

TITLE XIII. MARRIAGE AND PROBATE

Chapter 1. Marriage

13.101 GENERAL

- A. Short title.** This Statute shall be known and may be cited as the Marriage Act of 2006.
- B. Purpose.** The purpose of this act is to govern the making of marriages under Tribal law.

(Source: WOS 2007-001, January 26, 2007, Section I)

13.102 DEFINITIONS

- A. “Adult”** means a person eighteen (18) years of age or older.
- B. “Indian”** means a member of the Little Traverse Bay Bands of Odawa Indians, or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person within the Tribe’s territory as defined in the Tribe’s Constitution who is recognized by the community as an Indian, including a Canadian Indian or Alaska native.
- C. “LTBB” or “Tribe”** means the Little Traverse Bay Bands of Odawa Indians.
- D. “Marriage”** means the legal and voluntary union of one man and one woman, to the exclusion of all others.
- E. “Marriage Clerk”** means the Little Traverse Bay Bands of Odawa Indians staff person responsible for filing and maintaining records under this Statute.
- F. “Territory”** means the territory of the Tribe as defined in the Tribe’s Constitution.
- G. “Tribal Court”** means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians as defined in the LTBB Constitution.

(Source: WOS 2007-001, January 26, 2007, Section I)

13.103 MARRIAGE AND THE CAPACITY TO MARRY

- A. Marriage as a civil contract.** To be valid, and for purposes of this law, marriage is a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute a marriage. A marriage relies upon the issuance of a license, a ceremony solemnizing the marriage, and the issuance of a marriage certificate.

B. Capacity to consent. A person seeking to be married must fulfill each of the following requirements:

1. Freely consent to the marriage and have the mental capacity to marry;
2. Be an enrolled LTBB Citizen and domiciled within Tribal territory, or a person who consents to the civil jurisdiction of the Tribe;
3. Be at least eighteen (18) years of age or older as evidenced by a birth certificate, be at least sixteen (16) years of age as evidenced by a birth certificate with the consent of a parent or legal guardian, which consent must be notarized, or has been emancipated by a court of competent jurisdiction;
4. Not have an existing spouse;
5. Not be blood relatives to each other in any of the following degrees:
 - a. Parent and child;
 - b. Grandparent and grandchild;
 - c. Brother and sister, or half-brother and half-sister;
 - d. Uncle and niece, or aunt and nephew; or
 - e. Cousins in the first degree.

C. Recordkeeping of applications for marriage and marriage licenses. All applications for marriage licenses and copies of all marriage licenses issued shall be filed with the Marriage Clerk and maintained as permanent records of the Tribe.

(Source: WOS 2007-001, January 26, 2007, Section II)

13.104 MARRIAGE LICENSES

A. Application for Marriage License. All persons wishing to be married in accordance with this act shall obtain a marriage license from the Marriage Clerk. The application to obtain a marriage license shall be in the form of an affidavit and shall contain the following information for each person:

1. Full legal name, including last name before first marriage, if previously married;
2. Home mailing and street address,

3. Age;
4. Sex;
5. Tribal affiliation, if any;
6. Present age and date and place of birth;
7. If either party was previously married, his or her name, and the date, place, and Court in which the marriage was dissolved or declared invalid or the date and Place of death of the former spouse;
8. The names of each person's parents and the place of birth for each parent, if known. For each person's mother, the mother's name before first marriage shall be identified, if known;
9. If either person is a minor, the name and address of the parents, adoptive parent, or guardian of each party; or if emancipated, certified copies of papers granting emancipation;
10. Whether the parties are related to each other and, if so, their relationship;
11. The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated;
12. If either person is not an enrolled Tribal Citizen or does not reside within the Tribe's Territory, a statement that such person consents to the civil jurisdiction of the Tribe.

B. Authority of Marriage Clerk to issue marriage licenses.

1. A Marriage Clerk shall have the power to issue a marriage license where each of the parties is either an enrolled Tribal Citizen, a resident of the Tribe's Territory, or a person who consents to the civil jurisdiction of the Tribe.
2. A Marriage Clerk shall issue a marriage license within three (3) working days from the date that the applicants submit the following:
 - a. a properly-completed application for a marriage license on a form prescribed by the Marriage Clerk;
 - b. payment of a license fee not to exceed \$25.00; and
 - c. verification by the Marriage Clerk that each of the parties is an enrolled Tribal Citizen, a resident of the Tribe's Territory, or a person who

consents to the civil jurisdiction of the Tribe.

C. Validity of License. A marriage license shall be valid for thirty (30) days from the date of issuance.

(Source: WOS 2007-001, January 26, 2007, Section III)

13.105 SOLEMNIZATION OF MARRIAGE

A. Qualification to perform marriages.

1. The following persons shall be qualified to perform marriages under this Statute:

- a.** A medicine person or traditional spiritual leader;
- b.** Clergymen duly designated by the governing body of his or her faith as having the authority to perform marriages;
- c.** A Tribal Court Judge of the Tribal Court or Justice of the Tribal Court of Appeals;
- d.** The Tribal Chairperson;
- e.** A Tribal Judge of a Court of another federally recognized Tribe who is authorized by Tribal law to perform marriages; and
- f.** Any person who is deemed qualified by the persons being married.

B. Permissible location. A marriage performed in accordance with this act shall be solemnized at any location.

C. Examination of marriage license. Prior to the marriage ceremony, the person performing the ceremony shall review the marriage license and determine that the persons seeking to be married are the persons named on the license. For that purpose, the person performing the ceremony may administer oaths and examine the identification of the persons seeking to be married.

D. Marriage ceremony. A marriage ceremony performed under this act need not take any particular form, but the persons seeking to be married must declare in the presence of the person performing the ceremony, and in the presence of two adult witnesses, that they receive each other as spouses.

E. Completion of License. After the ceremony, the person who performed the marriage ceremony shall sign and endorse the marriage license with a statement that shall include their name, address, and title; the time and place of the ceremony; and the names

and places of residence of two witnesses. The two witnesses shall also sign the marriage license.

(Source: WOS 2007-001, January 26, 2007, Section IV)

13.106 PROCEDURE FOR RECOGNITION OF MARRIAGES AFTER SOLEMNIZATION

A. Return of fully-executed marriage license to the Marriage Clerk. Following the marriage ceremony, the fully executed marriage license shall be returned to the Marriage Clerk within seven (7) days.

B. Endorsement of marriage license by Marriage Clerk. The Marriage Clerk must endorse upon each copy its date of receipt.

C. Marriage Clerk issuance of marriage certificate. Upon receipt of a fully-executed marriage license and a copy of the marriage license application, the Marriage Clerk must examine the application, the license, and the signatures of the witnesses and the person performing the marriage to ensure that the information appearing is complete and that the marriage was performed in accordance with the provisions of the license. Upon a determination that the application, the license, and the signatures are in proper form, and that there has been compliance with the terms of the license, the Marriage Clerk shall endorse its approval upon the license, shall cause a certificate of marriage to be issued, and deliver a copy of the marriage license to the persons for whom it was issued.

D. Storage of marriage certificate records. The Marriage Clerk shall file the certificate of marriage together with the application for marriage license and the marriage license with the permanent records of the Tribe.

E. Obtaining certified copies of marriage certificate. Should the parties to any marriage performed under the auspices of these provisions desire that a marriage certificate be filed or recorded in another jurisdiction, they may obtain certified copies from the Marriage Clerk at a fee not to exceed \$25.00.

(Source: WOS 2007-001, January 26, 2007, Section V)

13.107 RECOGNITION OF FOREIGN MARRIAGES; AFFIRMANCE OF PAST TRIBAL COURT MARRIAGES

A. Recognition of foreign marriages. The Little Traverse Bay Bands of Odawa Indians shall recognize as valid and binding any marriage formalized or solemnized in compliance with the laws of the place of formalization or solemnization, except that a marriage contract entered into between individuals of the same sex is not deemed valid in this Tribe.

B. Prior Tribal Court Marriages. The Little Traverse Bay Bands of Odawa Indians affirms the validity and binding nature of all marriages performed by a member of the Tribal Judiciary prior to the effective date of this Statute.

(Source: WOS 2007-001, January 26, 2007, Section VI)

13.108 SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute shall continue in full force and effect.

(Source: WOS 2007-001, January 26, 2007, Section VII)

13.109 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2007-001, January 26, 2007, Section VIII)

Chapter 2. (Reserved for Dissolution of Marriage)

Chapter 3. Probate Code

13.301 PURPOSE

The purpose of this Statute is to provide for the distribution of estates upon the death of Tribal citizens and others within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians ("LTBB").

(Source: WOS 2006-020, November 22, 2006, Section I)

13.302 JURISDICTION

Upon the death of a Tribal citizen, or of any person domiciled within the LTBB reservation, the Tribal Court has jurisdiction to determine the heirs of the decedent, the claims of creditors, and the distribution of property under this Statute. The Court's jurisdiction in probate matters shall cover all of the decedent's real and personal property, including that which is located outside of the Reservation, and any debts owed to the decedent.

(Source: WOS 2006-020, November 22, 2006, Section II)

13.303 COVERAGE OF THIS STATUTE

The provisions of this Statute shall be used to distribute the assets of any person domiciled on the Reservation owning assets valued at more than \$15,000.00 (fifteen thousand dollars). In the event a person domiciled on the Reservation dies owning \$15,000.00 (fifteen thousand dollars) or less in assets the Court shall not have jurisdiction to probate the estate.

(Source: WOS 2006-020, November 22, 2006, Section III)

13.304 DEFINITIONS

For purposes of this Statute, the terms below are defined as follows:

- A. “Beneficiary”:** A beneficiary is a person who is designated to receive something from a legal arrangement or instrument, for example, property designated pursuant to a decedent’s valid will, income from a trust, or the proceeds from an insurance policy.
- B. “Decedent”:** A decedent is a deceased person with interests to be determined as demonstrated within this Statute.
- C. “Heir”:** An heir is a person who is entitled under this Statute, based upon a family relationship to the decedent, to receive the property of a decedent who dies without a will.
- D. “Holographic Will”:** A holographic will is one that is written entirely by the decedent that is not witnessed or otherwise does not fully comply with the requirements for a will under this Statute.
- E. “Immediate Family”:** The immediate family is generally comprised of the surviving spouse, parents, grandparents, son(s), daughter(s), brother(s) and sister(s) of the decedent.
- F. “Legally Incompetent”:** A person is legally incompetent when a court has determined that the person is mentally or physically unable or unfit to comprehend the nature and consequences of legal proceedings.
- G. “Minor”:** A minor is a person who has not reached age eighteen (18).
- H. “Marriage”:** The legal union of a man and a woman as husband and wife, generally pursuant to a Tribal or state license, and made official by a formal ceremony.
- I. “Probate”:** Probate is the legal process by which applicable Tribal common and written law, state law, or federal law that affects the distribution of the decedent’s estate is applied to determine the decedent’s heirs, approve wills and beneficiaries, and transfer any personal or real property held in trust by a trustee for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

J. “Real Property”: Real property includes all improvements and fixtures upon land; that which is incidental and appurtenant to land; all rights, interests, privileges, easements, and encumbrances relating to land, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these, except that such term shall never include subsurface rights or the title or ownership interest in tribal, trust, or otherwise restricted land.

K. “Testator”: A person who has written a will.

(Source: WOS 2006-020, November 22, 2006, Section IV)

13.305 LIMITED JURISDICTION OVER TRANSFERS INVOLVING REAL PROPERTY

The Court may effectuate transfers of land assignments or permanent structures affixed to the land, in accordance with codified Tribal Property and Housing law.

Once the transfer is complete, the Court shall forward a copy of the "transfer" to the Executive Branch for record-keeping purposes. The Court may only effectuate transfer title of real property if the decedent owned the property in fee, with no tribal or federal ownership interests or restrictions.

(Source: WOS 2006-020, November 22, 2006, Section V)

13.306 PETITION FOR ADMINISTRATION OF ESTATE OR FOR PROBATE OF WILL

A. Filing. The surviving spouse, or if none, any family member of the decedent, the personal representative as designated in decedent will, or a creditor of the decedent may file a probate petition. In the case of an unmarried minor, a legal guardian, or person appointed by the Court if a ward of the Court, may file the petition.

B. Time for Filing. The petition should normally be filed within sixty (60) days of the death of decedent.

C. Form of Filing. The petition shall contain the following information:

1. The date and location of death of decedent and age of decedent at time of death;
2. A statement of the decedent’s tribal affiliation, if any;
3. The name of the person filing the petition, tribal enrollment number, if any, age, residence, and relationship to the decedent;

4. A statement that the decedent left no will, or that the will is filed with the petition and offered for probate;
5. The names, ages, and relationship to the decedent of all known heirs of decedent, and if decedent dies with a will, the names, ages, and relationship, if any, of all beneficiaries under the will;
6. A detailed statement of assets and approximate value of each;
7. A list of names and addresses of the decedent's creditors, including all possible creditors that the petitioner can reasonably determine by reviewing the decedent's financial records and papers; and
8. A general list of items that were buried/burned with decedent not to be distributed.

D. Minor or Legally Incompetent Heirs. Upon the filing of the petition for administration, the Court shall ascertain whether or not there are any heirs, legatees, or devisees under the age of eighteen (18) years or legally incompetent heirs. If so, the Court shall appoint a guardian ad litem to represent the minor or legally incompetent heir's interests until the determination of distribution of belongings is final. The Court will give careful attention to all actions concerning that of a minor individual under eighteen (18) years of age or a legally incompetent heir.

(Source: WOS 2006-020, November 22, 2006, Section VI)

13.307 APPROVAL OF WILLS

A. When any member of the LTBB Community dies, the Tribal Court shall at the request of any interested party determine the validity of the will after giving notice and full opportunity to appear in Court to tell all persons who might be beneficiaries of the decedent. The Court shall provide actual notice of the proceedings to each beneficiary designated in decedent's will. In the event of a will contest, the Court shall try the case according to rules and procedures relating to civil cases in the LTBB Tribal Court. Normally challenges to a will should not be accepted after a final probate order is issued.

B. Formal Will. A will shall be deemed valid if (1) the decedent had a sane mind and understood what s/he was doing when s/he made the will, (2) the decedent was not subject to any undue influence of any kind from any person, and (3) if the will was made in writing and signed by the decedent and one (1) witness. The witness cannot be a beneficiary under the will or have a significant interest in the outcome of the will. If the Court determines the will to be validly executed, it shall issue a final probate order, stating that the property described in the will be given to the persons named in the will or, in the event that a person named in the will predeceases the testator, to their heirs of that person in accordance with this Statute.

C. Holographic Wills. The Court has discretion to determine the validity of a decedent's holographic will. The Court may consider evidence including, but not limited to, affidavits or testimony verifying that the will was hand-written by the decedent and that the decedent was not subject to duress when writing the will. If the Court determines that the holographic will is valid, it shall issue a final probate order, stating that the property described in the will be given to the persons named in the will or, in the event that a person named in the will predeceases the testator, to their heirs of that person in accordance with this Statute.

D. Invalid Will; Property Not Accounted for in Decedent's Will. Where the Court finds that the decedent's will is invalid, the Court shall order the administration of decedent's estate as if the decedent had died without a will. Where the Court finds that there is property of the decedent that was left out of a valid will and no other lawful instrument designates a beneficiary, the Court shall order distribution of the undesignated property, by following the procedures under this Statute where the decedent dies without a will.

E. Beneficiary Criminally Responsible for the Death of the Decedent. Any beneficiary or any heir of the decedent found to be criminally responsible for the death of the decedent shall not be entitled to inherit or receive any interest of the decedent's estate.

(Source: WOS 2006-020, November 22, 2006, Section VII)

13.308 ADMINISTRATION OF ESTATE WHERE DECEDENT HAS NO WILL

Administration of a decedent's property commences by filing a petition for administration with the Tribal Court. Once the probate petition is filed, pursuant to Section VI of this Statute, the Tribal Court shall order distribution of the decedent's assets remaining after satisfaction of the debts and expenses of the estate as follows in the event it determines that no valid will exists:

A. If a spouse survives decedent, all assets shall be distributed to the surviving spouse;

B. If there is no surviving spouse, all assets shall be distributed equally to decedent's surviving children;

C. If there is no surviving spouse or children, all assets shall be distributed to decedent's surviving parent/s;

D. If there is no surviving spouse, children or parents, all assets shall be distributed equally among decedent's grand-children;

E. If there are no surviving persons listed in A-D, all assets shall be distributed equally among decedent's surviving sibling/s;

F. If there are no surviving persons listed in A-E, all assets shall be distributed equally to decedent's surviving first cousin/s;

G. If there are no surviving persons listed in A-F, any real property in the Reservation shall escheat to LTBB; any other assets shall be distributed as the Court deems equitable to close friends or caretakers of the decedent.

(Source: WOS 2006-020, November 22, 2006, Section VIII)

13.309 DETERMINATION OF HEIRS AND DISTRIBUTION OF PROPERTY

A. In the case of a decedent without a will, the Court will make such inquiries of the petitioner, family members, the Enrollment Office or other sources as it deems necessary to make sure the list of heirs is submitted with the petition is complete.

B. In the case of multiple heirs and mixed financial, personal property and or real property assets, the Court shall hold hearings as it deems necessary to determine equitable distribution. Provided, a distribution plan submitted jointly by all affected heirs shall be presumed equitable.

(Source: WOS 2006-020, November 22, 2006, Section IX)

13.310 NOTICE TO CREDITORS

A. Once the Court receives the list of creditors in the Probate petition, the Court shall mail notice to each creditor listed that probate proceedings have commenced for the possessions of the decedent. Proof of mailing shall be filed in the case record.

B. For creditors who may be unknown or are not reasonably ascertainable, the Court shall issue a notice to creditors by publication. The notice shall be published on the Tribal website, in a Tribal newspaper and in one other local newspaper of general circulation for two consecutive publication dates and proof of publication shall be filed in the case record.

C. The last date for creditors to file claims against the estate shall be forty--five (45) days from receipt of notice or from the second date of publication, and are thereafter barred from any claim.

D. Claims shall have the following order of priority:

1. Court costs for actual notice and publication for creditor's claims, and actual notice and publication for determining heirs;

2. Debts owing for expenses of decedent's last illness and subsequent funeral charges not covered by LTBB;

3. Claims of indebtedness to the Little Traverse Bay Bands of Odawa Indians;
4. Debts owing to members of the Little Traverse Bay Bands of Odawa Indians;
5. Claims of all other creditors.

(Source: WOS 2006-020, November 22, 2006, Section X)

13.311 PAYMENT OF CREDITOR' CLAIMS

- A. All tangible personal property of the decedent that is of a unique keepsake nature, such as art, family heirlooms and photographs, is exempt from sale to pay for claims of creditors. The Court shall not order sale of such tangible personal property of the decedent to satisfy any liens or judgments of creditors.
- B. Decedent's remaining Per Capita funds are subject to satisfaction of liens or judgments of creditors.

(Source: WOS 2006-020, November 22, 2006, Section XI)

13.312 FORM OF PROBATE PLEADINGS

The Tribal Court shall determine what documents must be filed in a probate case.

(Source: WOS 2006-020, November 22, 2006, Section XII)

13.313 SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute shall continue in full force and effect.

(Source: WOS 2006-020, November 22, 2006, Section XIII)

13.314 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2006-020, November 22, 2006, Section XIV)