

TITLE 32

Probate

Chapter 32.01 Succession; Wills

32.01.01 Succession Defined ..... 1  
32.01.02 Order of Succession ..... 1  
32.01.03 Inheritance From a Child ..... 1  
32.01.04 Kindred of Half-blood Inherit ..... 2  
32.01.05 Inheritance by Representation ..... 2  
32.01.06 Aliens and Non-enrolled Individuals May Take ..... 2

Chapter 32.02 Execution and Revocation

32.02.01 How Wills Must be Executed and Attested ..... 2  
32.02.02 Who May Take; May Dispose of What Property ..... 2  
32.02.03 What May be Disposed of By Will ..... 2  
32.02.04 Codicil; definition of ..... 3  
32.02.05 Will Includes Codicil ..... 3  
32.02.06 Codicil; Effect of ..... 3  
32.02.07 Mutual Will ..... 3  
32.02.08 Holographic Will ..... 3  
32.02.09 Compliance With What Law Required ..... 3  
32.02.10 Change of Domicile; No Effect ..... 3  
32.02.11 Revocation of Wills ..... 3  
32.02.12 Cancellation and Destruction; How Proved ..... 4  
32.02.13 Revocation of Subsequent Will: Effect Upon Former Will ..... 4  
32.02.14 Marriage Revokes Will; If Wife or Issue Unprovided For ..... 4  
32.02.15 Encumbrance Not a Revocation ..... 4  
32.02.16 Agreement for Sale; No Revocation ..... 4  
32.02.17 Revocation Revokes Codicil ..... 5  
32.02.18 Kindred Not Mentioned in Will Who Share in Estate ..... 5  
32.02.19 Subscribing Witness; Rights Under Will ..... 5  
32.02.20 Probate of Will Not Prevented by Subsequent Incompetency of  
Witness ..... 5

Chapter 32.03 Interpretation

32.03.01 Intention of Testator Governs ..... 6  
32.03.02 Will Excludes All Oral Declarations ..... 6  
32.03.03 Construed Together if Several ..... 6  
32.03.04 Distinct devise; Not Affected by Inaccuracies ..... 6  
32.03.05 Ambiguities Construed by Other References ..... 6

32.03.06	Every Expression Given Effect .....	6
32.03.07	To Prevent Intestacy .....	6
32.03.08	Technical Words .....	7
32.03.09	Class Includes All .....	7
32.03.10	When Real Property Deemed Personal Property .....	7
32.03.11	Unborn Child Included.....	7
32.03.12	Imperfect Description Corrected .....	7
32.03.13	Conditional Disposition Defined .....	7
32.03.14	Condition Precedent.....	7
32.03.15	Condition Precedent Vests on Fulfillment; Exceptions.....	8
32.03.16	Condition Precedent; When Deemed Performed .....	8
32.03.17	Condition Subsequent.....	8

### Chapter 32.04 General Provisions

32.04.01	Order in Which Property Applies to Debts .....	8
32.04.02	Income, Benefits, and Interests After Death .....	8

### Chapter 32.05 Disposition of Property of Decedent Willfully Killed

32.05.01	Definition of Terms .....	9
32.05.02	Willful Perpetrator Shall Not Benefit by Succession, Will, or in Any Way .....	9
32.05.03	Disposition of Joint Property and Rights .....	9
32.05.04	Record of Conviction Admissible in Evidence.....	9

### Chapter 32.06 Probate Procedure

32.06.01	Who is Entitled to Letters of Testamentary .....	10
32.06.02	Power of Courts as to Estates.....	10
32.06.03	Petition May be Filed .....	10
32.06.04	Hearing Upon Petition.....	11
32.06.05	Decision of Court.....	11
32.06.06	Decree of Distribution .....	12
32.06.07	Sales May be Made When Necessary .....	12

## Chapter 32.01 Succession; Descent; Wills

### 32.01.01 Succession Defined

Succession is the coming in of another to take the property of one who dies without disposing of it by will.

### 32.01.02 Order of Succession

When any person having title to any estate dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this Code in the following manner:

1. To the surviving spouse of the decedent;
  - a. Upon finding of the Court that a valid marriage existed at the time of the death of the decedent, except as defined in subsection (C); or
  - b. The surviving member of an unmarried couple shall be considered a spouse if two (2) people who are not married have been living together for five (5) or more continuous years;
  - c. If an otherwise valid marriage existed at the time of the death of the decedent and the couple lived separately for the five (5) years preceding death, the marriage shall not be considered valid for the purposes of succession and distribution.
2. If there is no spouse, then to the surviving children equally;
  - a. All biological children of the decedent;
  - b. All adopted children of the decedent;
  - c. All children of a spouse;
  - d. All children the decedent maintained a reputation of parenthood of within the community for five (5) consecutive years, or if the child be less than five (5) years old, than for the length of the child's life;
  - e. A child born after the death of a parent inherits from that parent as if he had been born in the lifetime of such parent and survived him;
3. If there be no husband, nor wife, nor father, nor mother, nor issue, then in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister by right of representation;
4. If there is no one capable of succeeding under the previous subdivisions of this section, the property of the decedent escheats to the Port Gamble S'Klallam Tribe, to be used or disposed of for the benefit of the tribe as a whole.

### 32.01.03 Inheritance From a Child

If a child who has not been acknowledged or adopted by his father dies intestate, without lawful issue, his estate goes to his mother, or in case of her death, to her heirs.

#### **32.01.04 Kindred of Half-blood Inherit**

Kindred of the half-blood inherit equally with those of the wholeblood in the same degree.

#### **32.01.05 Inheritance by Representation**

Inheritance or succession by right of representation takes place when the decedents of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Inheritance by right of representation is preserved and representatives shall inherit as prescribed by succession.

#### **32.01.06 Aliens and Non-enrolled Individuals May Take**

Aliens and non-enrolled individuals may take in all cases, by succession and by will, the same as members of the Port Gamble S'Klallam Tribe.

### **Chapter 32.02 Execution and Revocation**

#### **32.02.01 How Wills Must be Executed and Attested**

Every will must be in writing, and every will, other than a holographic will, must be executed and attested as follows:

1. It must be signed at the end by the testator or by some person in the testator's presence and by his direction;
2. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will;
3. There must be two (2) attesting witnesses; both of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence; and, of whom one (1) must be a Port Gamble S'Klallam Tribal member; and, one (1) must be a registered notary.

#### **32.02.02 Who May Make; May Dispose of What Property**

Every person over the age of eighteen (18) years and of sound mind, may execute a will, and may thereby dispose of all or any part of his estate. All property disposed of by will is chargeable with the payment of testator's debts, except as otherwise expressly provided in this Code.

#### **32.02.03 What May be Disposed of by Will**

Every estate and interest in property may be disposed of by will. All portions of this Code shall be subject to Title 10, Tribal Land Code.

**32.02.04 Codicil; Definition of**

A codicil is a supplement or an addition to a will. It may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in a will.

**32.02.05 Will Includes Codicil**

The term "will" as used in this Code includes all codicils as well as wills.

**32.02.06 Codicil; Effect of**

The execution of a codicil, referring to a previous will, has the effect to republish the will as modified by the codicil.

**32.02.07 Mutual Will**

A conjoint or mutual will is valid, but it may be revoked by any of the testators like any other will. The revocation of a will by one party invalidates the will in whole.

**32.02.08 Holographic Will**

A holographic will is one that is entirely written, dated, and signed by the hand of the testator.

**32.02.09 Compliance With What Law Required**

The execution or revocation of any will in compliance with the laws of the place where executed, or of the testator's domicile shall be given legal effect if not Port Gamble S'Klallam Tribal Land.

**32.02.10 Change of Domicile; No Effect**

Whenever a will or a revocation thereof is duly executed in accordance with the law of the place in which the same was made, or of the domicile of the testator, the subsequent change of domicile of the testator shall have no effect on its validity.

**32.02.11 Revocation of Wills**

Except as expressly stated in this Code no written will, nor any part thereof, can be revoked or altered, otherwise than:

1. By a written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator;

or

2. By being burnt, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction, and with the same formalities with which a will should be executed by such testator.

#### **32.02.12 Cancellation and Destruction; How Proved**

When a will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will, the prior will remains effectual so far as consistent with the provisions of the subsequent will.

#### **32.02.13 Revocation of Subsequent Will: Effect Upon Former Will**

If, after making a will, the testator makes a second will, the destruction or other revocation of the second will does not revive the first will unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction or revocation, the first will is duly republished.

#### **32.02.14 Marriage Revokes Will; If Wife or Issue Unprovided For**

If, after any will, such testator marries and the husband, wife, or issue survives the testator, such will shall be deemed revoked as to such survivors, unless provision shall have been made for such survivors, and the couple have obtained inheritance rights as defined in section 31.01.02. Such surviving husband, wife, or issue shall be entitled to the same rights in, and to the same share or portion of the estate of the testator as he or she would have been, if such will have had not been made, when the couple have been married for at least five (5) years.

#### **32.02.15 Encumbrance Not a Revocation**

A charge or encumbrance upon any estate for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate, which was previously executed, but the devise and legacies therein contained must pass subject to such charge or encumbrance.

#### **32.02.16 Agreement for sale; No Revocation**

An agreement for sale or partial conveyance of property disposed of by a will previously made by the testator does not revoke such disposal, but the property passes by the will, subject to the same remedies on the testator's agreement as might be had against the testator's successors, if the same had passed by succession.

**32.02.17 Revocation Revokes Codicil**

The revocation of a will revokes all its codicils.

**32.02.18 Kindred Not Mentioned In Will Who Share In Estate**

When any testator omits to provide for any of his children, unless it appears such omission was intentional, such child, if unprovided for by any settlement, succeeds to the same portion of the estate that he would have succeeded to if the testator had died intestate. Such share must first be taken from the estate not disposed of by will, if any. If that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific provision of the will would thereby be defeated. In such a case, such provision may be exempted from such apportionment and a different apportionment, consistent with the intention of the testator, may be adopted. Such children who have had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, take nothing by virtue of this Section.

**32.02.19 Subscribing Witness; Rights Under Will**

A subscribing witness to a will may take nothing by such will unless there be two (2) other competent subscribing witnesses to the same. Any devise to a subscribing witness is void only so far as the witness or anyone claiming under him is concerned, and such person will be a competent witness so far as the remainder of the will is concerned. In cases where such witness would have been entitled to share in the estate of the testator had there been no will, he succeeds to so much of the share as would be distributed to him, not to exceed what he would have taken by the will.

**32.02.20 Probate of Will Not Prevented by Subsequent Incompetency of Witness**

If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency does not prevent the probate and allowance of the will if it is otherwise satisfactorily proved.

## **Chapter 32.03 Interpretation**

### **32.03.01 Intention of Testator Governs**

A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible

### **32.03.02 Will Excludes All Oral Declarations**

In case of uncertainty arising upon the face of a will as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances in which it was made, exclusive of his oral declarations, except as required in section 32.03.12.

### **32.03.03 Construed Together if Several**

Several testamentary instruments executed by the same testator are to be taken and construed together as one (1) instrument. However, if the several parts are irreconcilable, the latter parts must prevail.

### **32.03.04 Distinct Devise; Not Affected by Inaccuracies**

A clear and distinct devise or bequest will not be affected by inference or argument from another part of the will, or by an inaccurate reference in another part of the will.

### **32.03.05 Ambiguities Construed by Other References**

Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

### **32.03.06 Every Expression Given Effect**

The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which shall render any of the expressions inoperative.

### **32.03.07 To Prevent Intestacy**

Any mode of interpreting a will shall be preferred which will prevent total intestacy.



### **32.03.08      Technical Words**

Technical words are not necessary to give effect to any species of disposition by a will. If technical words are used, they are to be taken in their technical sense unless a contrary intention is clearly evident from the context.

### **32.03.09      Class Includes All**

A testamentary disposition to a class includes every person answering the description at the testator's death, but if possession is postponed, it also includes all persons coming within the class at the time of possession.

### **32.03.10      When Real Property Deemed Personal Property**

When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

### **32.03.11      Unborn Child Included**

A child conceived before the testator's death, but not born until after his death, takes as a member of a class when the disposition to the class vests, if such child answers the description of the class.

### **32.03.12      Imperfect Description Corrected**

If when applying a will it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected from the context of the will, or extrinsic evidence, or evidence of the declarations of the testator as to his intention.

### **32.03.13      Conditional Disposition Defined**

A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated.

### **32.03.14      Condition Precedent**

A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

### **32.03.15 Condition Precedent Vests on Fulfillment; Exceptions**

Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was known to the testator or arose from an unavoidable event subsequent to the execution of the will.

### **32.03.16 Condition Precedent; When Deemed Performed**

A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

### **32.03.17 Condition Subsequent**

A condition subsequent in a will exists where an estate or interest is so given as to vest immediately subject only to divest by some subsequent act or event.

## **Chapter 32.04 General Provisions**

### **32.04.01 Order in Which Property Applies to Debts**

Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for. The property of the testator, except as otherwise specially provided in this Code, must be resorted to for the payment of debts in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts;
2. Property not disposed of by the will;
3. Property given to a residuary legatee;
4. Property which is specifically devised or bequeathed; and
5. All property ratably.

### **32.04.02 Income, Benefits, and Interests After Death**

In case of a bequest of income, benefits, or interests after death, all shall be distributed following the Order of Succession or the appropriate provisions of a valid will.

## **Chapter 32.05 Disposition of Property of Decedent Willfully Killed**

### **32.05.01 Definition of Terms**

1. The term "perpetrator" shall mean any person who willfully and unlawfully takes, or procures to be taken, the life of another;
2. The term "decedent" shall mean any person whose life is so taken;
3. The term "property" shall include all property and any interest therein.

### **32.05.02 Willful Perpetrator Shall Not Benefit by Succession, Will or in Any Way**

A willful perpetrator shall not take from the decedent's estate by succession, will, or in any way, and the perpetrator shall be deemed to have predeceased the decedent in consideration of all interests unless specifically stated otherwise in this Code.

### **32.05.03 Disposition of Joint Property and Rights**

1. One-half (1/2) of any property held by the perpetrator and the decedent as joint tenants, joint owners, or joint obligee shall pass upon the death of the decedent to his estate, and the other half (1/2) shall pass to the estate of the perpetrator to be distributed following the Order of Succession or the appropriate provisions of a valid will.
2. As to property held jointly by three (3) or more persons, including the perpetrator and the decedent, any enrichment which would have accrued to the perpetrator as a result of the death of the decedent shall pass to the estate of the decedent. If the perpetrator becomes the final survivor, one-half (1/2) of the property shall immediately pass to the estate of the decedent, and the other half (1/2) shall pass to the estate of the perpetrator to be distributed following the Order of Succession or the appropriate provisions of a valid will.
3. The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than the other.

### **32.05.04 Record of Conviction Admissible in Evidence**

The record of his conviction of having willfully and unlawfully killed the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

## **Probate Procedure**

### **32.06.01 Who is Entitled to Letters Testamentary**

Where it appears from the terms of the will that it was the intention of the testator to commit the execution thereof, and the administration of his estate to a certain person as executor, such person, although not named executor, is entitled to letters of testamentary in like manner as if he had been named executor. If there is no such discernable intention, the spouse, or if no spouse, the eldest heir, shall be entitled to letters of testamentary. If there is no valid will, the spouse, or if no spouse, eldest heir, shall be entitled to letters of testamentary.

### **32.06.02 Power of Court as to Estates**

Probate administration, as provided in this chapter, may be had when the decedent was a resident of this reservation at the time of his death, or died therein, or left property, real or personal therein.

### **32.06.03 Petition May Be Filed**

A petition for such probate administration may be filed by any person claiming to be an heir, heir at law, legatee, devisee. Such petition must set forth:

1. The name, address, and place of death of the decedent;
2. The name, address, and relationship of the petitioner to the decedent;
3. Whether or not the decedent left a will and, if so, the original must be attached to the petition or, in case the original cannot be found, a complete explanation of the failure to find such will must be set forth and the contents of such will must be stated as nearly as possible;
4. The names, addresses and respective relationships to the decedent of all of his heirs, heirs at law, legatees, and devisees;
5. So far as known to petitioner, the names and addresses of all creditors of the decedent with the amounts owing to each of such creditors respectively, and with a further statement that if there are other creditors, they are unknown to the petitioner and cannot with reasonable diligence be ascertained;
6. A statement in detail as to all property, whether real or personal, left by the decedent giving an adequate legal description of all items of real estate not under the administration of the United States government, and a sufficient description to identify all items of personal property, and with the value of each item of real or personal property, according to petitioner's best knowledge, information, and belief;

7. If any of the persons designated in Subdivision (4) of this section are minors or adjudged mentally incompetent, the names and addresses of any guardians of the person and estate or either, and the names and addresses of any guardians ad litem.

Such petition must be verified by the petitioner, or his agent or attorneys and, if not verified by petitioner personally, the reason must be stated. Such verification must set forth that as to the valuations assigned to the decedent's property, the same are correct according to petitioner's best knowledge, information and belief, and, as to other matters required, the verification must be positive as to the petitioner's own knowledge or, if on information and belief, must show the source of such information and belief.

#### **32.06.04 Hearing Upon Petition**

At the hearing fixed as provided in Section 32.06.03 of this Code, the Court shall proceed with inquiry into the matter allowed by such petition and shall give all persons interested full opportunity to be heard.

#### **32.06.05 Decision of Court**

The Court shall proceed, in a summary manner, to adjust and determine the respective rights of all persons interested, including amounts actually owing to the respective creditors, if any, and the rights of such creditors as to priority. If it is claimed that the decedent left a will, the same must apply in determining and adjusting the rights of all persons interested, including creditors, if any, and the Court shall enter findings of fact and conclusions of law. Such findings of fact must show:

1. The name, residence, and place of death of the decedent;
2. Each item of personal property and any real property over which the Court has jurisdiction, left by decedent with its value as determined by the Court;
3. The reasonable expenses of petitioner in the proceeding;
4. All facts relevant to the setting aside of exempt property, whether real or personal, or both, including the names of the persons entitled thereto, and the basic facts on which they are entitled thereto;
5. The amount owing to each creditor, if any, with creditors classified according to priority;
6. The heirs, heirs at law, legatees, and devisees entitled to share in the estate, and the respective shares or amounts which they are entitled to receive.

### **32.06.06 Decree of Distribution**

Upon entry of such findings of fact and conclusions of law, the Court shall enter a decree based on such findings and conclusions, and which shall distribute the estate as follows and in the order of priority set forth:

1. To reimbursement of the petitioner for reasonable expense incurred in the proceedings;
2. To creditors, according to the rights of such creditors as to priority under the provisions of this Title and if the estate is insufficient to satisfy in full the amounts found owing to creditors of any class, then pro rata to such creditors in such class;
3. To the heirs, heirs at law, legatees, or devisees of the decedent according to the provisions of this Title. No further action whatsoever shall be required as to the distribution of such estate. The decree of the Court shall have the force and effect as a final decree. A certified copy of such decree must be filed and recorded in the office of the Tribal Court Clerk.

### **32.06.07 Sales May be Made When Necessary**

If necessary for the distribution of the estate, the Court may order the sale of any property, whether real or personal, and for that purpose may appoint an agent to act for the Court for the purpose of such sale and may direct the terms and conditions on which such sale may be made, and the notice of sale to be given. The order appointing such agent shall specify his authority, and may require a bond or not, as the Court sees fit. In case of such sale, the Court may delay the entry of the decree distributing the estate until the sale is made. An order of the Court confirming any such sale shall have the same force and effect as a similar order under other provisions of this Title. All provisions of this Title shall be subject to Title 10, Tribal Land Code.