

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: _____

ORDINANCE NO. _____ (2016)

WHEREAS, Cherokee Code § 47-4 expresses the rights that are granted to a Tribal member when a possessory holding is issued to the member; and

WHEREAS, subsection (g) of § 47-4 expresses that a member may give a possessory holding to somebody else in a Last Will and Testament or, if the member did not have a Will when he or she died, that the laws of North Carolina would apply to determine to whom the possessory holding should be distributed; and

WHEREAS, some disagreement has arisen regarding the effect to be given to wills that attempt to give a possessory holding in whole or in part to someone else, including to spouses who are not Tribal members, and what laws apply when no Will was written; and

WHEREAS, Section 47-4 should be amended to give better guidance on the inheritance of possessory holdings; and

WHEREAS, subsection (g) of § 47-4, which attempts to address the inheritance of possessory holdings, is more appropriately included in Cherokee Code Chapter 28, which governs inheritance laws.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that existing Cherokee Code § 47-4 be amended to read as follows, and that new sections 28-3 and 28-4 be added as follows:

Sec. 47-4. - Rights granted to member when possessory holding issued.

The following rights shall be granted by the Tribe to a Tribal member when a possessory holding is issued:

- (a) Recognition by the Tribal Council that the possessory holding has been assigned to the holder, assuming the holder has complied with the terms and conditions under which the assignment was made.
- (b) The possessory holder may construct a building or other improvements on this possessory holding for residential, business, industrial, or other purposes subject to the approval of the Business Committee.

- (c) The possessory holder may collect for damages or destruction of any improvement as the result of the issuance of an easement or right-of-way over this holding for any purpose by the Tribe.
- (d) The possessory holder may collect for the disturbance of the surface of this holding or the interference of the use thereof as a result of the Tribe's issuance of a mineral lease or permit.
- (e) The possessory holder may transfer all or any part of this holding to another recognized member of the Band under such conditions as may be prescribed by the Tribal Council.
- (f) The possessory holder may grant leases or permits on this possessory holding to a member, or nonmember of the Band for a definite period of time and for a prescribed consideration in accordance with the then applicable rules and regulations of the Bureau of Indian Affairs, and the Tribe and subject to the approval of the Business Committee and the Secretary of the Interior or his authorized representative. Such consideration shall be divided between the possessory holder and the Tribe in percentages established by the Tribal Council.
- (g) Any improvements placed on the land are considered the personal property of the possessory holder in which the Tribe has no interest. They A possessory holding may be bequeathed by will of a Tribal member grantor, or absent a will, shall be subject to descent and distribution according to the North Carolina laws of intestate succession and the applicable provisions of Cherokee Code Chapter 28.
 - ~~(1) If the holder of the possessory right shall die and leave surviving a wife or a husband who is also a member of the Band, the survivor shall have a life interest in the possessory holding.~~
 - ~~(2) If the holder of the possessory right shall die and leave surviving a wife who is not a member of the Tribe, the surviving widow shall, at the option of the Tribal Council, be permitted to use and occupy the holding during her lifetime if she does not remarry, but will not be recognized to have any possessory rights in the holding.~~
 - ~~(3) If the holder of the possessory right shall die and leave a surviving husband or wife who is a nonmember, together with surviving minors who are Tribal members, the surviving spouse may use the possessory holding and improvements for the benefit of such minors during the period of their minority; then the possessory holding shall, with the approval of the Tribal Council, be partitioned by agreement to the heirs. A surviving nonmember wife shall, with the approval of the Tribal Council, be permitted to use a portion equal to a child's share under conditions set forth in section 47-4(g)(2). A surviving nonmember husband shall, with the approval of the Tribal Council, be permitted to use a portion equal to a child's share under conditions set forth in section 47-4(g)(4).~~
 - ~~(4) If the holder of the possessory right shall die and leave a surviving husband or children or heirs other than a nonmember wife who are nonmembers of the Tribe, but who under state law would be entitled to inherit personal property from the holder of the possessory right, the Tribal Council, at their option, shall (A) purchase the improvements recognized to be the personal property of the holder of the possessory rights at their fair appraised value, or (B) give Tribal approval for a permit or lease~~

~~to the surviving husband or other nonmember for use of the improvements and premises on which they are located for such period of time as will enable the nonmember husband or other nonmember heirs to amortize the value of such improvements under leasing and permitting regulations.~~

~~(5) In any event as described in section 47-4(g)(1)-(4), this certificate must be surrendered to the officers of the Tribe who shall issue new certificates to the new possessory holder or rightful users thereof in such manner as to show their interest therein.~~

~~(6) The above rights of the holder or user of possessory rights are subject to any Tribal laws of general application which may be enacted by the Tribal Council and which by reference are made a part hereof.~~

(Res. No. 373, 10-14-1960)

Sec. 28-3. – Validity and interpretation of wills.

Questions regarding the validity of a person's will, and questions of the testator's intent, are matters within the exclusive jurisdiction of the courts. In the interpretation of wills and in the determination of one's testate or intestate estate, North Carolina law shall govern, subject to Cherokee Code § 28-4.

Sec. 28-4. – Interests of non-member spouses and first generation descendants in possessory holdings.

A person who is not a member of the Tribe may receive a possessory holding by will or intestacy only if they are the surviving spouse or first generation descendant of the deceased Tribal member grantor. In intestate estates, or unless a contrary intent is clearly expressed in the testator's will, the interest received by the non-member surviving spouse or first generation descendant shall be limited to a life estate in the possessory holding, measured by the life of the recipient; and the life estate shall apply to all of the possessory holdings of the deceased Tribal member grantor, regardless of whether the possessory holdings are improved, unimproved, residential, agricultural or commercial.

BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by Michael W. McConnell, Office of the Attorney General, on behalf of the Lands Committee