

CHAPTER 156 - ADMINISTRATION OF ESTATES OF MISSING PERSONS

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TRUSTEES OF ESTATES OF PERSONS MISSING 90 DAYS OR MORE

SECTION 156.010 Presentment of petition for appointment of trustee; filing; appointment of day for hearing. If any resident of this Reservation or State, who owns or is entitled to the possession of any real or personal property situate therein, is missing, or his whereabouts is unknown, for 90 days or more, and a petition is presented to the tribal court in which his last known residence was located by any member of his family or any friend, representing that his whereabouts has been, for such time, and still is, unknown, and that his estate requires attention, supervision and care of ownership, the tribal court shall order such petition to be filed, and appoint a day for its hearing, not less than 10 days from the date of the order.

SECTION 156.020 Notice of hearing; Publication by clerk; tribal court may direct further notice. The clerk of the tribal court shall thereupon cause a notice to be published in some daily or weekly newspaper published in the county, at least 10 days prior to such hearing, stating that such petition will be heard at the courtroom of the tribal court at the time appointed for the hearing. The tribal court may direct further notice of the application to be given in such manner and to such persons as it may deem proper.

SECTION 156.030 Hearing; appointment of trustee. The tribal court shall hear the evidence offered in support of or in opposition to the petition, and, if satisfied that the allegations thereof are true, and that such person remains missing, and his whereabouts unknown, it shall appoint some suitable person as trustee to take charge and possession of such estate and manage and control it under the direction of the tribal court.

SECTION 156.040 Who may be appointed trustee. In appointing such trustee, the tribal court shall prefer the spouse of the missing person, or the spouse's nominee, and, in the absence of a spouse, some relative of the missing person.

SECTION 156.050 Bond of trustee. Every trustee appointed under [SECTION 156.010](#) to [156.110](#), inclusive, shall give a bond in an amount to be fixed by the tribal court.

SECTION 156.060 Trustee's powers and duties; payments for family expenses or support.

1. The trustee shall take possession of the real and personal estate on this Reservation of such missing person, and collect and receive the rents, income and proceeds thereof, collect all indebtedness owing to him, and pay such indebtedness of the missing person as may be authorized by the tribal court.

2. The tribal court may direct the trustee to pay to the family of the missing person such sums of money for family expenses and support from the income and principal of the estate as it may, from time to time, determine.

SECTION 156.070 Accountings by trustee; removal and appointment of another trustee. The trustee shall, when directed by the tribal court, account to it for all his acts as trustee, and the tribal court may, from time to time, upon good cause shown, remove any trustee, and appoint another in his place.

SECTION 156.080 Sale or mortgage of property: Filing of petition by trustee; notice of hearing.

1. The trustee may sell any of the personal property or sell, mortgage or give a deed of trust upon any of the real property of the missing person when the tribal court considers such an action to be in the best interest of the estate and all parties concerned, including devisees and those who would be, in case of the death of the missing person, the heirs at law. For that purpose, the trustee may file a petition with the tribal court asking for an order authorizing such a sale, mortgage or deed of trust.

2. The clerk shall set the petition for hearing and give notice of the hearing, in the manner prescribed in [SECTION 155.010](#), to the persons described in that section and to:

- (a) Each of the persons who would be heirs at law of the missing person if he were dead; and
- (b) If it appears that the missing person left a will, each devisee mentioned therein.

SECTION 156.090 Sale or mortgage of property: Hearing; order for sale or mortgage; limitations and procedure. Proof shall be offered at the hearing provided for in [SECTION 156.080](#) showing the reasons for making the sale, mortgage or deed of trust. If the tribal court finds that it will be for the best interests of all persons concerned in the estate of the missing person to make such sale, mortgage or deed of trust, it shall order the trustee to proceed therewith in the manner provided in this title for the sales, mortgages and deeds of trusts of deceased persons. No such sale, mortgage or deed of trust may take place prior to the expiration of 8 months from the date of the appointment and qualification of the trustee.

SECTION 156.100 Accounting if missing person returns. If the missing person returns, the tribal court, upon application of such person, or upon its own motion, shall require the trustee to render and file a verified account of the administration of the trust. The provisions of this title relating to accounting by executors and administrators of estates of deceased persons shall apply to such accounting.

SECTION 156.110 Settlement of account on return of missing person; order requiring delivery of property.

Upon settling the account of the trustee, the tribal court shall order the property of the missing person remaining in the hands of the trustee to be delivered to the owner thereof.

ADMINISTRATION OF ESTATES OF PERSONS MISSING 3 YEARS OR MORE

SECTION 156.120 Person deemed missing after 3 years; administration of property; procedure. If any person owning property on this Reservation has been absent from his last known place of residence for a continuous period of 3 years, with his whereabouts for that period unknown to the persons most likely to know thereof, he shall be deemed to be a missing person, and all property of the person on this Reservation may be administered, as though he were deceased, in the same manner provided in this title for the administration of estates of deceased persons, subject to the conditions, restrictions and limitations prescribed in [SECTION 156.120](#) to [156.260](#), inclusive.

SECTION 156.130 Jurisdiction of proceedings; residence of absentee; entitlement of proceedings.

1. If such person was a resident of this Reservation at the time of his disappearance, the tribal court shall have jurisdiction of all proceedings initiated under [SECTION 156.120](#) to [156.260](#), inclusive.

2. The title of all proceedings commenced and prosecuted under [SECTION 156.120](#) to [156.260](#), inclusive, shall be entitled "In the matter of the estate of, a missing person."

SECTION 156.140 Petition for administration or probate; contents and verification of petition; appointment of day for hearing.

1. If a petition is presented to the tribal court having jurisdiction, as provided in [SECTION 156.130](#), by his spouse or any of his family or friends, representing that his whereabouts has been for the required period and still is unknown and that he left an estate which requires administration, the clerk of the tribal court shall appoint a day for hearing the petition, not less than 3 months from the date of filing.

2. The petition may be for administration of the estate or probate of the will of the person, as the case may be, and must be verified to the best knowledge and belief of the petitioner.

3. The petition must set forth a statement of facts as required in the case of administration of estates of deceased persons and must contain allegations as to the last known place of residence of the missing person, when he disappeared therefrom, the fact that he has not been heard from by the person most likely to hear, naming the person and his relationship, for a period of 3 years or more, and the fact that his whereabouts is unknown to the person and the petitioner.

SECTION 156.150 Manner of giving notice of hearing. Notice of hearing the petition for administration of the estate or probate of the will of the missing person shall be given in the manner provided in this title for giving notice of hearing in the administration of estates of deceased persons, and notice shall be mailed by registered or certified mail to the last known address of the missing person, and proof by affidavit of such notices shall be filed prior to or at the hearing.

SECTION 156.160 Hearing; appointment of administrator or executor; time fixed when person became missing; finding concerning death.

1. The tribal court shall hear all evidence in support of or in opposition to the petition provided for in [SECTION 156.140](#), and, if satisfied that the allegations thereof are true, and that the missing person has remained missing for a continuous period of 3 years or more and that his whereabouts is unknown, shall appoint some qualified person as administrator or executor in the manner provided in this title for the estates of deceased persons.

2. If the tribal court grants the order, it shall:

(a) Fix and determine the time when the person left his last place of residence and abode and became missing and that his whereabouts has not been known continuously for a period of at least 3 years; and

(b) Make a finding stating the fact and date of death.

3. At the hearing the tribal court may consider the testimony of any witnesses likely to know the last place of residence and whereabouts of the missing person, and may receive in evidence and consider the affidavits and depositions of other competent persons.

SECTION 156.170 No sale, mortgage or distribution of property for 1 year; exceptions. Except for the purposes of paying taxes, assessments, liens, insurance premiums, allowing claims for debts contracted by the missing person before his disappearance or to prevent the depreciation of property on account of neglect or waste, or to specifically perform contracts made by the missing person before his disappearance, no sale, mortgage or other disposition or distribution of the property of such person shall be made until the lapse of 1 year after the appointment and qualification of the executor or administrator.

SECTION 156.180 Distribution of property to heirs and devisees: Time; bond of distributee; conditions. No distribution of the property of the missing person to the heirs or devisees of the missing person may be made until the lapse of 1 year after the appointment and qualification of the executor or administrator, unless the distributee gives a bond in a penal sum not less than the value of the property distributed and for such additional amount as the tribal court prescribes, conditioned for the return of the property or the value thereof to the personal representative of the estate in case the missing person be adjudicated to be still living since the commencement of the 3-year period, and also conditioned to save the personal representative of the estate harmless from the damages and expenses of all suits brought by the missing person or anyone succeeding to his rights, by reason of the distribution during the period of 1 year.

SECTION 156.190 Petition of person claiming to be missing person: Contents; service; security for costs; trial of issue of identity.

1. If any person, within 1 year after the appointment and qualification of a personal representative, files a petition, claiming to be the missing person, and causes a copy of the petition to be served personally or by registered or certified mail upon the personal representative and upon each of the persons entitled to share in the estate of the missing person upon the death of the missing person, and the devisees, the tribal court shall determine the identity of the claimant at a hearing for that purpose.

2. The tribal court may, upon application or of its own motion, require the claimant to give security to be approved by the tribal court for all costs and expenses involved in the hearing and ultimate determination of the action, in case the outcome of the hearing be adverse to the claimant.

3. The petition must set forth the facts and circumstances of the claimant's disappearance and continued absence, and other facts and circumstances upon which he relies for his identification.

SECTION 156.200 Order vacating proceedings; exceptions; delivery of residue to claimant. If the tribal court determines that the claimant is the missing person, an order shall be made vacating all of the proceedings for administration, except those providing for the payment of liens, insurance premiums, allowed claims, the specific performance of contracts, preservation of the property, and any sale, encumbrance or other disposition of the property made in compliance with an order of the tribal court. The remainder of the estate, less fees, costs and expenses incurred, shall be surrendered and delivered to the claimant.

SECTION 156.210 Petition claiming death of missing person: Service; security for costs; trial of issue; order.

1. If any other person within 1 year after the appointment and qualification of the representative files a petition claiming that the missing person died subsequent to the commencement of the 3-year period provided herein, and the petitioner is entitled to the property in the estate, or any portion thereof, as successor in interest to the rights of the missing person, and if the petitioner causes a copy of the petition to be served personally or by registered or certified mail upon the personal representative of the estate and upon each of the heirs and devisees, the tribal court shall determine the truth of the facts contained in the petition.

2. The tribal court may, upon application or on its own motion, require the claimant to give security to be approved by the tribal court for all costs and expenses involved in the hearing and determination of the truth of the facts contained in the petition, in case the hearing is decided adverse to the claimant.

3. If the hearing is decided in favor of the claimant, the tribal court shall make and enter such order as the circumstances require.

SECTION 156.220 Final distribution; conclusive presumption of death.

1. If no claims are made during the 1-year period by any person claiming to be the missing person or a person claiming to have succeeded to the rights of that person, a conclusive presumption arises that the missing person died before the filing of the petition for the administration of his estate or the probate of his will.

2. In such event, the estate must be finally distributed accordingly, so far as the same has not already been accomplished, and the tribal court shall order the estate closed and all liability of sureties, the personal representative and the distributees ended, and all bonds cancelled.

SECTION 156.230 Distribution without bond if absence exceeds 5 years. If the petition provided in [SECTION 156.140](#) is filed more than 5 years after the disappearance of the missing person, the estate of the person may be finally distributed and closed at the end of 1 year after the filing of the petition, without a bond being given.

SECTION 156.240 Limitation of actions. No claims against the estate of a missing person, or against the personal representative of the estate or any surety or distributee may be brought by any person, including the missing person and persons claiming under him, after the expiration of 5 years from the date of disappearance as determined in the manner provided in [SECTION 156.160](#).

SECTION 156.250 Powers and duties of administrators and executors. The administrator or executor to whom letters have been issued as provided in [SECTION 156.120](#) to [156.260](#), inclusive, shall administer and distribute the estate of the missing person in the same manner and method and with the same force and effect as provided in this title for the administration and settlement of estates of deceased persons, except as otherwise provided in [SECTION 156.120](#) to [156.260](#), inclusive.