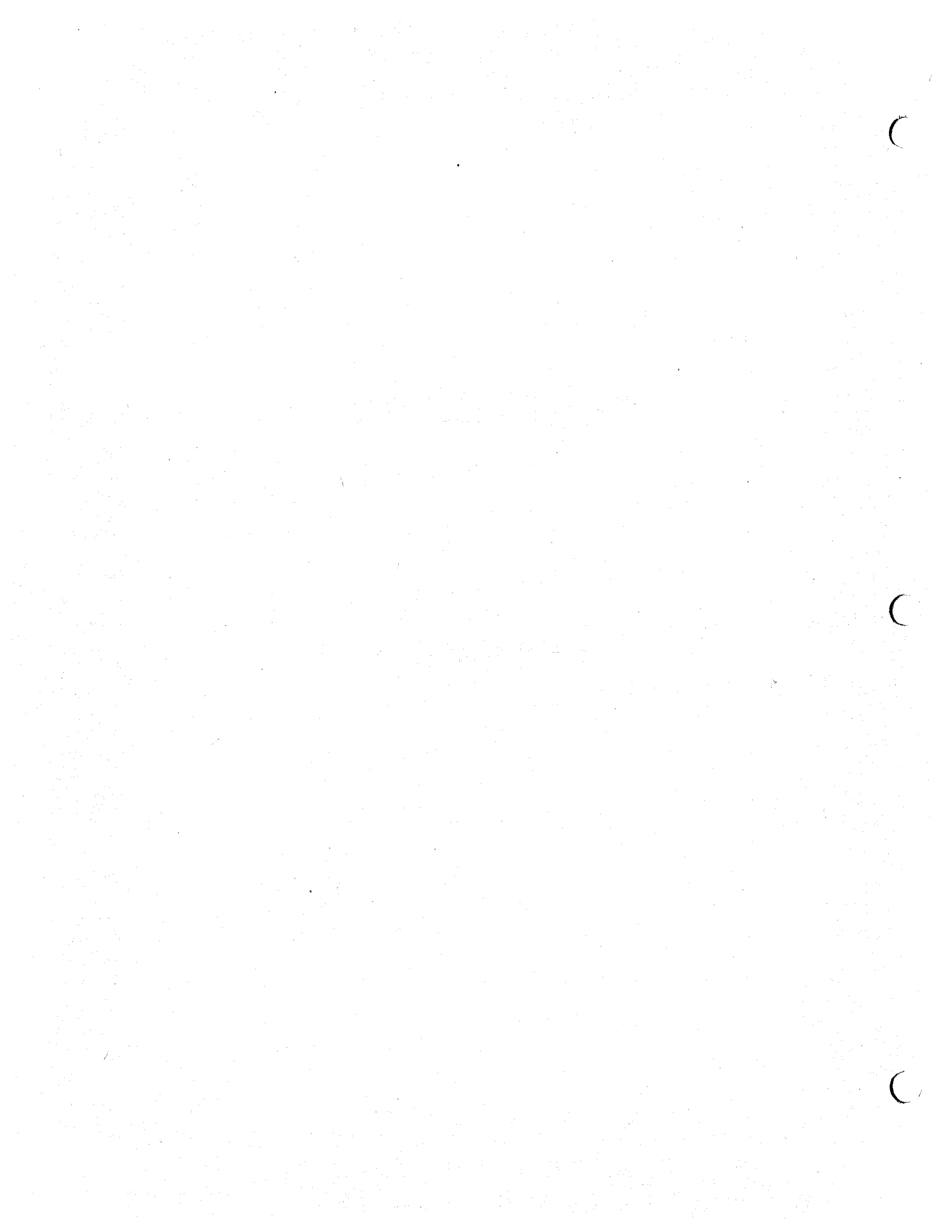




CHAPTER 12

PROBATE



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Definitions

1. Assignment - A grant of Penobscot Nation land to an individual tribal member subject to the restrictive covenants outlined in tribal law, and including all previous grants under former tribal law or custom.
2. Assigned lands - Lands within the Penobscot Nation held by a tribal member under an assignment deed.
3. Intestate succession - To inherit property by being related to a deceased owner of such property who died without a valid will.
4. Life Interest - The right to hold land for a duration of time measured by the life of the person.
5. Penobscot Reservation - The lands of the Penobscot Nation as defined in Section 2-A of Chapter 9.
6. Probate Rules of the Penobscot Nation - The Probate Rules adopted by the Penobscot Nation and contained in this Chapter.
7. Transfer - To convey or pass title to, or an interest in real property from its owner or owner to another or others as provided by this Act.
8. Trust Lands - Those lands of the Penobscot Nation acquired by the United States of America in Trust for the Penobscot Nation after October 10, 1980.

§1. Inheritance of assigned land

Land held by assignment may be transferred upon the death of the member holding the assignment only in accordance with the Rules set forth in this chapter. Except as expressly provided in this chapter, no right or interest in land within Penobscot Indian Territory may be acquired by inheritance or devise by anyone other than a member of the Penobscot Nation.

§2. Transfer by Will

When a member of the Penobscot Nation dies owning an interest in land within Penobscot Indian Reservation or Trust Lands under an assignment, and leaves a valid will, the interest in land shall

become the property of the members of the Penobscot Nation to whom the property is devised under the terms of the will. No provision of a will which attempts to devise an interest in such land, or in the proceeds from sale or lease of such land, to a non-member of the Penobscot Nation, shall be valid or enforceable.

§3. Transfer by Intestate Succession

When a member of the Penobscot Nation dies owning an interest in land within Penobscot Nation Reservation or Trust Lands under an assignment, but leaves no valid will, the interest shall descend according to the following rules:

§3-A. If the deceased member is married at the time of his or her death to a member of the Penobscot Nation, the interest shall become the sole property of the spouse of the deceased member,

§3-B. If the deceased member is not married at the time of his or her death to a member of the Penobscot Nation, the interest shall become the property, in equal shares, of his or her living children who are members of the Penobscot Nation, or if no such children exist, of his or her living grandchildren who are members of the Penobscot Nation.

§3-C. If the deceased member is not married at the time of his or her death to a member of the Penobscot Nation and leaves no living children or grandchildren who are members of the Penobscot Nation, the interest shall become the property, in equal shares, of his or her living parents who are members of the Penobscot Nation or if no such parents exist, of his or her living brothers and sisters who are members of the Penobscot Nation. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

§3-D. If the deceased member leaves no living spouse, children, grandchildren, parents, brothers or sisters who are members of the Penobscot Nation the interest shall revert to the ownership of the Penobscot Nation.

§4. Rights of Surviving Spouse

The non-member spouse of a member of the Penobscot Nation who resides at the time of such member's death on land held by such member under an assignment shall, upon the death of such member, have the right to occupy such residence for life. This right shall take precedence over the devise or inheritance of such assigned land to a person other than such spouse, but the assigned land shall pass upon death to the persons entitled thereto by inheritance or devise subject to the non-member spouse's rights of occupancy. The right of a non-member spouse to occupy such residence shall be contingent upon compliance by such non-member spouse with all provisions of the Penobscot Nation Land and

Residency Laws, including assent to the jurisdiction of the Penobscot Nation as provided therein, and upon re-marriage to a non-member of the Penobscot Nation, such non-member spouse may be removed in accordance with the Penobscot Nation Land and Residency Laws.

§5. Administration of Estates

The provisions of the Maine Probate Code governing the administration of estates, the interpretation of wills, and other applicable provisions of such Code, shall to the extent consistent with the provisions of this Law be applicable to the administration of estates with respect to the inheritance and devise of interests in assigned land; provided, however, that no personal representative shall have the authority, acting in such capacity, to sell or otherwise convey an interest in such land except for the purpose of distributing such land to the persons entitled thereto under this Section.

§6. Jurisdiction of Tribal Court

The Penobscot Tribal Court shall have exclusive jurisdiction over the inheritance and devise of rights in assigned land, and no judgment of any other court purporting to affect such rights shall be of any validity in determining such rights, provided, however, that rights in assigned land held by members of the Penobscot Nation under judgments entered prior to October 1, 1983, by a court of probate jurisdiction of any State which had jurisdiction over the estate of a member of the Penobscot Nation for other purposes, shall be recognized as valid by the Penobscot Nation and may be challenged only on grounds otherwise sufficient to attack such judgment or on the ground that such judgment purports to give an interest in such land to a non-member of the Penobscot Nation. The Penobscot Tribal Court shall, upon petition of any interested persons affording them an opportunity to be heard on the merits of such petition, make a determination of rights in assigned land passing by inheritance or devise under the provisions of this section, whether or not any other portion of the affected estate is before the court for probate proceedings. Such proceeding for determination of rights in assigned land shall be a simplified civil proceeding and shall not be governed by the Rules of Civil Procedure except to the extent that the court shall, by order, determine to be necessary to afford an adequate opportunity for all interested parties to be heard and to present merits of the petition.

§7. Effect on Rights of Non-members

Land held under assignment by a member of the Penobscot Nation shall not be deemed a property right or otherwise considered as part of the estate of a deceased member of the Penobscot Nation for purposes of determining the rights in such estate of any non-

member of the Penobscot Nation, and no order of any court providing for the distribution, sale or other application of such assigned land in connection with the probate of such member's estate shall be valid or enforceable. Interests in assigned lands may be transferred upon death only pursuant to this Land and Residency Law.

§8. Effect on Pending Proceedings

This chapter is intended to codify the laws, customs and practices of the Penobscot Nation governing rights in assigned land upon the death of a member of the Penobscot Nation and shall be applicable to all proceedings in the Penobscot Tribal Court after the date of adoption of this chapter including proceedings pending at the time of such adoption. Nothing in this section shall affect the validity of any judgment of the Penobscot Tribal Court entered prior to such adoption.

Historical Notes

As part of the recodification of tribal laws and ordinances, former Chapter XV, Land, Probate and Residency Laws was reprinted as separate chapters. Chapter XV, Subchapter V, Probate, and the applicable definitions contained in Subchapter II were reprinted herein as Chapter 12, Probate.