

CHAPTER 136 - PROBATE OF WILLS AND PETITIONS FOR LETTERS

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JURISDICTION

SECTION 136.010 Resident decedent; nonresident decedent.

1. Wills may be proved and letters granted on the Reservation where the decedent was a resident at the time of death, whether death occurred on that Reservation or elsewhere, and the tribal court of that Reservation has exclusive jurisdiction of the settlement of such estates.

2. The estate of a nonresident decedent may be settled by the tribal court of any Reservation in which any part of the estate is located. The tribal court to which application is first made has exclusive jurisdiction of the settlement of estates of nonresidents.

SECTION 136.020 Disqualified judge. A tribal judge shall not admit any will to probate, or grant letters in any case where the judge is:

1. Interested as next of kin to the decedent.
2. A devisee under the will.
3. Named as personal representative or trustee in the will.
4. A witness to the will.

SECTION 136.030 Disqualified judge required to transfer proceedings to qualified judge; duties, powers and jurisdiction of qualified judge.

1. If a tribal judge, who would otherwise be authorized to act, is precluded from acting from the causes mentioned in [SECTION 136.020](#), or if the judge is interested in any manner, the judge shall transfer all proceedings in the matter of the estate to another judge of the same Reservation, if there is one, who is not disqualified to act in the settlement of the estate, or the judge shall request a judge of another Reservation to hold the court on the other Reservation.

2. The judge to whom the matter is transferred or the other tribal judge shall hold court and is vested with all the powers of the court and judge so disqualified, and retains jurisdiction as to all subsequent proceedings in regard to the estate.

SECTION 136.040 Transfer of proceedings back to original court. If, before the administration of any estate transferred as provided in [SECTION 136.030](#) is closed, another person becomes judge of the court in which the proceeding was originally commenced who is not disqualified to act in the settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any interested person may have the proceeding returned to the judge who succeeded the disqualified judge, by filing a petition setting forth these facts and moving the court to grant the petition. If these facts are satisfactorily shown, the court must make an order transferring the proceeding back to the judge who is not disqualified.

PROBATE OF WILLS

SECTION 136.050 Delivery of will after death; liability for nondelivery.

1. Any person having possession of a will shall, within 30 days after knowledge of the death of the person who executed the will, deliver it to the clerk of the tribal court which has jurisdiction of the case or to the personal representative named in the will.

2. Any person named as personal representative in a will shall, within 30 days after the death of the testator, or within 30 days after knowledge of being named, present the will, if in possession of it, to the clerk of the court.

3. Every person who neglects to perform any of the duties required in subsections 1 and 2 without reasonable cause is liable to every person interested in the will for the damages the interested person may sustain by reason of the neglect.

SECTION 136.060 Order to produce will; penalty for failure to comply with order.

1. If it is alleged in any petition that the will of a decedent is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring that person to produce it at a time to be named in the order.

2. Any person having the possession of a will who neglects or refuses to produce it in obedience to such an order may, by warrant from the court, be committed to the jail, and be kept in close confinement until the person produces the will. The court may make all other necessary orders at chambers to enforce the production of the will.

SECTION 136.070 Persons qualified to petition for probate.

1. A personal representative or devisee named in a will, or any other interested person, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the will is in the possession of that person or not, or is lost or destroyed, or is beyond the jurisdiction of the Ely Shoshone Tribe.

2. A personal representative named in a will, though not in possession of the will, may present a petition to the district court having jurisdiction, requesting that the person in possession of the will be required to produce it so that it may be admitted to probate and letters may be issued.

SECTION 136.090 Petition for probate: Requirements; effect of defect.

1. A petition for the probate of a will and issuance of letters must state:
 - (a) The jurisdictional facts;
 - (b) Whether the person named as personal representative consents to act or renounces the right to letters;
 - (c) The names and residences of the heirs, next of kin and devisees of the decedent, the age of any heir, next of kin or devisee who is a minor, and the relationship of the heirs and next of kin to the decedent, so far as known to the petitioner;
 - (d) The character and estimated value of the property of the estate;
 - (e) The name of the person for whom letters are requested, and that the person has never been convicted of a **Category A offense**; and.
 - (f) The name of any devisee who is deceased.
2. No defect of form or in the statement of jurisdictional facts actually existing voids the probate of a will.

SECTION 136.100 Petition for probate: Clerk to set for hearing; notice of hearing.

1. A petition for the probate of a will and for the issuance of letters must be signed by the party petitioning, or the attorney for the petitioner, and filed with the clerk of the court, who shall set the petition for hearing.
2. The petitioner shall give notice of the hearing for the period and in the manner provided in [SECTION 155.020](#) to the heirs of the testator and the devisees named in the will, to all persons named as personal representatives. The notice must be substantially in the form provided in that section.

SECTION 136.120 Service of petition when petition presented by person other than named personal representative or by fewer than all named personal representatives. If a petition for probate is presented by any person other than the personal representative named in the will, or if it is presented by fewer than all of the personal representatives named in the will, the petition must be served upon the personal representatives not joining in the petition.

SECTION 136.130 Attesting witnesses to will subpoenaed; unnecessary where self-proving affidavits.

1. The clerk shall issue subpoenas to the subscribing witnesses to a will if they reside in the county.
2. No subpoenas to subscribing witnesses need be issued if the affidavits mentioned in [SECTION 136.160](#) are filed with the clerk.

SECTION 136.140 Proof of notice; witnesses to testify orally.

1. At the time appointed, or at any other time to which the hearing may be continued, upon proof being made by affidavit or otherwise to the satisfaction of the court that notice has been given as required by this chapter, the court shall proceed to hear the testimony in proof of the will.
2. All witnesses who appear and are sworn shall testify orally.

SECTION 136.150 Evidence of subscribing witnesses: Affidavits ex parte.

1. If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of only one of the subscribing witnesses, if that testimony shows that the will was executed in all particulars as required by law, and that the testator was of sound mind and had attained the age of 18 years at the time of its execution.
2. An ex parte affidavit of the witness, showing that the will was executed in all particulars as required by law, and that the testator was of sound mind and had attained the age of 18 years at the time of its execution, must be received in evidence and has the same force and effect as if the witness were present and testified orally.

SECTION 136.160 Proof of will by affidavits of attesting witnesses.

1. Any or all of the attesting witnesses to any will may, after the death of the testator and at the request of the executor or any interested person, make and sign an affidavit stating such facts as a witness would be required to testify to in court to prove the will. The sworn statement of any witness so taken must be accepted by the court as if it had been taken before the court.

2. The affidavit described in subsection 1 may be substantially in form as set forth in [SECTION 133.050](#).

SECTION 136.170 Proof of will when subscribing witnesses are unavailable.

1. If it appears to the court that a will cannot be proven as otherwise provided by law because one or more or all the subscribing witnesses to the will, at the time the will is offered for probate, are dead or mentally or physically incapable of testifying or otherwise unavailable, the court may admit the will to probate upon the testimony in person, by deposition or by affidavit of at least two credible disinterested persons that the signature to the will is genuine, or upon other sufficient proof that the signature is genuine.

2. The provisions of subsection 1 do not preclude the court, in its discretion, from requiring in addition, the testimony in person, by deposition or by affidavit of any available subscribing witness, or proof of such other pertinent facts and circumstances as the court deems necessary to admit the will to probate.

SECTION 136.180 Proof of will by copy.

1. If the will of a person is detained beyond the jurisdiction of the Ely Shoshone Tribe, in a court of any other state, country or jurisdiction, and cannot be produced for probate on the Reservation, a copy of the will may be admitted to probate in this Reservation in lieu thereof and has the same force and effect as would be required if the original will were produced.

2. Unless otherwise ordered by the court, a subscribing witness may testify in person, by deposition or by affidavit with respect to a copy of the executed will, and with respect to the handwriting of the affiant as a witness, or the handwriting of the testator or another witness, in the same way as he would if the original will were available.

SECTION 136.185 Proof of electronic will. An electronic will may be proved by authentication satisfactory to the court.

SECTION 136.190 Proof of holographic will. A holographic will may be proved by authentication satisfactory to the court.

SECTION 136.210 Translation and recording of will in foreign language. If the will is in a foreign language the court shall certify to a correct translation thereof into English and the certified translation shall be recorded in lieu of the original.

SECTION 136.220 Admissibility of certified copy of will and order admitting will to probate. A copy of the will and order admitting it to probate, certified by the clerk in whose custody it may be, must be received in evidence and be as effectual in all cases as the original will would be if proved.

LOST OR DESTROYED WILLS

SECTION 136.230 Jurisdiction of court to take proof of execution and validity of lost or destroyed will. If a will is lost by accident or destroyed by fraud without the knowledge of the testator, the court may take proof of the execution and validity of the will and establish it, after notice is given to all persons, as prescribed for proof of wills in other cases.

SECTION 136.240 Petition for probate; same requirements of proof as other wills; testimony of witnesses; order.

1. The petition for the probate of a lost or destroyed will must include a copy of the will, or if no copy is available state, or be accompanied by a written statement of, the testamentary words, or the substance thereof.
2. If offered for probate, a lost or destroyed will must be proved in the same manner as other wills are proved under this chapter.
3. In addition, no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.
4. The testimony of each witness must be reduced to writing, signed by the witness and filed, and is admissible in evidence in any contest of the will if the witness has died or permanently moved from the State or Reservation
5. If the will is established, its provisions must be set forth specifically in the order admitting it to probate, or a copy of the will must be attached to the order.

SECTION 136.250 Restraint of administration pending petition. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration have been granted upon the estate of the decedent, or letters testamentary of any previous will of the decedent, the court may restrain the administration if necessary to protect the interests of devisees claiming under the lost or destroyed will.

FOREIGN WILLS

SECTION 136.260 Probate of foreign wills: Procedure.

1. A will duly proved, allowed and admitted to probate outside of this Reservation may be admitted to probate and recorded in the proper court of any county in this State in which the testator left any estate.
2. When a copy of the will and the order admitting it to probate, duly certified, are presented by the personal representative, a nominee or any other interested person, with a petition for probate, the order and copy must be filed, and the clerk shall set a time for a hearing thereon, and notice must be given as required by law on a petition for the original probate of a domestic will pursuant to [SECTION 136.100](#).
3. If, upon the hearing, it appears to the satisfaction of the court that the will has been duly proved and admitted to probate outside this Reservation, and that it was executed according to the law of the place in which it was made, or in which the testator was at the time domiciled, or in conformity with the laws of this Tribe, it must be admitted to probate with the same force and effect as the original probate of a domestic will.
4. If a certified copy of a will from any jurisdiction where probate is not required by the laws of that jurisdiction, with the certificate of the legal custodian of the original will that the certified copy is a true copy and that the will has become operative by the laws of that jurisdiction, or a copy of a notarial will in possession of a notary in a foreign jurisdiction entitled to the custody of the will and required by the laws of that jurisdiction to retain custody of it, duly certified by the notary, is presented by the personal representative, his nominee or another interested person to the proper court on this Reservation, the clerk shall set a time for a hearing thereon, and notice must be given as required by law on a petition for the original probate of a domestic will.
5. If it appears to the court that the will should be admitted to probate in this Reservation, as the last will and testament of the decedent, the copy must be filed with the clerk, and the will has the same effect as if originally proved and admitted to probate in the court of this Tribe.