

1 **WAGANAKISING ODAWAK STATUTE # 2023-\_\_**  
2 **PROBATE CODE**

3  
4 **SECTION I. PURPOSE**  
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6 The purpose of this statute is to provide for the distribution of estates of citizens of the  
7 Little Traverse Bay Bands of Odawa Indians regardless of domicile at the time of death,  
8 as well as any person domiciled within the territorial jurisdiction of the Little Traverse  
9 Bay Bands of Odawa Indians at the time of death. This statute repeals and replaces  
10 Waganakising Odawak Statute 2006-020.  
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13 **SECTION II. JURISDICTION**  
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15 Upon the death of a Tribal citizen, or of any person domiciled within LTBB's territorial  
16 jurisdiction, the Tribal Court has jurisdiction to determine the heirs of the decedent, the  
17 claims of creditors, and the distribution of property under this statute. The Court's  
18 jurisdiction in probate matters shall cover all of the decedent's real property located  
19 within the Tribe's territorial jurisdiction, all of the decedent's personal property  
20 regardless of location, and any debts owed to the decedent.  
21  
22

23 **SECTION III. COVERAGE OF THIS STATUTE**  
24

25 **A.** The provisions of this statute shall be used to distribute assets valued at more than  
26 \$27,000.00. If a decedent owns \$27,000.00 or less in assets, the Court shall not have  
27 jurisdiction to probate the estate under this statute.  
28

29 **B.** The coverage limit in the preceding subsection shall apply to decedents who die  
30 before January 1, 2024. For decedents who die after December 31, 2023, the specific  
31 dollar amount in the preceding subsection shall be adjusted to the specific dollar amount  
32 specified in the Michigan Department of Treasury's annual cost-of-living adjustment for  
33 RCW 700.3982.  
34

35 **C.** In accordance with the preceding subsections, the Court administrator shall  
36 prominently post the coverage limit of this statute.

1     **SECTION IV.           DEFINITIONS**

2  
3     For purposes of this statute, the terms below are defined as follows:

4  
5     **A.**     “Beneficiary” means a person who is designated to receive something from a  
6     legal arrangement or instrument, for example, property designated pursuant to a  
7     decedent’s valid will, income from a trust, or the proceeds from an insurance policy.

8  
9     **B.**     “Coverage Limit” means the minimum value of an estate for the Court to exercise  
10    jurisdiction under Section III of this statute.

11  
12    **C.**     “Decedent” means a deceased person with interests to be determined as  
13    demonstrated within this statute.

14  
15    **D.**     “Domicile” means the permanent home where a person physically resides or  
16    intends to return.

17  
18    **E.**     “Heir” means a person who is entitled under this statute, based upon a family  
19    relationship to the decedent, to receive the property of a decedent who dies without a  
20    will.

21  
22    **F.**     “Holographic Will” means a will that is written entirely by the decedent that is not  
23    witnessed or otherwise does not fully comply with the requirements for a will under this  
24    statute.

25  
26    **G.**     “Immediate Family” means family members generally comprised of the surviving  
27    spouse, parents, grandparents, son(s), daughter(s), brother(s) and sister(s) of the decedent.

28  
29    **H.**     “Legally Incompetent” means a person determined by a court to be mentally or  
30    physically unable or unfit to comprehend the nature and consequences of legal  
31    proceedings.

32  
33    **I.**     “Minor” means a person who has not reached age eighteen (18).

34  
35    **J.**     “Marriage” means the legal and voluntary union of two persons to the exclusion  
36    of all others.

1 **K.** “Probate” means the legal process by which applicable Tribal common and  
2 written law, state law, or federal law that affects the distribution of the decedent’s estate  
3 is applied to determine the decedent’s heirs, approve wills and beneficiaries, and transfer  
4 any personal or real property held in trust by a trustee for a decedent to the heirs,  
5 beneficiaries, or other persons or entities entitled by law.  
6

7 **L.** “Real Property” means property including all improvements and fixtures upon  
8 land; that which is incidental and appurtenant to land; all rights, interests, privileges,  
9 easements, and encumbrances relating to land, including tenancies and liens of judgment,  
10 mortgage, or otherwise; and any portion of these, except that such term shall never  
11 include subsurface rights or the title or ownership interest in tribal, trust, or otherwise  
12 restricted land.  
13

14 **M.** “Testator” means a person who has written a will.  
15

16 **N.** “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”  
17 means all land that is held in trust by the United States government for the benefit of the  
18 Tribe.  
19

20 **O.** “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.  
21  
22

23 **SECTION V. LIMITED JURISDICTION OVER TRANSFERS**  
24 **INVOLVING REAL PROPERTY**  
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26 With respect to lands within the Tribe’s territorial jurisdiction, the Court shall effectuate  
27 transfers of land assignments or permanent structures affixed to the land, in accordance  
28 with codified Tribal Property and Housing law.  
29

30 Once the transfer is complete, the Court shall forward a copy of the “transfer” to the  
31 Executive Branch for record-keeping purposes. The Court may only effectuate transfer  
32 title of real property if the decedent owned the property in fee, with no tribal or federal  
33 ownership interests or restrictions.  
34  
35

36 **SECTION VI. PETITION FOR ADMINISTRATION OF ESTATE OR FOR**



1 **D. Minor or Legally Incompetent Heirs.** Upon the filing of the petition for  
2 administration, the Court shall ascertain whether or not there are any heirs, legatees, or  
3 devisees under the age of 18 years or legally incompetent heirs. If so, the Court shall  
4 appoint a guardian ad litem to represent the minor or legally incompetent heir's interests  
5 until the determination of distribution of belongings is final. The Court will give careful  
6 attention to all actions concerning a minor or a legally incompetent heir.  
7  
8

9 **SECTION VII. APPROVAL OF WILLS**  
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11 **A.** When any member of the LTBB Community dies, the Tribal Court shall at the  
12 request of any interested party determine the validity of the will after giving notice and  
13 full opportunity to appear in Court to tell all persons who might be beneficiaries of the  
14 decedent. The Court shall provide actual notice of the proceedings to each beneficiary  
15 designated in decedent's will. In the event of a will contest, the Court shall try the case  
16 according to rules and procedures relating to civil cases in the LTBB Tribal Court.  
17 Normally challenges to a will should not be accepted after a final probate order is issued.  
18

19 **B. Formal Will.** A will shall be deemed valid if (1) the decedent had a sane mind  
20 and understood what s/he was doing when s/he made the will, (2) the decedent was not  
21 subject to any undue influence of any kind from any person, and (3) if the will was made  
22 in writing and signed by the decedent and at least one witness. The witness cannot be a  
23 beneficiary under the will or have a significant interest in the outcome of the will. If the  
24 Court determines the will to be validly executed, it shall issue a final probate order,  
25 stating that the property described in the will be given to the persons named in the will or,  
26 in the event that a person named in the will predeceases the testator, to their heirs of that  
27 person in accordance with this statute.  
28

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

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

8  
9 **E. Beneficiary Criminally Responsible for the Death of the Decedent.** Any  
10 beneficiary or any heir of the decedent found to be criminally responsible for the death of  
11 the decedent shall not be entitled to inherit or receive any interest of the decedent's estate.

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14 **SECTION VIII. ADMINISTRATION OF ESTATE WHERE DECEDENT**  
15 **HAS NO WILL**

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

22  
23 **A.** If a spouse survives decedent, all assets shall be distributed to the surviving  
24 spouse;

25  
26 **B.** If there is no surviving spouse, all assets shall be distributed equally to decedent's  
27 surviving children;

28  
29 **C.** If there is no surviving spouse or children, all assets shall be distributed to  
30 decedent's surviving parent/s;

31  
32 **D.** If there is no surviving spouse, children or parents, all assets shall be distributed  
33 equally among decedent's grand-children;

34  
35 **E.** If there are no surviving persons listed in A-D, all assets shall be distributed  
36 equally among decedent's surviving sibling/s;

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

3  
4 **G.** If there are no surviving persons listed in A-F, any real property in the  
5 Reservation shall escheat to LTBB; any other assets shall be distributed as the Court  
6 deems equitable to close friends or caretakers of the decedent.

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9 **SECTION IX. DETERMINATION OF HEIRS AND DISTRIBUTION OF**  
10 **PROPERTY**

11  
12 **A.** In the case of a decedent without a will, the Court will make such inquiries of the  
13 petitioner, family members, the Enrollment Office or other sources as it deems necessary  
14 to make sure the list of heirs is submitted with the petition is complete.

15  
16 **B.** In the case of multiple heirs and mixed financial, personal property and or real  
17 property assets, the Court shall hold hearings as it deems necessary to determine  
18 equitable distribution. Provided, a distribution plan submitted jointly by all affected heirs  
19 shall be presumed equitable.

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22 **SECTION X. NOTICE TO CREDITORS**

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

27  
28 **B.** For creditors who may be unknown or are not reasonably ascertainable, the Court  
29 shall issue a notice to creditors by publication. The notice shall be published on the  
30 Tribal website, in a Tribal newspaper and in one other local newspaper of general  
31 circulation for two consecutive publication dates and proof of publication shall be filed in  
32 the case record.

33  
34 **C.** The last date for creditors to file claims against the estate shall be 45 days from  
35 receipt of notice or from the second date of publication, and are thereafter barred from  
36 any claim.

1 **D.** Claims shall have the following order of priority:

- 2
- 3 **1.** Court costs for actual notice and publication for creditor’s claims, and  
4 actual notice and publication for determining heirs;
- 5
- 6 **2.** Debts owing for expenses of decedent’s last illness and subsequent funeral  
7 charges not covered by LTBB;
- 8
- 9 **3.** Claims of indebtedness to the Little Traverse Bay Bands of Odawa  
10 Indians;
- 11
- 12 **4.** Debts owing to members of the Little Traverse Bay Bands of Odawa  
13 Indians;
- 14
- 15 **5.** Claims of all other creditors.
- 16
- 17

18 **SECTION XI. PAYMENT OF CREDITOR’ CLAIMS**

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20 All tangible personal property of the decedent that is of a unique keepsake nature, such as  
21 art, family heirlooms and photographs, is exempt from sale to pay for claims of creditors.  
22 The Court shall not order sale of such tangible personal property of the decedent to  
23 satisfy any liens or judgments of creditors.

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26 **SECTION XII. FORM OF PROBATE PLEADINGS**

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

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31 **SECTION XIII. SEVERABILITY**

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33 In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found  
34 by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the  
35 Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection  
36 or section shall be considered to stand alone and to be deleted from this statute, the entirety of the

1 balance of the statute to remain in full and binding force and effect.

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4 **SECTION XIV. EFFECTIVE DATE**

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6 Effective upon signature of the Executive or 30 days from Tribal Council approval whichever  
7 comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the  
8 veto.

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**CERTIFICATION**