

TITLE XXI – ESTATE PLANNING AND PROBATE LAW

CHAPTER 1. GENERAL ESTATE PLANNING AND PROBATE PROVISIONS

Sec. 101. Purpose

Chapters 1 through 7 of this Title are hereinafter referred to as the Chitimacha Probate Code. The objective of the Probate Code is to provide for the exercise of the greatest possible Tribal jurisdiction over the probate of the estate of decedents who were domiciled or owned real or personal property on the Chitimacha Indian Reservation. The Chitimacha Tribe of Louisiana finds that probate procedure in the Chitimacha Tribal Court is in the best interest of Tribal members in that probate may be concluded more economically and more expeditiously than by other jurisdictions. This Probate Code shall be liberally construed and applied to meet the following objectives:

- (a) To ensure that the property of decedents passes to the rightful heirs or beneficiaries.
- (b) To comply with the decedent's wishes as much as possible.
- (c) To comply with Tribal custom and tradition.
- (d) To provide a simple, efficient and inexpensive method for probating decedent's property.
- (e) To prevent the transfer of land out of Tribal ownership and control.
- (f) To ensure that the rights of creditors of decedents are protected to the extent possible and fair. (Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 102. Definitions

As used in Chapters 1 through 7 of this Title, unless the context otherwise requires:

- (a) "Administrator" means the person appointed by the Chitimacha Tribal Court to administer the estate of a decedent according to this Probate Code and may include an Administrator nominated by the decedent's will, appointed at the request of an interested party, appointed by the Chitimacha Tribal Court, or the public Administrator.
- (b) "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.
- (c) "Decedent" means a person who is deceased.
- (d) "Decedent's Estate" means all movable and immovable property and all rights and interest

related thereto within which the decedent had an interest at the time of his or her death, including decedent's interest in any property acquired during the marriage.

(e) "Devisee" means a person or entity that receives property under a will.

(f) "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under their will or the laws governing intestate succession.

(g) "Heir" means any individual, including the surviving spouse, or entity entitled under the law governing intestate succession to an interest in the property of a decedent.

(h) "Indian" means a person enrolled or eligible for enrollment as a member of the Chitimacha Tribe of Louisiana, or any other person of Indian blood who is an enrolled member of another federally recognized Indian Tribe.

(i) "Interested Witness" means any of the following:

(1) An heir of the decedent.

(2) A beneficiary named in any document offered for probate as the will of the decedent.

(3) A beneficiary of a trust created under any document offered for probate as the will of the decedent.

(4) A person named as Administrator or personal representative in any document offered for probate as the will of the decedent.

(5) Additional persons as the Chitimacha Tribal Court may order included.

(j) "Intestate" means that the decedent died without a valid will.

(k) "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.

(l) "Issue" when used to refer to persons who take by intestate succession, means children, grandchildren and lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term does include adopted children and non-marital children and their issue.

(m) "Member" means an enrolled member of the Chitimacha Tribe of Louisiana.

(n) "Personal Property" means all property other than real property.

(o) "Probate" means the legal process by which applicable Tribal, Federal, or State law that

affects the distribution of a decedent's estate is applied to:

- (1) Determine the heirs;
 - (2) Determine the validity of wills and determine devisees;
 - (3) Determine whether claims against the estate will be paid from trust funds; and
 - (4) Order the transfer of any restricted land or trust property to the heirs, devisees, or other persons or entities entitled by law to receive the land or property.
- (p) "Property" means any interest, legal or equitable in real or personal property, without distinction as to kind, except trust property.
- (q) "Real property" means all interest in land or in buildings or improvements permanently attached to land.
- (r) "Reservation" means the Chitimacha Reservation in Louisiana.
- (s) "Secretary" means the Secretary of the Interior of the United States or an authorized representative. The authorized representative of the Secretary for the performance of probate functions is the Bureau of Indian Affairs. The authorized representative of the Secretary for adjudication of probate for trust and restricted interests is the Office of Hearings and Appeals.
- (t) "Take by Representation" means the principle upon which the issue of a decedent takes or inherits the share of an estate which their immediate ancestor would have taken or inherited, if living.
- (u) "Testate" means that the decedent executed a valid will.
- (v) "Testator" means a person who has executed a valid will.
- (w) "Tribal Court" means the Chitimacha Tribal Court of the Chitimacha Tribe of Louisiana.
- (x) "Tribe" means the Chitimacha Tribe of Louisiana.
- (y) "Trust Property" means real or personal property title to which is in the United States for the benefit of an Indian or Indian Tribe.
- (z) "Will" means a written document executed with the required formalities and intended to facilitate the passage of the testator's property upon death.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 0113; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 103. Jurisdiction

The Chitimacha Tribal Court shall have jurisdiction to administer in probate the estate of a decedent who, at the time of their death, was domiciled or owned real or personal property situated within the Chitimacha Indian Reservation to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 104. Control of Funeral Arrangements

Control of funeral arrangements and disposition of the remains of the decedent shall be based upon a decision of the family and the Indian customs of the Chitimacha Tribe of Louisiana.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 105. Indian Custom and Tradition Distribution of Indian Finery and Artifacts

Notwithstanding the provisions of this Probate Code relating to descent and distribution, the surviving spouse or other surviving next of kin may distribute any Indian artifacts and finery belonging to the decedent in accordance with the customs and traditions of the Chitimacha Tribe of Louisiana prior to the initiation of the administration of the estate. Such distribution shall be in accordance with directions left by the decedent, if any.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 106. Effect of Fraud and Evasion

Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of this Probate Code, 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. Any proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against anyone later than six (6) 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.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 107. Evidence as to Death or Status

In proceedings under this Probate Code, 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 and of the dates, circumstances and places disclosed by the record or report;

(c) A person who is absent for a continuous period of not less than six (6) years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 108. Practice in Court

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provisions, the Chitimacha Rules of Civil Procedure (Title IV), including the rules concerning vacation of orders, the Chitimacha Rules of Evidence (Title IV) and the Chitimacha Rules of Appellate Review (Title I) govern formal proceedings under this Probate Code.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 109. Judicial Powers and Duties

(a) The judge of the Chitimacha Tribal Court may make orders for the sale of personal property at public or private sale for the compounding of debts, for the settlement of an estate as insolvent, for the approval of bonds and all other orders of an ex parte nature as may facilitate the settlement of estates. The orders shall be in writing, signed by the judge issuing the same, and shall be filed and recorded as an entry in the proper record.

(b) The judge shall examine the bonds filed by the personal representatives, with a view to ascertaining their sufficiency and may approve the same. The judge may examine any inventory, sale, bill, account current, final account and vouchers filed therewith, or examine into the condition of an estate generally. Bond may be waived for good cause shown.

(c) The Chitimacha Tribal Court shall have the authority to draft orders requesting property of funds outside the exterior boundaries of the Chitimacha Reservation to be delivered to the Court for probate in the Chitimacha Tribal Court.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 110. Numerical Index, Records and Certified Copies

(a) Numerical Index. The Clerk of the Chitimacha Tribal Court shall keep a numerical index in the Chitimacha Tribal Court of the records of all estates which have been or are pending, in which shall be entered the name of each such estate and the date and character of each proceeding in the Chitimacha Tribal Court, to facilitate access to such records.

(b) Records. The records and files of the Chitimacha Tribal Court retained by the Chitimacha Tribal Court under this Probate Code shall be kept in a secured cabinet, except when the records and files are in actual use for the purpose of examination, recording, copying, or entry, or when the records and files, after being recorded or copied, are placed in storage as records and files not in current use.

(c) Certification of Records and Files. Upon payment of a standard fee as set by the Chitimacha Tribal Court, the records and files of the Chitimacha Tribal Court retained by the Court under this Probate Code may be certified by the Judge or Clerk of the Chitimacha Tribal Court, any one of whom is authorized to use and affix the seal of the Chitimacha Tribal Court. All such certified copies of records and files, with or without the seal of the Chitimacha Tribal Court, shall be legal evidence, all orders, judgments and decrees of the Chitimacha Tribal Court, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 111. Jury Trial

If properly demanded, a party may request a trial by jury in any proceeding in which any genuine controverted question of fact arises. Otherwise all proceedings under this Probate Code shall be handled by a trial judge or the Clerk of the Chitimacha Court, as is appropriate.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 112. Oath or Affirmation on Filed Documents

Except as specifically provided in this Probate Code, every document filed with the Chitimacha

Tribal Court under this Probate 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 therein.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 113. Notice

(a) If notice of a hearing on any petition or other matter is required and except for specific notice requirements as otherwise provided, the Clerk of the Chitimacha Tribal Court shall cause notice of the time and place of hearing of any petition to be given to any interested person or his or her attorney if he or she has appeared by attorney or requested that notice be sent to his or her attorney. Notice shall be given in accordance with Title IV, Section 102 of this Code, at least fifteen (15) days prior to the hearing date.

(b) The Chitimacha Tribal Court for good cause shown may provide for a different method or time of serving notice for any hearing.

(c) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

(d) A person, including a guardian *ad litem*, or other fiduciary, may waive notice by a writing signed by the person or his or her attorney and filed in the proceeding.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 114. Renunciation of Succession

A person (or his or her personal representative) 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 Chitimacha Tribal Court not later than six (6) months after the decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death. 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 passes as if the renouncing person had predeceased the decedent or donee.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 115. Effect of Divorce, Annulment, and Decree of 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 or she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Probate Code.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 116. Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designation

(a) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits passing under this Probate Code and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who criminally and intentionally kills another joint tenant thereby affects a severance of the interest of the decedent so that the share of the decedent passes as his or her property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who criminally and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this Section.

(e) A final judgment of conviction of an offense containing the elements of criminal and intentional killing is conclusive for purposes of this Section. In the absence of a conviction of criminal and intentional killing, the Chitimacha Tribal Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this Section.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 117. Simultaneous Death Provisions

(a) Where the title to property covered under this Probate Code or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise

than simultaneously, the property of each person shall be disposed of as if he or she had survived except where provided otherwise in this Probate Code.

(b) Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed.

(c) Where there is not sufficient evidence that two (2) joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half (1/2) as if one had survived and one-half (1/2) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(d) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(e) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed, contract or insurance.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 2. WILLS

Sec. 201. Who May Make A Will

Any person eighteen (18) or more years of age and who is of sound mind may make a will.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 202. Execution

Except as otherwise provided for oral wills (Section 204) or holographic wills (Section 203), every will shall be put in writing signed by the testator, or in the testator's presence and at the testator's direction signed by another person, and shall be signed by at least two (2) persons each of whom either witnessed the signing by the testator of the will or the testator's acknowledgment of the signature and direction to do so.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 203. Holographic Will

A will which does not comply with Section 202 of this Probate Code is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 204. Oral Wills

A will which does not comply with Section 202 of this Probate Code is valid as an oral will under Chitimacha 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.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 205. Self-Proved Will-Form

An attested will may, at the time of its existence or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public, authorized authority or a judge, under official seal, attached or annexed to the will in form and content and substantially as follows:

The Chitimacha Indian Reservation
Chitimacha Tribal Court
Charenton, Louisiana

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached and foregoing instrument, being first duly sworn, do hereby declare to the foregoing authority that the testator signed and executed the instrument as the testator's last will and that the testator signed willingly or directed another to sign for the testator, and that the testator executed the instrument as their 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 the time eighteen (18) years or more of age, 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
_____ 20_____.

SIGNED BY JUDGE, AUTHORIZED AUTHORITY OR NOTARY

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 206. Who May Witness

(a) Any person who, at the time of execution of the will, would be competent to testify as a witness in Court to the facts relating to execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

(b) A will is not invalidated because signed by an interested witness; but, unless the will is also signed by two (2) disinterested witnesses, any beneficial provisions of the will for a witness or the witness' spouse are invalid to the extent that such provisions in the aggregate exceed in value what the witness or spouse would have received had the testator died intestate. Valuation is to be made as of testator's death.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 207. Choice of Law as to Execution

A written will is valid if executed in compliance with this Probate Code or if its 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 of the testator is domiciled.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 208. Revocation by Writing or by Act

A will or any part thereof is revoked:

(a) By a subsequent valid will, codicil, or other instrument which revokes the prior will in whole or in part expressly or by inconsistency; 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 the testator's presence and at the testator's direction.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 209. Revocation by Divorce; No Revocation by Other Changes of Circumstances

If, after executing a will, the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as Executor, trustee, conservator, or guardian, unless the will expressly provide 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. If provisions are revoked solely by this Section, 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 Section revokes a will.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 210. Revival of Revoked Will

If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third, the first will is revoked in whole or in part unless it is evident from the circumstances and the terms of the revocation of the second or from the testator's contemporary or subsequent declarations that the testator intended the first will to take effect as executed.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 211. 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.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 212. Events of Independent Significance

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 213. Rules of Construction and Intention

(a) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions;

(b) The following rules of construction apply unless a contrary intent is clear in the will:

(1) All property; after-acquired property. A will is construed to pass all property which the testator owns at their death including property acquired after the execution of their will;

(2) Devisee must survive testator by one-hundred twenty (120) hours. A devisee who does not survive the testator by one-hundred twenty (120) hours is treated as if he or she predeceased the testator, unless the will of the decedent contains such language dealing explicitly with simultaneous deaths, including 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;

(3) Failure of testamentary provision. If a devise other than a residuary devise fails for any reason, it becomes part of the residue. If the residue is devised to two (2) or more persons and the share of one (1) of the residuary devises fails for any reason, his or her share passes to the other residuary devises, or to other residuary devisee in proportion to his or her interest in the residue;

(4) Class Gifts. One who would have been a devisee under a class gift if he or she had survived the testator is treated as a devisee for purposes of this Section whether his or her death occurred before or after the execution of the will;

(5) Exercise of power of appointment. A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment unless specific reference is made to that power;

(6) Generic Terms. Half-bloods, adopted persons and persons born out of wedlock are included in class gifts terminology and terms of relationships 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 unless the person is openly and notoriously so treated by the father or unless paternity has been judicially determined during the life of the father;

(7) Ademption by satisfaction. Property which a testator gave in his or her 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 testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction. For the purpose of partial satisfaction, property given during the lifetime is valued as of the time of devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 3. INTESTATE SUCCESSION

Sec. 301. Intestate Succession

Any part of the estate of a decedent not effectively disposed of by the decedent's will passes to the decedent's heirs as prescribed in the following sections of this Probate Code.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 302. Share of the Spouse

The intestate share of the surviving spouse is:

- (1) if there is are surviving issue, one-half (1/2) of the intestate estate;
- (2) if there is no surviving issue of the decedent, the entire intestate estate.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 303. Share of Heirs Other Than Surviving Spouse

The part of the intestate estate not passing to the surviving spouse under Section 302 of this Probate Code, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is not surviving issue, to the decedent's parent or parents equally;

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

(4) if there is no surviving issue, parent or issue of a parent by the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 304. No Taker

If there is no taker under the provisions of this Chapter, the intestate estate passes to the Chitimacha Tribe of Louisiana.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 305. Representation

If representation is called for by this Probate Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among their issue in the same manner.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 306. Posthumous Persons

Person conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 307. Kindred of Half Blood; Stepchildren; Foster Children

Persons of the half-blood inherit the same share they would inherit if they were of the whole blood, but stepchildren and foster children and their descendants do not inherit, unless adopted.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 308. Divorce

Divorces of husband and wife do not affect the right of children to inherit their property.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 309. Determination of Relationship of Parent and Child

For the purpose of intestate succession a relationship of parent and child shall be established to determine succession by, through or from a person:

(a) An adopted person is the child of an adopting parent and of the natural parents for inheritance purposes only. The adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent;

(b) An adopted person shall inherit from all other relatives of an adoptive parent as though the adopted person was the natural child of the adoptive parent and the relatives shall inherit from the adoptive parent's estate as if they were the adoptive parent's relatives;

(c) In cases not covered by Subsection 309(a), a person born out of wedlock is a child of the mother and is a child of the father, if the relationship of parent and child has been established in accordance with the Chitimacha Comprehensive Codes of Justice.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 4. FAMILY RIGHTS/PROTECTION

Sec. 401. Omitted Spouse

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

(b) In satisfying a share provided in this Section, the devises made by the will abate as provided in Section 710 of this Probate Code, which concerns “abatement”.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 402. Pretermitted Children

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

(1) It appears from the will that the omission was intentional; or

(2) When the will was executed the testator had one or more children and devised substantially all his or her estate to the other parent of the omitted child; or

(3) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If, at the time of execution of the will, the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child receives a share in the estate equal in value to that which he or she would have received if the testator had died intestate.

(c) In satisfying a share provided by this Section, the devises made by the will abate as provided in Section 710 of this Probate Code, which concerns “abatement”.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 403. Homestead Allowance

A surviving spouse of a decedent who was domiciled on the Chitimacha Reservation is entitled to a homestead allowance of twenty-five thousand dollars (\$25,000.00). If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to five-thousand dollars (\$5,000.00) divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate except for a secure mortgage claim by qualified mortgage lenders. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided by intestate succession.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 404. Exempt Property

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the Chitimacha Reservation is entitled from the estate to a value not exceeding five thousand dollars (\$5,000.00) in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five thousand dollars (\$5,000.00), or if there is not five thousand dollars (\$5,000.00) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the five thousand dollars (\$5,000.00) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 405. Family Allowance

(a) In addition to the right to homestead allowance and exempt property, if the decedent was domiciled on the Chitimacha Reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent 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 (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as 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; but in case of any minor child or dependent child that is not living with the surviving spouse, the allowance may be made partially to the child or their guardian or other person having their care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates their right to allowances not yet paid.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 406. Source, Determination, and Documentation

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representation may determine the family allowance in a lump sum not exceeding six thousand dollars (\$6,000.00) or periodic installments not exceeding five-hundred dollars (\$500.00) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this Section may petition the Chitimacha Tribal Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 407. Dwelling Exemption

Upon the appraisal of an estate and it appearing that a dwelling is personal property in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or the dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Chitimacha Tribal Court may, by order, set aside such dwelling for the benefit of said surviving spouse and/or children as a homestead for a period of not to exceed ten (10) years,

provided that in case of special hardship or emergency, the Chitimacha Tribal Court may extend such term from year to year thereafter, provided that any heir or heirs or creditors of the deceased shall have the opportunity to appear before the Chitimacha Tribal Court and protest the extension of the original terms setting aside said homestead. The Chitimacha Tribal Court may also set aside such sums from the estate as the Court may deem necessary for maintenance and upkeep of the home. The Chitimacha Tribal Court shall hear evidence on any contest before making any order of extension.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 408. Summary Probate of Exempt Estates

(a) Exempt Estates. An estate having an appraised value which does not exceed ten thousand dollars (\$10,000.00) and which is to be inherited by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this Section.

(b) Notice of Hearing to Determine Whether the Estate is an Exempt Estate. Upon petition of the Administrator, the Chitimacha Tribal Court shall enter an order stating that it appears, from the appraised value of the whole estate does not exceed ten thousand dollars (\$10,000.00) and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of and interested persons, if any there be, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given to all persons known to the Administrator to be an heir, devisee, legatee or creditor of the decedent, in accordance with Title IV, Section 102 of this Code.

(c) Hearing to Determine Whether the Estate is and Exempt Estate. If, upon such hearing, the Chitimacha Tribal Court finds that such estate is an exempt estate, the Chitimacha Tribal Court shall enter an order directing the Administrator to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled thereto and filing receipts therefore, the estate shall be closed.

Sec. 409. Settlement of Small Estates without Probate of Will or Letters of Administration

(a) The surviving spouse of any person who dies, or if there is no surviving spouse, any of the next of kin of such decedent, or if there is no next of kin or if such surviving spouse or next of kin refuses, then any suitable person whom the Chitimacha Tribal Court deems to have a sufficient interest may, in lieu of filing an application for admission of a will to probate or letters of administration, file an affidavit in the Chitimacha Tribal Court stating, if such is the case, that all debts of the decedent have been paid in the manner

prescribed by Section 410 of this Chapter, at least to the extent of the fair value of all of the decedent's assets, when: (1) such decedent leaves property of the type described in Subsection (b) of this Section; and

(2) the aggregate value of any such property as described in Subsection (b) of this Section does not exceed the sum of twenty thousand dollars (\$20,000.00).

(b) Such property includes:

(1) a deposit in any bank;

(2) equity in shares in any savings and loan association, federal savings and loan association or credit union, doing business in the State of Louisiana;

(3) corporate stock or bonds;

(4) any unpaid wages due from any corporation, firm, individual, association or partnership located in the State of Louisiana;

(5) a death benefit payable from any fraternal order or shop society or payable under any insurance policy for which the decedent failed to name a beneficiary entitled under the bylaws and regulations of such order or society or under the terms of such insurance policy to receive such death benefit;

(6) other personal property, tangible or intangible, including a motor vehicle or motor vehicles and a motor boat or motor boats registered in his or her name; or

(7) an unreleased interest in a mortgage with or without value.

(c) Thereafter, except as provided in Subsection (e) of this Section, the probate judge shall issue a decree finding that no probate proceedings have been instituted in connection with the estate of such decedent and authorizing either the holder of such property or the registrant thereof, including the authority issuing the registration, to transfer the same or pay the amount thereof to the persons legally entitled thereto. The Chitimacha Tribal Court may issue such certificates and other documents as may be necessary to carry out the intent of this Section. If the petitioner indicates in such affidavit that the assets listed in such affidavit or a portion thereof are necessary to pay the funeral director who buried such decedent or to pay debts due for the last sickness of the decedent, the Chitimacha Tribal Court may order the payment of such assets directly to such funeral director or to those creditors to whom debts are due for the last sickness of the decedent to the extent necessary to pay their preferred claims for funeral expenses or expenses for the decedent's last sickness, or may order such assets sold and the proceeds from such sale paid directly to the funeral director or such creditors. Any decree issued by the Chitimacha Tribal Court may authorize the surviving spouse or next of kin, or some suitable person whom the Court deems to have a sufficient interest, to release an interest in any mortgage reported under

the provisions of this Section.

(d) If there is no surviving spouse or next of kin of a person who dies leaving property as described in this Section, the funeral director who buried such decedent or any creditor to whom a debt is due for the last sickness of the decedent may file in the Chitimacha Tribal Court an affidavit as described in this Section that such funeral director or any creditor to whom a debt is due for the last sickness of the decedent has a lawful preferred claim for funeral expenses or expenses for the decedent's last sickness. Thereupon the Chitimacha Tribal Court may, in its discretion, authorize either the holder of such property or the registrant thereof, as aforesaid, to transfer the property or pay from the property the amount of such claim, or to pay proceeds from the sale of any such assets ordered sold by the Court, to such funeral director or any creditor to whom a debt is due for the last sickness of the decedent, in satisfaction of the amount of the claim of each.

(e) If an affidavit is filed under Subsection (a) of this Section in lieu of an application for admission of a will to probate or letters of administration and the fair value of the property of the decedent exceeds the total amount of claims, including any amounts allowed to the family under Chapter 4 of this Title, the Chitimacha Tribal Court shall proceed as follows:

(1) If no purported last will and testament is found, the Chitimacha Tribal Court shall order distribution of the excess in accordance with the laws of intestate succession;

(2) If the decedent left a duly executed last will and testament and the will provides for a distribution which is the same as that under the laws of intestate succession, the Chitimacha Tribal Court shall order distribution of the excess in accordance with the laws of intestate succession;

(3) If the decedent left a duly executed last will and testament and the will provides for a distribution different from that under the laws of intestate succession, and the heirs at law of such decedent sign a written waiver of their right to contest the will, the Chitimacha Tribal Court shall order the excess to be paid in accordance with the terms of the will;

(4) If the will directs a distribution different from the laws of intestate succession, and the heirs at law do not waive their right to contest the admission of such will, the will shall be offered for Probate in accordance with Chapter 7 of this Title. In such case, the Chitimacha Tribal Court may issue a decree under this Section only if the persons entitled to take the bequests under the will consent, in writing, to the distribution of the bequests in accordance with the laws of intestate succession. If the claims against the estate exceed the value of the property of such decedent, the claims shall be paid in accordance with the priorities set forth in Section 410 of this Chapter. As used in this Subsection, the term "will" includes any duly executed codicil thereto.

(f) Any such transfer or payment shall, to the extent of the amount so transferred or paid, discharge the registrant or holder of such property from liability to any person on account

thereof.

(g) As a condition of such transfer or payment, the registrant or holder may require the filing of appropriate waivers, the execution of a bond of indemnity and a receipt for such transfer or payment.

Sec. 410. Order of Payment of Claims, Expenses and Taxes

Claims, expenses and taxes in the settlement of a decedent's estate shall be entitled to preference and payment in the following order of priority:

- (1) funeral expenses;
- (2) expenses of settling the estate;
- (3) claims due for the last sickness of the decedent;
- (4) all lawful taxes and all claims due the United States;
- (5) all claims due any laborer or mechanic for personal wages for labor performed by such laborer or mechanic for the decedent within three (3) months immediately before the decease of such person;
- (6) other preferred claims; and
- (7) all other claims allowed in proportion to their respective amounts.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 5. INHERITANCE BY NON-INDIANS/FRACTIONATED HEIRSHIP

Sec. 501. Incorporation by Reference of Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana (Assignment of Tribal Lands)

Article IV (Assignment of Tribal Lands) of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana is hereby incorporated by reference into this Probate Code. Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana provides as follows:

ARTICLE IV - ASSIGNMENT OF TRIBAL LANDS

Section 1. The members of the Chitimacha Tribe of Louisiana now occupying home sites on Tribal land may continue to occupy such as their home sites, the remaining acreage to be available for present and future assignments. The use and assignment of Tribal land shall be in

accordance with an ordinance enacted by the Chitimacha Tribal Council, which shall be subject to approval of the Secretary of the Interior.

Section 2. Upon the death of any member, male or female, now married to a non-Indian, the home site of such member shall continue to be held by the non-Indian husband or wife until said non-Indian person's death; provided, that this non-Indian person does not remarry a non-Indian. Should they remarry a non-Indian, the assignment shall be canceled, but any improvements accumulated on the land during the marriage of the non-Indian and the member of the Chitimacha Tribe of Louisiana or during the occupancy by said non-Indian after the death of the spouse, may be appraised and sold, the proceeds to be paid to the surviving spouse, or such improvements may be removed from the land in accordance with the land assignment ordinance.

Section 3. Upon the death of any member or non-Indian surviving spouse who did not remarry, the home site and improvements may continue to be occupied by the heirs or assigns, provided they qualify for membership in the Tribe.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 502. Clarification of Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana (Assignment of Tribal Lands)

The following provisions shall apply to clarify Article IV (Assignment of Tribal Lands) of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana:

(a) The provisions of Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana and this Probate Code concerning remarriage to a non-Indian shall apply whether the surviving spouse formally remarries a non-Indian or the surviving spouse lives with a non-Indian in a relationship which could be recognized as a common law marriage or Indian custom marriage under any state or Tribal law.

(b) A non-Indian surviving spouse who does not remarry a non-Indian may sell his or her interest in the improvements accumulated on the home site in accordance with the provisions of Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana.

(c) Any improvements on home sites under Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana or this Probate Code shall be sold only to members of the Chitimacha Tribe of Louisiana.

(d) Any person may renounce his or her interest in home sites or improvements on home sites in accordance with Section 114 (Renunciation of Succession) of this Probate Code.

(e) The provisions of Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana and this Chapter of the Probate Code shall apply to inheritance by either will or intestate succession.

(f) The provisions of Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana and this Probate Code shall apply to all actions by the Chitimacha Housing Authority, including succession upon death of home buyer.

(g) Under no circumstances shall a non-Indian be entitled to any interest in a home site greater than a life estate.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

**Sec. 503. Restrictions on Inheritance of Individual Trust/Restricted Lands
by Non-Indians**

(a) Non-Indians shall not be entitled to receive by devise or descent any interest in individual trust or restricted lands within the Chitimacha Reservation or otherwise subject to the jurisdiction of the Chitimacha Tribe of Louisiana provided that:

(1) if an Indian dies intestate, the surviving non-Indian spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Chitimacha Indians who would have been heirs in the absence of a qualified person taking a life estate;

(2) if an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the Chitimacha Tribe of Louisiana, subject to any non-Indian spouse and/or children's rights as described in Paragraph (1) of this Section;

(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a Tribal ordinance enacted pursuant to this Section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Chitimacha Tribe of Louisiana acquires such interests by paying to the Secretary, on behalf of the devisee, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: Provided, that any non-Indian and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests.

(b) Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit in accordance with Section 114 (Renunciation of Succession) of this Probate Code.

(c) The right to receive a life estate under this Section shall be limited to:

(1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of ten (10) per centum or more in the tract of land; or

(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

(d) This Section shall apply only to individual trust/restricted lands. Article IV of the Constitution and Bylaws of the Chitimacha Tribe of Louisiana and Sections 501 and 502 of this Probate Code shall apply to Chitimacha Tribal Lands.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 504. Escheat of Certain Fractionated Interests

The following Section is enacted under Section 2206(c) of Title 25 of the United States Code - The Indian Land Consolidation Act - to take precedence over the escheat provisions of Section 2206 of Title 25 of the United States Code.

(a) No undivided interest in any tract of trust or restricted land within the Chitimacha Reservation or otherwise subject to the Chitimacha Tribe of Louisiana's jurisdiction shall descend by intestacy or devise but shall escheat to the Chitimacha Tribe of Louisiana if such interests represents two (2) per centum or less of the total acreage in such tract and is incapable of earning to the respective heirs one hundred dollars (\$100.00) in any one (1) of the five (5) years from the date of decedent's death, and is otherwise without significantly greater future potential value, Provided, that:

(1) in determining the future earning capacity of such interest and hearing examiner shall consider the presence of known or probable minerals and timber;

(2) in determining whether such interest is otherwise without significantly greater future potential value the hearing examiner shall consider, among other things, the geographic location of such property and its potential for commercial or other exploitation;

(3) where the fractional interest has earned to its owner less than one hundred dollars (\$100.00) in any one (1) of the five (5) years before it is due to escheat, in absence of previously unexploited known or probable mineral reserves or standing timber, there shall be a rebuttable presumption that such interest is incapable of earning to the respective heirs one hundred dollars (\$100.00) in any one (1) of the five (5) years from the date of decedent's death, and that the property is otherwise without significantly greater future potential value.

(b) Nothing in this Section shall prohibit the devise of such a fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

(c) Any beneficiary who, but for the provisions of this Section, would have inherited such fractional interest, may assign such interest to any other owner of an undivided fractional interest in such trust or restricted land, such assignment to be made and filed with the hearing examiner within sixty (60) days of the issuance of notice of intent to escheat the interest to the Chitimacha Tribe of Louisiana. The hearing examiner shall formally notify the beneficiary of his or her rights under this Subsection at the time of the notice of intent to escheat and shall assist with the assignment process as needed.

(d) The Chitimacha Tribal Court Judge and the Federal Administrative Law Judge shall have the discretion to order any appropriate distribution of the decedent's estate as needed to reduce further fractionation so long as the distribution is fair and equitable.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 6. ADMINISTRATION OF INTESTATE ESTATES

Sec. 601. Petition

(a) When any person dies leaving an intestate estate subject to the jurisdiction of the Chitimacha Tribal Court under this Probate Code, any person claiming to be an heir of the decedent, or the Chitimacha Tribe of Louisiana, may petition the Chitimacha Tribal Court for a determination of the heirs of the decedent and for the distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioners who may be entitled to share in the distribution of the estate.

(b) Whenever there is a valid will probated by the Chitimacha Tribal Court which does not dispose of all the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Chitimacha Tribal Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 602. Administration of Intestate Estate

(a) If an Executor is appointed over a decedent's property which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

(b) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Chitimacha Tribal Court may appoint an Administrator over the estate. It shall not be necessary to appoint an administrator if the value of

the decedent's property appears to be less than five thousand dollars (\$5,000.00) in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.

(c) The following persons, if legally competent, shall be afforded priority in order of their listing for appointment as Administrator: the surviving spouse, children over eighteen (18) years of age in descending order of age, other blood relatives in order of their closeness of relationship, any adult Tribal member, any adult person.

(d) The duties of the Administrator shall be:

(1) To take possession of all property of the decedent subject to this Probate Code;

(2) Within one (1) month of appointment make an inventory and appraisal of such property and file it with the Chitimacha Tribal Court;

(3) Within one (1) month of appointment, determine and file with the Chitimacha Tribal Court a list of all known relatives of the decedent, their ages, their relationship to the decedent, and their whereabouts if known;

(4) Subject to the approval of the Chitimacha Tribal Court, ascertain and pay all of the debts and legal obligations of the decedent;

(5) Prosecute and defend actions for or against the estate;

(6) Distribute the estate in accordance with the order of the Chitimacha Tribal Court and file receipts with the Tribal Court showing distribution of the estate.

(e) The Administrator shall file a bond in an amount to be set by the Chitimacha Tribal Court to insure his or her faithful, honest performance of their duties as Administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an Administrator who is the spouse or child of a decedent.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 603. Appointment of Administrator

(a) Upon receipt of a petition to administer an intestate estate, a hearing shall be scheduled, and notice provided to all parties, as required.

(b) The Chitimacha Tribal Court shall determine the proper person to appoint as Administrator and, if such person manifests his or her willingness to serve, order his or her appointment as Administrator.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 604. Oath of Administrator; Letters of Administration

(a) Upon his or her appointment as Administrator, the person appointed shall take an oath to be prescribed by the Chitimacha Tribal Court to the effect that he or she will faithfully and honestly administer the estate.

(b) Upon taking the oath and filing the bond, if any is required, the Administrator shall be granted letters of administration as proof of his or her appointment.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 605. Notice to Creditors

If an Administration has been ordered by the Chitimacha Tribal Court, the Clerk of Court shall cause notice to creditors to be posted in at least three (3) conspicuous places on the reservation and published once per week, for three (3) consecutive weeks in a publication of general distribution in the geographic area surrounding the Chitimacha Reservation. This notice shall state that creditors have ninety (90) days from the date of the first publication of the notice to present their claims to the Administrator or Clerk of Court and that only those claims so presented may be paid by the estate. The Chitimacha Tribal Court, upon Motion of the Administrator and heirs or legatees, may waive the requirement for notice to creditors and be placed into possession, but in so doing, shall become personally liable for the debts of the estate if any.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 606. Payment of Creditors

(a) Payment to creditors of the decedent shall be made by the Administrator or by the Clerk of Court if no Administrator is appointed only upon the order of the Chitimacha Tribal Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(b) All just claims of creditors allowed by the Chitimacha Tribal Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance and homestead allowances as provided herein.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 607. Accounting

Prior to the distribution of every estate for which an Administrator has been appointed, such Administrator shall render an accounting to the Chitimacha Tribal Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or Administrator's fees involved for which approval for payment is sought. In estates in which no Administrator is appointed, the Clerk of Court shall account to the Chitimacha Tribal Court for all transactions relating to the estate.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 608. No Taker/Escheat To Tribe.

If there is no taker of the intestate estate, the intestate estate passes or escheats to the Chitimacha Tribe of Louisiana.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 609. Advancements

If a person dies intestate, property which he or she gave in his or her 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 is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 610. Debts 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 or other share of the debtor's issue.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 611. Distribution; Closing Estate

(a) When it is made to appear to the Chitimacha Tribal Court that an estate is ready to be distributed, the Chitimacha Tribal Court shall order such according to the rules of intestate succession and this Probate Code.

(b) The estate shall be closed and the Administrator dismissed and his or her bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, is now ready to be closed.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 7. PROBATE OF WILLS

Sec. 701. Duty to Present Will for Probate

Every custodian of a will shall deliver the will to the Chitimacha Tribal Court within thirty (30) days after receipt of information that the testator is deceased. Any will custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 702. Proving, Contesting and Admitting Will

(a) Proof of Will.

(1) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Chitimacha Tribal Court. The will may be proven and admitted to probate by filing the affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will.

(2) If the evidence of none of the attesting witnesses is available, the Chitimacha Tribal Court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one (1) of the witnesses is genuine.

(b) Contest of Will. At any time within forty-five (45) days after a will has been admitted to probate, or within such time as the Chitimacha Tribal Court shall establish in the case of an exempt estate, any person having an interest in the decedent's estate may contest the validity of the will. In the event of a will contest, the Chitimacha Tribal Court shall take no further action with respect to the probate of the estate, but shall set a day and hour, at which time relevant evidence shall be presented at the will hearing concerning the decedent's capacity to execute a valid will and the circumstances surrounding its execution. Every reasonable effort shall be made

to procure the testimony of the attesting witnesses to the will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

(c) Admission of Contested Will to Probate. Upon considering all relevant evidence concerning the will, the Chitimacha Tribal Court shall enter an order affirming the admission of the will to probate or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died without executing the will.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 703. Petition for Letters Testamentary

A petition for letters testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Chitimacha Tribal Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as Executor and the address of such person if known. The original copy of the will shall be submitted to the Chitimacha Tribal Court with the petition.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 704. Qualification of Executor

The Chitimacha Tribal Court shall appoint an Executor to administer the estate. The Executor shall be a competent adult and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse, child of the decedent over eighteen (18) years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship, any adult Tribal member, any adult person.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 705. Appointment of Executor

(a) Upon receipt of a Petition for Letters Testamentary, a hearing shall be scheduled and Notice provided to all parties as required.

(b) At the hearing, the Chitimacha Tribal Court shall first determine the validity of the decedent's will and then appoint an Executor to administer the estate according to the terms of this Probate Code and the decedent's will.

(c) Letters testamentary shall be granted to the person appointed as Executor upon him or her taking an oath, to be prescribed by the Chitimacha Tribal Court, to the effect that the Executor will faithfully and honestly administer the estate, and upon the Executor's filing of bond, if required.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 706. Duties of Executor; Bond

The duties of the Executor shall be the same as those prescribed in this Probate Code for the Administrator of an intestate estate (Chapter 6), and the Executor shall file bond in a like manner and subject to the same exceptions.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 707. Creditors

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates (Chapter 6). The Chitimacha Tribal Court upon Motion by the Executor and heirs or legatees, may waive the requirement for notice to creditors and be placed into possession, but in so doing, shall become personally liable for the debts of the estate, if any.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 708. Accounting

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the Executor shall submit to the Chitimacha Tribal Court for approval an accounting of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or Executor's fees involved for which approval for payment is sought.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 709. Distribution; Closing Estate

(a) When it is made to appear to the Chitimacha Tribal Court an estate is ready to be distributed, the Chitimacha Tribal Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the

rules set forth in this Probate Code.

(b) The estate shall be closed and the personal representative of the estate dismissed and his or her bond, if any, released upon filing with the Chitimacha Tribal Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed. "Personal Representation" as used herein includes both Administrators and Executors.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 710. Distribution; Order in which Assets Appropriated; Abatement

(a) Except as provided in Subsection 710(b), shares of distributee abate, without any preference or priority between real and personal property, in the following order:

- (1) Property not disposed of by the will;
- (2) Residuary devises;
- (3) General devises;
- (4) Specific devises.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in Subsection 710(a), the shares of the distributee abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 711. Property Discovered After Estate Closed

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his or her estate has been closed. The Chitimacha Tribal 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.

(Added by Ordinance #3-95; Adopted: March 2, 1995; Effective: March 2, 1995; Revised by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

CHAPTER 8. DECLARATIONS CONCERNING LIFE-SUSTAINING PROCEDURES

Sec. 801. Purpose, Findings and Intent

(a) The Chitimacha Tribal Council finds that all persons have the fundamental right to control the decisions relating to their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances where such persons are diagnosed as having a terminal and irreversible condition.

(b) The Chitimacha Tribal Council further finds that the artificial prolongation of life for a person diagnosed as having a terminal and irreversible condition may cause loss of individual and personal dignity and secure only a precarious and burdensome existence while providing nothing medically necessary or beneficial to the person.

(c) In order that the rights of such persons may be respected even after they are no longer able to participate actively in decisions concerning themselves, the Chitimacha Tribal Council hereby declares that the laws of the Chitimacha Tribe of Louisiana shall recognize:

(1) The right of such a person to make a declaration instructing his or her physician to withhold or withdraw life-sustaining procedures or designating another to make the treatment decision and make such a declaration for him or her, in the event he or she is diagnosed as having a terminal and irreversible condition; and

(2) The right of certain individuals to make a declaration pursuant to which life-sustaining procedures may be withheld or withdrawn from an adult patient who is comatose, incompetent, or otherwise physically or mentally incapable of communication, or from a minor, in the event such adult patient or minor is diagnosed and certified as having a terminal and irreversible condition.

(d) In furtherance of the rights of such persons, the Chitimacha Tribal Council finds and declares that nothing in this Chapter shall be construed to be the exclusive means by which life-sustaining procedures may be withheld or withdrawn, nor shall this Chapter be construed to require the application of medically inappropriate treatment or life-sustaining procedures to any patient or to

interfere with medical judgment with respect to the application of medical treatment or life-sustaining procedures.

(e) The Chitimacha Tribal Council intends that the provisions of this Chapter are permissive and voluntary. The Chitimacha Tribal Council further intends that the making of a declaration pursuant to this Chapter merely illustrates a means of documenting a patient's decision relative to withholding or withdrawal of medical treatment or life-sustaining procedures.

(f) It is the intent of the Chitimacha Tribal Council that nothing in this Chapter shall be construed to require the making of a declaration pursuant to this Chapter.

(g) It is the intent of the Chitimacha Tribal Council that nothing in this Chapter shall be construed to be the exclusive means by which life-sustaining procedures may be withheld or withdrawn, nor shall this Chapter be construed to require the application of medically inappropriate treatment or life-sustaining procedures to any patient or to interfere with medical judgment with respect to the application of medical treatment or life-sustaining procedures.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 802. Definitions

As used in this Chapter, the following words shall have the meanings ascribed to them unless the context clearly states otherwise:

(a) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.

(b) "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

(c) "Certified emergency medical technician" means an individual who is certified as any one of the following:

(1) A certified emergency medical technician-basic.

(2) A certified emergency medical technician-intermediate.

(3) A certified emergency medical technician-paramedic.

(d) "Certified first responder" means any person who has successfully completed a training course developed and promulgated by the United States Department of Transportation and adopted by the bureau of emergency medical services of the Louisiana Department of Health and Hospitals and who is certified by the bureau.

(e) "Crimes against persons" means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as "crimes against persons":

- (1) Solicitation for murder
- (2) First degree murder
- (3) Second degree murder
- (4) Manslaughter
- (5) Aggravated battery
- (6) Second degree battery
- (7) Aggravated assault
- (8) Mingling harmful substances
- (9) Aggravated rape
- (10) Forcible rape
- (11) Simple rape
- (12) Sexual battery
- (13) Second degree sexual battery
- (14) Intentional exposure to AIDS virus
- (15) Aggravated kidnapping
- (16) Second degree kidnapping
- (17) Simple kidnapping
- (18) Aggravated arson
- (19) Aggravated criminal damage to property

- (20) Aggravated burglary
- (21) Armed robbery
- (22) First degree robbery
- (23) Simple robbery
- (24) Purse snatching
- (25) Extortion
- (26) Assault by drive-by shooting
- (27) Aggravated crime against nature
- (28) Carjacking
- (29) Illegal use of weapons or dangerous instrumentalities
- (30) Terrorism
- (31) Aggravated second degree battery
- (32) Aggravated assault upon a peace officer with a firearm
- (33) Aggravated assault with a firearm
- (34) Armed robbery; use of firearm; additional penalty
- (35) Second degree robbery
- (36) Disarming of a peace officer
- (37) Stalking
- (38) Second degree cruelty to juveniles
- (39) Aggravated flight from an officer
- (40) Aggravated incest

(f) "Declaration" means a witnessed document, statement, or expression voluntarily made by the

declarant, authorizing the withholding or withdrawal of life-sustaining procedures, in accordance with the requirements of this Chapter. A declaration may be made in writing, orally, or by other means of nonverbal communication.

(g) "Declarant" means a person who has executed a declaration as defined herein.

(h) "Health care provider" means any health maintenance organization, home health agency, hospice, hospital, or nursing facility.

(i) "Life-sustaining procedure" means any medical procedure or intervention which, within reasonable medical judgment, would serve only to prolong the dying process for a person diagnosed as having a terminal and irreversible condition, including such procedures as the invasive administration of nutrition and hydration and the administration of cardiopulmonary resuscitation. A "life-sustaining procedure" shall not include any measure deemed necessary to provide comfort care.

(j) "Minor" means a person under eighteen (18) years of age.

(k) "Physician" means a physician or surgeon licensed by the Louisiana State Board of Medical Examiners or by the official licensing authority of another state.

(l) "Qualified patient" means a patient diagnosed and certified in writing as having a terminal and irreversible condition by two (2) physicians who have personally examined the patient, one (1) of whom shall be the attending physician.

(m) "Registry" means a registry for declarations established and maintained by the Secretary of State pursuant to this Chapter.

(n) "Spouse" means a person who is legally married to the qualified patient but does not include a spouse who is judicially separated from the patient, is cohabited with another person in the manner of married persons, or who has been convicted of any crimes against persons as defined in Paragraph (e) of this Section against the other spouse, that has resulted in the terminal and irreversible condition as defined in Paragraph (o) of this Section, or who has violated any domestic abuse protective order affecting the other spouse.

(o) "Terminal and irreversible condition" means a continual profound comatose state with no reasonable chance of recovery or a condition caused by injury, disease, or illness which, within reasonable medical judgment, would produce death and for which the application of life-sustaining procedures would serve only to postpone the moment of death.

(p) "Witness" means a competent adult who is not related to the declarant or qualified patient, whichever is applicable, by blood or marriage and who would not be entitled to any portion of the estate of the person from whom life-sustaining procedures are to be withheld or withdrawn upon his decease.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 803. Making of Declaration; Notification; Illustrative Form; Registry

(a) Making of Declaration.

(1) Any adult person may, at any time, make a written declaration directing the withholding or withdrawal of life-sustaining procedures in the event such person should have a terminal and irreversible condition.

(2) A written declaration shall be signed by the declarant in the presence of two (2) witnesses.

(3) An oral or nonverbal declaration may be made by an adult in the presence of two (2) witnesses by any non-written means of communication at any time subsequent to the diagnosis of a terminal and irreversible condition.

(b) Notification to Attending Physician.

(1) It shall be the responsibility of the declarant to notify his or her attending physician that a declaration has been made.

(2) In the event the declarant is comatose, incompetent, or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of the declaration. In addition, the attending physician or health care facility may directly contact the registry to determine the existence of any such declaration.

(3) Any attending physician who is so notified, or who determines directly or is advised by the health care facility that a declaration is registered, shall promptly make the declaration or a copy of the declaration, if written, or a notation of the existence of a registered declaration, a part of the declarant's medical record.

(4) If the declaration is oral or nonverbal, the physician shall promptly make a recitation of the reasons the declarant could not make a written declaration and make the recitation a part of the patient's medical records.

(c) Illustrative Form of Declaration.

(1) The declaration may, but need not, be in the following illustrative form and may include other specific directions including but not limited to a designation of another person to make the treatment decision for the declarant should he be diagnosed as having a terminal and irreversible condition and be comatose, incompetent, or otherwise mentally or physically incapable of communications:

DECLARATION CONCERNING LIFE-SUSTAINING PROCEDURES

Declaration made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below and do hereby declare:

If at any time I should have an incurable injury, disease or illness, or be in a continual profound comatose state with no reasonable chance of recovery, certified to be a terminal and irreversible condition by two (2) physicians who have personally examined me, one (1) of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedure would serve only to prolong artificially the dying process, I direct (initial one only):

That all life-sustaining procedures, including nutrition and hydration, be withheld or withdrawn so that food and water will not be invasively administered.

That life-sustaining procedures, except nutrition and hydration, be withheld or withdrawn so that food and water can be invasively administered.

I further direct that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____

The Chitimacha Indian Reservation
Charenton, Louisiana

The declarant has been personally known to me and I believe him or her to be of sound mind.

WITNESS

WITNESS

(2) Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

(3) Any declaration executed prior to January 1, 1992, which does not contain directions regarding life-sustaining procedures in the event that the declarant is in a continual profound comatose state shall not be invalid for that reason. Such declaration shall be applicable to any terminal and irreversible condition, as defined in this Chapter, unless it clearly provides to the contrary.

(4) Any declaration executed prior to August 15, 2005, which does not contain an option to specifically initial a choice regarding nutrition and hydration shall not be invalid for that reason nor presumed to mean that the declarant desires the invasive administration of nutrition or hydration.

(d) Establishment of Registry.

(1) The Clerk of the Chitimacha Tribal Court shall establish a declaration registry in which a person, or his or her attorney, if authorized by the person to do so, may register the original, multiple original, or a certified copy of the declaration.

(2) The Clerk of the Chitimacha Tribal Court shall provide written notice to any person, or his or her attorney, if authorized by the person to do so, who registers the original, multiple original, or a certified copy of the declaration with the Clerk of Court's office regarding the ability to register same with the declaration registry established by the Louisiana Secretary of State's office.

(3) Any attending physician or health care facility may, orally or in writing, request the Clerk of the Chitimacha Tribal Court to confirm immediately the existence of a declaration and to disclose the contents thereof for any patient believed to be a resident of the Chitimacha Reservation or of the State of Louisiana. A copy of the declaration or a facsimile thereof transmitted from the Clerk of Court's office shall be deemed authentic. However, nothing herein requires a physician or health care facility to confirm the existence of such declaration or obtain a copy thereof prior to the withholding or withdrawal of medical treatment or life-sustaining procedures.

(4) The Clerk of the Chitimacha Tribal Court may charge a standard fee as set by the Chitimacha Tribal Court for registering a declaration and for filing a notice of revocation. No charge shall be made for the furnishing of information concerning the existence of a

declaration, the disclosure of its contents, or the providing of a copy or facsimile thereof.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 804. Revocation of Declaration

(a) A declaration may be revoked at any time by the declarant without regard to his or her mental state or competency by any of the following methods:

(1) By being cancelled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarant or by some person in the presence of and at the direction of the declarant.

(2) By a written revocation of the declarant expressing the intent to revoke, signed and dated by the declarant. The attending physician shall record in the patient's medical record the time and date when notification of the written revocation was received.

(3) By an oral or nonverbal expression by the declarant of the intent to revoke the declaration. Such revocation by any method enumerated in this Section shall become effective upon communication to the attending physician. The attending physician shall record in the patient's medical records the time and date when notification of the revocation was received.

(b) A declaration registered with the Clerk of the Chitimacha Tribal Court may be revoked by the filing of a written notice of revocation with the Clerk of Court. The Clerk of Court shall indicate on the declaration the date and time the notice of revocation was received. Until the notation has been indicated on the declaration, any physician or health care facility acting in good faith may rely upon the validity of the declaration.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 805. Procedure for Making a Declaration for a Qualified Patient Who Has Not Previously Made a Declaration

(a) Nothing in this Chapter shall be construed in any manner to prevent the withholding or the withdrawal of life-sustaining procedures from a qualified patient with a terminal and irreversible condition who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a prior declaration in accordance with this Chapter.

(b) When a comatose or incompetent person or a person who is physically or mentally incapable of communication has been certified as a qualified patient and has not previously made a declaration, any of the following individuals in the following order of priority, if there is no individual in a prior class who is reasonably available, willing, and competent to act, may make a declaration on the qualified patient's behalf:

(1) Any person or persons previously designated by the patient, while an adult, by written instrument signed by the patient in the presence of at least two (2) witnesses, to have the authority to make a declaration for the patient in the event of the patient's inability to do so. If the instrument so authorizes more than one (1) person, it may include the order in which the persons designated shall have authority to make the declaration.

(2) The judicially appointed tutor or curator of the patient if one has been appointed. This Subparagraph shall not be construed to require such appointment in order that a declaration can be made under this Section.

(3) The patient's spouse not judicially separated.

(4) An adult child of the patient.

(5) The parents of the patient.

(6) The patient's sibling.

(7) The patient's other ascendants or descendants.

(c) If there is more than one (1) person within the above named class in Subparagraphs (b)(4) through (b)(7), then the declaration shall be made by all of that class available for consultation upon good faith efforts to secure participation of all of that class.

(d) In any case where the declaration is made by a person specified in Subparagraphs (b)(2), (3), (4), (5), or (6), there shall be at least two (2) witnesses present at the time the declaration is made.

(e) The absence of a declaration by an adult patient shall not give rise to any presumption as to the intent to consent to or to refuse life-sustaining procedures.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 806. Making a Declaration for the Benefit of a Terminally Ill Minor

(a) If a minor has been certified as a qualified patient, the following individuals may voluntarily make a declaration to document the decision relative to withholding or withdrawal of medical treatment or life-sustaining procedures on a minor's behalf:

(1) The spouse if he or she has reached the age of majority; or

(2) If there is no spouse, or if the spouse is not available, or is a minor, or is otherwise unable to act, then either the parent or guardian of the minor.

(b) An individual named in Subsection (a) of this Section may not make a declaration:

(1) If he or she has actual notice of contrary indications by the minor who is terminally ill; or

(2) If, as a parent or guardian, he or she has actual notice of opposition by either another parent, or guardian, or a spouse who has attained the age of majority.

(c) Nothing in this Section shall be construed to require the making of a declaration for a terminally ill minor. The Chitimacha Tribal Council intends that the provisions of this Chapter are permissive and voluntary. The Chitimacha Tribal Council further intends that the making of a declaration pursuant to this Chapter merely illustrates a means of documenting the decision relative to withholding or withdrawal of medical treatment or life-sustaining procedures on behalf of a minor.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 807. Physician, Health Care Provider, Certified Emergency Technician, and Certified First Responder Responsibility

(a) Any attending physician who has been notified of the existence of a declaration made under this Chapter or at the request of the proper person as provided in Section 805 or 806 of this Chapter upon diagnosis of a terminal and irreversible condition of the patient, or who on his or her own determines the existence of a declaration on file in the registry, shall take necessary steps to provide for written certification of the patient's terminal and irreversible condition, so that the patient may be deemed to be a qualified patient as defined in Section 802 of this Chapter.

(b) Any attending physician who refuses to comply with the declaration of a qualified patient or declaration otherwise made pursuant to this Chapter shall make a reasonable effort to transfer the patient to another physician.

(c) No provision of this Chapter imposes a duty upon the physician or health care facility to make a search of the registry for the existence of a declaration.

(d) If the policies of a health care provider preclude compliance with the declaration of a qualified patient under this Chapter or preclude compliance with the provisions pertaining to a representative acting on behalf of a qualified patient, then the provider shall take all reasonable steps to transfer the patient to a provider with which the provisions of this Chapter can be effectuated.

(e) Certified emergency medical technicians and certified first responders shall make a reasonable effort to detect the presence of a do-not-resuscitate identification bracelet on the patient.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 808. Immunity from Liability

(a) Any health care facility, physician, or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the withholding or the withdrawal of life-sustaining procedures from a qualified patient who has made a declaration or is wearing a do-not-resuscitate identification bracelet in accordance with the provisions of this Chapter.

(b) Any person, health care facility, physician, or other person acting under the direction of a physician who authorizes the withholding or withdrawal of life-sustaining procedures in accordance with a qualified patient's declaration or do-not-resuscitate identification bracelet, or as otherwise provided in this Chapter shall not be subject to criminal prosecution or civil liability for such action.

(c) In instances where a patient diagnosed as having a terminal and irreversible condition or his or her representative utilized means other than those in accordance with the provisions of this Chapter to document or manifest the patient's intention and desire that medical treatment or life-sustaining procedures be withheld or withdrawn, any health care facility, physician, or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the withholding or withdrawal of life-sustaining procedures when the health care facility, physician, or other person acting under the direction of a physician has acted in good faith reliance on the patient's or his or her representative's manifestations that medical treatment or life-sustaining procedures be withheld or withdrawn and the continued utilization of life-sustaining procedures would, within reasonable medical judgment, serve only to prolong the dying process.

(d) Inasmuch as the provisions of this Chapter are declared by the Chitimacha Tribal Council to provide an alternative nonexclusive means by which life-sustaining procedures may be withheld or withdrawn, the provisions of this Section shall apply to any case in which life-sustaining procedures are withheld or withdrawn unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the withholding or withdrawal of life-sustaining procedures did not, in good faith, comply with the provisions of this Chapter or did not act in good faith compliance with the intention of the terminal and irreversible patient that medical treatment or life-sustaining procedures be withheld or withdrawn.

(e) A declaration made in accordance with this Chapter shall be presumed to have been made voluntarily.

(f) A certified emergency medical technician or a certified first responder shall not be subject to criminal prosecution or civil liability for withholding life-sustaining procedures from a qualified patient who is wearing a do-not-resuscitate identification bracelet.

(g) A certified emergency medical technician or a certified first responder shall not be subject to criminal prosecution or civil liability for administering life-sustaining procedures to a qualified patient who is not wearing the do-not-resuscitate identification bracelet.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 809. Penalties

(a) Any person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another, including the removal of a do-not-resuscitate identification bracelet, without such declarant's consent or who falsifies or forges a revocation or the declaration of another shall be civilly liable.

(b) It shall be a Felony punishable by up to one (1) year of imprisonment, a fine in the amount of not more than five thousand dollars (\$5,000.00), or both for any person to falsify or forge the declaration of another or willfully conceal or withhold personal knowledge of a revocation of a declaration with the intent to cause the withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby because of such act directly cause life-sustaining procedures to be withheld or withdrawn and death thereby to be hastened. If the person found to have violated this Subsection is a non-Indian, the Chitimacha Tribal Court may exercise civil jurisdiction over this person and impose whatever civil penalties it deems to be appropriate in accordance with Tribal law.

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 810. Making a Durable Health Care Power of Attorney

(a) Any adult person may, at any time, make a written durable health care power of attorney to designate any person or persons to have full power and authority to make health care decisions for the declarant in the event of the declarant's inability to do so including, but not limited to, making a declaration directing the withholding or withdrawal of life-sustaining procedures in the event that the declarant should have a terminal and irreversible condition. If the instrument so authorizes more than one (1) person, it may include the order in which the persons designated shall have authority to make the declaration.

(b) A durable health care power of attorney:

(1) shall not be affected by the declarant's subsequent disability or incapacity or other condition that makes an express revocation of the declarant's agent impossible or impractical.

(2) shall be signed by the declarant in the presence of at least two (2) witnesses.

(3) may, but need not, be notarized.

(c) Illustrative Form of Durable Health Care Power of Attorney. The durable health care power of attorney may, but need not, be in the following illustrative form and may include other specific directions to the agent:

DURABLE HEALTH CARE POWER OF ATTORNEY

I, _____ (print full name), being of sound mind, do hereby designate _____ (print full name) as my agent with full power and authority to make health care decisions for me including, but not limited to, a Declaration Concerning Life-Sustaining Procedures in the event that I am unable to or choose not to make these decisions for myself.

This Durable Health Care Power of Attorney shall not be affected by my subsequent disability or incapacity or other condition that makes an express revocation of my agent impossible or impractical. I also grant my agent the authority to qualify me for all government entitlements including, but not limited to, Medicaid, Medicare and Supplemental Social Security.

Signed _____

The Chitimacha Indian Reservation
Charenton, Louisiana

The declarant has been personally known to me and I believe him or her to be of sound mind.

WITNESS

WITNESS

Notarization of this form is optional.

Sworn and subscribed before me, this _____ day of _____,
_____ (month, year).

Notary Public

My commission expires _____

(Added by Ordinance #01-13; Adopted: June 12, 2013; Effective: June 12, 2013)

Sec. 811. General Application

(a) Nothing in this Chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(b) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this Chapter shall not, for any purpose, constitute a suicide.

(c) The making of a declaration pursuant to this Chapter shall not affect the sale, procurement, or issuance of any life insurance policy, nor shall it be deemed to modify the terms of an existing policy.

(d) No policy shall be legally impaired or invalidated by the withholding or withdrawal of life-sustaining procedures from an insured, qualified patient, notwithstanding any term of the policy to the contrary.

(e) A person shall not be required to make a declaration as a condition for being insured or for receiving health care services.

(f) The removal of life support systems or the failure to administer cardio-pulmonary resuscitation under this Chapter shall not be deemed the cause of death for purposes of insurance coverage.

(g) The provisions of this Chapter are cumulative with existing law pertaining to an individual's right to consent or refuse to consent to medical or surgical treatment.

(h) A declaration properly executed in and under the laws of another Tribe or state is deemed to be validly executed for purposes of this Chapter.

(i) It is the policy of the Chitimacha Tribe of Louisiana that human life is of the highest and inestimable value through natural death. When interpreting this Chapter, any ambiguity shall be interpreted to preserve human life.

(Added by Ordinance # 01-13; Adopted: June 12, 2013; Effective: June 12, 2013)