a person may be established by:
 - (1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent;
 - (2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report; or
 - (3) A person who is absent for a continuous period of seven (7) years, during which they have not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. Their death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

- (g) “Devisee” means those persons who are entitled through a valid will to the real or personal property, trust land, restricted land or trust personalty of a decedent. When such property passes to a devisee, the property is said to have been devised.
- (h) “Estate” means all assets and liabilities of a deceased person.
- (i) “Heirs” means those persons who are entitled by a will, or under the rules of intestate succession, to the real or personal property or trust land of a decedent.
- (j) “Indian” means:
 - (1) Any person who is a member of a federally recognized Indian tribe is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of trust or restricted interest in land; or
 - (2) Any person meeting the definition of “Indian” under the Indian Reorganization Act (25 U.S.C. § 479) and the regulations promulgated thereunder.
- (k) “Intestate” means that a person has died without making a valid will as to some or all of the estate assets. Such property will pass to other persons under the intestate succession rules of this Act.
- (l) “Issue” means the lineal descendants of the decedent.
- (m) “Kindred” means persons related to the decedent by consanguinity, including lineal ancestors, lineal descendants, and collateral relatives.
- (n) “Land” means any real property.
- (o) “Lawfully adopted child” means a child adopted lawfully in accordance with 25 U.S.C. § 372a.
- (p) “Letters of administration” means the documents referred to in Section 509.
- (q) “Net estate” means the real and personal property of a decedent except exempt property, nonprobate assets, and allowable claims against and debts of the decedent or the estate.
- (r) “Parent” means the biological or lawful adoptive mother or father of the child, recognized by a state or tribal law. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
- (s) “Personal property” means any property that is not included in the definition of real property.

- (t) “Personal representative” means that person appointed by the court to carry out the powers and duties conferred by this Act on behalf of the estate.
- (u) “Real property” means all interests and estates in land, including leasehold interests and improvement to land, such as houses or other buildings, which have been affixed to the land. A mobile or modular home located on individual trust property and subject to a security interest, mortgage, promissory note, or other financing agreement or which is located on Tribal free or trust property shall be considered personal property for purposes of this Act. All other mobile and modular homes shall be considered real property for purposes of this Act.
- (v) “Special administrator” means that person appointed by the court to administer decedent’s estate when it is necessary to probate or preserve the estate.
- (w) “Spouse” means a party to a marriage recognized by any jurisdiction. A party may be a spouse by customary marriage or cohabitation.
- (x) “Testator” means a person who has created a valid will.
- (y) “Tribe” means the Kiowa Tribe.
- (z) “Trust or restricted land” means any real property, title to which is held in trust or restriction against alienation by the United States for the benefit of the Tribe or a member of a federally recognized tribe. Improvements that are attached to trust or restricted land are not trust or restricted land or trust personalty.
- (aa) “Trust personalty” means all funds and securities of any kind which are held in trust in an Individual Indian Money account (IIM) or otherwise supervised by the Secretary of the Interior.
- (bb) “Will” means an instrument validly executed as required by this Act that disposes of all or part of an individual’s estate at death.
- (cc) “Without regard to waste” means, with respect to a life estate interest in trust land, that the holder of such estate is entitled to the receipt of all income, including the bonuses and royalties, from such land to the exclusion of the remaindermen.

CHAPTER II

PERSONS AND PROPERTY SUBJECT TO THIS ACT

Section 201. Persons and Property Subject to this Act – Domicile Presumed.

- (a) This Act applies to members of the Kiowa Tribe, all enrolled members of a federally recognized Indian tribe, and all persons eligible for enrollment in a federally

recognized Indian tribe, or who otherwise meet the definition of “Indian” under this Act who have an interest in real or personal property or trust land subject to this Act.

- (b) Except to the extent the descent and distribution of real or personal property is governed by federal law, this Act governs the descent and distribution of real property that is within the Kiowa Tribe and personal property of any person domiciled on the lands of the Kiowa Tribe.

Section 202. Jurisdiction of the Trial Court – Nontrust Property.

- (a) The Kiowa Trial Court shall have all authority necessary to take evidence and determine the validity of any will or other document, the qualification of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent’s estate under this Act. The Trial Court shall have the broadest possible authority to execute its duties and responsibilities under this Act. It shall have authority to probate all estate interest subject to this Act which does not come within the exclusive jurisdiction of the United States, including overall real or personal property except trust and restricted land and trust personalty.
- (b) Unless the American Indian Probate Reform Act (AIPRA) is amended to allow tribes to carry out probate of trust land, restricted land and trust personalty, the United States shall carry out the probate of such property, as currently set out in 25 C.F.R. Part 15 and other applicable law.

Section 203. Nonprobate Assets.

- (a) Nonprobate assets, with the exception of cultural patrimony, are not covered by this Act.
- (b) Nonprobate assets means those rights or interests of a person having beneficial ownership of an asset that passes on the person’s death under a written instrument or arrangement existing at the time of the decedent’s death other than the person’s will or by descent and distribution under this chapter. “Nonprobate asset” includes, without limitation, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death bank account, transfer on death security or security account, a conveyance that has been postponed until the death of the person, or a trust that becomes effective or irrevocable only upon the person’s death.

Section 204. Family Heirlooms and Indian Finery. Notwithstanding the provisions of this Act relating to descent and distribution, the surviving spouse or other next of kin may distribute any family heirlooms or Indian finery that does not meet the definition of cultural patrimony

belonging to the decedent in accordance with the customs and traditions of the decedent's tribe prior to the initiation of probate proceedings pursuant to this Act. The distribution of such items shall be in accordance with directions left by the decedent, if any. The distribution of such items shall be exempt from all creditors.

Section 205. Distribution of Cultural Patrimony and Traditional Dispute Resolution.

- (a) Notwithstanding the provisions of this chapter related to descent and distribution, cultural patrimony possessed by the decedent shall be distributed in accordance with the customs and traditions of the Tribe prior to the initiation of the administration of the estate. The distribution shall be exempt from all creditors.
- (b) Any disputes over the distribution of items of cultural patrimony shall be referred to the Kiowa Peacemaker Court, which will make a recommendation to Tribal Court. A dispute may be brought to the Peacemaker Court by an interested individual or entity, or the dispute may be referred to the Peacemaker Court by the Chief Judge of the Trial Court. The Peacemaker Court shall conduct a hearing on the issue and shall endeavor to issue a final recommendation to Trial Court within sixty (60) days of the hearing's conclusion. The Trial Court shall then review the recommendation and issue an order and final judgment. A pending dispute shall not be cause to delay probate of the residual estate of the deceased.
- (c) Cultural patrimony is considered an object that passes outside of probate (nonprobate asset) and is not covered by this Act except as set forth under this section.

CHAPTER III

INTESTATE SUCCESSION OF NONTRUST PROPERTY

Section 301. Intestate Succession Rules. Subject to the provisions of this Act, the portion of the estate of a person dying intestate not covered by Chapter II of this Act shall descend and be distributed as follows:

- (a) If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third (1/3) to the surviving husband or wife, and the remainder in equal shares to the children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of the lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation: Provided, that if the

decedent shall have been married more than once, the spouse at the time of death shall inherit of the property not acquired during coverture with such spouse only an equal part with each of the living children of decedent, and the lawful issue of any deceased child by right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

- (b) If the decedent leaves no issue, the estate goes one-half (1/2) to the surviving husband or wife, and the remaining one-half (1/2) to the decedent's father or mother, or, if he leave both father and mother, to them in equal shares; but if there be no father or mother, then said remaining one-half (1/2) goes, in equal shares, to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If decedent leave no issue, nor husband nor wife, the estate must go to the father or mother, or if he leave both father and mother, to them in equal shares: Provided, that in all cases where the property is acquired by the joint industry of husband and wife during coverture, and there is no issue, the whole estate shall go to the survivor, at whose death, if any of the said property remain, one-half (1/2) of such property shall go to the heirs of the husband and one-half (1/2) to the heirs of the wife, according to the right of representation.
- (c) If there be no issue, nor husband nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if the deceased, being a minor, leave no issue, the estate must go to the parents equally, if living together, if not living together, to the parent having had the care of said deceased minor.
- (d) If the decedent leaves no issue nor husband, nor wife, nor father and no brother or sister is living at the time of his death, the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters.
- (e) If the decedent leaves a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.
- (f) If the decedent leaves no issue, nor husband, nor wife, and no father or mother, or brother, or sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

- (g) If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.
- (h) If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise, they take according to the right of representation.
- (i) If the decedent leaves no surviving relatives identified in this section, the entire net estate shall go to the Tribe.

Section 302. Inheritance by Child. For purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

Section 303. Inheritance by Adopted Child. A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property to his or her adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

Section 304. Child Born After Death of Decedent. A child born after the death of decedent is considered as living at time of the death of decedent.

CHAPTER IV

WILLS (TRUST AND NON-TRUST)

Section 401. Who May Make a Will. An individual is not capable of making a will if they are: (i) of unsound mind; or (ii) an unemancipated minor.

Section 402. Requirements of Wills. To be valid and effective, a will must be in writing, dated, and signed by the testator or some other person under the testator's authority and direction in the presence of the testator. The will shall be attested by two (2) or more adult competent witnesses, not having an interest in the testator's estate or in the will, signing their names to the will in the presence of the testator by the testator's direction or request; provided, that a will executed outside the jurisdiction of the Kiowa Tribe, in the mode prescribed by applicable law, either of the place where executed or of the testator's domicile, shall be deemed to be legally

executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Tribe.

Section 403. Self-Proven Will at Time of Execution and After Execution.

- (a) A will may be simultaneously executed, attested, and made self-proved by acknowledgment by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal in substantially the following form:

I, _____, swear or affirm under penalty of perjury that, on the ____ day of _____, 20__, I requested _____ and _____ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator

We, _____ and _____, swear or affirm under penalty of perjury that on the ____ day of _____, 20__, _____ of the State of _____, published and declared the attached document to be his/her/their last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her/their request, signed the will as witnesses in his/her/their presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her/their estate by will.

Witness

Witness

THE STATE OF _____

COUNTY OF _____

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____, 20____.

(SEAL)

(Signed) _____

(Official capacity of officer)

- (b) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the jurisdiction in which the acknowledgement occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

KIOWA TRIBE

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare that _____ requested _____ and _____ act as witnesses to testator's will; that testator declared to them that the document was testator's last will; that testator signed the will in the presence of both witnesses; that they signed the will as witnesses in testator's presence and in the presence of each other; that the will was read and explained to testator (or read by testator), after being prepared and before testator signed it, and it clearly and accurately expresses testator's wishes; and that testator willingly made and executed the will as testator's free and voluntary act for the purposes expressed in the will.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 20____.

(SEAL)

(Signed) _____

(Official capacity of officer)

Section 404. Holographic Will. A will which does not comply with Section 402 is valid as a holographic will if:

- (a) The testator was 18 years or older and of sound mind at the time of the will's creation;
- (b) The material provisions are in the handwriting of the testator;
- (c) The will is signed by the testator; and
- (d) The testator intended that the document will dispose of his or her property after death.

Section 405. Oral Will.

- (a) A will which does not comply with Section 402 is valid as an oral will under custom if all children, whether residing in testator's home or not, and testator's spouse, if alive, are present at the announcement of the oral will and agree that the testator orally made known the testator's last will before them.
- (b) An oral will is also valid under custom if made in the presence of a competent disinterested adult person by a testator who declares at the time that it is his or her wish that their property descend in a specific manner upon the event of the testator's death.
- (c) "Disinterested" means that the person hearing the oral declaration of testator's intent will not benefit in any way directly or indirectly nor will a spouse or any relative of said disinterested person benefit in any way directly or indirectly.
- (d) The Court shall hear testimony from the disinterested person who heard such declaration and the Court shall decide the following: (1) whether such testimony is credible; and (2) whether the manner of disposition of testator's property is reasonable and customary. If the Court finds that both of the foregoing conditions prevail, the testator's expressed intent shall be carried out as a valid will.

Section 406. Codicil.

- (a) A codicil may replace, in whole or in part, a prior will.
- (b) A codicil need not refer to, or be attached to, the prior will.

Section 407. Revocation of Will. A will, or any part thereof, shall be revoked and of no effect by:

- (a) A subsequent valid will that revokes the previous will, or part of that will, expressly or by inconsistency; or
- (b) Destruction of the will with the intent of revoking the will, by the testator or by anyone in the presence and by the direction of the testator.

Section 408. Subsequent Divorce of Testator. Unless a will specifically provides otherwise, a lawful divorce or annulment of marriage, subsequent to the making of a will, shall render the will revoked as to the former spouse.

Section 409. Spouse After Will Created.

- (a) If the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in the testator's estate that the spouse would have received if the testator had died intestate unless:
 - (1) It appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;
 - (2) The will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or
 - (3) The testator provided for the spouse by a transfer of funds or property outside the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.
- (b) This section shall not apply to an interest in trust land where the spouse of a testator is not Indian as defined by 25 U.S.C. § 2201(2).

Section 410. Omitted Spouse.

- (a) If the surviving spouse is omitted from the will of the testator, the surviving spouse shall receive the intestate share in the testator's estate that the spouse would have received if the testator had died intestate if:
 - (1) The testator and surviving spouse were continuously married without legal separation for the five-year period preceding the decedent's death;
 - (2) The testator and surviving spouse have a surviving child who is the child of the testator; or
 - (3) The surviving spouse is under a binding obligation to continue making loan payments for the trust land for a substantial period of time.

- (b) This section shall not apply if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of share of the estate outside of the will.

Section 411. Death of Related Devisee or Legatee Before Testator. Unless a will specifically provides otherwise, if an heir that is related to the testator is named in a will but predeceases the testator, then the descendants of that heir take that heir's interest by representation.

Section 412. Omitted Children.

- (a) Unless a will specifically provides otherwise, any children of the testator born or lawfully adopted after the execution of the will not named specifically or by reference to a class described as the children, descendants, or issue of the decedent or words of similar import, are referred to in this section as an "omitted child," and shall receive a share of the estate as provided in this section so long as such child lives one-hundred twenty (120) hours after its birth.
- (b) If the testator has no living child when the testator executed the will, an omitted child shall receive a share of the estate equal to the value of the share of the estate the omitted child would have received had the testator died intestate.
- (c) If the testator had one or more children living when the testator executed the will and the will devised property to one or more of the then-living children, an omitted child is entitled to a share of equal value to the shares received by the children to whom devises were made under the will unless the testator provided for the omitted child by transfer outside the will and the testator's intent to omit the child is established by statement of the testator, based on the amount transferred to the omitted child, or other evidence.

Section 413. Rules for Interpretation of Wills. Unless there is clear evidence of contrary intent, wills shall be construed as follows:

- (a) A will shall apply to all real and personal property and trust land which the testator owned at death;
- (b) A transfer by will of a trust interest in land shall be presumed to include the interest of testator in any permanent improvements attached to the land;
- (c) Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such "brothers," "sisters," "nieces," or "nephews," are construed to include both types of relationships;
- (d) A transfer by will of a trust interest in land or an interest in trust personalty to the testator's or another designated person's "heirs," "next of kin," "relatives," or "family" shall mean those persons, including the spouse, who would be entitled to take under the provisions of this chapter for nontestamentary disposition as of the date of the testator's death;

- (e) If the family cemetery plot owned by the testator in trust or restricted status at his or her death is not mentioned in the decedent's will, the ownership of the plot shall descend to his or her heirs as if he or she died intestate.

Section 414. Duty to Present Will for Probate. A custodian of a will shall deliver the will to the Trial Court within thirty (30) days after receipt of information that the maker thereof is deceased.

Section 415. Lifetime Deposit of Will.

- (a) Any member of the Kiowa Tribe who is at least fifty-five (55) years of age and otherwise competent to make a will may deposit the person's original will with the Trial Court for safekeeping during the person's lifetime.
- (b) A will deposited under this Section shall be sealed and maintained as a confidential court record and shall not be disclosed during the testator's lifetime except to the testator or to a person expressly authorized in writing by the testator.
- (c) The testator may withdraw the will at any time upon presentation of satisfactory identification and execution of a written request for its return.
- (d) Upon receiving reliable notice of the testator's death, the Court shall open the deposited will and notify any person designated to receive the will and deliver it to the person on request or the Court may initiate the probate of the estate.
- (e) The Court may establish procedures for the deposit, withdrawal, replacement, and subsequent filing of wills and codicils.
- (f) The Court shall not charge fees for the filing of documents under this Section.

CHAPTER V

TRIAL COURT PROBATE PROCEEDINGS (NON-TRUST PROPERTY)

Section 501. Intent of the Testator Controlling.

- (a) During probate proceedings, the Trial Court shall give effect to the intent of the testator as expressed in the will or other admissible evidence in all matters unless prohibited by law.
- (b) Notwithstanding subsection (a) of this section, a person who is related to the decedent through two lines of relationship is entitled to only a single share in the decedent's estate based on the relationship that would entitle such person to the larger share.

Section 502. Initiation of Probate Proceedings. At any time after the death of a person subject to this chapter, any person may initiate the probate of the decedent's estate by filing for probate with the Trial Court containing:

- (a) The name of the decedent;
- (b) The decedent's enrollment status with the Tribe or other tribe;
- (c) The decedent's date of death;
- (d) A certified copy of the decedent's death certificate, or other evidence sufficient to establish the decedent's death as defined in Section 108(f);
- (e) The names and addresses of the decedent's surviving family to the extent such information is known to the petitioner;
- (f) The original or a true and correct copy of any will found or document alleged to be the last will of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to the absence;
- (g) If the decedent left a will, the names and addresses of the beneficiaries under the will;
- (h) A general description of the decedent's estate subject to probate in Tribal Court, and a general description of those portions of the decedent's estate, if any, not subject to probate in this Court, including, but not limited to, any interests in trust or restricted property;
- (i) Proof of service of the petition on the Executive Branch of the Tribe;
- (j) Any other information about the estate or other relevant information that may be necessary to establish that the Court has jurisdiction over the probate proceedings;
- (k) A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and case number of the other proceedings, and the name and address of the personal representative or similar person appointed in such proceedings;
- (l) A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative including, without limitation, relation to the decedent;
- (m) If the will is available, a request for approval of the will of the decedent;

- (n) If a will is not available, a request that the Court find that the decedent died without a valid will; and
- (o) A verification signed under penalty of perjury by the petitioner that the contents of the petition are true and correct.

Subsections (d) and (f) of this section may be provided at the time of filing the petition or as soon as practicable thereafter.

Section 503. Purpose and Qualifications of Personal Representative and Special Administrator.

- (a) The purpose of a personal representative is to vest one or more persons with the responsibility and authority to settle the decedent's estate in accord with the decedent's will, if any, and applicable law. In the event a personal representative is not available and the decedent's estate must be administered to avoid loss, waste, or depreciation of property of the decedent's estate, a special administrator may be appointed by the Court.
- (b) A personal representative must be at least eighteen (18) years old and legally competent. Persons who have been convicted of any felony or of a misdemeanor involving moral turpitude may not serve as personal representative or special administrator. A special administrator may not be an heir or named beneficiary of decedent's estate. More than one person may serve jointly as personal representative or special administrator.
- (c) The provisions of this chapter that apply to personal representatives apply equally to special administrators.

Section 504. Appointment of Personal Representative.

- (a) The personal representative shall be the person named to serve as personal representative in the decedent's will unless:
 - (1) The named person does not meet the requirements of Section 503.
 - (2) The named person refuses to serve as a personal representative.
- (b) If a personal representative is not qualified or not willing to serve as personal representative, then a personal representative should be appointed in the following order of priority:
 - (1) The surviving spouse of decedent or such person as the surviving spouse may request to be appointed;
 - (2) A child or children of decedent;

- (3) A parent of decedent;
- (4) A sibling or siblings of decedent;
- (5) If none of the above is able or willing to serve as personal representative the Court shall appoint a personal representative who meets the requirements of Section 503.

Section 505. Removal After Appointment.

- (a) If, at any time after the letters of administration have been issued, a personal representative does not meet the requirements of Section 503, the Court shall revoke their letters of administration.
- (b) The letters of administration may be revoked by the Court for any good cause.

Section 506. Powers and Duties of Personal Representative. The personal representative shall have the following powers and duties:

- (a) To act in a fiduciary capacity in the name of the estate, subject to applicable orders of the Court, provide notice of creditors and settle any claim against the estate as provided in Chapter VI of this chapter, collect any debts owed to the estate, initiate or defend any litigation involving the estate, and distribute the assets of the estate;
- (b) To avoid any conflict of interest between the personal interests of the personal representative and the interests of the estate by always placing the interests of the estate ahead of such personal interests; provided, however, that no person shall be disqualified from serving as personal representative because the personal representative may be an heir or beneficiary of the estate;
- (c) To take possession and control of all of the decedent's assets subject to the probate jurisdiction of the Court, and preserve such assets for the benefit of the estate;
- (d) To give all notices to family members, heirs, beneficiaries, government agencies, or creditors as required or allowed by this chapter;
- (e) To require to receive reasonable compensation in an appropriate amount given the nature and amount of services required by the personal representative and size of the estate; and
- (f) To exercise any power granted by the decedent's will or by order of the Court.

Section 507. Bond. The personal representative shall serve without bond, unless a bond is required by the terms of decedent's will or the Court. A bond shall be in the amount deemed reasonable by the Court in relation to the value of the estate.

Section 508. Initial Hearing – Order Initiating Probate – Appointment of Personal Representative and Letters of Administration.

- (a) Within thirty (30) days of filing of a petition for probate, or as soon as practicable thereafter, the Court shall hold a hearing to consider:
 - (1) Initiating probate proceedings;
 - (2) Appointing a personal representative;
 - (3) Issuing letters of administration; and
 - (4) Whether decedent left a valid will or died intestate.
- (b) If the petition and other evidence before the Court are sufficient to support the jurisdiction of the Court, the Court shall enter an order initiating probate of the decedent's estate. Such order shall either establish and initiate probate of decedent's will, or shall conclude that the decedent died intestate. In the absence of an original will, the Court may permit a true and correct copy of a will to be probated if it finds that the will is valid by a preponderance of the evidence.
- (c) Following the conclusion of the hearing and order initiating probate, the Court shall issue letters of administration conferring the powers and duties of the personal representative on the petitioner or another person.

Section 509. Form of Letters of Administration. Letters of administration shall be signed by the Court under the seal of the Court, and shall be substantially in the following terms:

Whereas (name of decedent) of (address of decedent) died on or about the _____ day of _____, _____, leaving at the time of (his/her) death property in this jurisdiction subject to administration.

Now, therefore, this court hereby appoints _____ as personal representative of said estate, and whereas said personal representative is duly qualified, the court hereby authorizes the personal representative to administer the estate according to law. Witness my hand and the seal of said court this _____ day of _____ 20__.

Before letters of administration are issued, the appointed personal representative must take and subscribe an oath that the duties and responsibilities as personal representative will be performed according to law before a clerk of the Court or some other person authorized to administer oaths.

Section 510. Notice of Appointment as Personal Representative, Pendency of Probate – Proof by Affidavit.

- (a) Within twenty (20) days of appointment, the personal representative shall serve written notice of appointment and the pendency of probate proceedings to each heir, devisee, and legatee of the estate whose names and addresses are known to him or her. Such notice shall include a copy of the Court's order determining whether the decedent died testate or intestate.

- (b) Proof of such service shall be made by affidavit or declaration under penalty of perjury and filed with the Court.

Section 511. Inventory and Appraisement.

- (a) Within ninety (90) days of appointment, the personal representative shall file with the Court an inventory in the form of an affidavit listing all property of the estate passing under the will or by laws of intestacy which is in the possession or knowledge of the personal representative.
- (b) The inventory shall provide the appraised value of each item as of the date of the decedent's death, and all encumbrances, liens, or other secured interests charged against any item and all other debts. Such property and debts shall be classified as follows:
 - (1) Real property, by legal description;
 - (2) Leases, including without limitation leases of personal property on trust land not disposed of by the United States Department of the Interior Office of Hearing and Appeals;
 - (3) Stocks and bonds;
 - (4) Bank accounts and money;
 - (5) Furniture and household goods;
 - (6) All other personal property, including without limitation the decedent's nonprobate assets and any share in any business, but no inventory of the business property shall be required; and
 - (7) Mortgages, liens, notes, and other written evidences of debt, which shall be listed with the property the debt is associated with, and otherwise listed separately.
- (c) The appraised value may be an estimated value so long as there is a rational basis. A formal appraisal is not required, but may be ordered by the Court.
- (d) Notice of the filing of the inventory shall be served on each heir, devisee, legatee, creditor, and the Executive Branch of the Tribe.
- (e) If the personal representative obtains knowledge of any additional property of the estate, the inventory shall be amended and the procedures in this section shall be completed within thirty (30) days of acquiring such knowledge.

Section 512. Summary Probate of Small Estates.

- (a) An estate with an appraised value which does not exceed \$10,000.00 and which is to be inherited through the rules of intestacy or by devise exclusively by a surviving spouse and/or minor children of the decedent shall be exempt from the claims of all

general creditors and the probate thereof may be expeditiously processed as provided in this section.

- (b) Upon petition of the personal representative, the Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Court, that the value of the estate does not exceed \$10,000.00 and that such estate is to be inherited exclusively by the surviving spouse and/or minor children of the decedent, and shall set a hearing to allow interested persons, if any, to object to declaring the estate exempt from the claims of all general creditors and distributing the estate to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given by posting a true and correct copy of such order in Kiowa Tribal Offices, and by sending a true and correct copy of such order by certified mail to all persons the personal representative has reason to believe is an heir, devisee, or legatee of the decedent or creditor of the estate. Such notice shall be posted or mailed not less than ten (10) days before the time set for such hearing. On or before the time set for such hearing, the personal representative shall file his or her affidavit with the Court indicating compliance with this notice requirement.
- (c) If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing:
 - (1) the personal representative to distribute such estate to the surviving spouse and/or minor children of the decedent as set forth in the order;
 - (2) that no further proceedings are necessary; and
 - (3) that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the Court, the estate shall be closed and the personal representative discharged.

Section 513. Sale of the Estate Property.

- (a) No sale of any property of an estate is valid unless made pursuant to an order of the Court.
- (b) After filing the inventory and appraisal and before full distribution of the estate, the personal representative may petition the Court for authority to sell property of the estate for purposes of paying the expenses of last illness and burial of decedent, estate administration, claims against the estate, distribution, or any lawful purpose in the best interest of the estate, heirs, devisees, or legatees. If, in the Court's judgment, such sale is in the best interest of the estate, the Court shall order such sale and prescribe the terms upon which the property shall be sold.
- (c) The personal representative shall comply with the requirements with respect to the sale of trust land set forth in Section 911. The terminology specific to the probate of trust lands shall not conflict with the terminology specific to nontrust property in this chapter and for purposes of this section.

Section 514. Interim Reports of Personal Representatives.

- (a) Within one-hundred eighty (180) days of appointment, and each one-hundred eighty (180) days thereafter, and more frequently if necessary or required by the Court, the personal representative shall file with the Court a report of the estate signed under penalty of perjury. Such report shall contain:
 - (1) The claimant, amount, and nature of any claims filed against the estate;
 - (2) Whether such claims have been allowed or rejected;
 - (3) Whether any property of the estate has been sold, mortgaged, leased, or exchanged, and the purpose of such action, such as to pay debts or settle obligation against the estate, pay expenses of administration, or an allowance to an heir, devisee, or legatee;
 - (4) A detailed statement of the amount of property, real and personal, of the estate;
 - (5) A detailed statement of all sums collected, and of all sums paid out, on behalf of the estate, including documentation to support all sums paid out; and
 - (6) Any other information necessary to fully show the condition and affairs of the estate;
- (b) The personal representative shall serve the report on all heirs, devisees, and legatees of the estate.

Section 515. Final Report and Petition. When the affairs of an estate have been fully administered, the personal representative shall file a final report and petition with the Court, signed under penalty of perjury, which states:

- (a) The information listed in Section 514 not included in a prior interim report;
- (b) That all claims against the estate have been paid; or that all such claims have been paid except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay all such remaining claims;
- (c) The amount and recipients of funds expended, with documentation supporting each such payment;
- (d) That there is nothing further to be done in the administration of the estate except as shown in the final report;
- (e) The proposed determination of heirs, devisees, and legatees, indicating the names, ages, addresses, and relationship to the decedent of each distributee and the proposed share and value thereof which each is to receive;
- (f) A request for reasonable compensation to be paid to the personal representative, if any, as provided in subsection (e) of this section; and

- (g) A request that the Court set a hearing to approve the final report, to determine the heirs, devisees, and legatees of the decedent and the share each is to receive, if any.

Section 516. Hearing to Approve Final Report and Determine Distribution of the Estate.

Upon filing the final report and petition, the Court shall set a hearing for objections to the approval of the personal representative's final report.

Section 517. Notice of Hearing Final Report and to Determine the Distribution of the Estate.

The personal representative shall serve a true and correct copy of the final report and petition on the Executive Branch of the Tribe and on each heir, devisee, and legatee of the decedent at their last known address. On or before the time set for such hearing, the administrator shall file a certificate of service with the Court.

Section 518. Hearing on the Final Report and Determining the Distribution of the Estate.

On or before the time set for such hearing, any heir, devisee, or legatee, or other person having an interest in the distribution of the estate, may file an objection to the final report, or to the proposed determination of the heirs, devisees, or legatees, or of the proposed share each is to receive, stating the objections with specificity. The Court shall consider all evidence relevant to the objection and shall make a determination.

Section 519. Order Allowing Final Report and Order of Distribution.

After the hearing upon the final report, the Court shall enter an order:

- (a) Allowing the final report, either in whole or in part, as may be just and proper; and directing the personal representative to appropriate and expend funds to pay unpaid claims, charges, or allowances against the estate as shown in the final report which have been approved;
- (b) Determining the decedent's heirs, devisees, and legatees, indicating the names, ages, and addresses of each, and the share of the remaining estate which each is to receive; and
- (c) Directing the personal representative to distribute such share or shares to the distributees entitled hereto.

Section 520. Petition to Close Estate.

- (a) **Petition Required.** When the estate has been fully administered and all distributions required by the Court have been completed, the personal representative shall, within thirty (30) days, petition the Court for an order closing the estate, discharging the personal representative, and discharging the bond, if any.
- (b) **Required Documentation.** The petition shall be accompanied by documentation supporting any sums paid since the order approving the final report and by a signed receipt for the distributive share from each distributee named in the order of distribution, unless the Court determines that a receipt is impracticable or unnecessary.
- (c) **Failure to Close Estate.** If an estate has not been closed within nine (9) months after the appointment of the personal representative, the personal

representative shall file a written report with the Court stating the reasons the estate remains open, the actions remaining to be completed, and the anticipated date on which the estate will be ready for closure.

- (d) **Court-Initiated Proceedings.** If the personal representative fails to file a petition or report required by this Section, the Court may, on its own motion or upon motion of an interested person, order the personal representative to appear and show cause why the estate has not been closed. Following the hearing, the Court may order the personal representative to complete any remaining duties, file any required accounting or documentation, or take any other action authorized by this Code, including removal of the personal representative and appointment of a successor.

Section 521. Order Closing Estate. Upon finding that the estate has been fully administered and is in a condition to be closed, the Court shall enter an order closing the estate and discharging the administrator and the bondsman, if any.

CHAPTER VI

TRIBAL COURT CLAIMS AGAINST ESTATE (NON-TRUST PROPERTY)

Section 601. Notice to Creditors.

- (a) Unless it is determined by the Court that the estate is exempt from the claims of creditors, the personal representative shall promptly give notice to the public, the Executive Branch of the Tribe, and any known creditors of decedent for presentation of their claims against the decedent's estate which states:
- (1) The name, date of death, and resident address of the decedent at the time of his or her death;
 - (2) The dates upon which the first notice was published and posted;
 - (3) That all persons having claims against the estate are required to present such claims to the personal representative of the estate, at a stated address, and file the claim with the Court within ninety (90) days after the first notice is given;
 - (4) That a claim must include the name and address of the claimant, a statement of the facts or circumstances constituting the basis of the claim, and available documents evidencing the claim, and the amount of the claims; and
 - (5) That, in the event no such claim is presented, it will forever be barred.
- (b) Such notice shall be given by:
- (1) Publishing the notice in two consecutive issues of a Tribal news publication, or if there is no Tribal news publication, a news publication of general circulation within the jurisdiction of the Kiowa Tribe;

- (2) Posting the notice in Kiowa Tribal Offices and public places in three communities within the jurisdiction of the Kiowa Tribe, for a period of not less than thirty (30) days; and
- (3) Delivering a copy of the notice to the Executive Branch of the Tribe and any known creditor.

Each of the above notices must be initiated within thirty (30) days of the appointment of the personal representative. Before the expiration of the ninety (90) day period, the personal representative shall file with the Court a declaration and the notice showing compliance with this section.

Section 602. Allowance or Rejection of Claims – Notice.

- (a) The personal representative shall allow or reject, in whole or in part, all claims against the estate timely presented. Within thirty (30) days of receipt of the claim, the personal representative shall provide notice to the claimant at the address stated on the claim setting forth whether the claim has been allowed or rejected.
- (b) If the personal representative rejects the claim or fails to notify the claimant of the allowance or rejection of the claim within thirty (30) days of the personal representative's receipt of the claimant's notice, the claimant may petition the Court as provided in Section 603.
- (c) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.
- (d) Within ten (10) days of allowing or rejecting any claim, the personal representative shall file with the Court and serve on any known heirs, devisees, legatees, and creditors a notice setting forth the claims allowed or rejected and stating that the claimant must bring a petition for allowance of the claim in the probate action within thirty (30) days after notification of rejection or the claim will be forever barred.
- (e) To the extent there are sufficient assets of the estate, allowed claims may be paid by the personal representative, without court order, in the order provided in Section 604 twenty (20) days after providing notice to any known heirs, devisees, legatees, and creditors, unless otherwise ordered by the Court.

Section 603. Challenging Rejection of Claims. If the personal representative rejects a claim against the estate, in whole or in part, or fails to respond to a claim within thirty (30) days of receipt of the claimant's notice, the claimant must bring a petition for allowance of the claim in the probate action within thirty (30) days of notification of rejection or the claim is forever barred.

The Court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected.

Section 604. Order of Payment of Debts. After payment of costs of estate administration, the claims against or debts of the estate shall be paid in the following order:

- (a) Funeral expenses;
- (b) Claims of the family;
- (c) Claims of the Tribe; and
- (d) All other claims.

Section 605. Judgment Against Decedent – Execution Barred Upon Decedent’s Death – Presentation. If a judgment was entered against the decedent during the decedent’s lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a claim as provided in this Chapter.

Section 606. Secured Claim – Creditor’s Right. If a creditor’s claim is secured by any property of the decedent, the creditor may realize on the creditor’s security, whether or not the creditor presented the claim as provided in this Chapter.

Section 607. Miscellaneous Claim Provisions.

- (a) The time limitations for presenting claims do not accrue to the benefit of any liability or casualty insurer.
- (b) This section does not serve to extend any applicable statutes of limitations.

CHAPTER VII

HEIRSHIP BY KILLING (TRUST AND NON-TRUST)

Section 701. No Acquisition of Property by Killing.

- (a) An “heir by killing” means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willing and unlawful killing of the decedent.
- (b) No heir by killing shall in any way acquire any interests in the decedent’s property, but such property shall pass in accordance with this Chapter.
- (c) The heir by killing shall be deemed to have predeceased the decedent as to the decedent’s property which would have passed in any manner or form from the decedent or his or her estate to such heir.

Section 702. Disposition of Joint Interests and Life Estates as a Result of Killing.

- (a) Any property held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.

- (b) Any property held jointly by three or more persons, including both the heir by killing and the decedent, and any income which would have accrued to the heir by killing as a result of the death of the decedent, shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.
- (c) Notwithstanding any other provision of this section, the decedent's property that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his or her estate. The remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.
- (d) If decedent's estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

Section 703. Preadjudication Rule.

- (a) If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any state, with voluntary manslaughter or homicide in connection with a decedent's death, then any real or personal property or trust land that would otherwise pass to that person from the decedent's estate shall not pass or be distributed until the charges have been resolved in accordance with the provisions of this section.
- (b) Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such real or personal property or trust land shall pass as if no charge had been filed or made.
- (c) Upon conviction of such person, and the exhaustion of all appeals, if any, such real and personal property and trust land shall pass in accordance with this section.
- (d) This section shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his or her own wrong.

Section 704. Effect of Fraud and Evasion.

- (a) Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Act or if fraud is used to avoid or circumvent the provisions or purposes of this Act, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not.
- (b) Any proceeding under this section must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five (5) years after the time of commission of the

fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during their lifetime which affect the succession of the estate.

CHAPTER VIII

APPEALS

Section 801. Appeals. Appeals from any order of the Trial Court issued under this Act shall be made in accordance with the Appellate Procedures of the Kiowa Supreme Court.

CHAPTER IX

PROBATE OF TRUST PROPERTY

Section 901. Definitions. Subject to the Definitions found in Section 107, the following terms as used in this Chapter, shall be construed to apply as follows, except where the context indicates otherwise:

- (a) “Eligible heir” means an heir or devisee qualifying as one or more of the following:
 - (1) A member of a federally recognized tribe;
 - (2) A person eligible to become a member of a federally recognized tribe;
 - (3) A person meeting the definition of “Indian” under the American Indian Probate Reform Act, as amended;
 - (4) A person who owned trust or restricted land as of October 27, 2004;
 - (5) A person who co-owns the trust or restricted land subject to probate; or
 - (6) A lineal descendant within two generations of decedent.
- (b) “Estate” means the trust or restricted land and trust personalty owned by the deceased person at the time of death.
- (c) “Heir” means a person or entity who is entitled under the rules of intestate succession to the real or personal property or trust or restricted land or trust personalty of a decedent. When such property passes to an heir, the property is said to have been inherited.
- (d) “Office of Hearings and Appeals” or “OHA” means the Office of Hearings and Appeals within the U.S. Department of the Interior.

Section 902. Property Subject to this Chapter. This Chapter applies to trust or restricted land within the Kiowa Tribe and trust personalty. The United States Department of the Interior Office of Hearings and Appeals (OHA) shall follow these rules when exercising jurisdiction over estates that include trust or restricted interests in land and trust personalty.

Section 903. Intestate Succession of Trust Property.

- (a) *Intestate Succession of Interests in Trust or Restricted Land of Five Percent (5%) or Greater.*
- (1) *Surviving Spouse.* If the decedent owns five percent (5%) or more in any parcel of trust or restricted land and leaves a surviving spouse, the surviving spouse shall receive a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir(s) listed in subsection (a)(2) of this section.
 - (2) *No Surviving Spouse.* If the decedent leaves no surviving spouse, all parcels of trust or restricted land described in subsection (a)(1) are transferred to one or more eligible heirs in the following order:
 - (A) Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - (B) Grandchildren, in equal shares;
 - (C) Great-grandchildren, in equal shares;
 - (D) Parents, in equal shares;
 - (E) Siblings, in equal shares;
 - (F) The Tribe, provided an Indian co-owner of a parcel of trust or restricted land may acquire an interest that would otherwise descend to the Tribe by paying into the estate of the decedent, before the close of the probate estate, the fair market value of the interest in land; if more than one Indian (including the Tribe) offers to pay for such interest, the highest bidder shall acquire such interest.
- (b) *Intestate Succession of Interests in Trust or Restricted Land of Less Than Five Percent (5%).*
- (1) *Surviving Spouses.* If the decedent owns less than five percent (5%) in any parcel of trust or restricted land and leaves a surviving spouse who was residing on the property at the time of decedent's death, the surviving spouse receives a life estate without regard to waste in any such parcel. The remainder shall pass as set forth in subsection (b)(2) of this section.
 - (2) *No Residing Surviving Spouse.* If there is no surviving spouse residing on the property at the time of decedent's death, all parcels of trust or restricted land in which the decedent owned less than a five percent (5%) interest are transferred to an eligible heir in the following order:
 - (A) Oldest surviving child;
 - (B) Oldest surviving grandchild;

- (C) Oldest surviving great-grandchild;
 - (D) Oldest surviving eligible heir;
 - (E) The Tribe.
- (3) *Renouncement of Rights.* An heir of trust or restricted land interests of less than five percent may agree to renounce that interest so that it instead goes to one of the following:
- (A) Any other eligible heir or Indian related to the heir by blood;
 - (B) A co-owner of the land; or
 - (C) The Tribe.

Section 904. Permanent Improvements on Trust or Restricted Land.

Permanent improvements on trust or restricted land are not considered part of trust or restricted assets and they are not covered by this chapter. Authority to probate improvements on trust or restricted land resides exclusively with the Trial Court, not with the Secretary of the Interior, and probate shall be carried out according to the rules for Trial Court probate proceedings.

Section 905. Trust Personalty. Trust personalty shall be distributed in accordance with the American Indian Probate Reform Act.

Section 906. Children Born After Death of Decedent. For this Chapter, a child of decedent born after the death of decedent is considered living at the time of the death of decedent if the child lives at least one-hundred twenty (120) hours after its birth.

Section 907. Distribution of Trust Property by Will.

- (a) An owner of an interest in trust or restricted land or trust personalty may devise such interest to any of the following:
 - (1) Any lineal descendant of the testator;
 - (2) Any person who owns an interest in the same parcel;
 - (3) The Tribe; or
 - (4) Any Indian, as defined by the American Indian Probate Reform Act, as amended.
- (b) The land shall remain in trust or restricted status.
- (c) If the land is devised to a person not eligible as defined under Section 901 to hold the interest in trust or restricted status, that person may renounce their interest or they may hold a life estate without regard to waste and the remainder shall go to the first surviving person or entity on the following list that is eligible, in order of priority:

- (1) Spouse;
- (2) Children, in equal shares;
- (3) Grandchildren, in equal shares;
- (4) Great-grandchildren, in equal shares;
- (5) Parents, in equal shares;
- (6) Sibling, in equal shares;
- (7) The Tribe.

Section 908. Distribution of Trust Personalty by Will. Trust personalty may be devised to or inherited by any person or entity in accordance with the American Indian Probate Reform Act, as amended.

Section 909. Presumption of Joint Tenancy. If a testator devises an interest in the same parcel of trust or restricted land to more than one person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

Section 910. Other Trust Property Rules.

(a) *Renunciation or Disclaimer of Interests.*

- (1) A person eighteen (18) years of age or older and not under a legal disability may renounce or disclaim an inheritance of trust or restricted land or trust personalty, either in full or subject to the reservation of a life estate interest in land, in accordance with this section, by filing a signed and acknowledged declaration with the probate decision maker. A renunciation may be made at any of the following times:
 - (A) If the judge has not yet issued a decision, prior to entry of a final probate order;
 - (B) Within thirty (30) days of the order on review in a summary probate proceeding in which a request for review has been filed;
 - (C) Before the entry of an order on rehearing, if a petition for rehearing is pending; or
 - (D) Within thirty (30) days of the mailing date of the distribution order that provides the heir or devisee with additional property.
- (2) No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir, devisee or legatee, and the

renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

- (b) *Interest in Land.* A trust or restricted interest in land may be renounced or disclaimed only if the interest passes in trust status in favor of:

- (1) An eligible heir or devisee; or
- (2) The Tribe;

and the interest so renounced shall pass to its recipient in trust or restricted status.

- (c) *Trust Personality.* An interest in trust personality may be renounced or disclaimed in favor of any person.

- (d) *Unauthorized Renunciations and Disclaimers.* If a renouncement or disclaimer is not made in compliance with this section, the renounced or disclaimed interest shall pass as if the renouncing party predeceased the decedent.

- (e) *Acceptance of Interest.* A renunciation or disclaimer of an interest filed in accordance with this section shall be considered accepted when implemented in a final order by a decision-maker and shall thereafter be irrevocable.

- (f) A renunciation or disclaimer of an interest in trust or restricted land that is less than five percent (5%) may not be in favor of more than one person.

Section 911. Right to Purchase Trust or Restricted Land During Probate.

- (a) The following may purchase trust or restricted land during probate for fair market value:

- (1) Any eligible devisee or heir, as defined in Section 901, who is receiving an interest in the same parcel of land by devise or descent in the probate proceeding;
- (2) Any person who owns an undivided trust or restricted interest in the land;
- (3) The Tribe; or
- (4) The Secretary of the Interior on behalf of the Tribe.

- (b) Prior to any purchase, there shall be:

- (1) A written request to purchase at probate by an eligible purchaser submitted to OHA, prior to the completion of the first probate hearing, or if such purchase is for additional property identified after the probate decision has been issued, within thirty (30) days of the distribution order;
- (2) An appraisal of the trust or restricted land to determine fair market value;

- (3) Except as provided under subsection (d) of this section, an eligible purchaser can only purchase at probate a decedent's interest in trust or restricted property if they have the consent of:
 - (A) Any surviving spouse whose share is to be purchased and who receives a life estate under applicable federal law;
 - (B) The heir or devisee of the share to be purchased, provided such heir or devisee is eligible to hold land in trust; and
 - (C) Any recipient of an interest received under an approved consolidation agreement whose share is to be purchased.
- (4) Written consent to the purchase from the surviving spouse and any eligible heir who does not reside on the land; provided, that:
 - (A) The decedent's ownership interest in the land is five percent (5%) or more;
 - (B) There is a valid will addressing disposition of that land; and
 - (C) Either the Tribe or the Secretary is the purchaser from a non-Tribal member.
- (c) If consent is required from an heir or devisee for a purchase at probate, the heir or devisee shall notify OHA prior to a deadline established by OHA that the heir or devisee is not willing to consent to sell. To notify the OHA, the heir or devisee must state, either on the record at the probate hearing, or in writing to the OHA, that the heir or devisee is not willing to consent to sell the property under any circumstances and/or is not willing to consider any bids to purchase the property interest.
- (d) If the purchaser is the Kiowa Tribe, consent of those listed under subsections (b)(3) and (b)(4) of this section is unnecessary if the following five conditions are met:
 - (1) The interest will descend by intestate succession;
 - (2) The judge determines based on the Department of the Interior's records that the decedent's interest at the time of death was less than five percent (5%) of the entire undivided ownership of the parcel land;
 - (3) The heir or surviving spouse was not residing on the property at the time of the decedent's death;
 - (4) The heir or surviving spouse is not a member of the Kiowa Tribe or eligible to become a member; and
 - (5) The interest is not included in an approved consolidation agreement.
- (e) Proceeds from the sale of interests under this section shall be distributed to the devisee, surviving spouse, or heir whose interest was sold in accordance with the

amount of their respective interests; or, where the sold interest is subject to a life estate, the proceeds shall be distributed according to federal laws. The proceeds may be deposited or held in an account as trust personalty if the interest sold would otherwise pass to:

- (1) The heir, by intestate succession; or
- (2) The devisee in trust or restricted status.

Section 912. Tribal Purchase of Trust or Restricted Land Otherwise Devised to, or Being Inherited by, Non-Indian.

- (a) An interest in trust or restricted land may not pass to a devisee or an heir who is not eligible to receive trust or restricted land, as defined in Section 901. The Tribe may acquire the interest by paying fair market value for the land to the Secretary of the Interior. This section shall not apply in the event the non-Indian devisee renounces the trust or restricted land interest in favor of an Indian.
- (b) If the Tribe purchases trust or restricted land at probate, the person who would have received the interest in the land by devise or inheritance may retain a life estate in the land without regard to waste.

Section 913. Consolidation and Partition. Nothing in this chapter shall diminish the rights to enter into consolidation agreements or partition trust property as provided by federal law.

Section 914. Who May Make a Will for Trust and Restricted Property. Any person of sound mind who is eighteen (18) years of age or older and of testamentary capacity, who has any right, title, or interest in trust or restricted land or trust personalty may make a will to dispose of such trust or restricted land or trust personalty.

Section 915. Requirements of Wills – Trust Property. To be valid and effective, a will to dispose of a right, title, or interest in trust or restricted land or trust personalty, must be in writing, dated, and signed by the testator. The will shall be attested by two or more adult competent witnesses who do not have an interest in the testator's estate or in the will.

Section 916. Self-Proven Will at Time of Execution and After Execution. Section 403 shall apply to wills to dispose of a right, title, or interest in trust or restricted land or trust personalty.

Section 917. Oral Will Prohibited – Trust Property. Any interest in trust or restricted land or trust personalty may not be devised by an oral will.

Section 918. Codicil – Trust Property.

- (a) A codicil may replace, in whole or in part, a prior will to dispose of a right, title, or interest in trust or restricted land or trust personalty.
- (b) A codicil need not refer to, or be attached to, the prior will to dispose of a right, title, or interest in trust or restricted land or trust personalty.

- (c) A codicil must be executed with the same formalities as a will to dispose of a right, title, or interest in trust or restricted land or trust personalty.

Section 919. Revocation of Will – Trust Property. A will to dispose of a right, title, or interest in trust or restricted land or trust personalty, or any part thereof, shall be revoked and of no effect by:

- (a) A subsequent valid will that revokes the previous will, or part of that will, expressly or by inconsistency; or
- (b) Destruction of the will, with the intent of revoking the will, by the testator or by anyone in the presence and by the direction of the testator.

Section 920. Divorce of Testator and Surviving Spouse – Trust Property. An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death of the decedent.

Section 921. Spouse After Will Created – Trust Property.

- (a) If the surviving spouse of a testator married the testator after the testator executed his or her will to dispose of a right, title, or interest in trust or restricted land or trust personalty, the surviving spouse shall receive the intestate share in the decedent's trust or restricted land and trust personalty that the spouse would have received if the testator had died intestate unless:
 - (1) It appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;
 - (2) The will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or
 - (3) The testator provided for the spouse by a transfer of funds or property outside the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.
- (b) This section shall not apply to an interest in trust or restricted land where the spouse of a testator is not Indian as defined by 25 U.S.C. § 2201(2) and the testator devised the interests in trust or restricted land of the testator to one or more Indians.

Section 922. Omitted Spouse – Trust Property.

- (a) For purposes of trust or restricted land or trust personalty, if the surviving spouse is omitted from the will of the testator, then the testator's estate shall give the surviving spouse the intestate share that the spouse would have received if the testator had died intestate if:
 - (1) The testator and surviving spouse were continuously married without legal separation for the five-year period preceding the decedent's death;
 - (2) The testator and surviving spouse have a surviving child who is the child of the testator;
 - (3) The surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust or restricted land in such estate; or
 - (4) The surviving spouse is under a binding obligation to continue making loan payments for the trust or restricted land for a substantial period of time.
- (b) This section shall not apply if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of funds or property outside of the will.

Section 923. Death of Related Devisee or Legatee Before Testator – Trust Property.

If the recipient of trust or restricted land or trust personalty predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's current will specifically provides otherwise.

Section 924. Omitted Children – Trust Property. If the birth or adoption of any children occur after the execution of a testator's will, and the omission of the children from the will is inadvertent rather than an intentional omission, the children shall share in the trust or restricted interests in land and trust personalty as if the decedent had died intestate.

Section 925. Rules for Interpretation of Wills – Trust Property. Unless there is clear evidence of contrary intent, wills shall be construed as follows:

- (a) A will shall apply to all trust and restricted land and trust personalty which the testator owned at death, including any such land or personalty acquired after the execution of their will.
- (b) A transfer by will of a trust interest in land shall be presumed to include the interest of testator in any permanent improvements attached to the land.
- (c) Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such "brothers," "sisters," "nieces," or "nephews," are construed to include both types of relationships.

- (d) A transfer by will of a trust or restricted interest in land or an interest in trust personalty to the testator's or another designated person's "heirs," "next of kin," "relatives," or "family" shall mean those persons, including the spouse, who would be entitled to take under the provisions of this chapter for nontestamentary disposition as of the date of the testator's death.
- (e) If the family cemetery plot owned by the testator in trust or restricted status at his or her death is not mentioned in the decedent's will, the ownership of the plot shall descend to his or her heirs as if he or she died intestate.

Section 926. Duty to Present Will for Probate – Trust Property. A custodian of a will seeking to dispose of a right, title, or interest in trust or restricted land or trust personalty, shall deliver the will to the Regional Legal Administrative Specialist of the Southern Plains Regional Office of the Bureau of Indian Affairs.

Section 927. Heirship by Killing. The rules found in Chapter VII of this Act shall apply to the disposition of any right, title, or interest in trust or restricted land or trust personalty under this Chapter.

Section 928. Assistance to Members of the Kiowa Tribe.

- (a) The Trial Court may provide assistance to members of the Kiowa Tribe and their families in initiating and completing probate proceedings before the Bureau of Indian Affairs and other federal agencies responsible for the probate and distribution of trust or restricted property. In providing such assistance, the Trial Court may:
 - (1) assist in reporting the death of a decedent to the appropriate Bureau of Indian Affairs office;
 - (2) assist the interested person in identifying trust or restricted property owned by the decedent;
 - (3) assist in obtaining documents reasonably necessary for the federal probate proceeding, including death certificates, wills, codicils, marriage records, divorce decrees, adoption records, birth records, and Tribal enrollment records;
 - (4) assist in identifying and locating potential heirs and devisees;
 - (5) assist in completing forms and other documents required by the Bureau of Indian Affairs or Office of Hearings and Appeals;
 - (6) transmit documents and information to the appropriate Bureau of Indian Affairs office upon authorization by the interested person;
 - (7) assist an interested person in communicating with the Bureau of Indian Affairs, Office of Hearings and Appeals, Bureau of Trust Funds Administration, and other federal agencies concerning the probate; and

- (8) provide such other administrative assistance as the Court determines appropriate and as is permitted by federal law.
- (b) When the Court assists in initiating a federal probate proceeding, the Court shall provide the interested person with written notice that the federal government, rather than the Trial Court, has authority to adjudicate the federal probate proceeding and that the person remains responsible for providing truthful and complete information and responding to requests from federal probate authorities.

Section 929. No Federal Adjudicatory Authority. Assistance provided under Section 928 does not constitute an exercise of authority by the Trial Court to determine the heirs or devisees of trust or restricted property subject to federal probate, to issue a federal probate order, or to otherwise exercise authority reserved to the United States Department of the Interior or Office of Hearings and Appeals.

Section 930. Coordination with Federal Authorities. The Court shall establish procedures for coordinating assistance provided under this Section with the Bureau of Indian Affairs and other federal agencies responsible for the probate and distribution of trust or restricted property.