

CHAPTER IX  
PROBATE CODE

Section 1

Short Title

This Chapter of the Shoshone Bannock Law and Order Code shall be known and may be cited as the Probate Code.

Section 2

Purpose

The purpose of this Probate Code is to provide for the orderly distribution of the property of a deceased Indian where such property is within the jurisdiction of the Shoshone Bannock Tribal Court pursuant to Section 4 hereof. These provisions relating to decedent's estates shall be liberally construed and applied to give effect to the policy of distributing a decedent's property according to the decedent's intent where there is a valid will manifesting such intent, or according to the provisions of this Probate Code where there is not a valid will. It is also the purpose of this Probate Code to provide for the probate of such estates without unnecessary delay.

Section 3

Severability

If any provision of this code or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 4

Jurisdiction

The Shoshone Bannock Trial Court shall have original jurisdiction over all cases involving the intestate descent and testamentary distribution of all non-trust or unrestricted property found within the territorial jurisdiction of the Shoshone Bannock Tribes. This jurisdiction shall authorize the Court to issue any orders and take any action it deems necessary to fulfill the purposes of and authorized by this Chapter.

Section 5

Evidence of death or Status

In proceedings under this code the rules of evidence are applicable unless specifically displaced herein. In addition, the following rules relating to determination of death and status are applicable:

(a) 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;

(b) 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 of the dates, circumstances and places disclosed by the record or report;

(c) A person who is absent for a continuous period of five (5) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Section 6

Jury Trial

If properly demanded pursuant to the Rules of Civil Procedure of this Law and Order Code, a party is entitled to a trial by jury in any proceeding under this code in which any genuine controverted question of fact arises, or the trial judge may order a jury trial on any such issue on his own motion. Otherwise, all proceedings under this code shall be had before a trial judge.

Section 7

Oath or Affirmation on Filed Documents

Except as specifically provided in this code, every document filed with the court under this code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification thereof.

Section 8

Exercise of Court Powers

Powers under this code may be exercised by the court at any time, in chambers or in open court, as may be appropriate.

Section 9

Execution of Deed

Should any person be entitled to a deed or title from an administrator or administratrix and such administrator or administratrix be discharged or disqualified or refuse to execute the same, such deed or title may be executed by the court authorizing such sale or distribution or the court may appoint another administrator or administratrix and order that such deed or title be executed.

Section 10

Practice in Court

Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the Rules of Civil Procedure and that Chapter governing Appellate procedure of this Law and Order Code control formal proceedings under this code.

Section 11

Determination of Heirs

When any Indian dies leaving property subject to the court's probate jurisdiction any person claiming to be an heir of the decedent may petition the court to determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the court, and to the claimant have been notified of the suit and given full opportunity to come before the court and defend their interests. Possible heirs who are not residents of the Fort Hall Reservation must be notified by certified mail, return receipt requested at their last known address and a copy of the notice and return must be preserved in the record of the case. The petitioner shall be responsible for complying with this section as to notice.

Section 12

TEMPORARY SPECIAL ADMINISTRATOR

Section 12.1

Appointment

When any Indian dies leaving property subject to the court's probate jurisdiction, whether testate or intestate, any interested person may petition the court to appoint a temporary special administrator of the decedent's estate.

Section 12.2

Qualifications

Any legally competent adult person may be appointed as a temporary special administrator, with preference given to such persons who are not related to the decedent nor named as a beneficiary in decedent's will

Section 12.3

Duties

It shall be the duty of the temporary special administrator to (a) take possession of all property of the decedent which is subject to the court's probate jurisdiction as soon as he is appointed, and to make and return to the court an inventory and appraisal of all the property which comes into his hands within one (1) month after his appointment; and (b) deliver all such property to the named Executor in the will, if any, or to the regular administrator of the decedent's estate named by the court.

Section 12.4

Purpose of Appointment

The purpose of the temporary special administrator is to take charge of the decedent's estate immediately so the property will not be lost, wasted or depreciated in value.

Section 12.5

Application

Petitions for Letters of Temporary Special Administration must be in writing, signed by the applicant, and filed with the clerk of the court, stating facts essential to give jurisdiction of the case, and when known to the applicant, he must state the names, ages and residences of the heirs of the decedent.

Section 12.6

When Granted

Letters of Temporary Special Administration may be granted by the court at any time appointed for the hearing on the application, or at any time to which the hearing is continued or postponed.

Section 12.7

Notice of Application

When a petition praying for Letters of Temporary Special Administration is filed, the petitioner must give notice thereof to those named as heirs in his petition either by personal service or by certified mail, return receipt requested. Petitioner must also cause notice to be posted in at least three (3) public places on the Fort Hall Reservation, one of which must be at the place where court is held. All notices required by this section must contain at least the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice under this section must be given at least ten (10) days, excluding weekends and holidays recognized by the Shoshone Bannock Business Council, before the hearing.

Section 12.8

Bond

If it satisfactorily appears to the court that the assets of the estate for which temporary or regular Letters of Administration are sought do not warrant the necessity of a bond on the part of the applicant, the court may in its discretion order such Letters to issue without bond; but such Administrator may at any time afterward, if it appears from any cause necessary or proper, be required to file a bond in an amount which is twice the value of the estate.

Section 13

LETTERS OF ADMINISTRATION

Section 13.1

Incorporation of Other Sections

Those sections of this code which apply to the appointment, qualifications, duties, purpose, application, granting, notice and bonding of a Temporary Special Administrator shall also apply to the appointment, qualifications, duties, purpose, application, granting, notice and bonding of a permanent Administrator of an estate.

Section 14

Notice of Probate Hearing

Promptly after a petition is filed under Section 11 of this code the petitioner shall give notice of the appointed time and place of the probate hearing to determine the heirs and divide the property of the deceased Indian, and calling on all persons interested to attend the hearing.

Section 15

Service of Notice

A copy of the notice of the probate hearing shall be served by the petitioner at least ten (10) days, excluding weekends and holidays recognized by the Shoshone Bannock Business Council, prior to the hearing. Copies thereof shall be served either personally or by certified mail, return receipt requested to the person's last known address upon each claimant, presumptive heir and the Shoshone Bannock Tribes. Service upon the Shoshone Bannock Tribes shall be effected by personally serving the Chairman of the Shoshone Bannock Business Council or the Administrative Secretary thereof. Notice shall also be published in the Sho-Ban News at least five working days prior to the hearing.

The Court for good cause shown, and only by written order entered in the case file, may provide for a different method or time of giving notice for any hearing under this code.

A person entitled to receive notice of any hearing or proceeding under this code, or that person's guardian or other fiduciary, may waive his right to receive such notice by submitting to the court clerk a writing indicating his desire for such a waiver. Such written waiver shall be entered into the case file.

#### Section 16

##### Proof of Service

Proof of service of the Notice of Hearing required in Section 15 hereof shall be filed in each case. Proof of service shall consist of one of the following: (a) acknowledgment of receipt of service by the endorsement of the person served on a copy or the original of the Notice of Hearing; (b) a certificate that service was made in person signed by an adult person making service; (c) the return receipt where service was made by certified mail; and (d) affidavit of publication to show that notice was published in the Sho-Ban News as required.

#### Section 17

##### Renunciation of Succession

A person who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the court at any time prior to the closing of the estate. The instrument shall (a) describe the property or part thereof or interest therein renounced; (b) be signed by the person renouncing; and (c) declare the renunciation and the extent thereof. Upon proper renouncement, the interest renounced shall pass as if the person renouncing had predeceased the decedent or donee.

#### Section 18

##### Effect of Divorce, Annulment or Separation

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the marriage is not a divorce for purposes of this code.

Section 19

Effect of Homicide

For purposes of this section: "Slayer" shall mean any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person. "Decedent" shall mean any person whose life is so taken. "Property" shall include any real or personal property and any right or interest therein over which the court has probate jurisdiction.

No slayer shall in any way acquire any property or receive any benefit as a result of the death of the decedent, but such property shall pass as though the slayer predeceased the decedent.

The record of the slayer's conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against his claim of property in any action arising under this code.

In the absence of a conviction of a wilful and unlawful killing, or if the criminal court renders an acquittal, or if the Appellate Courts order a vacation or reversal of a conviction, the court presiding over the probate of decedent's estate under this code may determine by clear and convincing evidence whether the killing was wilful and unlawful for purposes of this code.

This section shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of the Shoshone Bannock Tribes that no person shall be allowed to profit by his own wrong, wherever committed.

Section 20

INTESTATE SUCCESSION

Section 20.1

Intestate Estate

Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

Section 20.2

Intestate Distribution

As for decedent's separate property:

1. If there is a surviving spouse and no children of the decedent, the entire estate goes to the surviving spouse.

2. If there are surviving children of the decedent but no surviving spouse, the entire estate goes to said children in equal shares.

3. If there are a surviving spouse and children of the decedent, then one-half of the estate will go to the surviving spouse and the children will share the remaining one-half equally.

4. If there are no surviving spouse and no children of the decedent, then the estate goes to the decedent's parents.

5. If there are no surviving spouse, children or parents of the decedent, then the estate goes to decedent's brothers and sisters in equal shares.

6. If there are no surviving spouse, children, parents, brothers or sisters of the decedent, then the estate goes to decedent's grandparents in equal shares. The term "grandparents" does not include the grandparents of decedent's spouse.

7. If there are no surviving spouse, children, parents, brothers, sisters or grandparents of the decedent, then the entire estate will escheat to the Shoshone Bannock Tribes.

8. If any of decedent's children predecease him and leave issue of their own, said issue will take that child's share by right of representation.

As for the one-half of community property which belongs to the decedent, it shall pass in accordance with paragraphs 1-8 of this section.

#### Section 21

##### Requirement of Survival for 120 Hours

Any person who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty (120) hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of an intestate estate by the Tribe under Section 20.2 hereof.



Section 22

Relatives of Half Blood

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Section 23

Afterborn Heirs

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

Section 24

Meaning of Child:

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(a) An adopted person is a child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent and adoption by the spouse of a natural parent has no effect on the relationship between the child and a deceased, undivorced natural parent.

(b) In cases not covered by subsection (a) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father if:

- (1) The natural parents were married before or after the birth of the child, even though the attempted marriage is later declared void; or
- (2) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (2) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

Section 25

Advancements

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property must be taken into account in computing

the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise. If an advancement exceeds the share of the heir, no refund is required.

Section 26

Debts Owed to Decedent

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

Section 27

Claims Against the Estate

(a) The administrator of the estate shall cause notices to creditors and unnamed heirs to be posted in at least three conspicuous places on the Reservation and published at least twice in a publication of general circulation on the reservation. Said notices shall state that creditors and heirs not named in the original petition who may have a claim against decedent's estate have thirty (30) days from the date of the first publication to present their claims to the court and that only those claims so presented shall be paid by the estate or considered by the court. Notice by mailing shall also be given to each creditor of whom the administrator has actual knowledge.

(b) Any person, other than the named heirs, who claims an interest in the estate must file a notice of said claim with the court within thirty (30) days from the date of the first publication of the notice required by subsection (a) of this section.

(c) Any heir who is not included in the petition must file a notice of his claim as an heir within thirty (30) days of the first publication of the notice required by subsection (a) of this section.

(d) Copies of all claims filed with the court shall be given by the court clerk to the administrator.

(e) If additional claims are filed by other persons claiming an interest or interests in the estate, the Administrator has two options: He may file an amended petition asking that these additional claims of heirs or creditors be included and provided for, and give notice to

all heirs and claimants at the end of the thirty-day period of his intention to provide for such additional heirs and claims; or, he may by written notice, properly mailed and with an affidavit of said mailing, give notice of the rejection of any and all of said additional heirs or claims and set a date for hearing, not sooner than ten (10) days thereafter, at which the original or amended petition will be presented to the court.

(f) Payment of creditors or the including of claimants as heirs of the estate shall be made by the administrator only upon the order of the court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(g) All just claims of creditors allowed by the court, and reasonable compensation for the administrator, shall be paid before distribution of the estate but only after payment of the family allowance and homestead allowance as provided herein.

#### Section 28

##### Family Allowance

The surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid in a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody as their needs may appear. The family allowance is exempt from and has priority over all claims except for the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent or by intestate succession. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

Section 29

Homestead Allowance

The surviving spouse is entitled to a homestead allowance of Two Thousand Five Hundred Dollars (\$2,500). If there is no surviving spouse, each minor dependent child of a decedent is entitled to a homestead allowance amounting to Two Thousand Five Hundred Dollars (\$2,500) divided by the number of minor dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. The homestead allowance is in addition to any share passing to the surviving spouse or minor dependent children by the will of decedent or by intestate succession.

Section 30

Trust Fund for Minor's Inheritance

At the discretion of the presiding judge, all or any part of a minor's inheritance may be put into a trust fund in that minor's name to mature upon that minor reaching majority.

Section 31

Distribution of Estate

After final hearing the court shall issue an Order of Distribution distributing the entire estate of the decedent to heirs named therein.

Section 32

Final Accounting and Discharge of Administrator

Pursuant to the Order of Distribution the Administrator shall distribute the assets of the entire estate and make a final accounting, under oath, of his actions. Upon being satisfied that the court's Order of Distribution has been complied with, the court shall issue an order discharging said administrator from his responsibilities to the estate and closing the estate.

Section 33

Sale of Property

(a) No sale of any property of an estate is valid unless made pursuant to an order of the court and under the terms and conditions therein specified.

(b) Sale of Personal Property- After filing an inventory and appraisal of the property of the estate, the administrator may petition the court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If in the court's judgment, such sale is in the best interests of the estate, the court shall order such sale.

If any such personal property has been specifically devised, it shall be exempt from the operation of the Order of Sale. The sale authorized by this subsection may also be ordered upon the court's own motion.

(c) Sale of Real Property- When the proceeds of the sale of personal property and other funds of the estate have been exhausted, and the charges, expenses and claims against the estate have not all been satisfied, or when it appears to the satisfaction of the court that it would be in the best interest of the heirs, or devisees that all or a part of the real property of the estate be sold for purposes of distribution, the administrator may petition the court for authority to sell real property of the estate, or so much thereof as may be necessary for that purpose, or the court may order such a sale on its own motion. The court shall prescribe the terms upon which the real property may be sold and shall prescribe the procedure to accomplish the sale. If any such real property has been specifically devised, it shall be exempt from the operation of the Order of Sale.

Section 34

Persons Eligible to Make a Will

Any person who has something of value to bestow and who is an emancipated minor, or of the age of eighteen (18) or more years, and who is of sound mind may make a will.

Section 35

Execution

Except as provided in Section 36 of this Chapter, every will must be written in typed print and signed by the testator and two witnesses. Each of the persons signing as witnesses must witness any of the following:

- a. The signing of the will by the testator; or
- b. An acknowledgment by the testator that the signature is his; or
- c. An acknowledgement by the testator that the document is his will.

Signing by the testator may be by his mark, or the will may be signed on behalf of the testator by another person signing the testator's name at his direction and in his presence. The witnesses are not required to sign in the presence of each other or the testator. The testator may sign the will outside the presence of the witnesses if he later acknowledges to the witnesses that the signature is his or that the document is his will, and they sign as witnesses. The testator's signature does not have to appear at the end of the will to be valid.

The requirements of this Section will not apply to those wills whose execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode or is a national.

Section 36

Holographic Wills

A will which does not comply with Section 35 of this Chapter is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 37

Self-Proved Wills

(a) Any will may be simultaneously executed, attested, and made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a Notary

Public under his official seal, in form and content substantially as follows:

I, \_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_ day of \_\_\_\_\_, 19\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign and execute this instrument willingly (or willingly direct another to sign for me) and as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, or an emancipated minor, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_, \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen (18) years of age or older, or an emancipated minor, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
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 \_\_\_\_\_, 19\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

(b) An attested will may at any time subsequent to its execution be made self-proved by the

acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a Notary Public under his official seal, attached or annexed to the will in form and content substantially as follows:

The State of \_\_\_\_\_  
County of \_\_\_\_\_

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 to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of their knowledge, the testator was at that time eighteen (18) years of age or older, or an emancipated minor, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
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 \_\_\_\_\_, 19 \_\_\_\_.  
(Seal)

\_\_\_\_\_  
Notary Public

Section 38

Who May Witness a Will

(a) Any person eighteen (18) years of age or older generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.



Section 39

Revoking a Will

A will is revoked:

(a) By a subsequent will, properly executed. All subsequent wills, properly executed, shall be deemed to revoke all other previously executed wills in their entirety. The will later in time shall be the only effective will of the testator; or

(b) By being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his uncoerced and voluntary direction. The revocation of a will executed in duplicate may be accomplished by revoking one (1) of the duplicates in a manner prescribed by this subsection; or

(c) If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this subsection, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this subsection revokes a will.

Section 40

Amendments and Revival of Wills

Except as provided in Section 39(c) of this Chapter, a previously revoked will may be revived only by again properly executing said will after it has been revoked. The subsequent will shall have the effect of revoking all other previously executed wills in their entirety and shall be the only will considered by the Court in the probate of testator's estate.

A will shall be probated as a single instrument. Codicils, amendments or supplements to a will shall not be considered by the Court in the probate of testator's estate except as provided in Sections 41 and 42 of this Chapter. If the testator desires to amend a prior will, it must be done by properly executing a subsequent will. The will later in time will be the only will or instrument admitted to probate and considered by the Court. Except as provided in Sections 41 and 42 of this Chapter, all other wills or instruments shall not be considered by the Court.

Section 41

Incorporation by Reference

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Section 42

Separate Writings

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

Section 43

Testator's Intent

In the probate of all wills, the Court shall interpret the provisions thereof as it believes the testator intended when he executed the will. The desires of the testator shall be effected whenever possible and legal.

Section 44

Property Which Passes by Will

A will shall be construed to pass all property which the testator owns at his death and which he has a right to dispose of including property acquired after the execution of the will.

Section 45

Deceased Devisee

If a person is named as a devisee in a will, but that person either dies before the testator or is dead at the time the will is executed, the children of the deceased devisee take in his place in equal shares if they survive the testator. If the deceased devisee leaves no children at the time of his death, or his children do not survive the testator, the devise of the deceased devisee shall become a part of the residue of the testator's estate.

Section 46

Nonexoneration

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay all debts. The devisee of encumbered assets has no right to have other assets of the estate applied to the encumbrance unless the will specifically so requires, or unless the administrator of the estate is authorized by the Court to make such application of estate funds.

Section 47

Generic Terms

Half bloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father, for the purposes of the construction of a devise made by will, unless the person is openly and notoriously so treated by the father.

Section 48

Satisfaction of a Gift

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the devisee acknowledges in writing that the gift is in satisfaction. For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

Section 49

Duty of Custodian of Will

After the death of the testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate, and if none is known, to the Shoshone Bannock Tribal Court. Any person having custody of a will who knows or has reason to know that the estate of the testator of the will in his possession is being probated must immediately submit said will to this Court. Any person who willfully refuses or fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the Court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

Section 50

Executions and Levies Prohibited

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative or administrator of the estate. This section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

Section 51

Property Discovered After Estate Closed

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

Section 52

Existence and Validity of Will

In all cases, as soon as a petition for probate of an estate has been filed with the Court, the Clerk thereof shall cause to be published in the Sho-Ban Newspaper a notice notifying all interested persons that a petition for probate has been filed, listing the name of the decedent and the name of the petitioner. The notice shall also list the time, date and place at which the hearing will be held. It is declared by this Section and the notice shall state that any person having in his possession a last will and testament of the deceased person shall have ten (10) working

days from the date of the first publication to submit that will to the Court Clerk for probate consideration. Any wills submitted after that date shall not be considered by the Court. There shall be no extensions made of this time period. This notice shall be published once a week for two consecutive weeks. The costs of publication may, in the discretion of the Court, be charged against the estate.

The purpose of this hearing shall be to determine the validity of decedent's will, if any, or, if more than one will is submitted, which one, if any, shall be validated by the Court and submitted for probate consideration. If more than one will is submitted, the Court shall validate the will which was most recently properly executed.

At this hearing the rules of evidence shall not apply and the Court shall hear all relevant evidence necessary to determine if the will was properly executed in accordance with the provisions of this Chapter. Wills which were submitted but not validated by the Court shall be returned to the persons submitting them and shall not be placed in the decedent's court file.

This hearing shall not be unreasonably delayed, postponed or continued.

Section 53

Requirement of Survival of Devisee

A devisee who does not survive the testator by one hundred twenty (120) hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Section 54

Tribal Custom and Tradition

Notwithstanding the provisions of this Chapter the family designate may distribute any Indian artifacts, finery or personal belongings of sentimental value belonging to the decedent in accordance with the customs and traditions of the Shoshone Bannock Tribes prior to the initiation of administration of the estate, unless the decedent's will provides otherwise.

For purposes of this Chapter, "family designate" shall mean, in the order of preference herein listed,:

1. The surviving spouse of the decedent; or
2. If there is no surviving spouse, then the oldest surviving child of the decedent; or
3. If there is no surviving spouse or children, then the surviving father or mother of the decedent; or
4. If none of the persons described above survive the decedent, then the oldest of decedent's surviving siblings; or
5. If none of the persons described above survive the decedent, then the closest next of kin of the decedent.