

**TITLE 24. PROBATE LAW**

**CHAPTER 1. PROBATE COURT—ADMINISTRATIVE PROVISIONS**

24 M.P.T.L. ch. 1 § 1

**§ 1. Name**

This law shall be known as the Mashantucket Pequot Tribal Probate Code.

24 M.P.T.L. ch. 1 § 2

**§ 2. Establishment of the Probate Court**

There is hereby established a division of the Mashantucket Pequot Tribal Court to be known as the Probate Court (hereinafter the Probate Court), which shall have jurisdiction over all inheritance and probate matters arising within the Mashantucket Pequot Tribe Reservation and all dependent tribal communities (hereinafter "tribal lands"), and inheritance and probate related matters involving or pertaining to tribal members and their families who receive benefits and services from the Tribe.

24 M.P.T.L. ch. 1 § 3

**§ 3. General Index**

A general index shall be kept in the Probate Court of the records of all estates which have been or are pending, in which shall be entered the name of each such estate and the date and character of each proceeding in the Probate Court.

24 M.P.T.L. ch. 1 § 4

**§ 4. Records**

The records and files of the Probate Court shall be kept in a fire-resistant safe cabinet, except when the records and files are in actual use for the purpose of examination, recording, copying, or entry, or when the records and files, after being recorded or copied, are placed in storage as records and files not in current use.

**24 M.P.T.L. ch. 1 § 5**

## **§ 5. Certification of Records and Files**

The records and files of the Probate Court may be certified by the judge or clerk of the court, any one of whom is authorized to use and affix the seal of the court. All such certified copies of records and files, with or without the seal of the court, shall be legal evidence, all orders, judgments and decrees of the Probate Court, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud.

## **CHAPTER 2. PROBATE COURT—JURISDICTIONS, POWERS**

24 M.P.T.L. ch. 2 § 1

### **§ 1. General Powers**

The Probate Court shall have the power to:

- a. grant administration of intestate estates of any person who has died domiciled on tribal lands;
- b. admit wills to probate of any person who has died domiciled on tribal lands;
- c. except as limited by an applicable statute of limitations, determine title or rights of possession and use in and to any real, tangible or intangible property that constitutes, or may constitute, all or part of any trust, any decedent's estate, or any estate under control of a guardian or conservator, which trust or estate is otherwise subject to the jurisdiction of the Probate Court, including the rights and obligations of any beneficiary of the trust or estate and including the rights and obligations of any joint tenant with respect to survivorship property;
- d. construe the meaning and effect of any will or trust agreement if a construction is required in connection with the administration or distribution of a trust or estate otherwise subject to the jurisdiction of the Probate Court, or, with respect to an intervivos trust, if that trust is or could be subject to jurisdiction of the court on request for an accounting pursuant to Chapter 3, Section 26, provided such an accounting need not be required;
- e. to the extent provided for in Chapter 3, Section 26, call executors, administrators, trustees, guardians, conservators, persons appointed to sell the land of minors, and attorneys-in-fact acting under powers of attorney created in accordance with Chapter 9, Section 1, to account concerning the estates entrusted to their charge; and
- f. make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them by the laws of the Mashantucket Pequot Tribal Nation (hereinafter "Tribe").

**CHAPTER 3. PROBATE COURT—PROCEDURES**

24 M.P.T.L. ch. 3 § 1

**§ 1. Entry Fees**

There shall be no entry fees for any proceeding to the Probate Court.

24 M.P.T.L. ch. 3 § 2

**§ 2. Miscellaneous Costs**

The Probate Court may charge a fee for recordings, notices, service of process and certified copies.

**24 M.P.T.L. ch. 3 § 3**

**§ 3. Payment of Costs, Fees and Expenses**

a. The costs, fees and expenses provided for in connection with proceedings under Section 2 of this Chapter with respect to a decedent's estate shall be paid for by the executor, administrator, or if there is no such fiduciary, by a transferee.

b. The costs, fees and expenses provided for in connection with proceedings under Section 2 of this Chapter with respect to an accounting shall be paid by the trustee, guardian, conservator or other fiduciary.

c. The costs, fees and expenses provided for in connection with proceedings under Section 2 of this Chapter commenced on motion of the Probate Court shall be paid by the party against whom such costs are assessed by the court.

d. In all other cases, the petitioner shall pay the costs, fees and expenses unless otherwise provided by law.

24 M.P.T.L. ch. 3 § 4

**§ 4. Giving of Orders of Notice**

Any order of notice of a hearing in any proceeding in, or matter pending before, the Probate Court, which is required by law to be given to interested persons, may be made by the judge, or the clerk of court.

24 M.P.T.L. ch. 3 § 5

**§ 5. Manner of Notice to be Fixed by Order of Court**

The Probate Court may make any proper order for notice to be given to any person residing out of or absent from tribal lands and, except as otherwise provided, to any person within the tribal lands to whom particular notice of any proceeding before such court is required by law. The notice given under the order shall be a legal notice to such person.

24 M.P.T.L. ch. 3 § 6

**§ 6. Giving of Public Notice**

a. Whenever public notice is required in any proceeding in, or matter pending before, the Probate Court, except as provided in Sections 4 to 7 of this chapter, inclusive, such notice shall be by publication in a newspaper of general circulation in the area, but not *The Pequot Times*, the length of time which the court directs. The court may prescribe such further notice as it deems requisite.

b. Notwithstanding subsection (a) of this Section, notice by publication is not required if actual notice is received by all parties interested in a matter or proceeding unless such notice is requested by an interested party or is required by the court.

24 M.P.T.L. ch. 3 § 7

**§ 7. Special Notice to be Given on Written Request**

a. Any person who is interested in any estate, trust or other matter pending in any Probate Court, or who is interested in any application that may be made to any Probate Court for the probating of a will or the granting of administration, may, in person or by attorney, file with the court a written request for special notice to be given to him or his attorney of any application to the court and of any order passed by the Probate Court in such estate, trust or other matter. The request shall state the estate, trust or other matter, cause or proceeding of which notice is desired and the post-office address of the person desiring the notice. Thereupon the Probate Court shall give notice to such person or his attorney of any hearing in such estate, trust or other matter at least seven days before the time assigned for the hearing, in whatever manner the court finds to be reasonable under the circumstances.

b. Any request for a special notice in the matter of probating a will or granting administration, before any application is made therefor, shall be obligatory upon the Court for a period of 30 days from the date of filing the same.

24 M.P.T.L. ch. 3 § 8

**§ 8. Reconsideration, Modification or Revocation of Order or Decree**

a. Except as provided in subsection (e) of this Section, any order or decree made by Probate Court ex parte may, in the discretion of the court, be reconsidered and modified or revoked by the court. Reconsideration may be made on the court's own motion or, for cause shown satisfactory to the court, on the written application of any interested person. Such motion or application shall be made or filed before any appeal has been allowed or after withdrawal of all appeals which have been allowed. For the purposes of this Section, an ex parte order or decree is an order or decree entered in a proceeding of which no notice is required to be given to any party and no notice is given.

b. Except as provided in subsections (a) and (e) of this Section, any order or decree other than a decree authorizing the sale of real estate made by the Probate Court may, in the discretion of the court, be reconsidered and modified or revoked by the court, on the court's own motion or on the written application of any interested person. Such application shall be made or filed within 120 days after the date of such order or decree and before any appeal is allowed or after withdrawal of all appeals. The court may reconsider and modify or revoke any such order or decree for any of the following reasons:

- (1) for any reason, if all parties in interest consent to reconsideration, modification or revocation;
- (2) for failure to provide legal notice to a party entitled to notice under law;
- (3) to correct a scrivener's or clerical error;
- (4) upon discovery or identification of parties in interest unknown to the court at the time of the order or decree.

c. Upon any modification or revocation there shall be the same right of and time for appeal as in the case of any other order or decree.

d. A hearing may be held in the discretion of the court on any motion or application for reconsideration, modification or revocation, and notice of the time and place of such hearing shall be given, in such manner as the court shall order, to all persons to whom notice of the order or decree to be reconsidered or notice of the hearings concerning such order or decree, was given, and to all persons by whom any such notice was waived, and to such other persons as the court may determine.

e. Except as provided in Chapter 6 Section 16, a decree or order made in reference to any estate may not be modified or revoked by the Probate Court as to assets lawfully transferred or distributed prior to the date of issuance of notice of hearing on a motion or application for reconsideration of such decree or order, or, if the court determines not to hold any such hearing, prior to the date of the court's order of revocation or modification.

**§ 9. Examination of Witnesses**

The Probate Court may, on its own motion or upon written application of any person having an interest in any matter before it, summon any person to appear and give testimony under oath relating to such matter.

24 M.P.T.L. ch. 3 § 10

**§ 10. Return of Compliance with Order of Court**

When the Probate Court orders any person to do any act, such person shall, upon compliance with the order, make written return to the court, which shall be prima facie evidence of the due execution of the order. The court may in its discretion require that such return be made under oath.

24 M.P.T.L. ch. 3 § 11

**§ 11. Participation of the Health and Human Services Department in Proceedings**

In any proceeding in the Probate Court in which the Tribe is interested through its Health and Human Services Department, any employee of such department shall be permitted to participate fully in the proceeding in the same manner as any other interested party before the court. The judge of the Probate Court shall not require that the Tribe be represented by an attorney-at-law as a condition of participation.

24 M.P.T.L. ch. 3 § 12

**§ 12. Appointment of Guardian Ad Litem for Minors and Incompetent, Undetermined and Unborn Persons**

a. In any proceeding before the Probate Court, the judge may appoint a guardian ad litem for any minor or incompetent, undetermined or unborn person, or may appoint one guardian ad litem for two or more of such minors or incompetent, undetermined or unborn persons, if it appears to the judge that one or more persons as individuals, or as member of a designated class or otherwise, have or may have an interest in the proceedings, and that one or more of them are minors, incompetent persons or persons undetermined or unborn at the time of the proceeding.

b. The appointment shall not be mandatory, but shall be within the discretion of the judge.

c. Any order or decree passed or action taken in any such proceeding shall affect all the minors, incompetent persons or persons thereafter born or determined for whom the guardian ad litem has been appointed, in the same manner as if they had been of the age of majority and competent and present in court after legal notice at the time of the action or the issuance of the order or decree.

d. Any appointment of a guardian ad litem may be made with or without notice and, if it appears to the judge that it is for the best interests of a minor having a parent or guardian to have as guardian ad litem some person other than the parent or guardian, the judge may appoint a disinterested person to be the guardian ad litem.

e. When the appointment is made in connection with the settlement of a decedent's estate or the settlement of the account of a trustee or other fiduciary, the person so appointed shall be authorized to represent the minor or incompetent, undetermined or unborn person in all proceedings for the settlement of the estate or account and subsequent accounts of the trustee or other fiduciary, or until his appointment is terminated by death, resignation or removal.

f. The guardian ad litem may be removed by the judge, without notice, whenever it appears to the judge to be in the best interests of the ward or wards of the guardian.

g. Any guardian ad litem appointed under the provisions of this Section may be allowed reasonable compensation by the judge appointing him and shall be paid as a part of the expenses of administration.

24 M.P.T.L. ch. 3 § 13

### **§ 13. Examination of Incapable Party. Expense**

In any matter before the Probate Court in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state of Connecticut. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such exam or the estate of the alleged incapable in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by the judge.

24 M.P.T.L. ch. 3 § 14

### **§ 14. Probate Bonds**

a. As used in this Chapter, except as otherwise provided, "bond" or "probate bond" means a bond with security given to secure the faithful performance by an appointed fiduciary of the duties of his trust and the administration of and accounting for all moneys and other property coming into his hands, as fiduciary, according to law.

b. Except as otherwise provided, every bond or probate bond shall be payable to the Tribe, shall be conditioned for the faithful performance by the principal in the bond of the duties of his trust and the administration of and accounting

for all moneys and other property coming into his hands, as fiduciary, according to law, and shall be in such amount and with such security as shall be required by the judge of probate. If bond is required of a fiduciary, his appointment shall not be effective until the bond has been accepted by the Probate Court.

24 M.P.T.L. ch. 3 § 15

**§ 15. Prohibition on Judges, Officers and Employees of Probate Court Acting as Sureties or Issuing Probate Bonds**

A judge of probate or officer or employee of the Probate Court shall not act as surety for, and shall not personally or as agent for any surety or bonding company, issue a probate bond to any administrator, executor, trustee or other person required to furnish a bond in any proceeding pending before the Probate Court.

24 M.P.T.L. ch. 3 § 16

**§ 16. Substitution of New Bond**

a. The principal or the surety, or the heirs, executors or administrators of the surety, upon any bond taken by Probate Court, may make written application to the court for an order permitting or requiring a new bond to be given in place of the existing bond. Thereupon the court shall cause reasonable notice of the application to be given to the surety, if the application is made by the surety, his heirs, executors or administrators, and to all persons whom the court finds to be interested in the estate for the security of which the bond was given, to appear and be heard upon the application at a time and place stated in the notice.

b. If, upon hearing, the court finds that to grant the application would not prejudice the estate, it may authorize the principal to give a new probate bond, or order him to give a new bond within a time which it may limit. If the principal, having been ordered to give a new bond, fails to do so within the time limited by the court, it may remove him and appoint another in his stead. If the new bond is given to the approval of the court, the surety on the original bond and his representatives shall not be liable for any breach of the bond committed after the court approves the bond.

24 M.P.T.L. ch. 3 § 17

**§ 17. Filing and Recording Bonds**

The Probate Court shall cause all bonds taken by it to be filed and recorded. In case of the loss of any bond, a certified copy of the record of the bond shall be admissible in evidence.

24 M.P.T.L. ch. 3 § 18



**§ 18. Examination of Estate. Removal of Principal**

a. The surety upon any bond taken by the Probate Court, or any person interested in the bond, may at any time make written application to the court for an order requiring the principal to exhibit fully in writing before such court the condition of the estate held by him, so that it may be ascertained whether the estate is being properly managed. Thereupon the court shall cause reasonable notice of such application to be given to the principal. If, upon hearing, the court finds that such application was made in good faith, it shall make such order.

b. If the principal refuses to obey such order or if, upon his obeying it, the court finds that the estate is not being properly managed by him, it shall remove him and appoint another in his place.

24 M.P.T.L. ch. 3 § 19

**§ 19. Action on Probate Bond by Aggrieved Person**

a. Any person claiming to be aggrieved by the breach of a probate bond, as representative of the estate in connection with which the bond was given, or in his own right or in the right of himself and all others having an interest in the estate, may bring an action to recover for the breach in his own name.

b. If, upon an action on a bond brought by one not acting as a representative of the estate, the judge concludes that the action ought to be prosecuted on behalf of all persons interested in the estate in connection with which the bond was given, he may order that the action shall include all such persons; but, in that event, such persons need not be named in the writ or complaint.

c. The plaintiff in any action brought by him as representative of the estate or on his behalf and that of all persons interested in it shall account for any moneys recovered to the Probate Court in which the estate is in settlement. The court may allow to the plaintiff a reasonable sum for his disbursements and services in the action and in any subsequent proceedings to enforce payment of any sum recovered, to be paid from the amount recovered or by the estate.

24 M.P.T.L. ch. 3 § 20

**§ 20. Enforcement of Judgment on Bond**

a. Any representative of an estate or any person suing on his own behalf and that of all others interested in the estate, who secures a judgment upon a probate bond, may file a judgment lien in his own name as representative of the estate or as representing himself and all other interested persons. He may, with the permission of the judge of the Probate Court, bring any proper action to enforce the lien. He may, by order of the Probate Court secured as provided in Section 23 of this Chapter, sell any such lien or any real property obtained by the enforcement of the lien or upon execution and he may release the lien by a certificate of discharge.

b. If any person bringing such an action on his own behalf and that of all others interested in the estate dies or is guilty of a breach of duty, the Probate Court may appoint some other person in his stead. Such other person shall, upon giving a bond as provided in Section 19 of this Chapter, acceptable to the court, be vested with the same rights and subject of the same duties as the person in whose stead he is acting with reference to the action, the enforcement of any judgment recovered or lien thereon and the discharge of any such lien.

24 M.P.T.L. ch. 3 § 21

#### **§ 21. Compromise and Settlement of Claims**

Upon application by executors, guardians, conservators, administrators, trustees in insolvency and trustees appointed or whose appointment has been approved by the Probate Court, the court may, after public notice and hearing, authorize such fiduciaries to compromise and settle any doubtful or disputed claims or actions, or any appeal from probate in favor of or against the estates or persons represented by them.

24 M.P.T.L. ch. 3 § 22

#### **§ 22. Suit upon Claims. Time Limitation**

When any guardian, conservator or testamentary or other trustee required to account in the Probate Court is unable to settle or adjust any claim against him as such, or when any such guardian, conservator or trustee and a claimant against him are unable to agree concerning the amount or validity of such claim, such guardian, conservator or trustee may give written notice to such claimant of the disallowance of his claim, wholly or in part. Unless such claimant commences a suit against such guardian, conservator or trustee within four months after such notice has been given, such claimant shall be barred of his claim against such guardian, conservator or trustee, except such part as has been allowed, and of any such claim against the estate or trust; but, if such creditor dies within such four months and before suit has been brought, a period of four months from his death shall be allowed to his executor or administrator within which to commence such suit.

24 M.P.T.L. ch. 3 § 23

#### **§ 23. Sale of Chose in Action and Other Property**

Before the final settlement of any estate, the Probate Court may order the sale of the credits and choses in action belonging to such estate, and may at any time order the sale of personal property, and in the case of an insolvent debtor's estate of all or any property, as it finds for the interest of the estate, in a manner and after notice which it judges reasonable. The court, in making orders for the sale of the property described herein, may order it to be sold at public or private sale at the discretion of the person authorized to make the sale. After a hearing the court may authorize that the property be

sold to the fiduciary either directly or under the provisions of Section 24 of this Chapter, except that if a public sale is ordered, the fiduciary may be the purchaser only if the sale is made under Section 24 of this Chapter. In the case of any proposed sale to a fiduciary, any notice sent to interested parties and any public notice shall indicate that the fiduciary is the proposed purchaser.

24 M.P.T.L. ch. 3 § 24

#### **§ 24. Sale of Personal Property by Other than Fiduciary**

a. Upon the written application of the conservator of the estate of any person, guardian of the estate of any minor, administrator or trustee appointed by the court, including a trustee of a missing person, or the executor or trustee under any will admitted to probate by the court, after public notice and other notice which the court may order and after hearing, the Probate Court may authorize a person other than the fiduciary to sell the whole or any part of or any interest in any personal property of any incapable person, minor, missing person, deceased person or trustee, or any property to which the fiduciary may hold legal title in such capacity, if:

(1) such person has first given a probate bond that he will faithfully administer and account for the proceeds of the sale according to law; and

(2) the court finds that to grant the application would be in the best interests of the parties in interest. If any party having an interest in such personal property is not in being or is not ascertained or is under a disability, the court shall appoint a guardian ad litem to represent the interest of such party at the hearing, unless such party already is represented by a guardian or by a conservator. Such order, and the sale thereunder, shall be conclusive upon all persons then or thereafter existing whose interests have been so represented.

b. The person selling the personal property shall pay to the fiduciary the sum for which such personal property was sold.

c. The Probate Court shall direct whether the sale shall be public or private, and, if public, the notice thereof which shall be given, and, if private, may authorize the sale at a price and upon terms, including such mortgage or mortgages, as it considers reasonable or advisable.

24 M.P.T.L. ch. 3 § 25

#### **§ 25. When Probate Bond not Required**

The Probate Court may dispense with the requirement of a probate bond as set forth in Sections 23 and 24 of this Chapter, if: (1) the fiduciary is a bank or trust company authorized to do business and maintaining a place of business in the state of Connecticut; (2) the fiduciary is a foreign bank or trust company which has qualified and been approved as such fiduciary; (3) the fiduciary is excused by the will from giving a probate bond; or (4) the

Probate Court determines that a bond is not required for the protection of interested parties.

24 M.P.T.L. ch. 3 § 26

**§ 26. Jurisdiction of Accounts of Fiduciaries. Appointment of Auditor to Examine Accounts**

a. The Probate Court shall have jurisdiction of the interim and final accounts of testamentary trustees, trustees appointed by the Probate Court, conservators, guardians, persons appointed by the Probate Court to sell the land of minors, executors, administrators and trustees in insolvency, and, to the extent provided for in this Section, shall have jurisdiction of accounts of the actions of trustees of inter vivos trusts and attorneys-in-fact acting under powers of attorney created in accordance with Chapter 9, Section 1.

b. A trustee or settlor of an inter vivos trust or an attorney-in-fact or the grantor of such power of attorney may make application to the Probate Court for allowance of the trustee's or attorney's actions under such trust or power.

c. (1) Any beneficiary of an inter vivos trust may petition the Probate Court for an accounting by the trustee or trustees. The court may, after hearing with notice to all interested parties, grant the petition and require an accounting for such periods of time as it determines are reasonable and necessary on finding that: (a) the beneficiary has an interest in the trust sufficient to entitle him to an accounting; (b) cause has been shown that an accounting is necessary, and (c) the petition is not for the purpose of harassment.

(2) The Probate Court shall have jurisdiction to require an accounting under this Section if: (a) a trustee of the trust resides on the tribal lands; (b) in the case of a corporate trustee, the trustee has its principal place of business on the tribal lands; (c) any of the trust assets are maintained or evidences of intangible property of the trust are situated on tribal lands; or (d) the settlor resides on tribal lands.

(3) As used in this Section, "beneficiary" means any person currently receiving payments of income or principal from the trust, or who may be entitled to receive income or principal or both from the trust at some future date, or the legal representative of such person.

d. The action to submit an accounting to the court, whether by an inter vivos trustee or attorney acting under a power of attorney created in accordance with Chapter 9, Section 1 or whether pursuant to petition of another party, shall not subject the trust or the power of attorney to the continuing jurisdiction of the Probate Court.

e. If the court finds such appointment to be necessary and in the best interests of the estate, the court upon its own motion may appoint an auditor, to examine accounts over which the court has jurisdiction under this Section, except those accounts on matters in which the fiduciary or co-fiduciary is a corporation having trust powers. Costs of the audit may be charged to the

fiduciary, any party in interest and the estate, in such proportion as the court shall direct if the court finds such charge to be equitable. Any such share may be paid by the Tribe, if the Probate Court determines that the person obligated to pay is unable to pay or to charge such amount to the estate would cause undue hardship.

f. Upon the allowance of any such account, the court shall determine the rights of the fiduciaries or the attorney-in-fact rendering the account and of the parties interested in the account, subject to appeal as in other cases. The court shall cause notice of the hearing on the account to be given in such manner and to such parties as it directs.

24 M.P.T.L. ch. 3 § 27

#### **§ 27. Statement in Lieu of Account when Fiduciary is Sole Beneficiary**

a. Except as provided in subsection (b) of this Section, or when any beneficiary is a trustee of a testamentary or inter vivos trust, if the fiduciary of a decedent's estate is the sole beneficiary of the residue of the estate, or if multiple fiduciaries of a decedent's estate are the only beneficiaries of the residue of the estate, and if all dispositions, if any, to other beneficiaries are bequests of specific personal property or of an amount certain or devises of specific real property, the fiduciary may, in lieu of any other accounting required under this chapter, file with the Probate Court a statement under oath that all debts, funeral expenses, taxes and expenses of administration have been paid, and such bequests and devises, if any, have been distributed and receipts therefor obtained. The statement shall include the total of any amount reported on the return of claims filed under Chapter 6, Section 44 and an itemized list of all funeral expenses, taxes and expenses of administration. The receipts of the beneficiaries of such bequests and devises shall be filed with the Probate Court at the time such statement is filed. The Probate Court may thereafter enter a decree releasing and discharging the fiduciary and the sureties on his bond, if any, from any further liability. Any fiduciary so discharged shall be excused from filing an accounting and any further returns with the court.

b. The Probate Court may, for cause shown, refuse to accept the statement and require an accounting from the fiduciary.

24 M.P.T.L. ch. 3 § 28

#### **§ 28. Periodic Rendering of Accounts; Hearing. Nature of Account. Exceptions**

a. All conservators, guardians, persons appointed by the Probate Court to sell land of minors and trustees, including those entrusted with testamentary trusts unless excused by the will creating the trust, shall render periodic accounts of their trusts under oath to the Probate Court at least once during each three-year period and more frequently if required to do so by the will or trust instrument creating the trust. Periodic accounts for filing only may be submitted to the court at any time during each three-year period. Upon receipt

of a periodic account, the court shall cause notice of it and of its availability for examination at the court to be given in such manner and to such parties as it deems reasonable. Any such party may apply to the court for a hearing on the account. If an application for such a hearing is not received by the court from a party in interest within the time stated in the notice, the periodic account will be filed without hearing thereon and without allowance or disallowance thereof, and shall not be recorded. At the end of each three-year period from the date of the last allowance of a periodic account, or upon the earlier receipt of a final account, there shall be a hearing on all periodic accounts not previously allowed, and the final account, if any, in accordance with Sections 29 and 30 of this Chapter.

b. Each such periodic account shall include an inventory of the trust estate showing fully how the principal of the fund is invested and the items of income and expenditure. If there has been no change in the identity of the items comprising the principal of the fund since the last account which has been accepted and approved, it shall not be necessary to include an inventory of the trust estate.

c. If the estate held by any person in any such fiduciary capacity is less than \$2,000, he shall not be required to render such account unless so ordered by the court.

24 M.P.T.L. ch. 3 § 29

#### **§ 29. Allowance of Interim Accounts. Notice and Hearing**

The Probate Court shall direct what notice, if any, shall be given to the parties in interest of the filing of any account described in Section 28 herein, and of the hearing thereon, and may adjust and allow the account. The court may make any order necessary and proper to secure the execution of the duties of such fiduciary, subject to appeal as in other cases.

24 M.P.T.L. ch. 3 § 30

#### **§ 30. Notice and Hearing on Final Accounts**

When an executor, administrator, conservator, guardian, trustee in insolvency or trustee of a testamentary trust exhibits his final account to the Probate Court for allowance, the court shall appoint a time and place for a hearing on the account and shall cause notice of the hearing to be given as it directs. Such fiduciary shall swear or affirm under oath to the truth of the account.

24 M.P.T.L. ch. 3 § 31

#### **§ 31. Settlement of Account of Deceased Fiduciary**

Whenever an executor, administrator, conservator, guardian, trustee in insolvency or trustee of any testamentary trust dies before completing and accounting for his trust, the executor or administrator of the deceased

fiduciary shall settle the deceased fiduciary's account in the Probate Court. The amount found due from or to the deceased fiduciary shall be paid in the same manner as it would have been paid to or by him if the account had been settled in his lifetime.

24 M.P.T.L. ch. 3 § 32

### **§ 32. Appeals from Probate**

Any person aggrieved by any order, denial or decree of the Probate Court in any matter, unless otherwise specially provided by law, may appeal therefrom to the Mashantucket Pequot Court of Appeals. Appeals from any decision rendered in any case after a record is made shall be on the record and shall not be a trial de novo.

24 M.P.T.L. ch. 3 § 33

### **§ 33. Time of Taking Appeals**

a. An appeal under Section 32 of this Chapter by those of the age of majority and who are present or who have legal notice to be present, shall be taken within 30 days. If such persons have no notice to be present and are not present, then appeal shall be taken within 12 months.

b. An appeal from any Probate order for the payment of claims or dividends on claims against any insolvent estate shall not be allowed unless it is taken within 30 days after the making of such order.

24 M.P.T.L. ch. 3 § 34

### **§ 34. Time of Taking Appeals by Minors or Nonresidents**

a. Except as provided in this Section, all appeals by persons who are minors at the time of the making of the order, denial or decree appealed from shall be taken within 12 months after they arrive at the age of majority.

b. In the case of any minor who has a guardian or guardian ad litem appointed and qualified by the Probate Court at the time of the making of the order, denial or decree, the time in which the minor or anyone on his behalf may appeal therefrom shall be one month from the date of such order, denial or decree if the guardian or guardian ad litem has had legal notice, as provided for the particular proceeding, of the time and place of the hearing on such proceeding concerning which such order, denial or decree was made.

c. All appeals by persons who were not present at such time and did not have legal notice to be present shall be taken within 12 months thereafter.

d. Any judge or clerk of the Probate Court or any fiduciary may cause written notice of any order, denial or decree of the Probate Court to be given to any person of the age of majority, or to the guardian or guardian ad litem of any

minor who has not had legal notice of the hearing on the proceeding at which the order, denial or decree was passed and who may be aggrieved thereby. In any such case the person, minor, guardian or guardian ad litem may appeal only within one month after receiving such notice.

24 M.P.T.L. ch. 3 § 35

**§ 35. Amendment to Appeal**

In the event of any defect in the form of an appeal taken under the provisions of Section 32 of this Chapter by any aggrieved person, such person may obtain from the Probate Court an amendment to the appeal correcting the defect, provided the order for amendment is granted not later than 90 days after the date of the order, denial or decree of the Probate Court from which the appeal was originally taken.

24 M.P.T.L. ch. 3 § 36

**§ 36. Interest of Appellant to be Stated**

In each appeal from probate, the interest of the appellant shall be stated in the motion for appeal, unless such interest appears on the face of the proceedings and records of such Probate Court.

24 M.P.T.L. ch. 3 § 37

**§ 37. Order of Notice**

The Probate Court, in allowing an appeal, shall make such order of notice to persons interested as it deems reasonable. When the notice has been given by the appellant and proved to the court, the Court of Appeals may hear the appeal without further notice.

24 M.P.T.L. ch. 3 § 38

**§ 38. Appellee to Give Bond**

a. In any appeal from any order or decree of the Probate Court, if the appellee is the party who applied for the order or decree and if the appellee appears in the Court of Appeals to contest the matter being appealed, the Court of Appeals may, at its discretion, order the appellee to give bond to the Mashantucket Pequot Tribal Nation for the payment to the appellant of his costs of suit if judgment is rendered for the appellant.

b. If the appellee neglects to comply with the order of the court, the court may make any disposition of the case favorable to the appellant that it deems proper.



## CHAPTER 4. FIDUCIARIES

24 M.P.T.L. ch. 4 § 1

### § 1. "Fiduciary" Defined

As used in Chapter 4, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

24 M.P.T.L. ch. 4 § 2

### § 2. Fiduciary Certificate Effective for one Year

A certificate of the appointment of a fiduciary issued by the Clerk of the Court shall be sufficient evidence of the authority and identity of such fiduciary for all purposes for one year after the date of such issuance, in the absence of actual notice of revocation.

24 M.P.T.L. ch. 4 § 3

### § 3. When Payments by Fiduciaries Protected

a. Any person, acting as a fiduciary as defined by Section 1 of this Chapter or in any other fiduciary capacity, who in good faith makes payments or delivers property or estate pursuant to the order of the Probate Court before an appeal has been taken from such order, shall not be liable for the money so paid, or the property so delivered, even if the order under which such payment or delivery has been made is later reversed, vacated or set aside.

b. This Section shall not prevent a recovery of such money or property by the person entitled to it from any person receiving it or in possession of it.

24 M.P.T.L. ch. 4 § 4

### § 4. Investment of Funds

a. Custody of Securities. Transfer of Title. In the absence of an express provision to the contrary in the instrument, judgment, decree or order creating a trust or other fiduciary relationship or appointing a fiduciary, such fiduciary may entrust the custody of any bonds, stocks or other securities of the fiduciary estate to any national banking association, state bank, trust company or state bank and trust company in the state of Connecticut or New York or in the Commonwealth of Massachusetts or Pennsylvania, which is a member of the Federal Reserve System and whose capital, surplus and undivided profits in the aggregate are not less than 50 million dollars. Any such fiduciary may transfer title to any such bonds, stocks or other securities without any court order to do so.

b. Prudent investor rule.

(1) Except as provided in subsection (2) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as set forth in (b) to (m).

(2) The prudent investor rule is a default rule that may be expanded, restricted, eliminated or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust.

c. Standard of care. Portfolio strategy. Risk and return objectives.

(1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(2) A trustee's investment and management decisions respecting individual assets shall be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries: (i) General economic conditions; (ii) the possible effect of inflation or deflation; (iii) the expected tax consequences of investment decisions, strategies and distributions; (iv) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property; (v) the expected total return from income and the appreciation of capital; (vi) related trusts and other income and resources of the beneficiaries; (vii) needs for liquidity, for regularity of income and for preservation or appreciation of capital; (viii) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; (ix) the size of the portfolio; and (x) the nature and estimated duration of the trust.

(4) A trustee shall take reasonable steps to verify facts relevant to the investment and management of trust assets.

(5) Subject to the standard of sections (b) to (m), inclusive, a trustee may invest in any kind of property or type of investment.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

d. Diversification. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

e. Duties at inception of trusteeship. Within a reasonable time after

accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of sections (b) to (m), inclusive.

f. Loyalty. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

g. Impartiality. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

h. Investment costs. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

i. Reviewing compliance. The prudent investor rule expresses a standard of conduct, not outcome. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action.

j. Delegation of investment and management functions.

(1) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in: (i) Selecting an agent; (ii) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and (iii) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trustee and to the trust to exercise reasonable care to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the agent from liability for failure to meet such a duty is contrary to public policy and void.

(3) A trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to Mashantucket Pequot Tribal Law, an agent submits to the jurisdiction of the courts of Mashantucket and can be held liable by the courts of this tribe for any breach of duty arising out of the delegation agreement or the terms of sections (b) to (m), inclusive.

k. Language invoking standards of act. The following terms or comparable language in a trust instrument, unless otherwise limited or modified by the instrument, authorizes any investment or strategy permitted under sections (b) to (m), inclusive: "Investments permissible by tribal law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of

prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

l. Uniformity of application and construction. Sections (b) to (m), inclusive, shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of said sections.

m. Applicability. These provisions apply to trust existing on or created after June 7, 2005. As applied to trusts existing on June 7, 2005 sections (b) to (m), these provisions govern only decisions or actions occurring after that date.

24 M.P.T.L. ch. 4 § 5

#### **§ 5. Investments may be Maintained as Received**

Trust funds received by executors, trustees, guardians or conservators may be kept invested in the securities received by them, unless it is otherwise ordered by the Probate Court or unless the instrument under which such trust was created directs that a change of investments shall be made, and the fiduciaries thereof shall not be liable for any loss that may occur by depreciation of such securities.

24 M.P.T.L. ch. 4 § 6

#### **§ 6. Fiduciary Powers Re: Increase in Capital Stock Assets of Estate**

Whenever any fiduciary holds shares of the stock of any corporation as assets of the estate in his charge and there is an increase of the capital stock of any such corporation, such fiduciary may, with the consent of the Probate Court, either (1) subscribe for and take the shares of the increased capital stock to which such estate may be entitled or (2) sell and transfer to others the right to subscribe for such shares.

24 M.P.T.L. ch. 4 § 7

#### **§ 7. Definitions**

As used in Sections 7 to 19 of this Chapter, inclusive:

a. "Income Beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;

b. "Inventory Value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax;

c. "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal;

d. "Trustee" means an original trustee and any successor or added trustee.

24 M.P.T.L. ch. 4 § 8

**§ 8. Duty of Trustee Re: Receipts and Expenditures**

a. A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(1) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of Sections 7 to 19 of this Chapter inclusive;

(2) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of said Sections; or

(3) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which persons of ordinary prudence, discretion and judgment would act in the management of their own affairs.

b. If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of Sections 7 to 19 of this Chapter, inclusive.

24 M.P.T.L. ch. 4 § 9

**§ 9. Income. Principal. Charges**

a. Income is the return in money or property derived from the use of principal, including return received as: (1) rent of real or personal property, including sums received for cancellation or renewal of a lease; (2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in Section 13 of this Chapter on bond premium and bond discount; (3) income earned during administration of a decedent's estate as provided in Section 11 of this Chapter; (4) corporate distributions as provided in Section 12 of this Chapter; (5) accrued increment on bonds or other obligations issued at discount as provided in Section 13 of this Chapter; (6) receipts from business and farming operations as provided in Section 14 of this Chapter; (7) receipts from disposition of natural resources as provided in Sections 15 and 16 of this Chapter; (8) receipts from other principal subject to depletion as provided in Section 17 of this Chapter; (9) receipts from disposition of unproductive and under-productive property as provided in Section 18 of this Chapter.

b. Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(1) consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(2) proceeds of property taken on eminent domain proceedings;

(3) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Section 12 of this Chapter;

(5) receipts from the disposition of corporate securities as provided in Section 13 of this Chapter;

(6) royalties and other receipts from disposition of natural resources as provided in Sections 15 and 16 of this Chapter;

(7) receipts from other principal subject to depletion as provided in Section 17 of this Chapter;

(8) any profit resulting from any change in the form of principal except as provided in Section 18 of this Chapter on unproductive and under-productive property;

(9) receipts from disposition of unproductive and under-productive property as provided in Section 18 of this Chapter.

c. After determining income and principal in accordance with the terms of the trust instrument or of Sections 7 to 19 of this Chapter, inclusive, the trustee shall charge to income or principal expenses and other charges as provided in Section 19 of this Chapter.

24 M.P.T.L. ch. 4 § 10

#### **§ 10. Right to Income. Apportionment of Income**

a. An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

b. In the administration of a decedent's estate or an asset becoming subject to

a trust by reason of a will,

(1) income receipts due but not paid at the date of death of the testator are principal;

(2) income receipts in the form of periodic payments other than corporate distributions to stockholders, including rent, interest, distributions from mutual funds and common trust funds or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

c. In all other cases, any income receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

d. On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to

(1) income undistributed on the date of termination;

(2) income due but not paid to the trustee on the date of termination;

(3) income in the form of periodic payments other than corporate distributions to stockholders, including rent, interest, distributions from mutual funds and common trust funds or annuities, not due on the date of termination, accrued from day to day.

e. Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

24 M.P.T.L. ch. 4 § 11

#### **§ 11. Income Earned During Administration of Decedent's Estate**

a. Unless the will otherwise provides and subject to subsection (b) of this Section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties concerning taxes, family allowances unless otherwise ordered by the Probate Court, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

b. Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under Sections 7 to 19 of this Chapter, inclusive, and distributed as follows:

(1) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other

expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration;

(2) to all legatees of pecuniary bequests not in trust, simple interest in the amount of 6% per year on the pecuniary bequest commencing one year from the date of death or, if later, one year from the date on which the legacy is payable;

(3) to all other legatees and devisees, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value; provided the amount of income earned during the further administration of the estate from and after the date of payment of any estate tax, inheritance tax, or other expenses of administration, which individually or cumulatively, after the last adjustment required hereunder, exceed ten thousand dollars shall be distributed to such beneficiaries in proportion to their respective interests in the undistributed assets of the estate after the making of such payment on the basis of the fair market value of such assets immediately after the making of such payment.

c. Income received by a trustee under subsection (b) shall be treated as income of the trust.

d. Income earned during the administration of the estate which is payable to a trust under subsection (b) of this subsection may be paid to the income beneficiary of the trust by the executor unless the payment of said income is at the discretion of the designated trustee, in which case, the payment may be made by the executor to such income beneficiary upon obtaining the written consent of the trustee.

24 M.P.T.L. ch. 4 § 12

## **§ 12. Corporate Distributions**

a. Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

b. Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to (1) a call of shares; (2) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another



corporation; or (3) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

c. Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

d. Except as provided in subsections (a), (b), and (c) of this Section, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions; provided, when a dividend is payable in shares or other securities or obligations of corporations other than the distributing corporation and the trustee determines that either the income beneficiaries or the remaindermen would profit unreasonably or inequitably at the expense of the other from the application of this Section, the trustee may apportion such dividend between income and principal or allocate the same in whole or part to income or principal in such manner and in such proportions as the trustee in its discretion shall deem reasonable and equitable in order to preserve the respective interests in the trust estate. Except as provided in subsections (b) and (c) of this Section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

e. The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of Sections 7 to 19 of this Chapter, inclusive, concerning the source or character of dividends or distributions of corporate assets.

24 M.P.T.L. ch. 4 § 13

### **§ 13. Bond Premium and Discount**

a. Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (b) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation of discount. The proceeds of a sale, redemption or other disposition of bonds or other obligations are principal.

b. The increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable at maturity or at a future time at an amount in excess of the amount in consideration of which it was issued is income. If the income accrues pursuant to a fixed schedule of appreciation such income is distributable to the beneficiary at the time the increment occurs and the trustee may transfer the amount thereof from principal to income on each such date. Whenever unrealized increment is distributed as

income but out of principal the principal shall be reimbursed from the income when realized.

24 M.P.T.L. ch. 4 § 14

#### **§ 14. Business and Farming Operations**

a. If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.

b. Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

24 M.P.T.L. ch. 4 § 15

#### **§ 15. Disposition of Natural Resources**

a. If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(1) if received as rent on a lease or extension payments on a lease, the receipts are income.

(2) if received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(3) if received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding subdivisions of this Section shall be apportioned on a yearly basis in accordance with this subdivision whether or not any natural resource was being taken from the land at the time the trust was established. 27.5% of the gross receipts, but not to exceed 50% of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

b. This Section does not apply to timber, water, soil, sod, dirt, turf, or

mosses.

24 M.P.T.L. ch. 4 § 16

§ 16. Timber

If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with subdivision (3) of subsection (a) of Section 8 of this Chapter.

24 M.P.T.L. ch. 4 § 17

**§ 17. Other Property Subject to Depletion**

Except as provided in Sections 15 and 16 of this Chapter, if any part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights and rights to receive payments on a contract for deferred compensation, the receipts from such property shall be allocated in accordance with subdivision (3) of subsection (a) of Section 8 of this Chapter.

24 M.P.T.L. ch. 4 § 18

**§ 18. Unproductive and Underproductive Property**

a. An income beneficiary is entitled to a portion of the proceeds of sale of any part of principal as delayed income when the trust principal as a whole has not produced income as required under subdivision (3) of subsection (a) of Section 8 of this Chapter. The trustee shall allocate the proceeds of sale in accordance with subdivision (3) of subsection (a) of Section 8 of this Chapter.

b. An income beneficiary or his estate is entitled to delayed income under this Section as if it accrued from day to day during the time he was a beneficiary.

c. Nothing in this Section shall deprive the income beneficiary of any rights he may have under law to require the trustee to invest the trust property in accordance with the standards set forth in subdivision (3) of subsection (a) of Section 8 of this Chapter.

24 M.P.T.L. ch. 4 § 19

**§ 19. Charges against Income and Principal**

a. The following charges shall be made against income:

(1) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary,

remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(2) one-half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(3) court costs, attorney's fees and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(4) one-half of the trustee's regular compensation, and one-half of all fees paid at least annually to banks, trust companies and registered investment advisers for investment advisory and custodial services, whether based on a percentage of principal or income, and other expenses reasonably incurred for current management of principal and application of income;

(5) any tax levied upon receipts defined as income under Sections 7 to 19 of this Chapter, inclusive, or the trust instrument and payable by the trustee; and if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any interest on the estate or inheritance tax that is apportioned to the trust.

b. If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

c. The following charges shall be made against principal:

(1) Trustee's compensation and fees for investment advisory and custodial services not chargeable to income under subdivision (4) of subsection (a) of this Section, expenses reasonably incurred in connection with principal, Court costs and attorney's fees primarily concerning matters of principal, trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(2) charges not provided for in subsection (a), including the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal, expenses for preparation of property for sale, and, unless the Court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(3) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments;

(4) any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority;

(5) if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

d. Regularly recurring charges payable from income shall be apportioned to the

same extent and in the same manner that income is apportioned under Section 10 of this Chapter.

24 M.P.T.L. ch. 4 § 20

## **§ 20. Construction of Statutes in this Part**

a. Definitions. As used in Sections 20 to 23 of this Chapter, inclusive,

(1) the term "fiduciary" means the one or more executors or administrators c.t.a. or administrators c.t.a., d.b.n. of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, or any successor or successors to the original fiduciary, or any substitute, or any ancillary fiduciary, whether corporate or individual and whether or not specifically named in the will or trust instrument, and includes the terms "co-fiduciary", "co-executor" and "co-trustee".

(2) the term "settlor" means the creator of an inter vivos trust, whether called "settlor", "grantor", "donor", or "trustor" in the instrument.

(3) the terms "will" and "trust instrument" include, respectively, codicils to a will and amendments to a trust as the context may require.

(4) "QTIP" means qualified terminable interest property as defined under Section 2056(b)(7)(B) of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

b. Use of terminology. In all cases, the singular includes the plural of said terms and vice versa. Reference to any person by use of the neutral term "it" includes masculine and feminine and vice versa.

c. Incorporation of certain powers by reference in will or trust instrument. By an expressed intention of the testator or settlor so to do contained in a will or in an instrument in writing whereby a trust estate is created inter vivos, any one or more or all of the powers or any portion thereof enumerated in Section 21 of this Chapter, as they exist at the time of the signing of a will by the testator or at the time of the signing by the first settlor who signs a trust instrument, may be, by appropriate reference made thereto, incorporated in such will or other instrument, with the same effect as though such language were set forth verbatim in such will or other instrument. If a codicil or amendment to a trust instrument has been executed, the incorporated powers contained in such will or other instrument shall remain unchanged unless modified or otherwise altered by such codicil or amendment. Incorporation of one or more or all of the powers contained in said Section by reference to said Section shall be in addition to and not in limitation of other powers in the will or other instrument and of the common law powers or other statutory powers of the fiduciary. Any one or more or all of the additional powers or any portions thereof enumerated in Section 22 of this Chapter also may be incorporated by reference as therein provided but only to the extent they are individually referred to in such will or other instrument. In the event of a conflict between one or more of the powers contained in Sections 21 and 22 of

this Chapter and the express terms of the will or other instrument, the terms of such will or other instrument shall govern. In the event of a conflict between one or more of the powers contained in Sections 21 and 22 of this Chapter, and any other provision of the general statutes, the power or powers contained in Sections 21 and 22 of this Chapter shall govern.

d. Limitation of power. No discretionary power or authority conferred upon a fiduciary as provided in Sections 21 to 23 of this Chapter, inclusive, may be exercised by such fiduciary in such a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital and orphans deductions and the deduction for transfers for public, charitable and religious uses, except as otherwise prescribed by the testator or settlor, or operate to attract or impose a tax upon a settlor or estate of a testator or upon any other person as owner of any portion of the trust or estate involved. Notwithstanding any provisions contained in or incorporated by reference into a will or trust instrument, no person shall have a power to make any equitable adjustments affecting any qualified terminable interest property or a QTIP trust. For the purposes of this subsection, "equitable adjustments" means adjustments to trust corpus or income or both which involve a reallocation of assets from the account of one beneficiary to that of another to compensate for disproportionate sharing of a tax burden resulting from a tax election. The exercise of a power in violation of the restriction contained in this subsection shall render the action by the fiduciary or any other person with regard to that violation void. "Tax" means a federal, state, whether that of the Tribe, Connecticut, another state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico, local, municipal or foreign, whether national, provincial, state, local or municipal, income, gift, estate, generation-skipping, inheritance, succession, accessions or other death tax, duty or excise imposed on the transfer of property at death or by gift. "Marital deduction" and "deduction for transfers for public, charitable and religious uses", shall have the same meaning and application as shall exist under the federal Internal Revenue Code in effect at the death of the testator or at the time a trust becomes irrevocable, as the case may be.

e. Construction of other types of instruments. Nothing herein shall be construed to prevent the incorporation of the powers enumerated in Sections 21 or 22 of this Chapter in any other kind of instrument or agreement.

24 M.P.T.L. ch. 4 § 21

## **§ 21. Powers**

The following powers may be incorporated by reference as provided in Sections 20 and 23 of this Chapter:

(1) Retain Original Property. To retain for such time as the fiduciary shall deem advisable any property, real, personal or mixed, which the fiduciary may receive, even though the retention of such property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision. The fiduciary shall not retain non-income-producing property in a trust intended to qualify for the marital

deduction without the consent of the life beneficiary of said trust or his legal representative, including his guardian or conservator.

(2) Sell, Mortgage or Exchange Property. To sell, exchange, alter, assign, transfer, grant options to buy, sign real estate listing agreements; to convey, pledge, hypothecate; and to mortgage, lease and sublease, even beyond the period of the estate or any trust; to partition or otherwise dispose of any property or interest therein; to do any of such acts without an order of any court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary shall deem advisable; to transfer and convey the property or any interest therein, in fee simple absolute or otherwise free of all trusts. The receipts of the fiduciary for moneys or things paid or delivered shall be effective discharges therefrom to the persons paying or delivering the same and no one either dealing with the fiduciary or from whom the fiduciary shall receive any money, property or other credit shall be required to see to the application thereof or shall be under any duty to follow the proceeds or other consideration received by the fiduciary from such sale or exchange. No one dealing with the fiduciary, or with any real, personal or mixed property which is or was estate or trust property, shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale is herein authorized or directed or otherwise as to the purpose or regularity of any acts of the fiduciary purporting to be done in pursuance of any other provisions or powers herein incorporated or granted.

(3) Invest and Reinvest. To invest and reinvest, as the fiduciary shall deem advisable, in stocks of any class, bonds, debentures, notes, mortgages or other securities as well as in investment trusts, mutual funds and common trust funds, to open accounts in any type of commercial or savings bank, savings and loan association, credit union or similar organization or company, whether within or without the state of Connecticut and to acquire by lease or purchase any interest in real property or real estate investment trusts whether such investment is in or outside the state of Connecticut or the United States and even though such investment shall not be of the character approved by applicable law but for this provision. Notwithstanding any other provisions to the contrary, neither a trustee of an irrevocable trust, intended to qualify for the federal gift tax exclusion as a gift of a present interest under Section 2503(b) or 2503(c) of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, nor the trustee of a trust providing for payment of all income therefrom to the life beneficiary, including a QTIP trust, may under any circumstances invest or reinvest in unproductive, under-productive or non-income-producing property, or acquire any life insurance, endowments or annuities unless explicitly so authorized in the trust instrument.

(4) Invest Without Diversification. To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one kind than would be considered appropriate for the fiduciary apart from this provision.

(5) Exercise Stock Options. To exercise any stock options owned by the testator or settlor at his death or acquired by or held in any trust, to borrow money and pledge any assets, including stock acquired by the exercise thereof, to obtain funds for the exercise thereof, to retain any stock purchased by the

exercise of such options for such time as the fiduciary deems advisable, and to exercise all other powers in respect of such stock as though such stock formed a part of the estate at the time of death or a part of any trust.

(6) Pay Taxes and Expenses. To pay taxes; to pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, debentures or other corporate securities in the hands of a fiduciary, whenever such payment may be legally enforceable against the fiduciary or any property of the estate or trust, or if the fiduciary deems payment expedient and for the best interests of the estate or trust; to pay for repairs and other expenses incurred in the management, collection, care, administration and protection of the trust or estate including fiduciary compensation and attorneys' fees.

(7) Receive Additional Property. To receive additional property from any source and administer such additional property as a portion of the appropriate trust or estate under the management of the fiduciary, provided the fiduciary shall not be required to receive such property without the fiduciary's consent unless such property is devised or bequeathed to the fiduciary in its fiduciary capacity in which case the fiduciary must receive such property or resign.

(8) Borrow Money. To borrow money and to assume indebtedness for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable, including the powers of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes, administration expenses, or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be required to secure such loan or loans, and to renew existing loans either as maker or endorser.

(9) Vote Shares. To vote shares of stock owned by the estate or owned by any trust stockholders' meetings in person or by special, limited, or general proxy, with or without power of substitution.

(10) Register in Name of Nominee. To hold any investment in the name of a nominee or in any form in which title will pass by delivery, but the fiduciary shall be liable for any act of the nominee in connection with the investment so held. Any corporation or its transfer agent may presume conclusively that the nominee is the actual owner of securities submitted for transfer.

(11) Use of Private Nominees. To form a general or limited partnership or partnerships under any name or names of the fiduciary's selection for the purpose of taking and holding title to all or any of the assets comprising the estate or trust property and for becoming the named beneficiary of any or all of the insurance policies therein; said partnership or partnerships shall have the power to deposit, withdraw, sell, loan, mortgage, lease, assign, convey, exchange, transfer or deal with said estate or trust property in all ways permitted to the fiduciary and to take any such action over the signature of only one partner or of the partnership itself; and any broker, bank, savings bank, savings and loan association, and any corporation or its transfer agent or registrar may presume conclusively that said partnership or partnerships are the actual owners of the bank deposits, savings and loan shares and securities registered in their names and submitted for transfer or registration.

(12) Take and Exercise Options, Rights and Privileges. To take options for



acquisition of property, to exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold such stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary shall deem advisable.

(13) Participate in Reorganizations. To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease or sale of the property; incorporation or re-incorporation, acquisition, re-capitalization, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders' or bondholders' protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to any such plan; and to receive as investments of any estate or any trust any securities issued as a result of the execution of such plan.

(14) Renew and Extend Obligations. To continue any obligation, whether secured or unsecured, upon and after maturity with a renewal or extension upon such terms as the fiduciary shall deem advisable, without regard to the value of the security, if any, at the time of such continuance, even though such continuance may extend beyond the period of the estate or of any trust.

(15) Foreclose and Bid in. To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(16) Insure. To carry such insurance coverage, including but not limited to public liability, fire, rent, title or casualty insurance for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary shall deem advisable. A fiduciary or a fiduciary's employee who is a director of any corporation, more than 19% of whose stock is held by the estate or any trust, may use estate or trust assets to purchase and pay premiums on insurance to indemnify himself from liability resulting from acting with conflicting interests and from other acts in his capacity as a director.

(17) Collect. To collect, receive and give receipts for rents, issues, profits, and income of an estate or trust.

(18) Litigate, Compromise or Abandon. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trusts the fiduciary shall deem advisable, and the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the estate or trust in the absence of fraud, bad faith or gross negligence of the fiduciary. No beneficiary serving as a co-fiduciary

and no settlor serving as a fiduciary or co-fiduciary may participate in any decision as to claims between him and the estate or trust. Any claim by a settlor or beneficiary serving as a co-fiduciary shall be determined only by the other co-fiduciary.

(19) Employ and Compensate Agents, etc. To employ and compensate persons deemed by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust including, but not limited to: servants, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, real estate managers, rental agents, realtors, appraisers, and investment counsel, custodians and other professional advisers as reasonably may be required or desired in managing, protecting and investing the estate or any trusts without liability for any neglect, omission, misconduct, or default of such person provided such person was selected and retained with due care on the part of the fiduciary. If investment counsel is selected, which at the time of selection has a reputation in its community for competence and fair dealing, its selection and retention shall be considered as having been made with due care, provided the fiduciary continues to retain such counsel only so long as such counsel maintains said reputation. Under said circumstances, the fiduciary shall have no investment responsibility whatever and may act without independent investigation upon the recommendations of any such person, without liability for any neglect, omission, misconduct, or default of such person.

(20) Acquire and Hold Property of Two or More Trusts Undivided. To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division shall become necessary in order to make a distribution; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, that the provisions of this subdivision shall not defer the vesting in possession of any share or part of share of the estate or trust.

(21) Distribute in Cash or Kind. To make distribution of assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, provided shares may be composed differently and specific assets may be allocated to particular distributions; to make such distribution either upon final distribution or during one or more preliminary distributions, at the then current values, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to make reasonable determinations of said values for the purpose of making distribution if there is more than one distributee thereof, which determination shall be binding upon the distributees, provided no settlor serving as a fiduciary of an irrevocable trust and no beneficiary serving as a fiduciary of any trust shall have such power.

(22) Pay to or for Minors or Incompetents. To make payments in money or in property, to or for a minor or incompetent in any one or more of the following ways:

(a) to such minor or incompetent directly, if the fiduciary in its sole and absolute discretion deems such payment advisable;

(b) to apply directly in payment for the support, maintenance, education, and

medical, surgical, hospital, or other institutional care of such minor or incompetent;

(c) to the legal or natural guardian of such minor or conservator of such incompetent;

(d) to any other person, whether or not appointed guardian of the person or conservator by any court, who shall, in fact have the care and custody of the person of such minor or incompetent. The fiduciary shall not be under any duty to see to the application of the payments so made and the receipt by such person shall be full acquittance to the fiduciary.

(23) Determine Income and Principal Questions. To determine in accordance with applicable law, where not otherwise provided by Connecticut's Principal and Income Act, all questions with respect to the manner in which expenses and charges, including the fiduciary's compensation as such, are to be borne and receipts are to be credited as between principal and income.

(24) Capital Gain from Mutual Funds. The fiduciary is directed to allocate to principal all distributions representing capital gains received from the sale of securities held by regulated investment companies, real estate investment trusts or mutual funds owned by the trust.

(25) Manage Real Property.

(a) To improve, manage, protect, develop, acquire and make additions to, exchange, and abandon any real property or any interest therein;

(b) to dedicate to public use or, where legally permissible, to withdraw from such dedication, parks, streets, highways, or alleys;

(c) to subdivide or re-subdivide any real property;

(d) to borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion;

(e) to lease or sublease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary deems advisable, although such period or periods may extend beyond the duration of the trust or the administration of the estate involved;

(f) to make gravel, sand, oil, gas and other mineral leases, subleases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies or to employ an ancillary fiduciary or fiduciaries so to act;

(g) to manage and improve timber and forests on such property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(h) to make, modify, renew or extend leases and subleases as lessor or lessee;

(i) to employ agents to rent and collect rents;

(j) to grant and create easements and release, convey, or assign any right, title, or interest with respect to any easement on real property or part thereof and enter into party wall agreements;

(k) to erect, make repairs, replacements or improvements, structural or otherwise, or to renovate any building or other improvement on real property, and to alter, raze, remove or demolish any building or other improvement in whole or part;

(l) to survey, partition, and adjust boundaries; and to make plats of any real property; and

(m) to deal with any such property and every part thereof in all other ways and for such other purposes or considerations as would be lawful for any person owning the same.

(26) Deal with Other Trusts. In dealing with one or more other trusts, the fiduciary may sell property, real, personal or mixed to, or exchange property with, the trustee of any trust which the testator or the settlor or his spouse or any child of his has created, for such estates and upon such terms and conditions as to sale price, terms of payment, and security as the fiduciary shall deem advisable, and no fiduciary shall have any duty to follow the proceeds of any such sale, provided a fiduciary who is the settlor of an irrevocable trust or a fiduciary who is a spouse or child of the settlor or testator, whether or not the trust is irrevocable, shall not have such power, nor shall a fiduciary who is also a beneficiary of another trust have any such power to deal with the trust of which he is beneficiary.

(27) Make Advances. In its sole and absolute discretion and without in any way being required so to do, to advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances and any interest thereon the fiduciary shall have a lien on the assets of the trust or estate as against a beneficiary, and in its sole and absolute discretion and without in any way being required so to do, to advance, without provision for reimbursement, cash to the executor of the will or administrator of the estate of the testator or settlor or of his spouse if there are insufficient liquid assets to pay debts, taxes or administration expenses of the decedent, or of his deceased spouse.

(28) Maintain Reserves. To maintain reasonable reserves for depreciation, depletion, other than percentage depletion, and for amortization, and obsolescence.

(29) Make Contracts and Execute Instruments; No Duty of Inquiry. To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers herein granted. No party dealing with a fiduciary need inquire as to the existence or proper exercise of any power of said fiduciary, whether said power is granted directly or incorporated by reference.

(30) Perform Decedent's Executory Contracts. The fiduciary may in its discretion, complete performance of the decedent's valid executory contracts which, at the time of his death, had not been fully performed.

(31) Use of Property by Distributee. During the administration of the testator's estate, the fiduciary shall have the discretion to permit any beneficiary to have the use, possession, and enjoyment, without charge, of any real estate or tangible personal property devised, bequeathed or ultimately distributable to said person, so long as he lives, and if he dies before his right to said property becomes absolute or before said property is distributed to him, neither he nor his estate shall be held liable for any loss, destruction, damage, depreciation or waste of said property except through his fault or neglect. Neither the existence nor exercise of this power shall be deemed a constructive or actual distribution of the property to which it relates.

(32) Continue Business. To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form or organization, including but not limited to the power:

(a) effect incorporation, dissolution, merger, consolidation or sale of all or substantially all of the assets, either for cash or in exchange for stock or other securities, or to make other changes in the form of the organization of the business or enterprise, and to diminish, enlarge or change the scope of nature or nature of any business;

(b) to dispose of any interest therein or acquire the interest of others therein;

(c) to contribute thereto or invest therein additional capital or to lend money thereto, in any such case upon such terms and conditions as the fiduciary shall approve from time to time except that a settlor of an irrevocable trust who is serving as a fiduciary thereof shall not have this power;

(d) to determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole, but such allocation must be done in accordance with applicable law;

(e) to control, direct and manage the business, delegate all or any part of the fiduciary's power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the business;

(f) to hire and discharge officers and employees, to fix their compensation and define their duties; and to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives as the fiduciary may deem appropriate, including the right to employ any beneficiary, or individual fiduciary, in any of the foregoing capacities;

(g) to pledge other assets of the estate or trust as security for loans made to such business;

(h) to retain in the business such amount of the net earnings for working capital and other purposes of the business as the fiduciary may deem advisable in conformity with sound business practice, provided such retention does not impair any right of a beneficiary to receive all income from his share of any trust;

(i) to purchase, process and sell merchandise of every kind and description;

(j) to purchase and sell machinery and equipment, furniture and fixtures and supplies of all kinds;

(k) to sell or liquidate all or any part of any business at such time and price and upon such terms and conditions, including credit, as the fiduciary may determine, including a sale to any partner, officer or employee of the business or to any individual fiduciary as beneficiary hereunder, provided any such sale shall be for adequate and full consideration and no such sale shall be made to an individual fiduciary who is also a beneficiary thereunder;

(l) to invest other estate or trust funds in such business; and to loan funds from the trust to such business; and

(m) in all cases in which the fiduciary is required to furnish statements to beneficiaries or to file accounts in any Court or in any other public office, it shall not be necessary to itemize business receipts and disbursements and distributions of property but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(33) Appoint Ancillary Fiduciaries. The fiduciary may itself act or it may select one or more persons or corporations to act as an ancillary fiduciary or fiduciaries and, to the extent permitted by applicable law, all of the powers held by the domiciliary fiduciary are hereby granted to the ancillary fiduciary or fiduciaries and all costs of ancillary administration may be paid from either the domiciliary estate or trust or the ancillary estate or trust, as the fiduciary may decide in its sole discretion.

(34) Postpone Distribution and Accounting. To postpone distribution and accounting with respect to any trust for a year from the date of the termination of the trust, if in the judgment of the fiduciary such postponement shall be necessary or advisable.

(35) (a) Alternate Valuation Date. The fiduciary may elect to value the estate for tax purposes at the values of its assets on the date of decedent's death or at those values on an estate tax valuation date other than the date of the decedent's death, whether or not such election increases or decreases the federal estate tax. No adjustments shall be required to be made between income and principal or between the property interests passing to any beneficiaries which may be affected as a result of such election.

(b) Administration and Other Expenses. To the extent permitted by law, the fiduciary may elect to claim certain administration expenses, casualty losses, medical and other expenses as deductions either on the income tax returns of the estate or of the decedent or on the federal estate tax return or partly on

each. The fiduciary shall elect to claim from time to time such expenses as deductions on the particular tax returns which in the fiduciary's opinion should result in the lowest total taxes being paid by the estate and its beneficiaries, regardless of whether such expenses may be payable from the income or principal of such estate, and the fiduciary is not required to make adjustments between income or principal or between the property interests passing to any beneficiaries which may be affected on account of such election, except that:

(i) where one or more residuary legatees of a will containing a so-called pre-residuary marital deduction formula provision is a charitable organization, as defined in Section 501(c) of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or any corresponding provision of applicable revenue laws, in effect at the date of the death of the testator of a will incorporating Sections 20 to 23 of this Chapter, inclusive, and

(ii) the fiduciary elects to treat such expenses in whole or in part as income tax deductions with the result that federal estate taxes paid from and chargeable to such principal are greater than if the contrary election had been made, an amount equal to the difference in such estate taxes shall be reimbursed to such principal from the income.

(c) Joint Returns. The fiduciary is specifically authorized but not required to execute and file a joint income tax return with the surviving spouse or his executor or administrator for the year of the decedent's death and for any prior years. The fiduciary is also authorized but not required to execute and file a gift tax return with the decedent's spouse or his executor or administrator, if any gift tax return is required of either the decedent or his spouse for any quarter in the year in which death occurs or for any quarter or year prior thereto. The fiduciary is authorized but not required to consent to treat any gifts made by such decedent's spouse as being made one-half by the decedent. The fiduciary may pay such income and gift taxes as are chargeable to the decedent and, in its discretion, may pay the entire amount of such taxes. The fiduciary shall incur no personal liability for any action taken by it in good faith in accordance with any of the foregoing authorizations.

(d) Installment Payment of Estate Taxes. The fiduciary is authorized in its discretion to elect to pay all or any part of the federal estate tax on the estate in installments under the provisions of Section 6166 of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or any corresponding provision of applicable revenue laws.

(e) Request for Extension of Time for Paying Estate Tax. The fiduciary is authorized in its discretion to request an extension of time for paying the federal estate tax, or any installment thereof on the estate or any amounts determined as a deficiency thereon under the provisions of Section 6161 or 6163 of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

(f) Election of Special Use Valuation. The fiduciary is authorized to make all elections with respect to valuations authorized by Section 2032A and related Sections of the federal Internal Revenue Code of 1986, or any subsequent

corresponding internal revenue code of the United States, as from time to time amended.

(g) Pension and Profit-Sharing Plans. To elect, either revocably or irrevocably, to receive death benefits and any other sums payable with respect to any pension and profit-sharing plans in a lump sum, in installments or as an annuity; to waive the benefit of any income averaging provisions available for distributions from pension and profit-sharing plans; to elect a different mode of distribution with respect to each applicable pension and profit-sharing plan. The term, "pension and profit-sharing plan", includes any pension, profit-sharing, thrift, stock purchase, or bonus plan as well as any so called "Keogh" plans and individual retirement accounts. A decedent's spouse, if acting as a fiduciary, shall take no part in the exercise of any election under any pension or profit-sharing plan.

(h) in making any of the elections authorized in subparagraph (d), (e), (f) or (g) of this subdivision, the fiduciary is authorized to take all action it deems necessary to implement said elections without incurring personal liability for any action taken or omitted by it in good faith under said authorization.

(36) Surrender of Stock for Redemption. The fiduciary is authorized in its discretion to surrender shares of stock in any corporation to the corporation issuing such stock for redemption, accepting in payment for the redeemed shares cash, notes or other property; and to vote the shares of stock of any corporation in favor of the redemption of shares of its stock included in determining the gross estate of a decedent, either for cash, notes or other property, including a redemption of such shares designed to provide funds for the payment of the decedent's death taxes, funeral expenses and administration expenses under the provisions of Section 303 of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or any corresponding provision of applicable revenue laws and the fiduciary shall incur no personal liability for any action taken or omitted by it in good faith in accordance with any of the foregoing authorizations.

(37) Pooling Agreements and Voting Trusts. To enter into any kind of pooling agreements and voting trusts, even though such action may involve delegation of authority.

(38) Exculpation. The fiduciary is hereby exonerated from any liability resulting from its retention, sale or operation, whether due to losses, depreciation in value or actions taken or omitted to be taken with respect to any business, farm or real estate interests held in an estate or trust, nor shall the fiduciary be liable for any loss to or depreciation of any other estate or trust property, so long as it is acting in good faith in the management thereof and exercising reasonable care and diligence, but the fiduciary is not exonerated from his own bad faith, willful misconduct or gross negligence.

(39) Environmental Hazards. To take any action necessary to deal with or prevent problems created by environmental hazards, including, but not limited to, conducting assessments, taking any remedial action to contain, clean up or remove environmental hazards and expending estate or trust assets to accomplish



any such action.

24 M.P.T.L. ch. 4 § 22

## **§ 22. Additional Powers**

Any one or more or all of the following additional powers or any portion thereof may be incorporated by reference, as provided in Section 20 of this Chapter but only to the extent they are individually referred to in such will or other instrument:

(1) Stock of Fiduciary. To retain and invest and reinvest in and purchase any stock or other securities issued by the fiduciary in its individual capacity, or by any parent holding company of the fiduciary, including any stock dividends thereon and any securities issued in lieu thereof as the result of any re-capitalization, reorganization, consolidation or merger. Furthermore the fiduciary may exercise or sell any rights, or exercise part and sell part thereof, including rights to buy fractional shares, issued to it by reason of its ownership of any such security; and may retain and hold any security so acquired and vote and issue general or limited proxies to vote said stock.

(2) Buy Insurance and Annuities. To retain and to purchase insurance contracts, on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or annuity contracts for any beneficiary and to pay the premiums thereon out of such beneficiary's portion of principal or income as the fiduciary, in its discretion, shall determine.

(3) Invest in Partnerships, etc. To retain, invest and reinvest in partnerships, joint ventures, leases, real estate syndicates, small business investment companies and hedge funds.

(4) Speculative Assets. To retain, trade and speculate in any real, personal or mixed property as the fiduciary shall deem advisable, wherever situated, including but not limited to:

(a) Any one or more or all commodities and commodity options regularly traded on exchanges in or outside the United States, in either spot or futures contracts, claims, straddles, spreads or any other type of commodity contract, whether long or short;

(b) puts, calls, straddles and options in any domestic or foreign securities and short sales of such contracts and of securities;

(c) interests in oil, gas, coal, gravel, sand, timber, sulfur, precious and semiprecious stones, minerals, metals and their ores, including but not limited to iron, aluminum, copper, rhodium, palladium, platinum, radium, uranium and gold and silver bullion, bars, bricks and coins, and any other mineral and timber rights, royalties, leases and payments, and interests in computer hardware and software;

(d) any interests in breeding of dairy cattle, horses, hogs, sheep, dogs, cats or other animals;

(e) postage and revenue stamps, postal covers, coins, jewelry, rare books, paintings, etchings, statues, sculptures, antiques, curios, antique firearms and edged weapons, and other collectible items and art objects;

(f) aircraft, ships, railroad locomotives, rolling stock, buses, antique automobiles and other vehicles;

(g) foreign currencies and United States Treasury bills including future contracts in such assets, whether long or short.

(5) Oil and Gas Interests. To have power with respect to oil, natural gas, minerals, and all other natural resources and rights to any interests therein, together with all equipment rights pertaining thereto, including oil and gas royalties, leases, payments, or other oil and gas interests of any character, whether owned in fee, as lessee, lessor, licensee, concessionaire or otherwise, either alone or jointly with others as partner, joint tenant, or joint venturer or in any other non-corporate manner, to:

(a) make oil, gas and mineral leases or subleases;

(b) pay delayed rents, lease bonuses, royalties, overriding royalties, taxes, assessments, and all other charges;

(c) sell, lease, exchange, mortgage, pledge or otherwise hypothecate any or all of such rights and interests;

(d) surrender or abandon, with or without consideration, any or all of such rights and interests;

(e) make farm-out, pooling, repressuration and unitization agreements;

(f) make reservations or impose conditions on the transfer of any such rights or interests;

(g) employ the most advantageous business form in which properly to exploit such rights and interests, whether as corporations, general or limited partnerships, mining partnerships, joint ventures, co-tenancies, or otherwise;

(h) drill, test, explore, mine, develop and otherwise exploit any and all such rights and interests;

(i) produce, process, sell or exchange all products recovered through the exploitation of such rights and interests, and to enter into contracts and agreements for or in respect of the installation or operation of absorption, reprocessing or other processing plants;

(j) carry any or all such interests in the name or names of a nominee or nominees;

(k) delegate, to the extent permitted by law, any or all of the powers set forth herein to the operator of such property; and

(l) employ personnel, rent office space, buy or lease office equipment,

contract and pay for geological surveys and studies, procure appraisals, and generally to conduct and engage in any and all activities incident to the foregoing powers, with full power to borrow and pledge in order to finance such activities. The fiduciary shall have the right to rely on the judgment and recommendations of the operators of such property and need not make an independent investigation before acting on their reasonable recommendations.

(6) Form Corporation or Other Entity. To form a corporation or other entity under the laws of any jurisdiction and to transfer, assign, and convey to such corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of any such corporation or entity, and to continue to hold such stock, securities and obligations.

(7) Fiduciary May Become Director or Officer. To vote for any individual fiduciary or any employee, officer or director of any corporate fiduciary, to be a director, officer, or both, of any corporation or small business investment company in which the estate or trust may be interested and to belong to any committee relating in any way to such corporation or company; and to serve as such director, officer, committee member, or any or all of them, and receive proper remuneration for such services, and to exercise its discretion with respect to all matters concerning the affairs of such corporation or company, and to consent to corporate or partnership sales, exchanges, leases, mortgages and encumbrances, without in any way being accountable for any such acts to any beneficiaries.

(8) Operate Farm. To continue any agricultural operation received by the fiduciary pursuant to the will or other instrument and to do any and all things deemed advisable by the fiduciary in the management and maintenance of any farm, which term includes, but is not limited to, a farm, garden, orchard, ranch, timber tract or dairy; and to do any and all things concerning the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including but not limited to the following powers:

(a) to operate the farm with hired labor, tenants or sharecroppers;

(b) to lease or rent the farm for cash or for a share of the crops;

(c) to purchase or otherwise acquire farm machinery and equipment and livestock;

(d) to undertake the construction, repairs and improvements to farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm;

(e) to make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm building, or for the purchase of farm machinery or equipment or livestock;

(f) to employ approved soil conservation practices in order to conserve, improve, and maintain the fertility and productivity of the soil;

(g) to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is for the best interest of the estate, or any trust;

(h) to ditch, dam and drain damp or wet fields and areas of the farm when and where needed;

(i) to engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such operations;

(j) to market the products of the farm;

(k) in general, to employ good husbandry in the operation of the farm.

(9) Residential Realty. To retain any residential real property or apartment and the contents of said real property or apartment received by it hereunder, to purchase, to rent and to maintain residential real property including an ordinary, cooperative or condominium apartment for occupancy, rent free, by any of the beneficiaries hereunder, so long as one or more of them wish to use and occupy it as a home, and to sell it when it is no longer so used and occupied, to pay all rent, taxes, assessments, repairs and other charges for maintaining such real and personal property or apartment, including title, public liability, fire and extended coverage insurance, and to make such purchases or payments out of such beneficiary's portion of the principal or income, in accordance with applicable law, as the fiduciary in its sole discretion shall determine.

(10) Deal with Estate and Trust. To deal in every way with the estate and trust of the settlor or testator, including but not limited to the purchase from, the sale to, the exchange of assets with such estate and trust, or the making of loans thereto, either secured or unsecured and either interest-free or at such rates of interest as the fiduciary shall determine, and to make loans from an estate to a trust, in the discretion of the fiduciary. The powers described herein may be exercised by the fiduciary even though it is the legal representative of the estate, and the fiduciary shall not incur any liability for any loss resulting from the exercise of any such power.

(11) Suits on Insurance Policies. To institute any proceeding at law or in equity to enforce the payment of any life insurance policy payable to the fiduciary and to do any and all things which it in its sole discretion deems advisable for the purpose of collecting any sums which may be due or payable under any such policy, provided, that the fiduciary shall be under no obligation to institute or enter into any such litigation to enforce the payment of any such policy until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part.

(12) Advancement of Income. The fiduciary, other than a beneficiary serving as a fiduciary, shall have the discretion to advance income to or for the use of any beneficiary and the fiduciary shall have a lien therefor on that beneficiary's future benefits.

(13) Majority Action Permissible. Where there are three or more fiduciaries, the decision of a majority of the fiduciaries shall bind all of the fiduciaries, but an absent or dissenting fiduciary who joins in carrying out the decision of the majority shall not be liable for the consequences of any

majority decision if said absent or dissenting fiduciary promptly files a written notice, by certified mail, of his dissent with its co-fiduciaries and with:

(a) the Probate Court having jurisdiction over any estate or trust,

(b) the income beneficiaries of any inter vivos trust, provided that liability for failure to join in administering the estate or trust or in preventing a breach of the trust may not thus be avoided.

(14) Reduce Interest Rates. To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(15) Establish and Maintain Reserves. In lieu of the basic power specified in subdivision (28) of Section 21 of this Chapter, the fiduciary shall have the power to set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation-obsolescence, amortization, depletion, other than percentage depletion, of mineral, timber or other wasting assets, and for repairs, improvements, and general maintenance of buildings, or other property out of rents, profits, or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries; provided that the provisions of this subdivision shall not affect the ultimate interests of beneficiaries in such reserves, although no beneficiary may compel distribution of amounts held in such reserves.

(16) Investment Philosophy. To invest with emphasis on growth and capital appreciation, and to apply the same criteria to both new assets and those already in the estate or trust. The fiduciary shall not be liable for any good faith action taken by it but only for negligence, since some assets in which it is authorized to invest are not ordinarily deemed suitable for fiduciary investment.

(17) Investment during Estate Administration. To invest and reinvest the assets of the estate actively and aggressively during the period of administration thereof.

(18) Premium and Discount. To determine whether or not to amortize from income as a sinking fund any premium paid to acquire property and to accrue any discount received at the time of acquisition thereof.

(19) Re-mortgage and Refinance Real Estate. To re-mortgage and refinance real estate for any one or more of the following purposes:

(a) business reasons;

(b) to obtain funds to pay:

(i) estate, inheritance, transfer, succession, generation-skipping or other death taxes or duties;

(ii) income, property, excise or other similar taxes;

(iii) interest and penalties on any tax, and

(iv) debts and funeral and administration expenses of the settlor or testator;  
or

(c) to invest or reinvest or speculate in real, personal or mixed property of any description and wherever situated.

(20) Terminate Small Trusts. To terminate any trust by distributing to the then income beneficiary of such trust the entire principal thereof, or an annuity purchased therewith, absolutely and free of trust, if the fiduciary, other than a beneficiary or the settlor serving as such, in its sole discretion, deems continuation of such trust unwarranted in view of the size of the trust.

(21) Distribute Directly to Remaindermen. To distribute property directly from the estate to the remaindermen of any trust, without the interposition of such trust, if the facts at the time for such distribution are such that no trust of such property would be operative under the terms of the will.

(22) Disclaimer of Power. To disclaim part or all of any one or more of the incorporated or specifically granted powers of the fiduciary by instrument in writing filed with the will, trust or other instrument incorporating this power and by complying with the provisions of Chapter 11, Sections 8 to 12, inclusive.

(23) Comply with Stock Restrictions. To observe and comply with any limitations on the disposition of any stock existing in the articles of incorporation, bylaws or other contract affecting such shares.

(24) Continue Subchapter S Election. To file appropriate consent to the continuation of any Subchapter S election in existence at the time of the testator's death, within the period required by the applicable provision of the federal Internal Revenue Code then in effect.

(25) Acquire Interest in Trust Asset. To acquire an undivided or an individual interest in a trust or estate asset in which the fiduciary, in any fiduciary capacity, holds an undivided interest.

(26) Income to Custodian for Minor. Any and all income or principal that is distributed, paid to or applied for the benefit of a minor may, in the discretion of the fiduciary, be paid to any person or corporation who is serving as a custodian for the benefit of said minor under the Uniform Gifts to Minors Act. If there is no such custodian, the fiduciary may appoint an adult member of the minor's family, a guardian of the minor, a bank with trust powers, or himself, herself, or itself to serve as such custodian and receive such payments.

(27) General Powers. To exercise every power and discretion in the management of the estate and the trusts created hereunder as the fiduciary would have if it were the absolute owner thereof. This general power shall not be limited in any way by the powers incorporated or granted herein, but no beneficiary serving as a co-fiduciary may participate in any decision, under this or any other power, that affects or could affect the share of such beneficiary relative to that of any other beneficiary in income, principal or in a trust

remainder.

24 M.P.T.L. ch. 4 § 23

**§ 23. Short Title: Fiduciary Powers Act**

Sections 20 to 23 of this Chapter, inclusive, shall be known as the "Fiduciary Powers Act." Any unqualified reference thereto by name or words of similar import shall be deemed to include all the powers listed in Section 21 of this Chapter, at the time of signing the will or trust instrument, but none of the additional powers listed in Section 22 of this Chapter.

24 M.P.T.L. ch. 4 § 24

**§ 24. Replacement of Fiduciary**

a. Removal of Fiduciary for Cause. If any fiduciary becomes incapable of executing his trust, neglects to perform the duties of his trust, wastes the estate in his charge, or fails to furnish any additional or substitute Probate bond ordered by the court, the Probate Court having jurisdiction may, upon its own motion, or upon the application and complaint of any person interested or of the surety upon the fiduciary's probate bond, after notice and a hearing, remove such fiduciary.

b. Resignation of fiduciary. The Probate Court, after notice and hearing, may accept or reject the written resignation of any fiduciary, but such resignation shall not be accepted until such fiduciary has fully and finally accounted for the administration of his trust to the acceptance of such court.

c. Resignation or Removal of Testamentary Trustee or Guardian. Trustees appointed by a testator to execute a trust created by will and testamentary guardians may resign or be removed, and the vacancies filled by the Probate Court in the manner provided under this Section, unless otherwise provided by the will.

d. Appointment of Successor Fiduciary. Bond. Except as otherwise provided in subsection (c) of this Section, upon the death, removal or acceptance of the resignation of any fiduciary before the completion of his duties, the Probate Court may appoint a suitable person to fill the resultant vacancy and such successor fiduciary shall give a probate bond.

e. Effect on lawsuits. All suits in favor of or against the original fiduciary shall survive to and may be prosecuted by or against the person appointed to succeed him.

24 M.P.T.L. ch. 4 § 25

**§ 25. Appeal from Removal of Fiduciary. Effect on Successor Fiduciary**

a. When any fiduciary has been removed for cause by the Probate Court, as

provided in Section 24 of this Chapter, the fiduciary may appeal from such order of removal in the manner provided in Chapter 3, Sections 32 to 38, inclusive. In the event of an appeal from the order of removal taken by the fiduciary who has been removed, the appointment of a successor shall not be stayed by the appeal but shall be a temporary appointment. Such successor fiduciary shall act during the pendency of the appeal and until the appeal is withdrawn or final judgment entered thereon.

b. If the order of removal is sustained upon appeal, such appointment shall become permanent.

c. If the order of removal is vacated upon appeal, such appointment may be terminated, subject to the obligation of such successor fiduciary to render a final account, and the acts of the successor fiduciary for the period of the pendency of the appeal shall be of full effect.

24 M.P.T.L. ch. 4 § 26

#### **§ 26. Enforcement of Delivery of Estate to Successor**

The Probate Court, after the removal of any fiduciary and the appointment of a successor fiduciary, may enforce the delivery to the successor fiduciary of any estate held by the former fiduciary by virtue of his original appointment in the same manner as a court of equity might do.

### **CHAPTER 5. WILLS: EXECUTION AND CONSTRUCTION**

24 M.P.T.L. ch. 5 § 1

#### **§ 1. Who may Make a Will**

Any person 18 years of age or older or an emancipated minor, and of sound mind, may dispose of his estate by will.

24 M.P.T.L. ch. 5 § 2

#### **§ 2. Making and Execution of Wills. Wills Executed Outside Tribal Lands**

A will or codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing in the testator's presence; but any will executed according to the laws of the state, Native American Tribes, or country where it was executed may be admitted to probate in the tribal court and shall be effectual to pass any property of the testator situated on the tribal lands.

24 M.P.T.L. ch. 5 § 3



**§ 3. Implied and Express Revocation of Wills**

a. If, after the making of a will, the testator marries or is divorced or his marriage is annulled or dissolved or a child is born to the testator or a minor child is legally adopted by him, and no provision has been made in such will for such contingency, such marriage, divorce, annulment, dissolution, birth or adoption of a minor child shall operate as a revocation of such will, provided such divorce, annulment or dissolution shall not operate as a revocation of such will if the spouse of the testator was not a beneficiary under such will.

b. A will or codicil shall not be revoked in any other manner except by burning, canceling, tearing or obliterating it by the testator or by some person in his presence by his direction, or by a later will or codicil.

24 M.P.T.L. ch. 5 § 4

**§ 4. Devise or Bequest to Subscribing Witness**

Every devise or bequest given in any will or codicil to a subscribing witness, or to the husband or wife of such subscribing witness, shall be void unless such will or codicil is legally attested without the signature of such witness, or unless such devisee or legatee is an heir to the testator. The competency of such witness shall not be affected by any such devise or bequest. The interest of any witness in any community, church, society, association or corporation, beneficially interested in any devise or bequest, shall not affect such devise or bequest or the competency of such witness.

24 M.P.T.L. ch. 5 § 5

**§ 5. Reference to Document Creating Trust**

The reference in a will or codicil to a trust document by which a devise or bequest is made to such trust shall not thereby cause such trust or such part of the assets thereof distributed to it by such devise or bequest to be subject to the jurisdiction of the Probate Court in which such will or codicil is admitted to Probate.

24 M.P.T.L. ch. 5 § 6

**§ 6. Uniform Testamentary Additions to Trusts Act**

a. A will may validly devise or bequeath property to the trustee or trustees of a trust established or to be established:

(1) during the testator's lifetime by the testator, by the testator and some other person or persons, or by some other person or persons including a funded or non-funded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise to the trustee or trustees

if the trust is identified in the testator's will or codicil and its terms are set forth in a written instrument, other than a will or codicil, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest shall not be invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the testator's death.

b. Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

c. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death shall cause the devise or bequest to lapse.

d. This Section may be cited as the "Uniform Testamentary Additions to Trusts Act".

24 M.P.T.L. ch. 5 § 7

#### **§ 7. Effect of Devise of all Real Property**

Every devise purporting to convey all the real property of the testator shall be construed to convey all the real property belonging to him at the time of his decease, unless it clearly appears by his will that he intended otherwise.

24 M.P.T.L. ch. 5 § 8

#### **§ 8. Reference to Internal Revenue Code**

A devise or bequest, outright or in trust, given in any will or codicil or republication thereof in any codicil shall not be deemed invalid by reason of any reference therein to the federal Internal Revenue Code or any treasury regulation issued thereunder.

24 M.P.T.L. ch. 5 § 9

#### **§ 9. Gift to Spouse; Reference to Federal Provisions Re: Estate Tax and Marital Deduction**

When any will, offered for probate in tribal court makes provision for a gift, whether outright or in trust, to or for the benefit of the spouse of the testator or testatrix, such gift shall not be held to be invalid on any of the following grounds: (1) that the amount of any such gift is required to be

computed or ascertained by reference to the federal statutes, or any treasury regulation issued thereunder, authorizing the allowance of a marital deduction in the computation of the federal estate tax or by reference to determinations or settlements of any kind whatsoever, whether by agreement, litigation or otherwise, in the proceedings for the assessment of said federal estate tax in the estate of such testator or testatrix; (2) that any such gift is required to be satisfied only by property which qualifies under said federal statutes, or such regulation, for such marital deduction; or (3) that any property allotted to the satisfaction of any such gift is required to be allotted at the values determined for such property, whether by agreement, litigation or otherwise, in such proceedings for the assessment of said federal estate tax or at values to be determined in any other reasonable manner.

24 M.P.T.L. ch. 5 § 10

**§ 10. Encumbrances on Property of Decedent or on Proceeds of Insurance Policy on Life of Decedent not Chargeable Against Assets of Decedent's Estate**

a. Where any property, subject to any lien, security interest or other charge at the time of the decedent's death, is specifically disposed of by will, passes to a distributee, or passes to a joint tenant under a right of survivorship, or where the proceeds of any policy of insurance on the life of the decedent are payable to a named beneficiary and such policy is subject to any lien, security interest or other charge, the fiduciary, as defined in Chapter 6, Section 37, is not responsible for the satisfaction of such encumbrance out of the assets of the decedent's estate, unless, in the case of a will, the testator has expressly or by necessary implication indicated otherwise. A general provision in the will for the payment of debts is not such an indication.

b. Any such encumbrance is chargeable against the property of the decedent or the proceeds of a policy of insurance on the life of the decedent, subject thereto. Nothing in this Section imposes upon a testamentary beneficiary, distributee, joint tenant or named insurance beneficiary any personal liability for the payment of the debt secured by such encumbrance.

c. Where any lien, security interest or other charge encumbers:

(1) property passing to two or more persons, the interest of each such person shall, only as between such persons, bear its proportionate share of the total encumbrance;

(2) two or more properties, each such property shall, only as between the recipients thereof, bear its proportionate share of the total encumbrance.

24 M.P.T.L. ch. 5 § 11

**§ 11. Bequest of Perishable Property for Life or Years**

When a testator, by his will, bequeaths the use, for life or for a term of years, of any livestock, provisions, wearing apparel or other personal property

which will necessarily be consumed by using, such bequest shall give to the legatee an absolute estate in the property so bequeathed.

## CHAPTER 6. DECEDENTS' ESTATES

24 M.P.T.L. ch. 6 § 1

### **§ 1. Settlement of Small Estates without Probate of Will or Letters of Administration**

a. The surviving spouse of any person who dies, or if there is no surviving spouse, any of the next of kin of such decedent, or if there is no next of kin or if such surviving spouse or next of kin refuses, then any suitable person whom the court deems to have a sufficient interest may, in lieu of filing an application for admission of a will to probate or letters of administration, file an affidavit in the Probate Court in the district wherein the decedent resided, stating, if such is the case, that all debts of the decedent have been paid in the manner prescribed by Section 48 of this Chapter, at least to the extent of the fair value of all of the decedent's assets, when: (1) such decedent leaves property of the type described in subsection (b) of this Section and (2) the aggregate value of any such property as described in subsection (b) of this Section does not exceed the sum of \$20,000.

b. Such property includes:

(1) A deposit in any bank;

(2) equity in shares in any savings and loan association, federal savings and loan association or credit union, doing business in this state;

(3) corporate stock or bonds;

(4) any unpaid wages due from any corporation, firm, individual, association or partnership located in this state;

(5) a death benefit payable from any fraternal order or shop society or payable under any insurance policy for which the decedent failed to name a beneficiary entitled under the bylaws and regulations of such order or society or under the terms of such insurance policy to receive such death benefit;

(6) other personal property, tangible or intangible, including a motor vehicle or motor vehicles and a motor boat or motor boats registered in his name; or

(7) an unreleased interest in a mortgage with or without value.

c. Thereafter, except as provided in subsection (e) of this Section, the probate judge shall issue a decree finding that no probate proceedings have been instituted in connection with the estate of such decedent and authorizing either the holder of such property or the registrant thereof, including the authority issuing the registration, to transfer the same or pay the amount thereof to the persons legally entitled thereto. The Probate Court may issue

such certificates and other documents as may be necessary to carry out the intent of this Section. If the petitioner indicates in such affidavit that the assets listed in such affidavit or a portion thereof are necessary to pay the funeral director who buried such decedent or to pay debts due for the last sickness of the decedent, the court may order the payment of such assets directly to such funeral director or to those creditors to whom debts are due for the last sickness of the decedent to the extent necessary to pay their preferred claims for funeral expenses or expenses for the decedent's last sickness, or may order such assets sold and the proceeds from such sale paid directly to the funeral director or such creditors. Any decree issued by the court may authorize the surviving spouse or next of kin, or some suitable person whom the court deems to have a sufficient interest, to release an interest in any mortgage reported under the provisions of this Section.

d. If there is no surviving spouse or next of kin of a person who dies leaving property as described in this Section, the funeral director who buried such decedent or any creditor to whom a debt is due for the last sickness of the decedent may file in the Probate Court an affidavit as described in this Section that such funeral director or any creditor to whom a debt is due for the last sickness of the decedent has a lawful preferred claim for funeral expenses or expenses for the decedent's last sickness. Thereupon such court may, in its discretion, authorize either the holder of such property or the registrant thereof, as aforesaid, to transfer the property or pay from the property the amount of such claim, or to pay proceeds from the sale of any such assets ordered sold by the court, to such funeral director or any creditor to whom a debt is due for the last sickness of the decedent, in satisfaction of the amount of the claim of each.

e. If an affidavit is filed under subsection (a) of this Section in lieu of an application for admission of a will to probate or letters of administration and the fair value of the property of the decedent exceeds the total amount of claims, including any amounts allowed to the family under Section 25 of this Chapter, the court shall proceed as follows:

(1) If no purported last will and testament is found, the court shall order distribution of the excess in accordance with the laws of intestate succession;

(2) If the decedent left a duly executed last will and testament and the will provides for a distribution which is the same as that under the laws of intestate succession, the court shall order distribution of the excess in accordance with the laws of intestate succession;

(3) If the decedent left a duly executed last will and testament and the will provides for a distribution different from that under the laws of intestate succession, and the heirs at law of such decedent sign a written waiver of their right to contest the will, the court shall order the excess to be paid in accordance with the terms of the will;

(4) If the will directs a distribution different from the laws of intestate succession, and the heirs at law do not waive their right to contest the admission of such will, the will shall be offered for Probate in accordance with Section 8 of this Chapter. In such case, the court may issue a decree under this Section only if the persons entitled to take the bequests under the will consent, in writing, to the distribution of the bequests in accordance

with the laws of intestate succession. If the claims against the estate exceed the value of the property of such decedent, the claims shall be paid in accordance with the priorities set forth in Section 48 of this Chapter. As used in this subsection, the term "will" includes any duly executed codicil thereto.

f. Any such transfer or payment shall, to the extent of the amount so transferred or paid, discharge the registrant or holder of such property from liability to any person on account thereof.

g. As a condition of such transfer or payment, the registrant or holder may require the filing of appropriate waivers, the execution of a bond of indemnity and a receipt for such transfer or payment.

24 M.P.T.L. ch. 6 § 2

### **§ 2. Payment of Medical or Health Benefits**

When any decedent is entitled to payment of medical benefits, tribal, federal, or state, or insurance or health benefits or proceeds, or other intangible personal property owned by or payable to him or to his estate in a sum not exceeding \$1,000, the probate judge may name an administrator, ex parte, for the purpose of enabling distribution to the surviving spouse or, if there is no surviving spouse, to the next of kin of such decedent or to the funeral director or physician, as the case may be, upon evidence satisfactory to him that all debts have been paid or provided for as prescribed by Section 48 of this Chapter.

24 M.P.T.L. ch. 6 § 3

### **§ 3. Applicability of Statutes**

Sections 1 and 2 of this Chapter shall apply only to estates of decedents for whom no will is presented for Probate or no application for administration is filed within 30 days after death.

24 M.P.T.L. ch. 6 § 4

### **§ 4. Custodian of Will to Deliver it after Testator's death. Penalty**

a. Any person having in his possession any will or codicil shall, forthwith, after he has knowledge of the death of the testator, deliver such will either to the person designated to be the executor or one of the persons designated to be an executor thereof, or to the judge or clerk of the Probate Court.

b. On the neglect of such person to do so within the period of 30 days after he has knowledge of the death of the testator, he shall be fined not more than \$1,000.

24 M.P.T.L. ch. 6 § 5

**§ 5. Executor to Exhibit Will for Probate. Penalty for Failure**

a. Every person having knowledge of his designation in a will as an executor of a testator's estate shall, within 30 days next after the death of the testator, apply for Probate of the will to the Probate Court.

b. Every such person neglecting to do so shall be fined not more than \$100.

24 M.P.T.L. ch. 6 § 6

**§ 6. Opening of Safe Deposit Boxes to Search for a Will**

Whenever the sole owner of a safe deposit box dies, his next of kin, spouse, or any person showing a sufficient interest in the presence of a will may apply to the Probate Court for an order to open the decedent's safe deposit box to obtain any will or cemetery deed that may be contained therein. The Probate Court may issue such order ex parte. The safe deposit box shall be opened in the presence of an officer of the bank who shall make return of such order to the court stating: (a) that only the will or cemetery deed was removed from the safe deposit box or (b) that there was no such will or cemetery deed in the safe deposit box and nothing was removed.

24 M.P.T.L. ch. 6 § 7

**§ 7. Proof of Will out of Court**

Any or all of the attesting witnesses to any will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make and sign an affidavit before any officer authorized to administer oaths in or out of the state of Connecticut or tribal lands, stating such facts as they would be required to testify to in court to prove such will. The affidavit shall be written on such will or, if that is impracticable, on some paper attached thereto. The sworn statement of any such witness so taken shall be accepted by the Probate Court as if it had been taken before the court.

24 M.P.T.L. ch. 6 § 8

**§ 8. Hearing Required before Proving or Rejecting a Will. Notice**

The Probate Court shall, before proving or disapproving any last will and testament, or codicil thereto, hold a hearing thereon, of which notice, either public or personal or both, as the court may deem best, has been given to all parties known to be interested in the estate, unless all parties so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. The finding by the court that the estate is not more than sufficient to pay the expenses of administration and of the funeral and last sickness shall be sufficient cause to dispense with such

notice.

24 M.P.T.L. ch. 6 § 9

**§ 9. Recording of a Will Proved Outside Tribal Lands**

a. When a will conveying property situated on the tribal lands has been proved and established outside tribal lands by a court of competent jurisdiction, the executor of such will or any person interested in such property may present to the Probate Court, an authenticated and exemplified copy of such will and of the record of the proceedings proving and establishing the will and request that such copies be filed and recorded. The request shall be accompanied by a complete statement in writing of the property and estate of the decedent on the reservation. If, upon a hearing, after such notice to other parties in interest as the court orders, no sufficient objection is shown, the Probate Court shall order such copies to be filed and recorded, and they shall thereupon become a part of the files and records of such court, and shall have the same effect as if such will had been originally proved and established in such Probate Court.

b. Nothing in this Section shall give effect to a will made on the reservation by an inhabitant thereof which has not been executed according to the laws of the Tribe.

c. If the Probate Court finds sufficient objection to such will, the applicant shall offer competent proof of the contents and legal sufficiency of the will except that the original thereof need not be produced unless so directed by the Probate Court.

24 M.P.T.L. ch. 6 § 10

**§ 10. When Bond Required of Executor. Amount of Bond. Reduction of Bond**

a. A probate bond shall be required of an executor, unless such bond is excused as provided by law.

b. If the will designates a person to be an executor and directs that no bond or that a bond of a certain amount only shall be required of such executor, the Probate Court shall follow such provisions of the will if no objection to such provisions has been filed, provided, if an objection has been filed or the Probate Court determines that for cause shown the filing of a bond is necessary for the protection of creditors, a bond shall be required in an amount which shall not be less than an amount equal to twice the amount of the debts of the deceased as estimated by the court or to the amount named in the will, whichever of such amounts is the greatest.

24 M.P.T.L. ch. 6 § 11

**§ 11. Administration with the Will Annexed and De Bonis Non**



a. If no person has been designated in a will to be executor, or if the person designated in the will to be executor has died or refuses to accept or is incapable of accepting such trust, and no alternate or successor has been named, the court shall commit the administration of the estate, with the will annexed, to any person or persons in accordance with the order of priority for the appointment of administrators under subsection (c) of Section 19 of this Chapter, except that any person who is entitled to a bequest or devise under such will, or his or her designee, shall have priority over a person who is not so entitled, or on the objection of any one interested under such will or of any creditor, which objection is found reasonable by the court, the court may commit the administration of the estate, with the will annexed, to any person whom the court deems proper, taking a probate bond.

b. If during the settlement of an estate, the executor or the administrator with the will annexed appointed by the court dies or resigns or is removed from such trust, and no alternate or successor has been named in the will, the court shall appoint an administrator of the estate with the will annexed, de bonis non, subject to the same provisions as to hearing, notice, waiver of or order dispensing with notice, selection of the administrator and bond, as are stated in this Section and Section 8 of this Chapter.

c. If the person designated in the will to be executor has died or refuses to accept or is incapable of accepting such trust, or if during the settlement of the estate, the executor appointed by the court dies, or resigns or is removed from such trust, and the will names an alternate or a successor, the court shall appoint such alternate or successor executor named in said will as executor, who shall have all the powers and duties as provided in the will. Such appointment shall be subject to the same provisions as to hearing, notice, waiver of or order dispensing with notice, and bond, as are stated in this Section and Sections 8 and 10 of this Chapter.

24 M.P.T.L. ch. 6 § 12

#### **§ 12. Executor to Administer Intestate Part of an Estate**

When a will which disposes of only a part of the estate of the testator is admitted to Probate, the executor of such will, or the administrator with the will annexed, shall, unless otherwise specified in such will, be, ex officio, the administrator of the intestate estate and shall proceed to settle the entire estate according to the will and according to law.

24 M.P.T.L. ch. 6 § 13

#### **§ 13. Executor of an Executor**

The executor of an executor shall not as such administer the estate of the first testator.

24 M.P.T.L. ch. 6 § 14

**§ 14. Notice of Devise or Bequest to Corporation**

Within 30 days after the admission to probate of any will containing a devise or bequest to any corporation or voluntary association, the judge or clerk of the Probate Court shall mail, postage paid, a written notice thereof, directed to the devisee or legatee at the place where it is located.

24 M.P.T.L. ch. 6 § 15

**§ 15. Expenses of Executor or Administrator in Will Contest**

a. The Probate Court shall allow to the executor his just and reasonable expenses in defending the will of such person in the Probate Court, whether or not the will is admitted to probate.

b. If there is an appeal from the order or decree of such court, admitting or refusing to admit to probate the will of such person, the Probate Court shall allow to the executor or administrator his just and reasonable expenses in supporting and maintaining or defending against such will, on such appeal.

c. Such expenses shall be charged by such court pro rata against the respective rights or shares of the devisees and legatees under such will and the distributees of such estate.

24 M.P.T.L. ch. 6 § 16

**§ 16. Court may Annul Orders Passed Under**

a. Revoked Will. Subsequent Settlement Procedure. When it appears to the Probate Court, pending proceedings before it for the settlement of the estate of a deceased person as a testate estate, that the will under which such proceedings were commenced and have been continued had been revoked in accordance with the provisions of subsection (b) of Section 4 of Chapter 5, the court shall have power to revoke, annul and set aside any order or decree proving or approving the will so revoked and any other order or decree made and passed by such court in the settlement of the estate under such will.

b. The court may thereafter proceed with the settlement of the estate under a subsequent will if there is one or, if there is no subsequent will, may grant administration on the estate of such deceased person and proceed with the settlement of the estate as an intestate estate upon such notice to all parties in interest as the court orders.

24 M.P.T.L. ch. 6 § 17

**§ 17. Procedure if, on Appeal, Will is Set Aside after Partial Settlement.  
Effect on Fiduciary**

When a will is admitted to probate by the Probate Court, and an appeal is taken from the probate of such will, the acts done in good faith by the executor of

such will or by an administrator with the will annexed in settling the estate of the testator shall be deemed valid to the same extent as if no appeal had been taken. When an inventory and appraisal have been returned to court by such executor or administrator with the will annexed, and when an order limiting the time for the presentation of claims against the estate of such testator has been passed and published, a further inventory and appraisal shall not be required except of property not included in the inventory returned to court, and further time need not be given for presentation of claims against such estate, if upon such appeal such will is set aside by the appellate court. Nothing in this Section shall authorize the executor or administrator with the will annexed to pay any legacies named in the will so appealed from while such appeal is pending.

24 M.P.T.L. ch. 6 § 18

#### **§ 18. Procedure if Will is Found after Partial Settlement**

When it appears to the Probate Court, during proceedings before it for the settlement of the estate of a deceased person as an intestate estate, that such deceased person left a will, the court shall have power to revoke any order or decree granting letters of administration upon such estate and any other order or decree made by the court in the settlement of such estate as an intestate estate. The court may thereafter proceed with the settlement of such estate under such will, upon notice to all parties in interest as required in the settlement of testate estates. The acts already done in good faith before the court revokes the order or decree granting administration by the administrator of such estate in the settlement thereof shall be deemed valid to the same extent as if such letters had not been revoked. If an inventory and appraisal have been returned to the court by such administrator, a further inventory or appraisal shall not be required, except of property not included in such inventory. If an order limiting the time for the presentation of claims against such estate has been passed and published, further time shall not be required to be given for presentation of such claims.

24 M.P.T.L. ch. 6 § 19

#### **§ 19. Jurisdiction of Intestate Estates. Probate Costs. Issuance of Letters of Administration**

a. Jurisdiction of Intestate Estates. Probate Costs. When any Indian domiciled on tribal lands dies intestate, the Probate Court shall have jurisdiction to grant letters of administration.

b. Application, Notice and Hearing re: Letters of Administration. Upon application for letters of administration to the Probate Court of the estate of an intestate decedent, the court shall, before granting letters of administration, after notice required by this Section, hold a hearing. Notice of such hearing, either public notice, personal notice or both as the court deems best, shall be given to all persons interested in such estate, unless all persons so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. The finding

by the court that such estate is not more than sufficient to pay the expenses of administration, the funeral and last sickness shall be sufficient cause to dispense with such notice.

c. To Whom Letters of Administration Granted. Upon hearing as required by this Section, the Probate Court having jurisdiction shall grant administration of the intestate decedent's estate to any one or more persons or their designees appointed in the following order, provided such person or persons are entitled to share in the estate of the decedent:

(1) the surviving spouse;

(2) any child of the decedent or any guardian of such child as the court shall determine;

(3) any grandchild of the decedent or any guardian of such grandchild as the court shall determine;

(4) the decedent's parents;

(5) any brother or sister of the decedent;

(6) the next of kin entitled to share in the estate, or, on their refusal, incapacity or failure to give bond or upon the objection of any heir or creditor to such appointment found reasonable by the court, to any other person whom the court deems proper.

d. If the intestate decedent resided off tribal lands leaving property on tribal lands, the Probate Court may, upon notice and hearing as required by this Section, grant administration to such person as the court deems proper.

e. Bond Required of Administrator. The court, upon granting any administration, shall take a Probate bond from the administrator or any successor administrator appointed by the Probate Court.

24 M.P.T.L. ch. 6 § 20

## **§ 20. Finding of Domicile**

Upon the admission of any will to probate or the appointment of an administrator of the estate of any deceased person, or the placing of a will on file under Section 9 of this Chapter, the Probate Court shall make a finding as to the domicile of such person at the time of death. Upon application of any interested party, the Probate Court may grant any administration or admit any will to probate or place any will on file subject to a subsequent and final finding of domicile, or for any other reason the Probate Court may find proper, and upon such conditions and limitations as the Probate Court shall determine advisable for the due and proper administration of the decedent's estate. Any person interested in such estate may appeal from such finding as provided in Chapter 3, Section 32.

24 M.P.T.L. ch. 6 § 21

## **§ 21. "Fiduciary" Defined**

As used in Chapter 4, Sections 1, 20 to 22; Chapter 6, Sections 1 to 3, inclusive, 21 to 24 inclusive, and 25 to 30, inclusive, unless otherwise required by the context, "fiduciary" includes the executor or administrator of a decedent's estate.

24 M.P.T.L. ch. 6 § 22

## **§ 22. Appointment of Temporary Administrator or Trustee or an Officer to Preserve Assets. Bond**

Whenever, upon the application of a creditor or other person interested in the estate of a deceased person or insolvent debtor, it is found by the Probate Court of the estate that the granting of administration on the estate or the probating of the will of the deceased or the appointment of a trustee in insolvency will be delayed, or that it is necessary for the protection of the estate of the deceased or insolvent person, the court may, with or without notice, appoint a temporary administrator or trustee to hold and preserve the estate until the appointment of an administrator or trustee or the probating of the will. The court shall require from such administrator or trustee a probate bond. If the court deems it more expedient, it may order any deputy sheriff or constable to take possession of the estate until the appointment of an administrator, executor or trustee.

24 M.P.T.L. ch. 6 § 23

## **§ 23. Powers and Duties of Temporary Appointee. Removal. Account**

a. The temporary administrator or officer appointed pursuant to the provisions of Section 22 of this Chapter shall take immediate possession of all the real and personal property of the deceased, collect the rents, debts and income thereof and do any additional acts necessary for the preservation of the estate that the court authorizes.

b. Such administrator or officer may be authorized by the court to sell any personal property of the estate which is perishable in its nature or which the court finds cannot be retained to advantage, and may be further authorized to make up or complete any stock or materials in an unfinished state, and to continue any business, so far as may be necessary for the preservation of the same.

c. Such administrator or officer shall file forthwith under oath an inventory of all personal property of the deceased and, when ordered to do so, shall exhibit to the court an account of his actions.

d. Such administrator or officer may be removed by the court with or without notice and a successor appointed whenever such action appears to the court advisable.

e. Upon the appointment and qualification of the administrator or the administrator with the will annexed or the qualification of the executor, such temporary administrator or such officer shall exhibit forthwith to the court an account of his trust and deliver to the administrator, executor or administrator with the will annexed all of the estate of the deceased remaining in his hands.

24 M.P.T.L. ch. 6 § 24

#### **§ 24. Custody of Remains of Deceased Persons**

The custody and control of the remains of deceased Indian residents of the tribal lands shall belong to the surviving spouse of the deceased. If the surviving spouse had abandoned, and at the time of death was living apart from, the deceased, or if there is no spouse surviving, then such custody and control shall belong to the next of kin, unless the decedent, in a duly acknowledged writing, designated another person to have custody and control of his remains. The Probate Court may at any time, upon the petition of any of the kin or such person, award such custody and control to that person who seems to the court most fit to have the same. If a deceased Indian resident of the tribal lands leaves no spouse, next of kin or designated person surviving, or if the spouse, next of kin or designated person cannot be contacted after due diligence to assume custody and control of the remains of such decedent as provided in this Section, or if the spouse, next of kin or designated person refuses to assume such custody and control, the Probate Court of the deceased may, upon the petition of a representative of the Tribe or a licensed funeral director grant such custody and control to some suitable person.

24 M.P.T.L. ch. 6 § 25

#### **§ 25. Allowance for Support of Surviving Spouse and Family. Family Car**

a. The Probate Court may allow out of any real or personal estate of a deceased person in settlement before the Court, including a small estate being settled under the provisions of Section 1 of this Chapter, such amount as it may judge necessary for the support of the surviving spouse or family of the deceased during the settlement of the estate.

b. In making such allowance the court may in its discretion include in its decree ordering such allowance any one or more of the following provisions, to the extent they are not mutually inconsistent:

(1) A provision that such allowance shall run;

(a) for the entire period the estate is in settlement; or

(b) for a fixed period of time not to exceed the period of settlement, in which case such allowance shall be subject to renewal by the court in its discretion;

(2) a provision that such allowance is to be paid in a lump sum;

(3) a provision that such an allowance made for a surviving spouse shall vest in such spouse retroactively as of the moment of death of his spouse so that it will be a fixed sum certain as of said date of death and shall not terminate with the subsequent death or remarriage of the surviving spouse, such allowance to be the absolute property of the surviving spouse, or, if deceased, of the estate of such surviving spouse, without restriction as to use, encumbrance or disposition and for the purpose of this Section, the right to seek such a vested allowance shall be a vested right as of the date of death of the deceased spouse; and

(4) a provision that such allowance shall be charged ultimately in whole or in part against any right the surviving spouse or other family member for whom an allowance is ordered may have to the income of the estate earned during the period of settlement.

c. The court may also allow for the use during the settlement of the estate by such surviving spouse or family of any motor vehicle maintained by the decedent during his lifetime as a family car.

24 M.P.T.L. ch. 6 § 26

**§ 26. Partition or Sale of Undivided Interest in Decedent's Estate. Notice. Hearing**

a. During the settlement of the estate of any person who died owning an undivided interest in any property not specifically devised or bequeathed, the executor or administrator of the estate and the owner or owners of the major portion of the other interest therein may apply in writing to the Probate Court having jurisdiction of the estate to order partition of the same.

b. Unless the petition for the partition of such interest in property is signed by all the persons in interest, or the guardians of such of them as are minors, or the conservators of such of them as are incapable persons having conservators, the court shall, following public notice, fully hear the case and make all orders as the interests of the parties and the estate demand. In such case the court shall not order partition unless upon full hearing it appears that the best interests of the estate and of the parties concerned will be promoted thereby.

c. If, upon such petition, it is the opinion of the Court of Probate that a sale will better promote the interests of the owners, or that the property cannot be beneficially divided for the purpose of distribution, it may order the sale of any or all such property in such manner and upon such notice as it deems expedient; but unless the petition for the partition or sale of such interest in property is signed by all the persons in interest, or the guardians of such of them as are minors, or the conservators of such of them as are incapable persons having conservators, the court shall, following public notice, fully hear the case and make all orders as the interests of the parties and the estate demand. In such case the court shall not order sale unless upon full hearing it appears that the best interests of the estate and of the parties concerned will be promoted thereby. An order to sell pursuant to this

Section shall not be made until the executor, administrator or person designated to sell gives a probate bond to secure the execution of his trust according to the order of the court and according to law unless the Probate Court dispenses with the requirement of a probate bond as provided in Chapter 3, Section 25.

d. The court may appoint for the purpose of partitioning such property a committee of three disinterested persons, who shall be sworn and shall make a return of their actions to the court according to the order thereof. Such partition, when so made and returned to and accepted by the court, and all orders and decrees relating thereto, shall bind all persons interested therein and their heirs.

e. The portion set to the estate of the deceased person shall be treated as if the same had been partitioned in the lifetime of such deceased person by the court.

f. If the name or residence of any party entitled to share in the proceeds of property so sold is unknown to the court and cannot be ascertained, it shall appoint a trustee for the share of such party. Such trustee shall give a probate bond and shall hold such share until demanded by the person or persons entitled thereto.

24 M.P.T.L. ch. 6 § 27

**§ 27. Court may Authorize Stock and Materials to be Worked up or Business to be Continued**

Fiduciaries of a decedent's estate and trustees in insolvency may be authorized by the Probate Court to work up and complete any stock and materials in an unfinished state, or to continue any business so far as may be expedient for the prudent winding up of the same, if the court finds that it will be for the interest of the estate.

24 M.P.T.L. ch. 6 § 28

**§ 28. Settlement of Estate on Presumption of Death**

a. Any person who has been absent from his home and unheard of for a period of seven or more years shall be presumed to be dead.

b. If such person left a will, it shall be presented for probate, and, if he left no will, administration on his estate shall be granted by the Probate Court, as provided in Section 19 of this Chapter, and his estate may be settled and distributed in the same manner as if he were known to be dead.

c. After such administration and distribution, the fiduciary shall not be liable to the person so presumed to be dead in any action for the recovery of the estate.

24 M.P.T.L. ch. 6 § 29



**§ 29. Time Limited for Granting Administration or Proving Will; Exceptions**

Except as provided in Chapter 4, Section 24, administration of the estate of any person shall not be granted, nor shall the will of any person be admitted to Probate, after 10 years from his decease, unless the Probate Court upon written petition and after public notice and hearing finds that administration of such estate ought to be granted, or that such will should be admitted to probate; but when any minor is interested, one year shall be allowed after his arrival at the age of majority to take out administration or to cause such will to be proved. In all cases where any person has died leaving property which is not known to those interested in the same within the time above limited, but is discovered afterwards, administration may be granted within one year after its discovery.

24 M.P.T.L. ch. 6 § 30

**§ 30. Settlement of Estate after ten Years. Closure of Estate for Dormancy**

a. Whenever for any cause the settlement of any decedent's estate after the appointment of a fiduciary has been delayed or not completed, the Probate Court before which the same is pending may at its discretion proceed with the settlement of such estate, although more than 10 years have elapsed since any proceedings have been taken, and in such case may make all such orders as might have been proper if such settlement had not been delayed.

b. In any such case in which it appears to the court that the fiduciary has neglected or refused to complete administration of the estate and the appointment of a successor fiduciary would serve no useful purpose, the court may hold a hearing, after giving public notice thereof and notice to such others as the court deems reasonable. Thereafter, on its own motion, the court may order and decree the estate closed for dormancy and the bond released without adjudication and the estate shall be closed and only reopened by further order of the court; provided the bond shall be released for future acts and not for any acts or misdeeds occurring during the period of administration of the estate.

24 M.P.T.L. ch. 6 § 31

**§ 31. "Fiduciary" Defined**

As used in Sections 31 to 36 of this Chapter, inclusive, "fiduciary" includes the executor or administrator of a decedent's estate.

24 M.P.T.L. ch. 6 § 32

**§ 32. Inventory to be Filed. Property Included in Inventory. Appraisal. Time Limits. Sale of Personal Property. Hearing. Return of Sale**

a. (1) Inventory of all the property of every deceased person and insolvent debtor, except real property situated off the tribal lands, duly appraised, shall be made and sworn to by the fiduciary;

(2) When any personal property of a deceased person or insolvent debtor is located outside tribal lands the court may receive an inventory of such property, accompanied by such evidence of its value as it deems sufficient and sworn to by the fiduciary;

(3) The inventory and appraisal of the estate of any deceased nonresident shall include only such interest as the decedent had at the time of his death in the tangible personal property situated on tribal lands and intangible personal property, provided intangible personal property shall not be included if the proceeding in the state of Connecticut with regard to such estate is ancillary to a proceeding in another jurisdiction.

(4) The fiduciary shall appraise or cause to be appraised such inventoried property at its fair market value.

b. (1) The fiduciary shall file the inventory in the Probate Court within two months after the acceptance of the bond or other qualification of the fiduciary.

(2) The court may, for cause shown, extend the time for the filing of such inventory to not more than four months from the qualification of the fiduciary.

c. If the court grants administration of a decedent's estate to a person other than:

(1) the person designated in the will as executor or successor to such executor;

(2) the surviving spouse;

(3) any child of the decedent or any guardian of such child as the court shall determine;

(4) any grandchild of the decedent or any guardian of such grandchild as the court shall determine;

(5) the decedent's parents;

(6) any brother or sister of the decedent; or

(7) the next of kin entitled to share in the estate.

The fiduciary appointed by the court shall file an inventory as required by this Section prior to the sale, either under a power in the will or under the laws of this state, of any property; except that if the fiduciary appointed is a Connecticut bank and trust company or national banking association authorized to do business in Connecticut, such fiduciary shall not be required to file such an inventory of intangible personal property prior to sale. The fiduciary shall send a copy of such inventory to each person interested in the estate and shall notify each such person by certified mail, return receipt requested, that

a sale of certain items in the inventory is contemplated. Such notice shall inform the recipient that he or she may object to such sale by filing a notice of objection in writing with the Probate Court within five days after receipt of such notice of sale. Upon receipt of such notice of objection, the court shall set a time and place for a hearing, with notice to all persons interested in the estate.

d. Notwithstanding the provisions of subsection (c), upon application by the fiduciary, the sale of personal property without a hearing prior to the filing of an inventory and notice of sale, provided the court finds that an expeditious sale is necessary for the protection of the estate and a delay would cause irreparable harm to the estate.

e. The fiduciary shall file a return of sale with the court after any sale of personal property of the decedent.

24 M.P.T.L. ch. 6 § 33

### **§ 33. Penalty for not Filing Inventory**

If any fiduciary fails to file in the Probate Court an inventory and appraisal for the estate of a deceased person as required, within the time limited, the court may cite such fiduciary to appear at a time and place therein stated and show cause why he should not be removed. Unless sufficient cause is shown and an inventory and appraisal is forthwith filed, the court shall remove such fiduciary and appoint a successor to complete the administration of such estate.

24 M.P.T.L. ch. 6 § 34

### **§ 34. Objections to Inventory or Appraisal. Notice and Hearing**

a. Within 60 days after the receipt of such inventory and appraisal by the court any interested party may file in the court a statement in writing setting forth in detail such objections as he may have to the acceptance of the inventory or appraisal.

b. Upon the filing of the objections, the court shall order a hearing on the acceptance of the inventory and appraisal to be had within 60 days and not less than 15 days after the filing of the objections. The court shall cause notice of the time and place of the hearing to be forthwith given to the fiduciary of the estate and to each party in interest.

c. The court, upon such hearing, shall hear the objections and may order the fiduciary to amend the inventory or appraisal in any way that it finds proper, and may accept the same as amended.

24 M.P.T.L. ch. 6 § 35

**§ 35. Appointment of Court-Appointed Appraisers Prohibited**

There shall be no court-appointed appraisers of any decedent's property.

24 M.P.T.L. ch. 6 § 36

**§ 36. Beneficiary Designation Exempt from Laws Governing Transfer by Will**

The designation in accordance with the terms of: (1) an insurance, annuity or endowment contract, or of any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof; or (2) any thrift plan, savings plan, pension plan, profit-sharing plan, death benefit plan, stock bonus plan, employee stock ownership plan, retirement plan including a self-employed retirement plan, qualified cash or deferred arrangement which is part of a profit-sharing plan or stock bonus plan, individual retirement account, annuity or bond or simplified employee pension plan, ; or (3) any tribal government issued benefit successor form, including a Housing Successor Designation Form issued pursuant to 27 M.P.T.L., of any person to be a beneficiary or owner of any right, title or interest thereunder upon the death of another, shall not be subject to any law governing the transfer of property by will, even though such designation is revocable by the person who made it, or the rights of such beneficiary or owner are otherwise subject to defeasance.

24 M.P.T.L. ch. 6 § 37

**§ 37. Definitions**

For the purposes of Sections 1, 37 to 66, inclusive, 67 and 76 of this Chapter, the following terms shall have the following meanings, unless otherwise specifically provided:

a. "Fiduciary" means an ancillary or domiciliary executor, administrator, administrator c.t.a., administrator d.b.n., administrator c.t.a., d.b.n. and temporary administrator of the estate of a decedent.

b. "Assets" means all property and property interests, whether real or personal, tangible or intangible, corporeal or incorporeal, and choate or inchoate, of a decedent at the time of his death or of the estate of a decedent;

c. "Beneficiary" means any person entitled to legal title to any assets:

- (1) under the laws governing descent and distribution;
- (2) under the provisions of a will or codicil;
- (3) by virtue of a right of election;
- (4) in settlement of a will contest; or

(5) by mutual distribution; but shall not include the recipient of assets pursuant to a widow's allowance or family allowance paid by order of the Probate Court.

d. "Claim" means all claims against a decedent:

(1) existing at the time of the decedent's death; or

(2) arising after the decedent's death, including, but not limited to, claims which are mature, unmatured, liquidated, unliquidated, contingent, founded in tort, or in the nature of exoneration, specific performance or replevin.

e. "Creditor" means any person having a claim.

f. "Demonstrative disposition" means a testamentary disposition to be taken out of specified or identified property.

g. "Distributee" means a person who receives assets under the statutes governing descent and distribution.

h. "First fiduciary" means the fiduciary first appointed by the Probate Court to administer the estate of a decedent.

i. "General Disposition" means a testamentary disposition not amounting to a demonstrative, residuary or specific disposition.

j. "Newspaper Notice" means notice published in a newspaper having a substantial general circulation within tribal lands and in the surrounding area but not *The Pequot Times* or its substantial equivalent.

k. "Notice" means a written instrument containing the required information sent to the person to whom the notice is to be given by certified mail or registered mail and the date on which such notice shall be deemed given shall be the date of mailing; provided in the case of notice required to be given by the Probate Court, the term "notice" shall include such forms of notification in addition to certified or registered mail as the Probate Court shall in its discretion direct.

l. "Person" means a natural person, association, board, corporation, partnership or other firm or entity.

m. "Specific disposition" means a testamentary disposition of a specified or identified item.

n. "Spouse" means either a husband or wife who have been joined in lawful marriage.

o. "Testamentary disposition" means a disposition of assets by will.

24 M.P.T.L. ch. 6 § 38

**§ 38. Notice to Creditors**

a. The Probate Court shall cause newspaper notice to be published at least once notifying all persons having claims to present their claims to the fiduciary. Newspaper notice shall be made within 14 days after the appointment of the first fiduciary. Such notice shall state:

(1) the name of the fiduciary and the address at which claims should be presented;

(2) that persons with claims should promptly present those claims to the fiduciary; and

(3) that failure to promptly present any such claim may result in the loss of rights to recover on such claim.

b. In the event of a failure of publication of such notice, a defective publication of such notice, or the death, resignation or removal of the fiduciary, the Probate Court may, in its discretion, order such supplemental publication of notice as it shall determine.

24 M.P.T.L. ch. 6 § 39

**§ 39. Effect of Failure to Present Claim; Exoneration of Fiduciary**

a. If any claim is not presented on or before the day which is 150 days from the date of the appointment of the first fiduciary, no fiduciary shall be chargeable for any assets that a fiduciary may have paid or distributed in good faith in satisfaction of any lawful claims, expenses or taxes or to any beneficiary before such claim was presented. A payment or distribution of assets by a fiduciary shall be deemed to have been made in good faith unless the creditor can prove that the fiduciary had actual knowledge of such claim at the time of such payment or distribution. Such 150 day period shall not be interrupted or affected by: (1) failure of publication or defective publication of the newspaper notice required by Section 38 of this Chapter; or (2) the death, resignation or removal of a fiduciary, except that the time during which there is no fiduciary in office shall not be counted as part of such period.

b. No fiduciary shall be chargeable for any assets that a fiduciary may have paid or distributed at any time pursuant to a widow's allowance or family allowance ordered by the Probate Court.

24 M.P.T.L. ch. 6 § 40

**§ 40. Optional Notice Procedures; Effect of Failure to Present Claim; Discretionary Extension of Time; Exoneration**

a. A fiduciary may at any time give notice to any person such fiduciary has reason to believe may have a claim that, if such person fails to present any such claim to the fiduciary on or before a date specified in such notice which

date shall not be less than 90 days from the date of such notice, such person will be forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate. Such notice shall contain the name and address of the fiduciary to whom such claim must be presented. The fiduciary shall not be liable to any creditor, beneficiary or any other person for the decision of the fiduciary to use or refrain from using this optional notice procedure.

b. Any creditor notified in accordance with subsection (a) of this Section, who fails to present his claim to the fiduciary on or before the date specified in such notice shall be forever barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate. Any creditor who presents his claim on or before the date specified in such notice may not increase such claim following the expiration of such period.

c. Any creditor who, through no fault of his own, has failed to present his claim within the time set forth in the notice given to said creditor pursuant to subsection (a) of this Section may submit an application for an extension of time to file such claim with the Probate Court within 180 days from the date of such notice. Upon such application, the Probate Court may, upon hearing after notice, for cause shown, enter an order extending the time for such creditor to present his claim for a period of not more than 30 days from the date of such order, and no claim so presented shall be barred by the application of subsection (b) of this Section; provided no such extension may be granted which would extend the period for presenting such claim beyond the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to Section 58 of this Chapter, would otherwise have expired.

24 M.P.T.L. ch. 6 § 41

#### **§ 41. Form and Verification of Claims; Presentation**

a. Every claim shall be presented to the fiduciary in writing. In addition, the fiduciary may require the claimant to present proof by affidavit that his claim is justly due, that all payments thereon, if any, have been credited and that he knows of no offsets or evidence of indebtedness and holds no security, except as specifically described in the affidavit.

b. Whenever the fiduciary resides outside of the state, claims may be presented to the fiduciary by filing such claims with the judge of probate in the district where such estate is in settlement. The Probate Court shall promptly forward to the fiduciary a copy of any such claim.

c. No creditor shall be entitled to enforce payment of his claim against assets in the hands of a fiduciary in any proceeding in any court unless his claim is presented in accordance with the provisions of this Section.

d. A claim may be presented to the fiduciary, or filed with the Probate Court pursuant to subsection (b) of this Section, by: (1) personal delivery to the fiduciary or Probate Court, as the case may be; or (2) mailing by regular,

certified or registered mail, postage prepaid, to the fiduciary or Probate Court, as the case may be.

e. A claim shall be deemed presented on:

(1) the date on which the fiduciary actually receives the claim in the event the claim is presented by delivery to the fiduciary personally;

(2) the date of mailing in the event the claim is properly mailed to the fiduciary at the fiduciary's address as set forth in the newspaper notice given under Section 38 of this Chapter, or in the notice given under Section 40 of this Chapter, or in the records of the Probate Court; or

(3) the date of receipt by the court if the claim is presented in accordance with subsection (b) of this Section.

24 M.P.T.L. ch. 6 § 42

#### **§ 42. Unmatured, Contingent or Unliquidated Claims**

a. If, at the death of any person, there shall be an unmatured, contingent or unliquidated claim or an outstanding bond, note, recognizance or undertaking upon which he was principal, surety, or indemnitor and on which at the time of his death the liability was unmatured, contingent or unliquidated, then the Probate Court shall, on the petition of either:

(1) a claimant who has duly presented his claim or

(2) the fiduciary to whom an unmatured, contingent or unliquidated claim has been duly presented, after notice to such persons as the court shall direct, conduct a hearing to determine whether a reserve from the assets of the estate should be established to secure the payment of the unmatured, contingent or unliquidated claim. Following such hearing the Probate Court shall issue an order that:

(a) no reserve be established; or

(b) the fiduciary establish a reserve from the assets of the estate in such amount as the court may deem reasonable to secure the payment of the unmatured, contingent or unliquidated claim when the amount thereof shall become due and payable; provided in no event shall the amount of such reserve exceed the difference between the amount of any such unmatured, contingent or unliquidated claim and the value of any security or collateral to which the creditor may resort for payment of such claim. In fixing the amount to be reserved for the payment of any such claim the Probate Court shall determine the value of any security or collateral to which the creditor may resort for payment of such claim. The order of the Probate Court concerning the establishment of a reserve shall discharge the fiduciary from all personal liability with respect to such unmatured, contingent or unliquidated claim, with the exception of the fiduciary's obligation to maintain any reserve so established.

b. Any such reserve shall be retained by the fiduciary for such period or



periods as the Probate Court shall direct for the purpose of being applied to the payment of such claim when matured, fixed and liquidated; except that the Probate Court shall retain jurisdiction over the reserve and may from time to time issue orders regarding the continuation and management of the reserve, including the power to direct the disposition of income and principal. The fiduciary, in managing the reserve, shall be entitled to reasonable compensation and reimbursement for all expenses, including reasonable attorney's fees, which shall be paid out of the reserve. Such portion of the reserve as is not needed to pay the claim when matured, fixed and liquidated shall be distributed according to law by the fiduciary as directed by the Probate Court.

24 M.P.T.L. ch. 6 § 43

#### **§ 43. Allowance or Rejection of Claims**

a. The fiduciary shall:

- (1) give notice to a person presenting a claim of the rejection of all or any part of his claim;
- (2) give notice to any such claimant of the allowance of his claim; or
- (3) pay the claim.

b. A notice rejecting a claim in whole or in part shall state the reasons therefor, but such statement shall not bar the raising of additional defenses to such claim subsequently.

c. If the fiduciary fails to reject, allow or pay the claim within 90 days from the date that it was presented to the fiduciary as provided by Section 41 of this Chapter, the claimant may give notice to the fiduciary to act upon the claim as provided by subsection (a) of this Section. If the fiduciary fails to reject, allow or pay the claim within 30 days from the date of such notice, the claim shall be deemed to have been rejected on the expiration of such 30 day period.

24 M.P.T.L. ch. 6 § 44

#### **§ 44. Return and List of Claims**

Within 60 days following the expiration of the 150 day period set forth in subsection (a) of Section 39 of this Chapter, the fiduciary shall file in the Probate Court a return and list of claims sworn to by the fiduciary containing:

- (1) a list of all persons notified pursuant to Section 40 of this Chapter; and
- (2) a list of all claims presented to the fiduciary within such 150 day period stating as to each such claim whether and to what extent such claim was allowed or rejected.

24 M.P.T.L. ch. 6 § 45

**§ 45. Determination of Claims Presented if Fiduciary Dies, Resigns or is Removed**

A successor fiduciary may apply to the Probate Court to determine: (1) any and all claims presented to any predecessor fiduciary; (2) the time of presentation of each such claim; (3) whether optional notice was given by any predecessor fiduciary to any persons pursuant to Section 40 of this Chapter; and (4) whether and to what extent each such claim was rejected, allowed or paid by any predecessor fiduciary. Upon application by a successor fiduciary, after notice to such persons as the court shall direct, the court shall hear and decide the foregoing matters and the court's decision with regard thereto shall, unless timely appealed, be final and conclusive.

24 M.P.T.L. ch. 6 § 46

**§ 46. Suit Against Estate on Rejected Claim; Time within which to Commence Suit or File Application**

a. No person who has presented a claim shall be entitled to commence suit unless and until such claim has been rejected, in whole or in part, as provided in Section 43 of this Chapter.

b. Unless a person whose claim has been rejected:

(1) commences suit within 120 days from the date of the rejection of his claim, in whole or in part; or

(2) files a timely application pursuant to Section 47 of this Chapter, he shall be barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate, except for such part as has not been rejected. If such person dies within 30 days from the date of the rejection of his claim and before suit is commenced or an application is filed, his fiduciary shall be allowed a period of 120 days from the date of his death within which to commence such suit or to file the application provided for in Section 47 of this Chapter. If such person dies more than 30 days but within 120 days from and including the date of the rejection of his claim and before suit is commenced, his fiduciary shall be allowed a period of 120 days from the date of his death within which to commence such suit.

24 M.P.T.L. ch. 6 § 47

**§ 47. Hearing on Rejected Claims by Probate Court or Appointment of Counsel; Costs**

a. Whenever a claim has been rejected, in whole or in part, as provided in Section 43 of this Chapter, the person whose claim has been rejected may, within 30 days from and including the date of such rejection, make application to the Probate Court to hear and decide such claim or, in the alternative, may apply to the court for the appointment of counsel of one or more disinterested persons, at least one of whom shall be an attorney-at-law, admitted to practice

in the tribal court, hear and decide such claim. The Probate Court shall not appoint as counsel any officer or employee of the Probate Court or any person employed by or associated in the practice of law with the judge of the court. The court may, in its discretion, grant the application, hear and decide such claim if the application so requests or appoint such counsel to hear and decide such claim. The court shall notify the applicant and the fiduciary of its action granting or denying the application within 15 days after receipt of the application.

b. Upon application of such counsel upon its own motion, the Probate Court shall give notice of the time and place set forth for the hearing to decide such claim to such persons as the court may direct at least 10 days before the hearing date.

c. If the application to receive and decide such claim by the court or for the appointment of counsel is denied, the claimant shall commence suit within 120 days from and including the date of the denial of his application or be barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate.

d. (1) If the Probate Court appoints more than one counsel, it shall appoint an odd number of counselors and a determination by a majority of such counsel shall constitute the decision of counsel.

(2) When any counselor is unable to complete his duties, the Probate Court may appoint a successor counselor or allow the remaining counselor to complete the duties of the counselor.

(3) The Probate Court may remove any counselor for cause and appoint another in his place.

e. The determination of such counsel shall be final on the date the report of such counsel is filed in the Probate Court, and the court shall thereupon enter an order approving the report unless the court finds that the counselor were guilty of misconduct substantially affecting the validity of the report or that the report is clearly erroneous. Upon rejection of the report, the Probate Court may hear and determine such claim or appoint a different counsel to hear and determine such claim as otherwise provided in this Section.

f. Such counsel may be allowed such reasonable compensation and expenses as the Probate Court shall determine, the cost of which may be apportioned between the creditor and the estate as the court shall direct. In the event that the Probate Court shall receive and decide a claim, costs shall not be assessed other than that permitted by Chapter 3, Section 1.

24 M.P.T.L. ch. 6 § 48

#### **§ 48. Order of Payment of Claims, Expenses and Taxes**

Claims, expenses and taxes in the settlement of a decedent's estate shall be entitled to preference and payment in the following order of priority: (1) funeral expenses; (2) expenses of settling the estate; (3) claims due for the

last sickness of the decedent; (4) all lawful taxes and all claims due the United States; (5) all claims due any laborer or mechanic for personal wages for labor performed by such laborer or mechanic for the decedent within three months immediately before the decease of such person; (6) other preferred claims; and (7) all other claims allowed in proportion to their respective amounts.

24 M.P.T.L. ch. 6 § 49

**§ 49. Payment of Funeral and Last Illness Expenses of Married Person**

The funeral expenses and expenses of the last illness of a married person shall be paid out of his or her estate, if sufficient therefor. If such estate is not sufficient therefor, such expenses shall be paid by his or her spouse.

24 M.P.T.L. ch. 6 § 50

**§ 50. Payment of Claims of Fiduciary**

A fiduciary shall not pay any personal claim of his own until such claim has been approved by the Probate Court after newspaper notice and hearing, unless the court, for cause shown, waives such notice and hearing. If any such claim is wholly or partly secured, it may be paid out of such security at any time after such approval. The unsecured portion of any such claim and any unsecured claim shall not be paid until after such approval and until after the expiration of the 150 day period provided for in subsection (a) of Section 39 of this Chapter.

24 M.P.T.L. ch. 6 § 51

**§ 51. Liability of Beneficiaries**

a. Subject to the provisions of Sections 52 to 58 of this Chapter, inclusive, a beneficiary is liable, in an action or actions, to the extent of the fair market value on the date of distribution of any assets received by him as a beneficiary from the estate of a decedent, for the expenses of administering the estate, claims, funeral expenses of the decedent, and all taxes for which the estate is liable, which have not previously been recovered out of assets held by the fiduciary or from any other source described in subsection (b) of this Section.

b. No liability may be imposed upon any such beneficiary under subsection (a) of this Section, unless the plaintiff establishes satisfactorily to the court that the obligation to him cannot be fully satisfied:

(1) because there are insufficient assets available for such purpose in the hands of the fiduciary;

(2) by action against persons prior in liability to the defendant under subsections (a), (b) and (c) of Section 52 of this Chapter, because such

persons are insolvent or for any other reason, other than not being amenable to suit in tribal court on the reservation, cannot be made to answer for their liabilities; and

(3) by the enforcement, under Chapter 5, Section 10, of any lien, security interest or other charge he holds against assets of the decedent specifically disposed of by will or passing to a distributee, or against the proceeds of any policy of insurance on the life of the decedent payable to a named beneficiary.

24 M.P.T.L. ch. 6 § 52

**§ 52. Order of Liability; Preferences**

a. Except as otherwise provided in subsections (c) and (d) of this Section, beneficiaries are liable, as provided in Section 51 of this Chapter, in the following order:

- (1) distributees;
- (2) residuary beneficiaries;
- (3) beneficiaries of general dispositions; and
- (4) beneficiaries of specific dispositions of personal property.

b. For the purposes of subsection (a) of this Section:

(1) a beneficiary of a demonstrative disposition shall be treated as a beneficiary of a general disposition to the extent the property or fund charged with a demonstrative disposition has adeemed;

(2) beneficiary of a demonstrative disposition shall be treated as a beneficiary of a specific disposition if the property or fund charged with a demonstrative disposition has not adeemed, to the extent of the value of such property or fund.

c. A beneficiary who receives assets, which assets are security for the payment of a debt of the decedent, shall be liable for such debt prior to any other beneficiary, in an amount not to exceed the difference between the fair market value of such assets received by him and the amount which such secured creditor shall have realized on the disposition of such security.

d. The order of liability provided in subsection (a) of this Section shall not apply to the liability for an estate, succession or other death tax under the law of any jurisdiction, with respect to any property required to be included in the gross tax estate of a decedent under the provisions of any such law. The apportionment of the United States estate taxes, and the liability under Section 51 of this Chapter of beneficiaries consequent to such apportionment, are governed by the provisions of Connecticut General Statutes Sections 12-401 and 12-376, respectively, and the apportionment of such taxes assessed by another jurisdiction, and the liability of the beneficiaries under Section 51 of this Chapter therefor, shall be governed by the apportionment statutes of

such other jurisdiction.

e. The express or implied intention of the testator to prefer certain beneficiaries shall be effective to vary the order of liability prescribed by subsection (a) of this Section.

f. If in an action under Section 51 of this Chapter, it is established to the satisfaction of the court that:

(1) The defendant is liable for the payment of two or more of the obligations described in subsection (a) of said Section, preference in the payment of such obligations must be given in the order prescribed by law for payment of the obligations of the decedent and his estate.

(2) An unsatisfied obligation described in subsection (a) of said Section exists which is legally preferred to that of the plaintiff, the existence of such unsatisfied obligation is a defense to the action if the aggregate value of the assets passing to the defendant does not exceed the defendant's pro rata share, as provided in Section 53 of this Chapter, of such unsatisfied obligation. If the aggregate value of the assets passing to the defendant exceeds such pro rata share of such unsatisfied obligation, the plaintiff, subject to the provisions of Section 53 of this Chapter, may recover such excess from the defendant.

g. (1) If at any time payment with respect to an obligation described in subsection (a) of Section 51 of this Chapter is made by a beneficiary having a lower order of liability than another beneficiary or beneficiaries, or out of assets due such beneficiary having a lower order of liability, then the beneficiary having a lower order of liability shall be entitled to recover the amount so paid from any beneficiary prior in liability to him under subsection (a) of this Section who remains liable under Chapter 5, Section 12, Chapter 6, Sections 37 to 78, inclusive and Section 87 of this Chapter without regard to the limitations of Sections 53 and 56 of this Chapter.

(2) If by application of subdivision (1) of subsection (g) of this Section any beneficiary has paid more than his ratable obligation, as defined in Section 53 of this Chapter, such beneficiary shall be entitled to contribution from any beneficiary within the same order of liability without regard to the limitations of Sections 53 and 56 of this Chapter.

24 M.P.T.L. ch. 6 § 53

### **§ 53. Maximum Liability of Beneficiary**

Except as otherwise provided in subsections (c) and (g) of Section 52 of this Chapter, the maximum liability to which a beneficiary is subject under subsection (a) of Section 51 of this Chapter is his ratable obligation, in the proportion that the value of the assets passing to him bears to the value of all such assets passing to beneficiaries within the same order of liability as his under subsection (a) of Section 52 of this Chapter, and no judgment may be had or entered in favor of any plaintiff against any such beneficiary for more than such ratable obligation.

**§ 54. Liability of Beneficiary-Fiduciary**

a. As used in this Section, "beneficiary-fiduciary" means either:

(1) a fiduciary as defined in Section 37 of this Chapter; or

(2) a trustee, guardian, conservator, committee, and any other person who, in a fiduciary capacity, has received assets as a beneficiary or as the personal representative of a beneficiary.

b. A beneficiary-fiduciary shall not be chargeable for any assets that such beneficiary-fiduciary may have paid or distributed in good faith before a claim is presented to such beneficiary-fiduciary. A payment or distribution of assets by a beneficiary-fiduciary shall be in good faith unless the creditor can prove that the beneficiary-fiduciary had actual knowledge of such claim at the time of such payment or distribution.

c. A transferee of assets from a beneficiary-fiduciary who has not furnished adequate and full consideration in money or moneys worth to the beneficiary-fiduciary for such assets shall be liable to the extent of the value of such assets so received in the same manner and to the same extent as if such transferee were the original beneficiary. For the purposes of this subsection, the term "transferee" means the person to whom or for whose benefit the beneficiary-fiduciary has paid or distributed such assets.

**§ 55. Action not Impaired by Failure to Present Claim to Fiduciary. Proper Person to Sue Following Final Distribution**

a. Except as otherwise provided in subsection (b) of Section 40 and Section 58 of this Chapter, the failure of a plaintiff to present his claim to the fiduciary as prescribed by law shall not impair his right to maintain an action against the beneficiaries under Section 51 of this Chapter; provided nothing contained herein shall extend the time limited for the commencement of an action to enforce plaintiff's claim.

b. Following final distribution of all assets known to a fiduciary, any suit on an unsatisfied obligation described in subsection (a) of Section 51 of this Chapter shall be brought against beneficiaries and not against the fiduciary, unless the plaintiff is seeking to have the fiduciary personally surcharged.

**§ 56. Action Against one or more Beneficiaries**

An action may be brought against one or more of the beneficiaries under Section

51 of this Chapter, but no defendant shall be liable, except as otherwise provided in subsections (c) and (g) of Section 52 of this Chapter, for more than his ratable obligation as described in Section 51 of this Chapter.

24 M.P.T.L. ch. 6 § 57

**§ 57. Title of Bona Fide Purchaser from Beneficiary Protected**

The entry and filing of a judgment recovered against a beneficiary in an action brought under Section 51 of this Chapter does not affect the rights of a prior purchaser, in good faith and for valuable consideration, from such beneficiary of any assets which would otherwise be subject to such judgment. When the subsequent purchaser is so protected, the judgment is enforceable against such beneficiary but not in excess of the value of the assets received by him on the date of distribution or his ratable obligation as described in Section 53 of this Chapter.

24 M.P.T.L. ch. 6 § 58

**§ 58. Statutes of Limitation; Suspension. Maximum Periods Applicable to Claims. After-Accruing Claims**

Claims shall be subject to the following provisions:

a. If any person against whom a claim exists dies within 30 days prior to the date the applicable statute of limitations on such claim would otherwise expire, a period of 30 days from the date of the appointment of his fiduciary shall be allowed within which to present such claim.

b. The running of any limitation period applicable to the claim of any person, shall, provided such claim was presented to the fiduciary prior to expiration of the applicable period of limitations, be suspended from the time of presentation of such claim until such claim has been rejected, in whole or in part, as provided in Section 43 of this Chapter, provided upon such rejection, such person may commence suit or file an application as provided in Section 46 of this Chapter.

c. Except as provided in subsections (b) and (d) of this Section, no claim may be presented and no suit on such claim may be commenced against the fiduciary, the estate of the decedent, or any creditor or beneficiary of such estate but within: (1) two years from the date of the decedent's death; or (2) the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to Section 40 of this Chapter, would otherwise have expired, whichever shall first occur.

d. With respect to any claim arising after the death of a decedent, no claim may be presented and no suit on such claim may be commenced against the fiduciary, the estate of the decedent, or any creditor or beneficiary of the estate but within: (1) two years from the date the claim arose; or (2) the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to Section 40 of this Chapter,



would otherwise have expired, whichever shall first occur.

24 M.P.T.L. ch. 6 § 59

**§ 59. Determination of Insolvency**

The Probate Court shall direct the fiduciary of the estate of a deceased person which is represented to be insolvent to publish newspaper notice and to give notice to such persons as the court may direct to appear if they see cause before the court, at a time and place appointed by it and designated in such notice, to be heard relative to such representation. After hearing, the court shall determine whether such estate shall be declared insolvent and shall send a copy of the decree to all persons in interest.

24 M.P.T.L. ch. 6 § 60

**§ 60. Determination of Insolvency after Partial Settlement**

When, during the settlement of the estate of a deceased person, the fiduciary represents the estate to be insolvent, the Probate Court shall set a time and place for a hearing on such representation and the court shall proceed in the manner prescribed in Section 59 of this Chapter.

24 M.P.T.L. ch. 6 § 61

**§ 61. Notice to Creditors. Presentation of Claims; Effect of Failure to Present Claim. Discretionary Extension of Time**

a. Within 14 days after the determination of insolvency, the Probate Court shall cause newspaper notice to be published at least once notifying all persons having claims to present such claims to the fiduciary. Such notice shall state:

(1) the name of the fiduciary and the address at which claims should be presented;

(2) that the estate has been found insolvent and any creditor who fails to present his claim on or before the date specified in such notice, which date shall be 150 days from the date of the determination of insolvency, shall be forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor of the estate. In the event of a failure of publication of such notice, a defective publication of such notice, or the death, resignation or removal of the fiduciary, the Probate Court may, in its sole discretion, order such supplemental publication of notice as it shall determine.

b. The fiduciary shall give notice to all creditors of which the fiduciary has actual knowledge that any creditor who fails to present any claim he may have to the fiduciary on or before the date specified in such notice, which date shall be 150 days from and including the date of the determination of

insolvency, shall be forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor of the estate. Such notice shall be given no later than 30 days prior to the expiration of such 150 period and shall contain the name and address of the fiduciary to whom claims must be presented.

c. Any creditor who fails to present his claim to the fiduciary within 150 days from the date of the determination of insolvency shall be forever barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor of the estate. Any creditor who presents his claim within such 150 day period may not increase such claim after the expiration of such period. Such 150 day period shall begin on the date of the determination of insolvency and shall not be interrupted or affected by any failure of publication or defective publication of the notice required by subsection (a) of this Section, or by the death, resignation or removal of a fiduciary, except that the time during which there is no fiduciary in office shall not be counted as part of such period.

d. Any creditor who, through no fault of his own, has failed to present his claim within the time set forth in the notices given to said creditor pursuant to subsections (a) and (b) of this Section may submit an application for an extension of time to file such claim with the Probate Court within 60 days after the expiration of the time limited to present claims. Upon such application, the Probate Court may, upon hearing after notice, for cause shown, enter an order extending the time for such creditor to present his claim for a period of not more than 30 days from and including the date of such order, and no claim so presented shall be barred by the application of subsection (c) of this Section.

e. Claims shall be presented in the manner set forth in Section 41 of this Chapter.

24 M.P.T.L. ch. 6 § 62

**§ 62. Creditor having Secured Claim. Determination of Value of Security**

a. If a creditor presenting a claim to the fiduciary has security for his claim, such creditor shall be entitled to participate in the estate only with respect to the excess of his claim over the fair market value of the security unless such creditor files in the Probate Court a written election to relinquish such security.

b. The fiduciary shall determine the fair market value of any security held by a creditor submitting a claim and shall give such creditor and the Probate Court notice of the value and how such value was determined. Such creditor may, within 30 days from the date of such notice, file in the Probate Court an objection to the fiduciary's valuation, and the Probate Court shall, within 30 days from and including the date on which such objection was received by the Probate Court, hold a hearing, after notice, on such valuation and shall enter an order establishing the value of such security.

24 M.P.T.L. ch. 6 § 63

**§ 63. Fiduciary's Report. Notice to Creditors. Hearing. Appeal**

a. As soon as practicable after the expiration of the 150 day period for presentation of claims, the fiduciary shall file a report in the Probate Court;

(1) listing all claims presented;

(2) specifying with respect to each claim whether such claim was allowed or rejected, in whole or in part; and

(3) listing the names and addresses of all creditors given notice in accordance with Section 61 of this Chapter.

b. Within 30 days after the filing of the fiduciary's report, the Probate Court shall hold a hearing on the acceptance of said report and shall give notice of the hearing to each creditor who presented a claim to the fiduciary. Following such hearing, the court shall accept, accept with modifications or reject such report, and shall order distribution of the assets or moneys as it shall find payable in accordance with Section 48 of this Chapter. Any creditor aggrieved by the order of the Probate Court may either:

(1) appeal from the order of distribution in accordance with Sections 32 to 38 of this Chapter, inclusive; or

(2) proceed in accordance with Section 47 of this Chapter.

c. In the event of an appeal or a proceeding under Section 47 of this Chapter, the order of distribution shall be stayed pending resolution of such appeal or proceeding; provided the court may, if it deems appropriate, order the fiduciary to set aside assets sufficient to assure pro rata payment of any creditor who has appealed or who has proceeded under Section 47 of this Chapter, and to distribute the remaining assets in accordance with the order of distribution.

24 M.P.T.L. ch. 6 § 64

**§ 64. Estate Found Solvent after Finding of Insolvency**

When any estate of a deceased person in settlement as an insolvent estate proves to be solvent, the Probate Court, after notice and hearing, shall order the estate settled in accordance with Sections 37 to 58 of this Chapter, inclusive; provided: (1) no further newspaper notice shall be required; and (2) any notifications to creditors given under subsection (b) of Section 61 of this Chapter shall be the equivalent and have the same legal effect as a notice under Section 40 of this Chapter, except that the time for presentation shall remain as the date stated in the notice under subsection (b) of Section 61 of this Chapter, and any other time periods in Section 40 of this Chapter shall be adjusted accordingly.

24 M.P.T.L. ch. 6 § 65

**§ 65. Suits Against Insolvent Estate Prohibited; Pending Suits**

Except as provided by Section 63 of this Chapter, no suit shall be brought against the fiduciary of an estate in course of settlement as insolvent. If judgment has been rendered against such fiduciary before the commencement of its settlement as an insolvent estate, execution shall not issue, but the creditor may present his judgment to the fiduciary and receive his proportionate share of the estate with the other creditors. If judgment has not been rendered, any pending suit shall abate and the creditor shall submit his claim to the fiduciary and may request that costs incurred in connection with the suit up to the date of abatement be added to the claim.

24 M.P.T.L. ch. 6 § 66

**§ 66. Settlement of Estate Without Claims Procedures**

When it appears to the Probate Court that the assets of the estate of any deceased person in settlement before the court, exclusive of the articles which may be legally set out to the surviving spouse and the allowance for support of such spouse and that of the family of the deceased, will not be more than sufficient to pay the funeral expenses, the expenses of settling the estate, the expenses of the last sickness and the lawful taxes and claims due the Mashantucket Pequot Tribe and the United States, the court may, after notice and hearing, ascertain the amount of such funeral and other expenses and of such taxes and preferred claims, and order that the settlement of the estate be completed without following the procedures otherwise required by Sections 59 to 65 of this Chapter, inclusive.

24 M.P.T.L. ch. 6 § 67

**§ 67. "Fiduciary" Defined**

As used in Sections 67 to 77, inclusive, and Sections 81 to 91 of this Chapter, inclusive, unless otherwise required by the context, "fiduciary" includes the executor or administrator of a decedent's estate.

24 M.P.T.L. ch. 6 § 68

**§ 68. Protection of Legacies**

a. All pecuniary legacies given in any will shall, if the personal property of the testator is insufficient for the payment thereof, be a charge on his real property not specifically described and devised, unless otherwise directed in such will.

b. Specific legacies shall not be taken or sold for the payment of debts and charges against the estate of the testator when there is other property, real or personal, sufficient and available therefor and not specifically devised or

bequeathed; but real property may be sold in lieu thereof, when it is necessary for such purpose, unless such will otherwise directs.

24 M.P.T.L. ch. 6 § 69

**§ 69. Contribution Where Estate is Taken to Pay Debts**

When any estate bequeathed or devised to any person is taken for the payment of debts and charges, all the other legatees, devisees or heirs shall contribute their proportional part of the estate to the person from whom such legacy or devise is taken and he may maintain an action to compel such contribution.

24 M.P.T.L. ch. 6 § 70

**§ 70. When Distributees to Give Security for Contingent or Future Debts**

Each person to whom any part of an estate is distributed or paid by order of the Probate Court and each person to whom any property is devised or bequeathed when no sufficient provision has been made by the will for the payment of the debts out of some particular property shall, upon the request of any person having a claim against the estate, contingent or not yet matured, give a bond to the state, with surety to the acceptance of the Probate Court. The bond shall stipulate that if, after the settlement of the estate, debts appear and are allowed, such person will pay to the fiduciary his proportional part of such debts and of the charges of the fiduciary.

24 M.P.T.L. ch. 6 § 71

**§ 71. Distribution of Estates**

a. Court to Ascertain Heirs and Distributees. The Probate Court shall ascertain the heirs and distributees of each intestate estate, and the heirs and distributees of, and their respective shares in, each testate estate so far as the will may leave the same indefinite and necessary to be defined or so far as it is necessary to give effect to an agreement made in accordance with the provisions of Section 74 of this Chapter.

b. Court to order fiduciary to distribute estate. The court shall order the administrator or other fiduciary charged with the administration of the estate to deliver possession of or pay over the intestate estate and the shares in each testate estate so far as the will may leave the same indefinite and necessary to be defined to the person or persons entitled thereto in the proportions provided by law, or, if distributors are appointed or a mutual distribution is filed, as provided in Section 73 of this Chapter, or if disinterested persons are appointed to make division or an agreement is filed, as provided in Section 74 of this Chapter, the court shall order the fiduciary of the estate to deliver possession of or pay over the same in accordance with the division made by such distributors or mutual distribution or agreement, as the case may be. The fiduciary shall take proper receipts for any such delivery or payment.

24 M.P.T.L. ch. 6 § 72

**§ 72. Distribution of Estate, Testate in Part**

When part of an estate has been devised or bequeathed and part is intestate and held in common with the devisees or legatees, the Probate Court may order a distribution of such estate.

24 M.P.T.L. ch. 6 § 73

**§ 73. Distribution of Intestate Estates**

a. After payment of expenses and charges, an intestate estate shall be distributed by the administrator or other fiduciary charged with the administration of the estate; provided the Probate Court may, in its discretion, on its own motion or upon application by any interested person, appoint three disinterested persons to make the distribution.

b. If all the persons interested in the estate legally capable of acting and all fiduciaries for any other persons interested in the estate make and file in the Probate Court a division of the estate, made, executed and acknowledged like deeds of land in the state of Connecticut, such division, being recorded in the records of the court, shall be a valid distribution of the estate. Any such fiduciary may petition the Probate Court which appointed him for permission to enter into such a division, and such permission may be granted or, for cause shown, denied by the court, after a hearing on such petition held on such notice as the court may order.

24 M.P.T.L. ch. 6 § 74

**§ 74. Division of Estate among Joint Legatees**

a. When a testator orders an estate to be divided among two or more legatees without appointing any person to divide it, or if he appoints persons to divide it who refuse or are unable to do so, or when in any will any estate or interest has been given to two or more persons jointly, and the same is susceptible of a division, the executor or other fiduciary charged with the administration of the estate shall make the division, provided the court before which such will was proved may, in its discretion, during the settlement of the estate of the testator, on its own motion or on the request of anyone interested, appoint three disinterested persons to make the division. Such division shall, when accepted by the court, be binding on all persons interested.

b. If the legatees or heirs are legally capable of acting and make a division in writing, in the manner provided for the division of an intestate estate, such division shall be valid.

c. Whenever there has been a contest with respect to the validity,

admissibility to probate or construction of a will, if all persons interested in the estate, including persons interested as contestants or fiduciaries acting in behalf of a contestant, make and file in the court an agreement as to the division of the estate, in writing, executed and acknowledged in the same manner as provided for conveyances of land in the state of Connecticut, such agreement shall be a valid division of the estate if approved by the Probate Court. Any such fiduciary may petition the Probate Court which appointed him for permission to enter into such an agreement. The court may grant such petition or may deny such petition. Such petition shall not be denied unless a hearing has been held thereon for which the court shall make such order of notice as it deems reasonable.

24 M.P.T.L. ch. 6 § 75

**§ 75. Personal Property that may be set out to Spouse from Insolvent Estate**

When the personal property of the deceased, exclusive of household goods exempt from execution, is not sufficient for the payment of his or her debts, the Probate Court shall set out such household goods and may set out any other exempt property to the surviving spouse.

24 M.P.T.L. ch. 6 § 76

**§ 76. Succession upon Death of Spouse. Statutory Share**

a. On the death of a spouse, the surviving spouse may as provided in subsection (c) of this Section, take a statutory share of the property passing under the will of the deceased spouse. The "statutory share" means one-third of the estate owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.

b. If the deceased spouse has by will devised or bequeathed a portion of his or her property to his or her surviving spouse, such provision shall be taken to be in lieu of the statutory share unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse may elect to take the statutory share in lieu of the provision of the will.

c. The surviving spouse, or the conservator or guardian of the estate of the surviving spouse, with the approval, after public notice and hearing, of the Probate Court by which such conservator or guardian was appointed, shall, not later than 150 days from the date of the appointment of the first fiduciary, as defined in Section 37 of this Chapter, file a notice, in writing, of his or her intention to take the statutory share with the Probate Court before which the estate is in settlement, and if such notice is not so filed, the surviving spouse shall be barred of such statutory share.

d. If the Probate Court has allowed a support allowance under Section 25 of this Chapter from the deceased spouse's estate for support of the surviving

spouse and for the support of his or her family, the surviving spouse shall not take his or her statutory share until the expiration of the time for which the support allowance is made.

e. The statutory share shall be set out by the fiduciary charged with the administration of the estate or, in the discretion of the Probate Court on its own motion or on application by any interested person, by distributors appointed by the Probate Court.

f. The provisions of this Section with regard to the statutory share of the surviving spouse in the property of the deceased spouse shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of the statutory share.

g. A surviving husband or wife shall not be entitled to a statutory share, as provided in subsection (a) of this Section, or an intestate share, as provided in Section 77 of this Chapter, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

24 M.P.T.L. ch. 6 § 77

#### **§ 77. Intestate Succession. Distribution to Spouse**

a. If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to Section 25 of this Chapter, which the surviving spouse shall take is:

(1) If there is no surviving issue or parent of the decedent, the entire intestate estate absolutely;

(2) If there is no surviving issue of the decedent but the decedent is survived by a parent or parents, the first \$100,000 plus three-quarters of the balance of the intestate estate absolutely;

(3) If there are surviving issue of the decedent all of whom are also issue of the surviving spouse, the first \$100,000 plus one-half of the balance of the intestate estate absolutely;

(4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely.

b. For the purposes of this Section issue shall include children born out of wedlock and the issue of such children who qualify for inheritance under the provisions of Section 78 of this Chapter.

24 M.P.T.L. ch. 6 § 78



**§ 78. Distribution to Children. Children Born out of Wedlock may Inherit**

a. After distribution has been made of the intestate estate to the surviving spouse in accordance with Section 77 of this Chapter, all the residue of the real and personal estate shall be distributed in equal proportions, according to its value at the time of distribution, among the children and the legal representatives of any of them who may be dead, except that children or other descendants who receive estate by advancement of the intestate in his lifetime shall themselves or their representatives have only so much of the estate as will, together with such advancement, make their share equal to what they would have been entitled to receive had no such advancement been made.

b. (1) Children born before marriage whose parents afterwards are lawfully married shall be deemed legitimate and inherit equally with other children.

(2) A child born out of wedlock shall inherit from:

(a) his or her mother; and

(b) his or her father, provided

(i) such father has been adjudicated the father of such child by a court of competent jurisdiction; or

(ii) the father has acknowledged under oath in writing to be the father of such child, or

(iii) paternity is established by the Probate Court, after the death of either the father or the child, by clear and convincing evidence that the father has acknowledged in writing that he is the father of the child and has openly treated the child as his.

c. For the purposes of this Section,

(1) issue shall include children born out of wedlock and the issue of such children provided both the child born out of wedlock and any of such issue qualify for inheritance under this Section; and

(2) legal representatives shall include legal representatives of children born out of wedlock, provided both the child born out of wedlock through whom such legal representatives inherit and the legal representatives qualify for inheritance under this Section.

24 M.P.T.L. ch. 6 § 79

**§ 79. Distribution of Intestate Estate of Minor**

If any minor child dies intestate, unmarried and without issue, before any distribution of the estate, the portion of such deceased child shall be distributed as if such child had died in the lifetime of his parent.

24 M.P.T.L. ch. 6 § 80

**§ 80. Distribution of Intestate Estate of Child to Father where Paternity Established after Death**

For the purposes of this law, the father of a child born out of wedlock shall be considered a parent, provided paternity is established: (1) prior to the death of such father by a court of competent jurisdiction; or (2) after the death of such father by the Probate Court, provided paternity established after death is ineffective to qualify the father or his kindred to inherit from or through the child unless it is demonstrated by clear and convincing evidence that the father has acknowledged in writing that he is the father of the child and has openly treated the child as his.

24 M.P.T.L. ch. 6 § 81

**§ 81. Distribution when there are no Children or Representatives of them**

a. (1) If there are no children or any legal representatives of them, then, after the portion of the husband or wife, if any, is distributed or set out, the residue of the estate shall be distributed equally to the parent or parents of the intestate, provided no parent who has abandoned a minor child and continued such abandonment until the time of death of such child, shall be entitled to share in the estate of such child or be deemed a parent for the purposes of subdivisions (2) to (4), inclusive, of this subsection.

(2) If there is no parent, the residue of the estate shall be distributed equally to the brothers and sisters of the intestate and those who legally represent them.

(3) If there is no parent or brothers and sisters or those who legally represent them, the residue of the estate shall be distributed equally to the next of kin in equal degree. No representatives shall be admitted among collaterals after the representatives of brothers and sisters.

(4) If there is no next of kin, then the residue of the estate shall be distributed equally to the stepchildren and those who legally represent them.

b. In ascertaining the next of kin in all cases, the degree of kindred according to the rule of the civil law shall be used.

c. Relatives of the half blood shall take the same share under this Section that they would take if they were of the whole blood.

24 M.P.T.L. ch. 6 § 82

**§ 82. Simultaneous Death; Disposition of Property**

a. When no Sufficient Evidence of Survivorship. When the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously,

the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Section.

b. Successive Beneficiaries. When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and such portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

c. Joint tenants. When there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

d. Life or accident insurance. When the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

e. Applicability. This Section shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision had been made for distribution of property otherwise than as provided by this Section.

24 M.P.T.L. ch. 6 § 83

#### **§ 83. When Deaths of Husband and Wife Presumed Simultaneous**

It shall be presumed that the deaths of husband and wife were simultaneous when there is no evidence to indicate the priority of death of either.

24 M.P.T.L. ch. 6 § 84

#### **§ 84. Death of Devisee or Legatee**

When a legatee, being a child, stepchild, grandchild, brother or sister of the testator, dies before him, and no provision has been made in the will for such contingency, the issue of such legatee shall take the estate so devised or bequeathed.

24 M.P.T.L. ch. 6 § 85

#### **§ 85. Shares May be set out in Personal Property**

After the share or interest of the husband or wife has been distributed and set out, in the distribution of any estate, the share or interest of any distributee of the estate may be distributed and set out to such distributee in

personal property.

24 M.P.T.L. ch. 6 § 86

**§ 86. Distribution when Heir, Legatee or Distributee is Presumed to be Dead.  
Liability of Fiduciary**

a. If, at any hearing before a Probate Court on an application for an order for the distribution of the estate or for the payment of legacies provided for in the will of a deceased person whose estate is in process of settlement in the court, it is found by the court that any person who if living would be an heir at law of such decedent, or a legatee or distributee under such will, has been absent from his home and unheard of for a period of seven years or more next prior to the date of the death of the decedent and until the date of such hearing, the court shall find as a presumptive fact that such person died prior to the death of the decedent whose estate is in settlement, and shall order such distribution of the estate or payment of such legacies as would have been made if such person was known to have died prior to the death of the decedent whose estate is in settlement.

b. After such administration and distribution, the fiduciary shall not be liable to the person so presumed to be dead in any action for the recovery of the estate.

24 M.P.T.L. ch. 6 § 87

**§ 87. When Person Guilty of Killing Another to Inherit from or Receive Property or Insurance Proceeds as Beneficiary of Victim**

a. A person finally adjudged guilty, either as the principal or accessory, in any jurisdiction, of any crime, the essential elements of which are substantially similar to those enumerated under the Connecticut General Statutes Section 53a-54(a) or 53a-54(b), shall not inherit or receive any part of the estate of the deceased, whether under the provisions of any act relating to intestate succession, or as legatee, or otherwise under the will of the deceased, or receive any property as beneficiary or survivor of the deceased; and such person shall not inherit or receive any part of the estate of any other person when such homicide or death terminated an intermediate estate, or hastened the time of enjoyment. With respect to inheritance under the will of the deceased, or rights to property as heir, legatee or beneficiary of the deceased, the person whose participation in the estate of another or whose right to property as such heir, legatee or beneficiary is so prevented under the provisions of this Section shall be considered to have predeceased the person killed. With respect to property owned in joint tenancy with rights of survivorship with the deceased, such final adjudication as guilty shall be a severance of the joint tenancy, and shall convert the joint tenancy into a tenancy in common as to the person so adjudged and the deceased but not as to any remaining joint tenant or tenants, such severance being effective as of the time such adjudication of guilty becomes final.

b. (1) A named beneficiary of a life insurance policy or annuity who

intentionally causes the death of the person upon whose life the policy is issued or the annuitant, is not entitled to any benefit under the policy or annuity, and the policy or annuity becomes payable as though such beneficiary had predeceased the decedent.

(2) A conviction under Connecticut General Statutes Section 53a-54(a), 53a-54(b), 53a-54(c), 53a-54(d), 53a-55 or 53a-55(a), shall be conclusive for purposes of this subsection. In the absence of such a conviction, the tribal court may determine by the common law, including equity, whether the named beneficiary is entitled to any benefit under the policy or annuity. In any proceeding brought under this subsection, the burden of proof shall be upon the person challenging the eligibility of the named beneficiary for benefits under a life insurance policy or annuity.

(3) Any insurance company making payment according to the terms of its policy or annuity is not liable for any additional payment by reason of this Section unless it has received at its home office or principal address written notice of a claim under this Section prior to such payment.

24 M.P.T.L. ch. 6 § 88

#### **§ 88. Distribution of Damages for Causing Death**

All damages recovered for injuries resulting in death, after payment of the costs and expenses of suit, all expenses of last illness and all funeral bills, the expenses of administration and claims against the estate and such amount for the support of the surviving spouse or family of the deceased during the settlement of the estate as the Probate Court may allow, shall be distributed as personal estate in accordance with the last will and testament of the deceased if there is one or, if not, in accordance with the law concerning the distribution of intestate personal estate.

24 M.P.T.L. ch. 6 § 89

#### **§ 89. Property Due Person Residing Outside United States**

When it appears that a legatee, distributee, cestui or beneficiary not residing within the territorial limits of the United States of America or any territory or possession thereof would not have the benefit or use or control of property due him or that special circumstances make it desirable that delivery to him be deferred, the Probate Court may in its discretion order: (1) that such legacy or distributive share be paid in whole or in part, to the executor, administrator, trustee or interested party for use by him in the purchase of goods such as food, clothing, medicine and the necessities of life to be sent to such legatee, distributee, cestui or beneficiary and that thereafter the executor, administrator, trustee or interested person account to the court indicating the purchase of such goods and forwarding the receipt for the same sent by said legatee, distributee, cestui or beneficiary; or (2) that such property be converted into available funds and paid to the treasurer of the state of Connecticut, to be invested by him at his discretion and, together with any proceeds thereof, to be held subject to such further order as the

court may enter, provided the reasonable fees, as allowed by the court, of the attorney for any such legatee, distributee, cestui or beneficiary whose funds are payable to the state treasurer hereunder shall be considered a lien thereon and shall be paid by the fiduciary having such funds in charge to such attorney prior to payment to the state treasurer.

24 M.P.T.L. ch. 6 § 90

**§ 90. Securing of Interest of Remainderman in Personal Property after Life Estate**

When a life estate in any personal property is given by will to one with remainder to another, and there is no trustee named for such property during the continuance of the life estate therein, the Probate Court may order the executor to deliver such personal property to the person having the life estate upon his giving a Probate bond. It shall be the duty of the person having the life estate thereupon to safely and properly keep such property to be delivered to the person entitled to receive it on the determination of the life estate therein. If such person fails to give bond as provided in this Section, the court shall appoint a trustee for such property during the continuance of such life estate who shall give a probate bond. The annual expense of such trust shall be chargeable upon the annual income of such property.

24 M.P.T.L. ch. 6 § 91

**§ 91. When Property Escheats to the Mashantucket Pequot Tribal Nation. Procedure**

After five years, when no owner of any estate can be found, it shall be presumed abandoned and it shall escheat to the Mashantucket Pequot Tribal Nation.

24 M.P.T.L. ch. 6 § 92

**§ 92. Short Title: Mashantucket Pequot Uniform Disposition of Community Property Rights at Death Act**

Sections 92 to 99 of this Chapter, inclusive, may be cited as the "Mashantucket Pequot Uniform Disposition of Community Property Rights at Death Act."

24 M.P.T.L. ch. 6 § 93

**§ 93. Application**

The provisions of Sections 92 to 99 of this Chapter, inclusive, shall apply to the disposition at death of the following property acquired by a married person: All personal property, wherever situated: (1) which was acquired as, or became and remained, community property under the laws of another jurisdiction; or (2) all or the proportionate part of that property acquired

with the rents, issues or income of, or the proceeds from or in exchange for, that community property; or (3) traceable to that community property.

24 M.P.T.L. ch. 6 § 94

#### **§ 94. Rebuttable Presumptions**

In determining the applicability of the provisions of Sections 92 to 99 of this Chapter, inclusive, to specific property, the following rebuttable presumptions apply: (1) property acquired during marriage by a spouse of the marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which Sections 92 to 99 of this Chapter, inclusive, apply; and (2) personal property wherever situated, acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which Sections 92 to 99 of this Chapter, inclusive, apply.

24 M.P.T.L. ch. 6 § 95

#### **§ 95. Disposition of Property at Death**

Upon death of a married person, one-half of the property to which Sections 92 to 99 of this Chapter, inclusive, apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of the Tribe. One-half of such property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of the Tribe. With respect to property to which Sections 92 to 99 of this Chapter, inclusive, apply, the one-half of the property which is the property of the decedent is not subject to the right of the surviving spouse to elect against the will.

24 M.P.T.L. ch. 6 § 96

#### **§ 96. Perfection of Title of Surviving Spouse**

If the title to any property to which Sections 92 to 99 of this Chapter, inclusive, apply was held by the decedent at the time of death, title to such property of the surviving spouse may be perfected by an order of the Probate Court or by execution of an instrument by the personal representative or the heirs or of the decedent with the approval of the Probate Court. Neither the personal representative nor the Probate Court has a duty to discover or attempt to discover whether property held by the decedent is property to which Sections 92 to 99 of this Chapter, inclusive, apply, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

24 M.P.T.L. ch. 6 § 97

**§ 97. Perfection of Title of Personal Representative or Heir**

If the title to any property to which Sections 92 to 99 of this Chapter, inclusive, apply is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which Sections 92 to 99 of this Chapter, inclusive, apply unless a written demand is made by an heir, or creditor of the decedent.

24 M.P.T.L. ch. 6 § 98

**§ 98. Security Interest of Purchaser for Value or Lender**

a. If a surviving spouse has apparent title to property to which Sections 92 to 99 of this Chapter, inclusive, apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir of the decedent.

b. If a personal representative or an heir of the decedent has apparent title to property to which Sections 92 to 99 of this Chapter, inclusive, apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

c. A purchaser for value or a lender shall not be required to inquire whether a vendor or borrower acted properly.

d. The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

24 M.P.T.L. ch. 6 § 99

**§ 99. Creditor's Rights**

Sections 92 to 99 of this Chapter, inclusive, shall not: (1) affect rights of creditors with respect to property to which said Sections apply; (2) prevent married persons from severing or altering their interests in property to which said Sections apply; or (3) authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

**CHAPTER 7. TRUSTS**

24 M.P.T.L. ch. 7 § 1



**§ 1. Trustee to Receive Proceeds of Pension, Retirement, Death Benefit and Profit-Sharing Plans**

a. As used in this Section, "proceeds" means the proceeds paid upon the death of any insured, employee or participant under any thrift plan or trust, savings plan or trust, pension plan or trust, death benefit plan or trust, stock bonus plan or trust including any employee's stock ownership plan or trust; any retirement plan or trust, which includes self-employed retirement plans and individual retirement accounts, annuities and bonds; and the proceeds of any individual, group or industrial life insurance policy, or accident and health insurance policy and any annuity contract, endowment insurance contract or supplemental insurance contract.

b. (1) Proceeds may be made payable to a trustee under a trust agreement or declaration of trust in existence on the date of such designation, and identified in such designation. Such proceeds shall be paid to such trustee and held and disposed of in accordance with the terms of such trust agreement or declaration of trust, including any written amendments thereto in existence on the date of the death of the insured, employee or participant. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee as beneficiary to receive such proceeds.

(2) Proceeds may be made payable to a trustee of a trust to be established by will. Upon issuance of a decree qualifying a trustee so named, such proceeds shall be payable to the trustee to be held and disposed of in accordance with the terms of such will as a testamentary trust. A designation which in substance names as such beneficiary the trustee under the will of the insured, employee or participant, shall be taken to refer to the will of such person actually admitted to probate, whether executed before or after the making of such designation.

c. Such Proceeds may be Payable in More than One Installment. If no qualified trustee claims such proceeds from the insurer or other payor within 18 months after the death of the insured, employee or participant, or if satisfactory evidence is furnished to the insurer or other payor within such period showing that there is or will be no trustee to receive such proceeds, such proceeds shall be paid by the insurer or other payor to the personal representative or assigns of the insured, employee or participant, unless otherwise provided by agreement with the insurer or other payor during the lifetime of the insured, employee or participant.

d. Except to the extent otherwise provided by the trust agreement, declaration of trust or will, proceeds received by the trustee shall not be subject to the debts of the insured, employee or participant, to any greater extent than if such proceeds were payable to the beneficiaries named in the trust; and for all purposes, including the succession and transfer tax, they shall not be deemed payable to or for the benefit of the estate of the insured, employee or participant.

e. Proceeds so held in trust may be commingled with any other assets which may properly become part of such trust.

24 M.P.T.L. ch. 7 § 2

**§ 2. Bonds of Testamentary Trustees**

When a testator has appointed a trustee to execute a trust created by his will, the Probate Court shall, unless otherwise provided in the will, require of such trustee a probate bond. If any trustee refuses to give such bond, the refusal shall be deemed a refusal to accept or perform the duties of such trust; but the bond without surety of any public or charitable corporation or cemetery association to which any bequest or devise is made in trust shall be deemed sufficient. Whenever by any will it is provided that the trustee or trustees thereunder shall not be required to give a probate bond, or shall be required to give a bond which in the judgment of the Probate Court having jurisdiction is insecure or inadequate, the court may, upon the application of any person interested, require such trustee or trustees at any time to furnish a probate bond in accordance with Chapter 3, Section 14.

24 M.P.T.L. ch. 7 § 3

**§ 3. Vacancies in Office of Trustee**

When any person has been appointed trustee of any estate, or holds as trustee the proceeds of any estate sold, and no provision is made by law or by the instrument under which his appointment is derived for the contingency of his death or incapacity or for his refusal to accept such trust or for his resignation of such trust, or when a trust has been created by will and no trustee has been appointed in the will or when more than one trustee has been appointed and thereafter a trustee so appointed dies, becomes incapable, refuses to accept or resigns such trust, the Probate Court may, on the happening of any such contingency, appoint some suitable person to fill such vacancy, taking from him a probate bond, unless in the case of a will it is otherwise provided therein, in which case the provisions of Section 2 of this Chapter shall apply.

24 M.P.T.L. ch. 7 § 4

**§ 4. Legal Title Vests in Trustee Appointed to Fill Vacancy**

When the legal title to any property has vested in a trustee and the trusteeship has become vacant, such legal title shall vest in his successor immediately upon his appointment and qualification.

24 M.P.T.L. ch. 7 § 5

**§ 5. Foreign Trustee's Custody of Trust Estate. Jurisdiction of Probate Court over Trusts Created by Nondomiciliaries**

a. When any person not a resident of tribal lands is the owner of a life estate or income during life in any personal property on tribal lands that may

thereafter be converted into money, and the child or children of such life tenant or person entitled to such life use or income, residing in the same state as such life tenant or person entitled to such life use or income, are entitled to the remainder upon the termination of such life estate, life use or income, such life tenant having procured the appointment of a trustee or other legal custodian of the property in which he has such interest under the laws of the place of his residence, such custodian may apply in writing to the Probate Court for the possession and removal of such property. In such application the trustee or custodian shall allege that he has been legally appointed such custodian in the jurisdiction in which such life tenant resides, and that he has therein given a probate bond valid according to the requirements of such jurisdiction, and security thereon, or an increase in an existing bond and security, in an amount equal to the value of all such estate of such person to be removed from this state. Such bond and the decree of the court appointing such custodian shall provide that if the child or children of such life tenant are for any reason unable to take or receive the property upon the termination of the life estate or estate aforesaid, it is to be held and paid over by such custodian to such persons as the Probate Court in this state ordering such removal directs. Upon such custodian filing for record in the Probate Court an exemplified copy of the record of the court by which he was appointed, it shall, after a hearing upon such notice as the court orders to the person having such estate in custody and after proof that all known debts against it on the reservation have been paid or satisfied, appoint the applicant to be guardian, conservator or trustee without further bonds, and authorize the person having such estate in his custody to deliver it to the applicant, who may demand, sue for and recover it and remove it from the reservation.

b. Any one or more of the vested beneficial owners of interests established by a testamentary transfer of personal property wherever situated, in trust or under custodianship established and administered outside of the reservation, who are residents of the reservation may petition the Probate Court if any of such beneficial owners reside on the reservation to assume jurisdiction of such trust or custodianship. In the petition, such beneficial owner or owners shall allege that it would be in the best interest of some or all of such beneficial owners and not adverse to any of such owners for the trust or custodianship to be administered in the Probate Court or that all such beneficial owners consent to the administration of the trust or custodianship in the Probate Court. The Probate Court, after hearing with notice as it directs, including notice to any Court having jurisdiction over the trust or custodianship, upon written consent of all such beneficial owners or satisfaction that the allegations in the petition are true and upon proof that such transfer is not prohibited by law, may assume jurisdiction. If a Probate bond is required under the laws of the state in which the transferring court is located on the reservation, such bond shall be given to the Probate Court prior to the assumption of jurisdiction by such court. Upon transfer and assumption of jurisdiction and administration of such trust or custodianship to the reservation, the record shall be established in the Probate Court as if the estate were being originally established for administration on tribal lands and the provisions of the tribal laws shall govern the trust or custodianship and its administration.

24 M.P.T.L. ch. 7 § 6

**§ 6. Appointment of Trustee when Person has Disappeared. Trustee's Rights**

**and Duties. Procedure if Person Reappears**

a. When any Mashantucket Pequot Tribal Member, domiciled on tribal lands and having property has disappeared so that after diligent search his whereabouts cannot be ascertained, the Probate Court, upon the application of the spouse, or a relative, creditor or other person interested in the property of such person, shall, after public notice and a hearing thereon, appoint a trustee of the property of such person.

b. Diligent search shall be deemed to have been made for any person who has disappeared while serving with the armed forces when such person has been reported or listed as missing, missing in action, interned in a neutral country or beleaguered, besieged or captured by an enemy.

c. Such trustee, upon giving a probate bond, shall have charge of such property, and he shall have the same powers, duties and obligations as a conservator of the estate of an incapable person. With the approval of the Probate Court, such trustee may use any portion of the income or principal of such property for the support of the spouse and minor children of such person.

d. Upon its own motion or upon the application of any interested person, the Probate Court may, after public notice and a hearing thereon, remove, discharge, require an accounting from, or appoint a successor to, such trustee.

e. The Probate Court may continue such trustee in office until satisfactory proof of the death of such person is furnished, until proceedings are taken to settle his estate on the presumption of his death under the provisions of Chapter 6, Section 28, or for a period of seven years from the time of the disappearance of such person if he remains unheard of.

f. In case of the reappearance of such person, the Probate Court shall, on his application, after hearing and public notice thereof, order the restoration of such property to the person entitled thereto and the discharge of such trustee, after acceptance of the trustee's account.

24 M.P.T.L. ch. 7 § 7

**§ 7. Suspension of Fiduciary Powers During Armed Forces Service**

a. When any fiduciary of any trust other than a testamentary trust is engaged in service in the armed forces, which prevents his giving the necessary attention to his duties as the fiduciary, the Probate Court, upon petition of the fiduciary or any person interested in such estate, may, upon such notice as the court deems suitable and after hearing, order the suspension of the powers and duties of the fiduciary for the period of such service and until the further order of the court.

b. The Probate Court may appoint a substitute fiduciary to serve for the period of suspension whether or not there remains any fiduciary to exercise the powers and duties of the fiduciary who is in such service. Said court may decree that the ownership and title to the trust res shall vest in the substitute fiduciary or co-fiduciary or both and that the duties and such of the powers and

discretions as are not personal to the fiduciary may be exercised by the co-fiduciary or substitute fiduciary and may make such further orders as said court deems advisable for the proper protection of such fund or estate.

c. The Rules of Court with respect to judgments under the Selective Service Act shall not apply to actions under this Section.

d. Upon a petition therefor, the court may order the reinstatement of the fiduciary when his service in the armed forces has terminated.

24 M.P.T.L. ch. 7 § 8

**§ 8. Income from Property Acquired by Trustee by Conveyance or Foreclosure when Mortgage Formerly held by Trustee**

In any case in which a trustee holds a mortgage upon property for the benefit of one or more tenants for life or limited term, with remainder over to another or others, and such trustee acquires title to such property by conveyance or foreclosure, such acquired property shall be a principal asset in lieu of such mortgage, and such tenant or tenants for life or limited term shall be entitled to the net income from such acquired property from the date of its acquisition.

24 M.P.T.L. ch. 7 § 9

**§ 9. Distribution by Testamentary Trustee upon Completion of Trust**

The trustee of any testamentary trust which has terminated may, unless the will creating the trust otherwise directs, after settling his final account, deliver the property remaining in his hands to the remainderman upon the order of the Probate Court, without returning the same to the estate of the decedent.

24 M.P.T.L. ch. 7 § 10

**§ 10. Distribution of Assets of Inoperative Trust**

When the facts at the time of distribution from an estate to a trust or from a testamentary trust to a successive trust are such that no trust would be operative under the terms of the instrument creating such trust or successive trust because of the death of the life tenant, or because the beneficiary has reached a stipulated age, or for any other reason, the fiduciary of such estate or prior trust may distribute, with the approval of the Probate Court having jurisdiction, directly from the estate or prior trust to the remaindermen of such trust, the corpus of such trust and any income earned during the period of estate administration or administration of the prior trust and distributable to such remaindermen, without the interposition of the establishment of such trust or successive trust.

24 M.P.T.L. ch. 7 § 11

**§ 11. Settlement of Trust Estate when Beneficiary has been Absent seven Years**

The trustee of any trust for the benefit of any person who has been absent from his home and unheard of for seven years or more may settle his account as such trustee in the Probate Court. Upon the order of the court, the trustee shall distribute such trust estate to the persons entitled to the remainder thereof as determined by the court, and the trustee shall not thereafter be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof. A person shall not be entitled to receive any portion of such estate from the trustee until such person has filed in the Probate Court a bond with surety to the acceptance of the court, payable to the Mashantucket Pequot Tribal Nation, conditioned to return such trust estate to the trustee or his successor on the reappearance of the person presumed to be dead within 13 years from the date of such order authorizing distribution. After the expiration of such 13 year period, such person entitled to the remainder shall not be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof.

24 M.P.T.L. ch. 7 § 12

**§ 12. Termination of Small Trusts**

a. Except as otherwise provided by the trust or Chapter 7, Section 27 with respect to charitable trusts, the Probate Court under this Section may terminate a trust, in whole or in part, on application therefor by the trustee, by any beneficiary entitled to income from the trust, or by such beneficiary's legal representative, after reasonable notice to all beneficiaries who are known and in being and who have vested or contingent interests in the trust, and after holding a hearing, if the court determines that all of the following apply:

(1) The continuation of the trust is:

(a) uneconomic when the costs of operating the trust, probable income and other relevant factors are considered; or

(b) not in the best interest of the beneficiaries;

(2) the termination of the trust is equitable and practical; and

(3) the current market value of the trust does not exceed the sum of \$40,000.

b. If the Probate Court orders termination of the trust, in whole or in part, it shall direct that the principal and undistributed income be distributed to the beneficiaries in such manner as the Probate Court determines is equitable. The Probate Court may also make such other order as it deems necessary or appropriate to protect the interests of the beneficiaries.

c. No trust may be terminated over the objection of its settlor or where the interest of the beneficiaries cannot be ascertained. The provisions of this Section shall not apply to spendthrift trusts.

d. The Probate Court may terminate a testamentary trust pursuant to this Section if the Probate Court has jurisdiction over the accounts of the testamentary trustee. The Probate Court may terminate an inter vivos trust pursuant to this Section if the trustee or settlor is a Mashantucket Pequot tribal member and is domiciled on tribal lands.

24 M.P.T.L. ch. 7 § 13

**§ 13. Tribal Court Jurisdiction to Reform Instrument to Ensure Allowance of Marital Deduction. Qualified Domestic Trust**

a. If any marital deduction would not be allowed by reason of Section 2056(d)(1) of the Internal Revenue Code of 1986 with respect to any interest in property passing under any will, trust agreement or other governing instrument because such interest fails to comply with the requirements of Sections 2056(d)(2)(A) and 2056A(a) of said Code, the tribal court shall have jurisdiction over any action brought to reform such will, trust agreement or other governing instrument of comply with those requirements so as to allow a marital deduction under Section 2056(a) of said Code. All references contained in this Section to any Section of the Internal Revenue Code of 1986 shall mean that Section of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

b. The tribal court shall be empowered to reform any such will, trust agreement or other governing instrument to the extent necessary to ensure the allowance of the marital deduction described in subsection (a) of this Section.

c. Any reformation of any will, trust agreement or other governing instrument in accordance with the provisions of this Section shall be effective whether or not a disclaimer has been filed within the period of time specified in Chapter 11, Sections 1 to 5, inclusive.

24 M.P.T.L. ch. 7 § 14

**§ 14. Statutory Rule Against Perpetuities**

a. A non-vested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation.

b. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

c. A non-general power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

d. In determining whether a non-vested property interest or a power of appointment is valid under subdivision (1) of subsection (a), (b), or (c) of this Section, the possibility that a child will be born to an individual after the individual's death is disregarded.

e. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument:

(1) seeks to disallow the vesting or termination of any interest or trust beyond;

(2) seeks to postpone the vesting or termination of any interest or trust until; or

(3) seeks to operate in effect in any similar fashion upon, the later of

(a) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(b) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor described in subparagraph (a) of this subsection. Nothing in this subsection shall affect the validity of the other provisions of the trust or other property arrangement or of the governing instrument.

24 M.P.T.L. ch. 7 § 15

#### **§ 15. When Non-Vested Property Interest or Power of Appointment Created**

a. Except as provided in subsections (b) and (c) of this Section and in subsection (a), of Section 17 of this Chapter, the time of creation of a non-vested property interest or a power of appointment is determined under general principles of property law.

b. For purposes of Sections 14 to 17 of this Chapter, inclusive, if there is a



person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

- (1) a non-vested property interest; or
- (2) a property interest subject to a power of appointment described in subsections (b) or (c) of Section 14 of this Chapter, the non-vested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates; or
- (3) for purposes of Sections 14 to 17 of this Chapter, inclusive, a non-vested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the non-vested property interest or power of appointment in the original contribution was created.

24 M.P.T.L. ch. 7 § 16

#### **§ 16. Reformation**

Upon the petition of an interested person, the court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by subdivision (2) of subsections (a), (b) or (c) of Section 14 of this Chapter if a non-vested property interest or a power of appointment becomes invalid under Section 14 of this Chapter: (1) a class gift is not but might become invalid under Section 14 of this Chapter and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or (2) a non-vested property interest that is not validated by subdivision (1) of subsection (a) of Section 14 of this Chapter can vest but not within 90 years after its creation.

24 M.P.T.L. ch. 7 § 17

#### **§ 17. Exclusions from Statutory Rule Against Perpetuities**

The provisions of Section 14 of this Chapter do not apply to:

a. A non-vested property interest of a power of appointment arising out of a non-donative transfer, except a non-vested property interest or a power of appointment arising out of

- (1) premarital or post-marital agreement;
- (2) separation or divorce settlement;
- (3) spouse's election;
- (4) similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;
- (5) contract to make or not to revoke a will or trust;

(6) contract to exercise or not to exercise a power of appointment;

(7) transfer in satisfaction of a duty of support; or

(8) reciprocal transfer.

b. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

c. A power to appoint a fiduciary;

d. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasible vested interest in the income and principal;

e. A non-vested property interest held by a charity, government or governmental agency or subdivision, if the non-vested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

f. A non-vested property interest in a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a non-vested property interest or a power of appointment that is created by an election or a participant or a beneficiary or spouse; or

g. A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

24 M.P.T.L. ch. 7 § 18

#### **§ 18. "Majority" Defined for Trusts Executed prior to October 1, 1972**

Whenever the word "majority" is used in a will or trust instrument executed prior to October 1, 1972, it shall be construed to mean a person who has attained the age of 21.

24 M.P.T.L. ch. 7 § 19

#### **§ 19. Rule Against Perpetuities**

"Second look" doctrine. In applying the rule against perpetuities to an interest in property created before October 1, 1989, limited to take effect at

or after the termination of one or more life estates in, or lives of, persons in being when the period of said rule commences to run, the validity of the interest shall be determined on the basis of facts existing at the termination of such one or more life estates or lives. For the purpose of this Section, an interest which must terminate not later than the death of one or more persons is a life estate although it may terminate at an earlier time.

24 M.P.T.L. ch. 7 § 20

#### **§ 20. Reduction of Age Contingency to Preserve Interest**

If an interest in property created before October 1, 1989, would violate the rule against perpetuities as modified by Section 19 of this Chapter because such interest is contingent upon any person attaining or failing to attain an age in excess of 21, the age contingency shall be reduced to 21 as to all persons subject to the same age contingency.

24 M.P.T.L. ch. 7 § 21

#### **§ 21. Exemption of Certain Trusts Funds from the Rule Against Perpetuities**

Any trust (a) created by the Mashantucket Pequot Tribal Nation, or (b) created by an employer as part of a stock bonus, pension, disability, death benefit or profit-sharing plan for the benefit of some or all employees, to which contributions are made by the employer or employees or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the funds held in trust, shall not be deemed to be invalid as violating any existing law or rule of law against perpetuities or suspension of the power of alienation of the title to the property. Any such trust may continue for such time as may be necessary to accomplish the purposes for which it has been created. The income arising from any property held in any such trust may be permitted to accumulate in accordance with the terms of such trust and the plan of which such trust forms a part for such time as may be necessary to accomplish the purposes for which such trust has been created. Any rule of law against perpetuities or suspension of the power of alienation of the title to property shall not invalidate any such trust.

24 M.P.T.L. ch. 7 § 22

#### **§ 22. Charitable Trusts**

Any charitable trust or use created in writing, or any public and charitable trust or use for aiding and assisting any person or persons to be selected by the trustees of such trust or use to acquire education, shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use.

24 M.P.T.L. ch. 7 § 23

**§ 23. Charitable Uses Determined by Trustee, when**

Any person may, by will, deed or other instrument, give, devise or bequeath property, real or personal or both, to any trustee or trustees, and may provide in such instrument that the property so given, devised or bequeathed shall be held in trust and the income or principal applied in whole or in part for any charitable purpose. A donor or testator shall not be required to designate in such will, deed or other instrument the particular charitable purpose or class of purposes for which the property shall be used or the income applied. Any such gift, devise or bequest shall be valid and operative, provided the donor or testator shall give to the trustee or trustees thereof or to any other person or persons, the power to select, from time to time and in such manner as such donor or testator may direct, the charitable purpose or purposes to which such property or the income thereof shall be applied; and such gift, devise or bequest, accompanied by such power of selection, shall not be void by reason of uncertainty.

24 M.P.T.L. ch. 7 § 24

**§ 24. Gifts to Charitable Community Trust**

Any person may incorporate by reference in any will, deed or other instrument, the terms, conditions, trusts, uses or purposes of any existing written or printed resolution, declaration or deed of trust passed by any corporation or executed by any person whereby there is established or is attempted to be established any charitable community trust. Any gift, devise or bequest so given to any person or corporation, in trust for any use or purpose of such charitable community trust, shall be valid and effectual notwithstanding that the terms, conditions, uses and purposes thereof are not otherwise recited in such deed, will or other instrument than by such reference; and the property so given to such person or corporation shall be used for the purposes and upon the terms, conditions and trusts contained in such resolution, declaration or deed of trust establishing such community trust, so far as the same do not conflict with the intent of the donor or testator as expressed in such will, deed or other instrument. Any gift, devise or bequest so made shall not be void for uncertainty or invalid because such resolution, declaration or deed of trust establishing such community trust was not executed by the testator or donor in accordance with statutory provisions, provided such will, deed or other instrument is executed in accordance with such provisions.

24 M.P.T.L. ch. 7 § 25

**§ 25. Community Trustees to Render Annual Accounts. Hearing on Adjustment and Allowance**

a. The trustee or trustees of any charitable community trust shall annually render an account under oath to the Probate Court. The account shall include an inventory of the estate held by such trustee or trustees and shall state the manner in which the principal of such fund is invested and the items of income and expenditure.

b. The Probate Court shall direct the notice, if any, which shall be given of the hearing upon the adjustment and allowance of any such account. The court may adjust and allow the account and make any order necessary to secure the execution of the duties of such trustee or trustees, subject to appeal as provided for appeals from orders of the Probate Court.

24 M.P.T.L. ch. 7 § 26

**§ 26. Probate Court Jurisdiction to Reform Instruments to Federal Tax Requirements**

a. If any deduction under Section 170, Section 2055 or Section 2522 of the Internal Revenue Code of 1986 is not allowable with respect to any interest in property passing under any will, trust agreement or other governing instrument to a person, or for a use, described in Section 170(c), Section 2055(a) or Section 2522(a) and (b) of said code because such interest shall fail to comply with the requirements of Section 170(f)(2), Section 2055(e)(2) or Section 2522(c)(2) of said code, the Probate Court shall have jurisdiction over any action brought to reform such will, trust agreement or other governing instrument in accordance with the provisions of Section 170(f)(7), Section 2055(e)(3) or Section 2522(c)(4) of said code so that such deduction may be allowed under the applicable provisions of said code. All references contained in this Section to any Section of the Internal Revenue Code of 1986 shall mean that Section of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

b. The Probate Court shall be empowered to reform any such will, trust agreement or other governing instrument only to the extent necessary in order to ensure the allowance of any deduction described in subsection (a) of this Section, and only to the extent the court finds that such reformation is consistent with the original intent of the testator or donor.

c. This Section shall not be construed to effect a change in any dispositive provisions of the governing instrument as provided in Section 22 of this Chapter.

d. Any reformation of any will, trust agreement or other governing instrument in accordance with the provisions of this Section shall be effective whether or not a disclaimer has been filed within the period of time specified in Chapter 10, Sections 1 to 5, inclusive.

24 M.P.T.L. ch. 7 § 27

**§ 27. Termination of Charitable Trusts**

a. As used in this Section:

(1) "Charitable Beneficiary" and "Charitable Entity" shall include, without limitation, towns, ecclesiastical society and cemetery associations owning or controlling the operation of a cemetery or burial ground;

(2) "Charitable Trust" shall mean a trust for the benefit of one or more charitable beneficiaries.

b. In any case where the current market value of the assets of a testamentary or inter vivos charitable trust is less than \$65,000 any trustee thereof, any charitable beneficiary specifically designated in the governing instrument or the general counsel of the Tribe may petition the Probate Court for an order terminating the trust. If such a trust has not been under the jurisdiction of the Probate Court prior to any such petition, the petition shall only be brought if the grantor, if living, or any trustee is a member of the Tribe and resides on tribal lands. Upon receipt of such a petition, the court shall order a hearing and cause notice thereof to be given to the general counsel, the trustees, the grantor of the trust, if living, and any charitable beneficiary of the trust specifically designated in the governing instrument. If at such a hearing the court determines that continuation of the trust is uneconomic when the costs of operating the trust, probable income and other relevant factors are considered or not in the best interest of the beneficiaries, the court may order termination of the trust and distribution of the trust assets to any charitable beneficiary specifically designated in the governing instrument or, in the event no such beneficiary exists, to such other charitable trusts or charitable entities, including any community trust or foundation, as the court may determine will fulfill the charitable purposes of the trust being so terminated.

24 M.P.T.L. ch. 7 § 28

#### **§ 28. Definitions**

As used in Sections 28 to 36 of this Chapter, inclusive:

a. "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, a governmental organization to the extent that it holds funds exclusively for any of these purposes, or a charitable community trust as described in Section 24 of this Chapter;

b. "Institutional Fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include:

(1) a fund held for an institution by a trustee that is not an institution, other than a fund which is held for a charitable community trust; or

(2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund;

c. "Endowment Fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

d. "Governing Board" means the body responsible for the management of an

institution or of an institutional fund;

e. "Historic Dollar Value" means the aggregate fair value in dollars of:

(1) an endowment fund at the time it became an endowment fund;

(2) each subsequent donation to the fund at the time it is made; and

(3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

f. "Gift Instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

24 M.P.T.L. ch. 7 § 29

#### **§ 29. Expenditure of Net Appreciation, Standards**

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 35 of this Chapter. This Section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

24 M.P.T.L. ch. 7 § 30

#### **§ 30. Exception and Restriction on Expenditure of Net Appreciation. Construction**

Section 29 of this Chapter does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends" or "rents, issues or profits", or "to preserve the principal intact", or a direction which contains other words of similar import.

24 M.P.T.L. ch. 7 § 31

#### **§ 31. Accumulation of Annual Net Income, Standards**

The governing board may accumulate so much of the annual net income of an endowment fund as is prudent under the care established by Section 35 of this

Chapter and may hold any or all of such accumulated income in an income reserve for subsequent expenditure for the uses and purposes for which such endowment fund is established or may add any or all of such accumulated income to the principal of such endowment fund as is prudent under said standard. This Section does not limit the authority of the governing board to accumulate income or to add the same to principal of an endowment fund as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

24 M.P.T.L. ch. 7 § 32

**§ 32. Exception and Restriction of Accumulation of Annual Net Income.  
Construction**

Section 31 of this Chapter does not apply if and to the extent that the applicable gift instrument indicates the donor's intention that income of an endowment fund shall not be accumulated or shall not be added to the principal of the fund. A restriction against accumulation or addition to principal may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to apply to the uses and purposes of the fund the "income", "interest", "dividends", "currently expendable income" or "rent, issues or profits", or a direction which contains other words of similar import.

24 M.P.T.L. ch. 7 § 33

**§ 33. Investment of Institutional Funds**

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may: (1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof; (2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable; (3) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and (4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

24 M.P.T.L. ch. 7 § 34



**§ 34. Delegation of Powers of Investment**

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

- a. delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;
- b. contract with independent investment advisers, investment counsel or managers, banks or trust companies so to act; and
- c. authorize the payment of compensation for investment advisory or management services.

24 M.P.T.L. ch. 7 § 35

**§ 35. Standards Applicable to Actions of Governing Board**

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, member of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

24 M.P.T.L. ch. 7 § 36

**§ 36. Release of Restriction in Gift Instrument: Written Consent, Court Order. Limitations. Doctrine of Cy-Pres Applicable**

- a. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund;
- b. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply, in the name of the institution, to the Probate Court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The general counsel of the Tribe shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund;
- c. A release under this Section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary

purposes of the institution affected;

d. This Section does not limit the application of the doctrine of cy-pres or approximation.

24 M.P.T.L. ch. 7 § 37

### **§ 37. Special Needs Trust**

The Probate Court shall recognize and enforce the terms of any special needs or supplemental needs trust created under tribal or other laws. Such trust shall be enforced in accordance with the general trust provisions of tribal law. Special Needs Trusts may be established by the guardian, conservator, or the beneficiary or other individual with the power to otherwise establish trusts under tribal law.

## **CHAPTER 8. MASHANTUCKET PEQUOT UNIFORM GIFTS TO MINORS ACT**

24 M.P.T.L. ch. 8 § 1

### **§ 1. Definitions**

As used in Sections 1 to 9 of this Chapter, inclusive, unless the context otherwise requires:

- a. "Adult Person" means a person who has attained the age of 21 years;
- b. "Bank" means a bank or credit union owned or managed by the Tribe or its employees, a state bank and trust company, national banking association or savings bank;
- c. "Broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions and also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;
- d. "Court" means the Probate Court of the Tribe;
- e. "The Custodial Property" includes:
  - (1) all securities, money, life insurance and endowment policies, annuity contracts and the proceeds of life insurance and endowment policies and annuity contracts, interests in general and limited partnerships, tangible personal property, under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive;
  - (2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance or endowment policies, annuity contracts, the proceeds from life insurance and endowment policies and annuity contracts, interests in general and limited partnerships, and interests in tangible personal property.

f. "Custodian" means a person so designated in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive;

g. A "Guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person;

h. "Issuer" means a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

i. "Legal Representative" of a person means his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;

j. A "Member" of a "Minor's Family" means any of the minor's parents, stepparents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;

k. A "Minor" is a person who has not attained the age of 21 years;

l. A "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

m. "Transfer Agent" means a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;

n. "Trust Company" means a bank authorized to exercise trust powers;

o. "Savings and Loan Association" means savings and loan associations and federal savings and loan associations;

p. "Life Insurance and Endowment Policies and Annuity Contracts" means only life insurance and endowment policies and annuity contracts on the life of a minor or a member of the minor's family as defined in subsection (j) of this

Section;

q. "Credit Union" means a tribal, state or federally chartered credit union.

24 M.P.T.L. ch. 8 § 2

## **§ 2. Methods of Making Gift**

a. An adult person may, during his lifetime, make a gift of a security, an interest in a general partnership, an interest in a limited partnership, money, a life insurance policy, an endowment policy, an annuity contract, the proceeds of life insurance or endowment policies and annuity contracts, or tangible personal property to a person who is a minor on the date of the gift:

(1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "As custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act";

(2) If the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or to a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian: "GIFT UNDER THE MASHANTUCKET PEQUOT UNIFORM GIFTS TO MINORS ACT: I, ....(name of donor), hereby deliver to ....(name of custodian) as custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act, the following security(ies): (Insert an appropriate description of the security or securities delivered sufficient to identify it or them) .... (dated) .... (signature of donor) .... (name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Mashantucket Pequot Uniform Gifts to Minors Act. Dated: .... (signature of custodian)".

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank, or to a savings and loan association, or a credit union for credit to an account or for purchase of shares in the name of the donor, another adult person or a bank with trust powers, followed, in substance, by the words: "As custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act".

(4) If the subject of the gift is a life insurance or endowment policy or an annuity contract, the ownership of the policy or contract shall be registered by the donor of such policy or contract in his own name, in the name of another adult person or a trust company, followed, in substance, by the words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act", and such policy or contract shall be delivered to the person in whose name it is thus registered as custodian. If the policy or contract is registered in the name of the donor, as custodian, such registration shall of itself constitute the delivery required by this subsection. If the subject of the gift is the proceeds of a life insurance or endowment policy or an annuity contract, where the ownership of such policy or contract has not been given, the ownership of such proceeds may be transferred either revocably or

irrevocably by merely designating as a primary or contingent beneficiary another adult person or trust company, followed, in substance, by the words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act", and such custodian shall be authorized to claim and receive such proceeds in his capacity as such custodian.

(5) If the subject of the gift is an interest in a general or limited partnership, by delivering an assignment of such interest to the donor in his own name, another adult person or a bank with trust powers, followed, in substance by words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act", and by notifying in writing, the other general partner or partners and the donee of such gift. In the case in which the assignment is made to the donor in his own name, notification to the other general partner or partners shall constitute the delivery required by this subsection.

(6) If the subject of the gift is an interest in tangible personal property, by delivery of an instrument of conveyance to the custody for such minor under the Mashantucket Pequot Uniform Gifts to Minors Act, executed and acknowledged by the donor and specifying that the gift is made subject to said act.

b. An adult person may, by will, make a specific bequest of a security, a general bequest of money, an interest in a general or a limited partnership, one or more articles of tangible personal property or a share of his or her residuary estate to a person who is a minor on the date of the testator's death:

(1) If the subject of the bequest is a security in registered form by directing his executor to register such security in the name of another adult person or a trust company, in the form provided in subsection (g) of Section 4 of this Chapter;

(2) If the subject of the bequest is a security not in registered form, by directing his executor to deliver it to an adult person or to a trust company accompanied by a statement in the following form, in substance, signed by the executor and the person designated as custodian: "SPECIFIC BEQUEST UNDER THE MASHANTUCKET PEQUOT UNIFORM GIFTS TO MINORS ACT: I, ....(name of executor), hereby deliver to ....(name of custodian) as custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act, the following security(ies): (Insert an appropriate description of the security or securities delivered sufficient to identify it or them) on behalf of ...."

(3) If the subject of the bequest is an interest in a general or a limited partnership, a specific bequest of money, one or more articles of tangible personal property, or a share in the residuary estate, by directing his executor, in the case of an interest in a general or limited partnership, to execute an assignment of such interest in the form provided in subdivision (6) of subsection (a) of this Section and deliver said assignment to said person and to the other general partner or partners, and in the case of a specific bequest of money or of one or more articles of tangible personal property, or a share in the residuary estate, to distribute such money or article or articles of tangible personal property such share under the provisions of subsection (c) of this Section.

c. (1) If a devise or bequest is distributable by will, the will may state that the devise or bequest is made under the Mashantucket Pequot Uniform Gifts to Minors Act, and unless the testator in his will designates the custodian, who shall be an adult or a bank with trust powers, the testator's personal representative making a distribution of the property shall, subject to any limitations contained within the will, have the power to distribute to an existing custodian or, if none, to a custodian who shall be an adult or a bank with trust powers, selected by the testator's personal representative in accordance with the provisions of Section 7 of this Chapter, and such personal representative shall distribute the subject of the gift or bequest by transferring it in the manner and form provided for in subdivisions (1) to (3), inclusive, of subsection (b) and under this subsection.

(2) If the instrument specifically so provides, any distributions by a trustee or trustees under an inter vivos or testamentary trust instrument of income or principal or both income and principal to a minor may be made to a custodian for such minor under the Connecticut Uniform Gifts to Minors Act; and unless the testator or settlor in his will or trust instrument designated a custodian, who shall be an adult or a bank with trust powers, the trustee or trustees shall, subject to any limitations contained within the will or trust instrument, have the power to distribute to an existing custodian or, if none, to a custodian who shall be an adult or a bank with trust powers selected in accordance with the provisions of Section 7 of this Chapter, and such trustee or trustees shall distribute the subject of the gift or bequest by transferring it in the manner and form provided in subdivisions (1) to (5), inclusive, of subsection (a) of this Section. The provisions of this subsection shall apply to distributions by an executor, trustee or trustees in the same manner as the provisions of subsection (a) apply to any donor making a gift during his lifetime. Any trustee or trustees of an inter vivos trust making any distribution under this subsection may do so without court order.

d. Any gift or bequest made in a manner prescribed in subsection (a) or (b) of this Section may be made to only one minor and only one person may be the custodian. If the custodian named by the testator or settlor predeceases the testator or settlor, or if he refuses or declines to act, or if after being appointed custodian he resigns or is removed, and the testator or settlor has made no provision for a successor custodian, then the successor custodian shall be appointed in accordance with the provisions of Section 7 of this Chapter.

e. A donor who makes a gift to a minor in a manner prescribed in subsection (a) or his executor, trustee or trustees in the case of a gift under subsection (b), shall promptly do all things within his power to put the subject of the gift or bequest in the possession and control of the custodian, but neither the failure of the donor or his executor, trustee or trustees to comply with this subsection, nor the designation by the donor, his executor, trustee or trustees of an ineligible person as custodian, nor renunciation by the person designated as custodian shall affect the consummation of the gift or bequest.

**§ 3. Gift or Bequest to be Irrevocable. Rights and Powers Granted Custodian, Issuers, Transfer Agents, Brokers**

a. A gift, devise or bequest made in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive, is irrevocable and conveys to the minor indefeasibly vested legal title to the custodial property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in said Sections.

b. By making a gift or bequest in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive, the donor incorporates in his gift all the provisions of said Sections and grants to the custodian, and to any issuer, transfer agent, bank, savings and loan association, credit union, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in said Sections.

24 M.P.T.L. ch. 8 § 4

**§ 4. Powers and Duties of Custodian**

a. The custodian shall collect, hold, manage, invest and reinvest the custodial property.

b. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

c. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 12 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

d. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 21 years or, if the minor dies before attaining the age of 21 years, he shall thereupon deliver or pay it over to the estate of the minor.

e. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property in any property described in subsections (a) and (b) of Section 2 of this Chapter, including life insurance and endowment policies on the life of the minor or that of another person in whom the minor has an insurable interest, as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain any property given to the minor in

a manner prescribed in Sections 1 to 9 of this Chapter, inclusive.

f. The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

g. The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in a bank or savings and loan association or credit union in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

h. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 12 years.

i. A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

j. If the subject of the gift is a life insurance or endowment policy or an annuity contract, the custodian:

(1) shall have all the incidents of ownership in such policy or contract which he may hold as custodian, to the same extent as if he were the owner thereof, but only in his fiduciary capacity as custodian. The designated beneficiary of any such policy or contract on the life of a person other than the minor shall be the minor or the custodian, in his fiduciary capacity as custodian and the designated beneficiary of any such policy or contract on the life of the minor may be the minor's spouse, parents, siblings or the minor's estate; and

(2) may pay premiums on the policy or contract out of the custodial property.

24 M.P.T.L. ch. 8 § 5

#### **§ 5. Reimbursement of Custodian**

a. A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.



b. A custodian may act without compensation for his services.

c. Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services.

d. Except as otherwise provided in Sections 1 to 9 of this Chapter, inclusive, a custodian shall not be required to give a bond for the performance of his duties.

e. A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in Sections 1 to 9 of this Chapter, inclusive.

24 M.P.T.L. ch. 8 § 6

**§ 6. Responsibility of Issuer, Transfer Agent, Bank, Life Insurance Company, Savings and Loan Association, Credit Union, Broker or Other Person**

No issuer, transfer agent, bank, life insurance company, savings and loan association, credit union, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by Sections 1 to 9 of this Chapter, inclusive, or is obliged to inquire into the validity or propriety under said Sections of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, savings and loan association, broker or other person acting on any instrument of designation of a successor custodian, executed as provided in Section 7 of this Chapter by a minor to whom a gift has been made in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive, and who has attained the age of 12 years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under said Sections of the instrument of designation.

24 M.P.T.L. ch. 8 § 7

**§ 7. Successor Custodian. Resignation of Custodian**

a. Only an adult or a trust company is eligible to become successor custodian. A donor may designate a successor custodian at the same time as he makes a gift under the provisions of Sections 1 to 9 of this Chapter, inclusive, by

executing and dating an "instrument of designation of a successor custodian by a donor" before a subscribing witness other than the successor and delivering a copy of such instrument to such successor and such custodian. Unless a custodian has received such an instrument from the donor, such custodian may designate his successor by executing and dating an "instrument of designation of a successor custodian by a custodian" before a subscribing witness other than the successor. The instrument of designation of a successor custodian by a custodian may but need not contain the resignation of the custodian. If the donor does not so designate a successor custodian at the time of making the initial gift to a particular custodian for a particular minor under said Sections and the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of 12 years, the minor may designate a successor custodian by executing an "instrument of designation of a successor custodian by the minor donee" before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed in said Sections.

b. The designation of the successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item, if it is a security in registered form or a life insurance or endowment policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance or endowment policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

c. A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has attained the age of 12 years, or, if none, in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by an instrument dated on a later date.

d. If a person designated as custodian or as successor custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age 21 years and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated

as provided in subsection (a), the legally appointed guardian of the property of the minor, if the minor has a legally appointed guardian of his property, shall be successor custodian and, if the minor has no legally appointed guardian of his property, then the legally appointed guardian of the person of the minor, if the minor has a legally appointed guardian of his person, shall be successor custodian, and if the minor has no legally appointed guardian of his property or his person, then the father of the minor shall be successor custodian, unless the minor's parents are separated or divorced and the mother has been awarded custody of the minor by a court or if the minor has no living and legally competent father, then the mother of the minor shall be successor custodian and, if the minor has no legally appointed guardian or living and legally competent parents or parent, a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of the successor custodian.

e. A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of 12 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

f. Upon the filing of a petition as provided in this Section, the court shall grant an order, directed to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

24 M.P.T.L. ch. 8 § 8

#### **§ 8. Petition for Accounting**

a. The minor, if he has attained the age of 12 years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

b. The court, in a proceeding under Sections 1 to 9 of this Chapter, inclusive, or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

24 M.P.T.L. ch. 8 § 9

#### **§ 9. Not Exclusive Method of Gift**

Sections 1 to 9 of this Chapter, inclusive, shall not be construed as providing an exclusive method for making gifts to minors.

## CHAPTER 9. DURABLE POWER OF ATTORNEY

24 M.P.T.L. ch. 9 § 1

### § 1. Power of Attorney to Survive Disability or Incompetence

a. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of any person who acts under a power of attorney in a writing executed by the principal, if the writing contains the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incompetence; provided the power of attorney is executed and witnessed in the same manner as provided for deeds in the state of Connecticut.

b. If a conservator of the estate of the principal is appointed after the occurrence of the disability or incompetence referred to in subsection (a) of this Section, the power of attorney shall cease at the time of the appointment, and the person acting under the power of attorney shall account to the conservator rather than to the principal.

## CHAPTER 10. POWERS OF APPOINTMENT

24 M.P.T.L. ch. 10 § 1

### § 1. Power of Appointment May be Released; Definitions

a. As used in Sections 1 to 5 of this Chapter, inclusive:

(1) "Power of Appointment" includes all powers which are in substance and effect powers of appointment regardless of the language used in creating them; and

(2) "Release" includes:

(a) an instrument wherein the person who executes it in substance states that he wholly releases, or agrees in no respect to exercise or participate in the exercise of, a power of appointment; and

(b) an instrument wherein the person who executes it in substance states that he releases all right to exercise, or participate in the exercise of, a power of appointment otherwise than within limits therein defined, or agrees not to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits therein defined.

b. A power of appointment, whether or not coupled with an interest, and whether the power is held by the donee in an individual or in a fiduciary capacity, may be released, wholly or partially, by the donee thereof, unless otherwise expressly provided in the instrument creating the power.

24 M.P.T.L. ch. 10 § 2

**§ 2. Method of Release**

A power releasable according to Section 1 of this Chapter may be released, wholly or partially, by the delivery of a written release executed by the donee of the power, for consideration or under seal, to any person who could be adversely affected by the exercise of the power, or to any person who, alone or with another or others, holds in trust property subject to the power, or, in the case of a power created by will, by the filing of such release in the Probate Court in which the will was proved or allowed.

24 M.P.T.L. ch. 10 § 3

**§ 3. Extent of Release**

A release executed by the donee of a power releasable according to Section 1 of this Chapter, and delivered or filed in accordance with Section 2 of this Chapter, shall be effective to release the power to the extent provided in such release.

24 M.P.T.L. ch. 10 § 4

**§ 4. Effect of Release of one Donee upon other Donees**

If a power of appointment releasable according to Section 1 of this Chapter is or may be exercisable by two or more persons in conjunction with one another or successively, a release or disclaimer of the power, in whole or in part, executed and delivered or filed, in accordance with Section 2 of this Chapter, by any one of the donees of the power, shall, subject to the provisions of Section 2 of this Chapter, be effective to release or disclaim, to the extent therein provided, all right of such person to exercise, or to participate in the exercise of, the power, but, unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees thereof.

24 M.P.T.L. ch. 10 § 5

**§ 5. Exercise in Favor of Further Power**

a. Except to the extent otherwise expressly provided in the instrument creating the power, the donee of a power of appointment over any trust may appoint all or any part of the property subject to such power in further trust and may create further special powers of appointment. Where the donee of the original power could have appointed the property outright to the donee of the further power, any restrictions on the class of permissible appointees imposed by the donor of the original power shall lapse with the exercise of such power. The trustee of any trust the property of which is so appointed shall transfer and

pay over such appointed property to the trustee designated by the donee, to be administered subject to the jurisdiction of any court having jurisdiction over the trust to which such property is appointed.

b. Nothing contained in this Section shall be construed to permit the creation of any interest which violates the rule against perpetuities.

24 M.P.T.L. ch. 10 § 6

#### **§ 6. Exercise of Power of Appointment of Property**

The donee of a power to appoint property to anyone other than his estate shall not have the power to appoint property to himself, his estate, his creditors or the creditors of this estate, but may appoint to anyone not expressly excluded from the class of permissible appointees.

24 M.P.T.L. ch. 10 § 7

#### **§ 7. Applicability if Power of Appointment of Property**

The provisions of Section 6 of this Chapter shall apply to all wills and trusts, regardless of the testator's date of death or the date the will or trust was executed, unless: (1) the power of appointment expressly included the power to appoint to the donee, his estate, his creditors or the creditors of his estate; or (2) a contrary intention of the donor is demonstrated by clear and convincing evidence.

### **CHAPTER 11. DISCLAIMER OF PROPERTY**

24 M.P.T.L. ch. 11 § 1

#### **§ 1. Definitions**

a. The provisions of Sections 1 to 5 of this Chapter, inclusive, shall be liberally construed to promote their underlying purpose and policy of readily permitting the disclaimer of interests.

b. As used in said Sections,

(1) "Non-testamentary Instrument" includes, but is not limited to, a trust other than a trust created under a will, an annuity, a policy of life, health or accident insurance, a bank account or any contract or other document naming another party as beneficiary thereof whether such beneficiary takes by survivorship, payment on death or outright grant, but does not include a will.

(2) "Interest" means any interest in property, including any power, even if held in a fiduciary capacity.

c. A disclaimer which complies with the requirements of said Sections is

irrevocable.

24 M.P.T.L. ch. 11 § 2

**§ 2. Disclaimer of Property in Decedent's Estate. Time Limitation. Effect of Disclaimer**

a. An heir, next of kin, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, trustee of a non-testamentary trust, donee of a power of appointment granted by a testamentary instrument or appointee under a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part any interest by delivering a written disclaimer in the manner hereinafter provided.

b. A guardian of the estate, conservator of the estate, executor, administrator or other personal representative of the estate of a minor, incapable person, or decedent, or the trustee of a testamentary trust, if such fiduciary deems it in the best interests of those interested in the estate of such person or such trust and not detrimental to the interests of such minor, incapable person, decedent's estate or such trust, with the approval of the Probate Court having jurisdiction over such minor's, incapable person's or decedent's estate or such trust, may disclaim on behalf of such estate or such trust within the same time and in the same manner as could a capable person.

c. The disclaimer shall:

(1) describe the interest disclaimed;

(2) be executed by the disclaimant in the manner provided for the execution of deeds of real property either by the laws of the state of Connecticut or by the laws of the place of execution; and

(3) declare the disclaimer and the extent thereof.

d. A disclaimer under this Section shall be effective if made in the following manner:

(1) A disclaimer of a present interest shall be delivered not later than the date which is nine months after:

(a) the death of the decedent, or the donee of the power or,

(b) the day on which the disclaimant attains the age of 18 years, whichever is later;

(2) a disclaimer of a future interest shall be delivered not later than the date which is nine months after:

(a) the event that determines that the taker of the interest is finally ascertained and his interest indefeasibly vested, or

(b) the day on which the disclaimant attains the age of 18 years, whichever is

later;

(3) the disclaimer shall be delivered to the legal representative of the estate of the decedent or deceased donee of the power or the holder of the legal title to the property to which the interest relates. Although not a condition to disclaimer, if within such nine-month period, a copy of such disclaimer and a receipt therefor, executed by such legal representative or such holder of legal title in the same manner as provided for the disclaimer, are filed in the Probate Court.

e. If a disclaimer is made pursuant to this Section, and the deceased owner or donee of a power of appointment has not provided for another disposition, the interest disclaimed shall devolve as if the disclaimant had predeceased the decedent or, if the disclaimant has been designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. If a disclaimer is addressed to an interest disposed of by a particular provision of an instrument, then the interest disclaimed shall devolve as if the disclaimant had predeceased the decedent, but only for purposes of that provision, and such interest may devolve to or for the benefit of the disclaimant under other provisions of such instrument or by intestacy. Any future interest that takes effect in possession or enjoyment at or after the termination of the interest disclaimed shall take effect as if the disclaimant had predeceased the decedent or the donee of the power. A disclaimer shall relate back for all purposes to the date of death of the decedent or of the donee.

24 M.P.T.L. ch. 11 § 3

**§ 3. Right to Disclaim Barred, When. Binding Effect of Disclaimer or Waiver**

a. The right to disclaim an interest is barred by any:

(1) assignment, conveyance, encumbrance, pledge or transfer of the interest or any part thereof;

(2) written waiver of the right to disclaim such interest;

(3) acceptance of such interest or any of its benefits; or

(4) sale of such interest under judicial sale, made before the disclaimer is effected.

b. The right to disclaim shall exist notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

c. A disclaimer or a written waiver of the right to disclaim, shall be binding upon the disclaimant or person waiving and all parties claiming by, through or under such disclaimant or person.

24 M.P.T.L. ch. 11 § 4



#### **§ 4. Right to Disclaim Under other Law**

The provisions of Sections 1 to 5 of this Chapter, inclusive, shall not abridge the right of any person to assign, convey, release, or renounce any interest arising under any other statute or under common law.

24 M.P.T.L. ch. 11 § 5

#### **§ 5. Disclaimer of Property Passing Under Non-Testamentary Instrument. Time Limitation. Effect of Disclaimer**

a. A grantee, donee, joint-tenant of personalty, person succeeding to a disclaimed interest, beneficiary under a non-testamentary instrument, trustee of a non-testamentary trust, donee of a power of appointment granted by a non-testamentary instrument, or an appointee under a power of appointment exercised by a non-testamentary instrument may disclaim in whole or in part any interest by delivering a written disclaimer in the manner hereinafter provided.

b. A guardian of the estate, conservator of the estate, executor, administrator or other personal representative of the estate of a minor, incapable person, or decedent, or the trustee of a non-testamentary trust, if such fiduciary deems it in the best interests of those interested in the estate of such person or such trust and not detrimental to the interests of such minor, incapable person or decedent's estate or such trust, with the approval of the Probate Court may disclaim on behalf of such estate or such trust within the same time and in the same manner as could a capable person.

c. The disclaimer shall:

(1) describe the interest therein disclaimed;

(2) be executed by the disclaimant in the manner provided for the execution of deeds of real property either by the laws of the state of Connecticut or by the laws of the place of execution; and

(3) declare the disclaimer and the extent thereof.

d. A disclaimer under this Section shall be effective if made in the following manner.

(1) A disclaimer of a present interest shall be delivered not later than the date which is nine months after the effective date of the non-testamentary instrument. A disclaimer of a future interest shall be delivered not later than the date which is nine months after the event determining that the taker of the interest is finally ascertained and such interest is indefeasibly vested.

(2) If the disclaimant does not have actual knowledge of the existence of the interest, the disclaimer shall be delivered not later than the date which is nine months after the disclaimant has actual knowledge of the existence of the interest. If the disclaimant has not attained the age of 18 years, the disclaimer shall be delivered not later than the date which is nine months

after such person has attained the age of 18 years.

(3) The disclaimer shall be delivered to the transferor of the interest, his legal representative, or the holder of the legal title to the property to which such interest relates.

(4) The effective date of a revocable, non-testamentary instrument is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest.

e. If an interest has devolved to the disclaimant under a non-testamentary instrument and such instrument does not provide for another disposition, the interest disclaimed shall devolve as if the disclaimant had died before the effective date of such instrument. A disclaimer shall relate back for all purposes to that date. Any future interest that takes effect in possession or enjoyment at or after the termination of the interest disclaimed shall take effect as if the disclaimant had died before the effective date of the non-testamentary instrument that transferred the interest disclaimed. If a disclaimer is addressed to an interest disposed of by a particular provision of a non-testamentary instrument then the interest disclaimed shall devolve as if the disclaimant had died before the effective date of such instrument, but only for purposes of that provision, and such interest may devolve to or for the benefit of the disclaimant under other provisions of such instrument or by intestacy.

## **CHAPTER 12. PROTECTED PERSONS AND THEIR PROPERTY**

24 M.P.T.L. ch. 12 § 1

### **§ 1. Administrator of Veterans' Affairs to be Party in Interest**

a. The Administrator of Veterans' Affairs, created by Act of the Congress of the United States, or his successor, shall be a party in interest in any proceedings brought under any provision of the laws of the Mashantucket Pequot Tribe for the appointment of a guardian of a veteran of any war or other beneficiary on whose account benefits of compensation, adjusted compensation, pension or insurance or other benefits are payable by the Veterans' Administration.

b. The Administrator of Veterans' Affairs or his successor shall be an interested party in the administration of the estate of any ward on whose account the benefits are payable or whose estate includes assets derived from benefits paid by the Veterans' Administration, its predecessor or successor.

c. Written notice shall be given by registered or certified mail, unless waived in writing, to the division of the office of the Veterans' Administration having jurisdiction over the area in which the court is located, of the time and place for hearing on any petition or pleading or in connection with any proceeding pertaining to or affecting in any manner the administration of the estate of any beneficiary of the Veterans' Administration. Notice shall be mailed in time to reach such office not less than 10 days before the date of

the hearing or other proceeding.

24 M.P.T.L. ch. 12 § 2

**§ 2. Investment of Funds in Insurance and Annuity Contracts by Conservator or Guardian of Estate**

Upon application of a conservator or the guardian of the estate of a ward, the Probate Court may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the Court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company deemed suitable by said Court, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested in it.

24 M.P.T.L. ch. 12 § 3

**§ 3. Testamentary Guardian or Co-Guardians**

The surviving parent of any minor may by will appoint a person or persons who shall be guardian or co-guardians of the person of such minor, a guardian or co-guardians of the estate or both. Such appointment shall not supersede the previous appointment of a guardian made by the Probate Court.

24 M.P.T.L. ch. 12 § 4

**§ 4. Payment by Guardian or Conservator of Administration Expenses of Deceased Protected Person**

a. Upon the death of a minor with respect to whose estate a guardian has been duly appointed by the Probate Court, has qualified and is acting as such, and upon the death of a person with respect to whose estate a conservator has been duly appointed, has qualified and is acting as such, if:

(1) the estate consists entirely of personalty; and

(2) the estate remaining in the hands of the guardian or conservator at the time of the death of the protected person is not more than sufficient to pay expenses incurred during the lifetime of the protected person and not paid as of the date of death, administration expenses necessary to the settlement of the fiduciary's final account and the funeral expenses, including the cost of a suitable monument and cemetery plot, then such guardian or conservator may pay such expenses and take credit therefor on his final account.

b. If the estate is less than sufficient to pay all such expenses in full, the provisions of Chapter 6, Section 48 as to order of payment shall govern.

24 M.P.T.L. ch. 12 § 5

## § 5. Definitions

For the purposes of Sections 5 to 18 of this Chapter, inclusive, the following terms shall have the following meanings:

a. "Conservator of the Estate" means a person, a tribal official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in the Connecticut General Statutes Section 19a-521, appointed by the Probate Court under the provisions of Sections 5 to 18 of this Chapter, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Probate Court for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of Section 12 of this Chapter.

b. "Conservator of the Person" means a person, a tribal official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in the Connecticut General Statutes Section 19a-521, appointed by the Probate Court under the provisions of Sections 5 to 18 of this Chapter, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Probate Court for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of Section 12 of this Chapter.

c. "Incapable of Caring for One's Self" means a mental, emotional or physical condition resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health.

d. "Incapable of Managing His or Her Affairs" means that a person has a mental, emotional or physical condition resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from performing the functions inherent in managing his or her affairs, and the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care or welfare of the person or those entitled to be supported by that person and that the person is unable to take the necessary steps to obtain or provide funds which are needed for the support, care or welfare of the person or those entitled to be supported by such person.

e. "Involuntary Representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the Probate Court that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

f. "Respondent" means either a minor or adult person for whom an application for a voluntary or involuntary representation has been filed.

g. "Voluntary Representation" means the appointment of a conservator of the person or estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

h. "Ward" means a person for whom involuntary representation is granted under Sections 5 to 18 of this Chapter, inclusive.

24 M.P.T.L. ch. 12 § 6

#### **§ 6. Naming of own Conservator for Future Incapacity**

a. Any person who has attained at least 18 years of age, and who is of sound mind, may designate in writing a person or persons whom he desires to be appointed as conservator of his person or estate or both, if he is thereafter found to be incapable of managing his affairs.

b. The designation shall be executed, witnessed and revoked in the same manner as provided for wills in Chapter 5, Sections 3 and 4; provided, any person who is so designated as a conservator shall not qualify as a witness.

c. Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of Section 11 of this Chapter, if appointed thereafter as a conservator.

24 M.P.T.L. ch. 12 § 7

#### **§ 7. Application for Voluntary Representation**

Any person domiciled on tribal lands or tribal members wherever they reside may make application to the Probate Court for voluntary representation either for the appointment of a conservator of the person or a conservator of the estate, or both. If the application excuses bond, no bond shall be required by the court unless later requested by the respondent or unless facts are brought to the attention of the court that a bond is necessary for the protection of the respondent. Upon receipt of the application, the court shall set a time and place for hearing and shall give such notice as it may direct to the petitioner, the petitioner's spouse, if any, and to other interested parties, if any. After seeing the respondent in person and hearing his or her reasons for the application and after explaining to the respondent that granting the petition will subject the respondent or respondent's property, as the case may be, to the authority of the conservator, the court may grant voluntary representation and thereupon shall appoint a conservator of the person or estate or both, and shall not make a finding that the petitioner is incapable. The conservator of the person or estate or both, shall have all the powers and duties of a conservator of the person or estate of an incapable person appointed pursuant to Section 11 of this Chapter. If the respondent subsequently becomes disabled or incapable, the authority of the conservator shall not be revoked as a result of such disability or incapacity.

**§ 8. Release from Voluntary Representation**

Any person who is under voluntary representation as provided by Section 7 of this Chapter shall be released from voluntary representation upon giving 30 days written notice to the Probate Court.

**§ 9. Application for Involuntary Representation. Penalty for Fraudulent or Malicious Application of False Testimony**

An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and stating the reasons for the alleged incapability. The application shall be filed in the Probate Court for any person who is domiciled on tribal lands or tribal members wherever they may reside.

**§ 10. Notice of Hearing. Appointment of Counsel**

a. Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least seven days before the hearing date, which date shall not be more than 30 days after the receipt of the application by the Probate Court unless continued for cause shown. Notice of the hearing shall be sent within 30 days after receipt of the application.

(1) The court shall direct that personal service be made, by the tribal police or an indifferent person, upon the following:

(a) the respondent, except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this Section;

(b) the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to Connecticut General Statute Section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin of such respondent.

(2) The court shall order such notice as it directs to the following:

(a) the applicant;

(b) to the Administrator of Veteran's Affairs by registered or certified mail, if the respondent is receiving veterans' benefits or the Veteran's Home and Hospital, or both, if the respondent is receiving aid or care from such hospital, or both;

(c) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives;

(d) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution.

(3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified.

b. (1) The notice required by subdivision (1) of subsection (a) of this Section shall specify:

(a) the nature of involuntary representation sought and the legal consequences thereof;

(b) the facts alleged in the application; and

(c) the time and place of the hearing.

(2) The notice shall further state that the respondent has a right to be present at the hearing and has a right to be represented by an attorney at his or her own expense. If the respondent is unable to request or obtain counsel for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be paid by the Probate Court. If the respondent notifies the court in any manner that he or she wants to attend the hearing on the application but is unable to do so because of physical incapacity, the court shall schedule the hearing on the application at a place which would facilitate attendance by the respondent but if not practical, then the judge shall visit the respondent, if he or she is on tribal lands, before the hearing. Notice to all other persons required by this Section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

24 M.P.T.L. ch. 12 § 11

#### **§ 11. Hearing. Appointment of Conservator**

a. At any hearing for involuntary representation, the court shall receive evidence regarding the condition of the respondent, including a written report

or testimony by one or more physicians licensed to practice medicine in the state of Connecticut or Rhode Island who have examined the respondent within 30 days preceding the hearing. The report or testimony shall contain specific information regarding the disability and the extent of its incapacitating effect. The court may also consider such other evidence as may be available and relevant, including but not limited to a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community, or any other appropriate source. Such evidence may include, if available, reports from the Mashantucket Pequot Department of Health and Human Services, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court deems qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or his or her refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If this requirement is waived, the court shall make a specific finding in any decree issued on the petition stating why medical evidence was not required.

b. The court may hold the hearing on the application at a place within tribal land other than its usual courtroom if it would facilitate attendance by the respondent.

c. If the court finds by clear and convincing evidence that the respondent is incapable of managing his or her affairs then the court shall appoint a conservator of his or her estate. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself, then the court shall appoint a conservator of his or her person.

d. When selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. The respondent may, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference, nominate a conservator who shall be appointed unless the court finds the appointment of the nominee is not in the best interests of the respondent. In such case, or in the absence of any such nomination, the court may appoint any qualified person, authorized tribal official or corporation in accordance with subsections (a) and (b) of Section 5 of this Chapter.

e. Upon the request of the respondent or his or her counsel, made within 30 days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

f. If the court appoints a conservator of the estate of the respondent, it shall require a Probate bond. The court may, if it deems it necessary for the protection of the respondent, require a bond of any conservator of the person appointed hereunder.

24 M.P.T.L. ch. 12 § 12

## **§ 12. Appointment of Temporary Conservator**



a. Upon written application of any person deemed by the court to have sufficient interest in the welfare of the respondent, including but not limited to the spouse or any relative of the respondent, the Probate Court may, if it finds the respondent to be incapable of managing his or her affairs or incapable of caring for himself or herself, appoint a temporary conservator. The temporary conservator shall have charge of the property or of the person of the respondent or both for such period of time or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than 30 days.

b. An appointment shall not be made unless:

(1) there is presented to the judge a certificate, signed by two physicians licensed to practice medicine or surgery in this state, stating that they have examined the person and that it is their opinion that his condition renders him incapable; and

(2) the court finds that irreparable injury to the mental or physical health or financial or legal affairs of the respondent will result if a conservator is not appointed forthwith.

c. The court may, if it deems it to be in the best interests of the respondent, hold a hearing on any application for temporary conservator under this Section, in which case the provisions of Section 10 of this Chapter shall apply, except that the seven-day notice requirement set forth in Section 10 of this Chapter shall be waived. The application shall be acted upon within 48 hours after the filing thereof, Saturdays and Sundays excluded, unless continued for cause shown. The certificate shall state the date of examination, which shall not be more than three days before the date of signature. The judge may, in his discretion, require a temporary conservator to give a probate bond.

24 M.P.T.L. ch. 12 § 13

**§ 13. Duties of Conservator of the Estate. Application for Distribution of Gifts of Income and Principal from the Estate**

a. A conservator of the estate appointed under Sections 7, 11, or 12 of this Chapter shall, within two months after the date of his or her appointment, make and file in the Probate Court, an inventory under oath of the estate of his or her ward, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of his appointment. Such inventory shall include the value of the ward's interest in all property in which the ward has a legal or equitable present interest, including, but not limited to, the ward's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the ward and those members of the ward's family whom he has the legal duty to support and to pay his debts, and may sue for and collect all debts due the ward.

b. Any conservator of the estate of a married person may apply such portion of the property of the ward to the support, maintenance and medical treatment of

the ward's spouse which the Probate Court, upon hearing after notice, decides to be proper under the circumstances of the case.

c. Notwithstanding the provisions of Chapter 3, Section 28, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under Section 12 of this Chapter.

d. Upon application of a conservator of the estate, after hearing with notice to all parties who may have an interest as determined by the court, the court may authorize the conservator to pay and distribute gifts of income and principal from the estate of the ward in such amounts or in such form as the court approves, to individuals and qualified charities as defined in the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts shall be authorized only if the court finds that:

(1) in the case of individuals not related to the ward by blood or marriage, the ward has made a previous gift to that individual prior to being declared incapable;

(2) in the case of a charity, the ward had made a previous gift to such charity or pledged a gift in writing to such charity prior to being declared incapable;

(3) the estate of the ward is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this Section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such ward in accordance with such ward's established standard of living and for the support of persons the ward is legally obligated to support;

(4) the purpose of the gifts is not to diminish the estate of the ward so as to qualify the ward for federal or state aid or benefits; and

(5) in the case of a ward capable of making an informed decision, the ward has no objection to such gift. The court shall give consideration to the following:

(a) the medical condition of the ward, including the prospect of restoration to capacity;

(b) the size of the ward's estate;

(c) the provisions which, in the judgment of the court, such ward would have made if he or she had been capable, for minimization of income and estate taxes consistent with proper estate planning.

24 M.P.T.L. ch. 12 § 14

#### **§ 14. Duties of Conservator of the Person**

The conservator of the person shall have:

- a. the duty and responsibility for the general custody of the respondent;
- b. the power to establish his or her place of abode within the tribal lands in accordance with tribal laws;
- c. the power to give consent for his or her medical or other professional care, counsel, treatment or service;
- d. the duty to provide for the care, comfort and maintenance of the ward;
- e. the duty to take reasonable care of the respondent's personal effects; and
- f. the duty to report at least annually to the Probate Court regarding the condition of the respondent. The preceding duties, responsibilities and powers shall be carried out within the limitations of the resources available to the ward, either through his own estate or through the assistance of Tribe.

24 M.P.T.L. ch. 12 § 15

#### **§ 15. Court to Resolve Conflicts between Conservators**

If a person has both a conservator of the person and a conservator of the estate who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the Probate Court which appointed the conservators. Upon hearing, the court shall order the course of action which in the court's discretion is in the best interests of the person under conservatorship.

24 M.P.T.L. ch. 12 § 16

#### **§ 16. Conservator of Nonresident's Property**

a. If any person domiciled out of and owning tangible personal property within tribal lands is incapable of managing his affairs, the Probate Court may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person and after notice pursuant to Section 12 of this Chapter or such reasonable notice as the court may order, and a hearing as required pursuant to Section 13 of this Chapter appoint a conservator of the estate for the tangible personal property on tribal lands of the incapable person pursuant to Section 13 of this Chapter.

b. If a conservator of the estate has been appointed for such an incapable person in the jurisdiction of such person's domicile,

(1) the court may, on application of such conservator to act as conservator for tangible personal property of the incapable person on tribal lands, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the

jurisdiction of the incapable person's domicile; and

(2) if the application is for the appointment of a person other than the out-of-jurisdiction conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-jurisdiction appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in another jurisdiction includes any person serving in the equivalent capacity in such jurisdiction.

c. The conservator of the estate for the property on tribal lands shall give a probate bond, and shall, within two months after the date of his appointment, make and file in the Probate Court, under oath, an inventory of all the tangible personal property on the reservation of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

d. The proceeds of any sale of tangible personal property may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the jurisdiction where the incapable person is domiciled, following the application and proceedings which are required by the laws of the Tribe.

24 M.P.T.L. ch. 12 § 17

#### **§ 17. Termination of Conservatorship. Review by Court**

a. (1) If the Probate Court finds a ward to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a ward is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of his or her property be restored to the ward.

(2) If the court finds upon hearing and after notice which the court prescribes, that a ward has no assets of any kind remaining, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept, to some suitable person, to be determined by the court, to hold for the benefit of the ward, upon such conservator or person giving such probate bond, if any, as the court orders.

(3) If any ward having a conservator dies, his or her property shall be delivered to his or her executor or administrator.

b. (1) In any case under subsection (a) of this Section the conservator shall file in the court his or her final account, and the court shall audit the account and allow the account if it is found to be correct. If the ward is living, the ward and his or her attorney, if any, shall be entitled to notice by regular mail of any hearing held on the final account.

(2) The Probate Court shall send written notice annually to the ward and his or her attorney that the ward has a right to a hearing under this Section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than 30 days from the receipt of the application unless continued for cause shown.

c. The court shall review each conservatorship at least every three years, and shall either continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the ward. The conservator, the attorney for the ward and a physician licensed to practice medicine in the state of Connecticut or Rhode Island, shall each submit a written report to the court within 45 days of the court's request for such report. If the ward is unable to request or obtain an attorney, the court shall appoint an attorney. If the ward is unable to pay for the services of the attorney, the reasonable compensation of such attorney shall be paid the Probate Court. The physician shall examine the ward within the 45 day period preceding the date of submission of his report.

d. If the court determines, after receipt of the reports from the attorney for the ward, the physician and the conservator, that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician or conservator requests a hearing, the court shall hold a hearing within 30 days of such request.

24 M.P.T.L. ch. 12 § 18

#### **§ 18. Compensation of Conservator if Ward Unable to Pay**

If a ward is unable to pay for the services of a conservator appointed pursuant to the provisions of this law, the reasonable compensation of such conservator shall be paid by the Mashantucket Pequot Tribe pursuant to rules and regulations and at rates established by the Mashantucket Pequot Tribal Court.

### **CHAPTER 13. LIVING WILL**

24 M.P.T.L. ch. 13 § 1

#### **§ 1. Probate Court Jurisdiction Concerning Living Wills**

The Probate Court shall have jurisdiction over any dispute concerning the meaning or application of any provision of a living will, as defined herein. With respect to any communication of a declarant's wishes other than by means of a document executed in accordance with this Chapter, the court shall consider whether there is clear and convincing evidence of such communication.

24 M.P.T.L. ch. 13 § 2

**§ 2. Definition of Living Will**

A living will means a written statement made and executed in compliance with this Chapter containing a declarant's wishes concerning any aspect of his or her health care, including the withholding or withdrawal of life support systems.

24 M.P.T.L. ch. 13 § 3

**§ 3. Form of Document re: Health Care Instructions, Appointment of Health Care Agent or Conservator of the Person**

Any person 18 years of age or older may execute a document which contains health care instructions, the appointment of a health care agent, for health care decisions and an appointment of a conservator of the person for future incapacity. Such document shall be signed and dated by the declarant with at least two witnesses who are over the age of 18.

ADDENDUM THESE ARE MY HEALTH CARE INSTRUCTIONS, MY APPOINTMENT OF A HEALTHCARE AGENT FOR HEALTH CARE DECISIONS, AND THE DESIGNATION OF MY CONSERVATOR OF THE PERSON FOR MY FUTURE INCAPACITY.

To any physician who is treating me: These are my health care instructions, including those concerning the withholding or withdrawal of life support systems, together with the appointment of my health care agent for health care decisions, and the designation of my conservator of the person for future incapacity. As my physician, you may rely on any decision made by my health care agent or conservator of my person for health care decisions if I am unable to make a decision for myself.

I, \_\_\_\_\_, the maker of this document, request that if my condition is deemed terminal or if I am determined to be permanently unconscious, I be allowed to die and not be kept alive through life support systems. By terminal condition, I mean that I have an incurable or irreversible medical condition which, without the administration of life support systems, will, in the opinion of my attending physician, result in death within a relatively short time. By permanently unconscious I mean that I am in a permanent coma or persistent vegetative state which is an irreversible condition in which I am at no time aware of myself or the environment and show no behavioral response to the environment. The life support systems which I do not want include, but are not limited to: artificial respiration, cardiopulmonary resuscitation and artificial means of providing nutrition and hydration. I do want sufficient pain medication to maintain my physical comfort. I do not intend any direct taking of my life, but only that my dying not be unreasonably prolonged.

I appoint \_\_\_\_\_ to be my health care agent and my attorney-in-fact for health care decisions. If my attending physician determines that I am unable to understand and appreciate the nature and consequences of health care decisions and unable to reach and communicate an informed decision regarding treatment, my health care agent is authorized to:

- (1) Convey to my physician my wishes concerning the withholding or removal of

life support systems;

(2) Take whatever actions are necessary to ensure that my wishes are given effect;

(3) Consent, refuse or withdraw consent to any medical treatment as long as such action is consistent with my wishes concerning the withholding or removal of life support systems; and

(4) Consent to any medical treatment designed solely for the purpose of maintaining physical comfort.

If \_\_\_\_\_, is unwilling or unable to serve as my health care agent and my attorney-in-fact for health care decisions, I appoint, to be my alternative health care agent and my attorney-in-fact for health care decisions. If a conservator of my person should need to be appointed, I designate \_\_\_\_\_ be appointed my conservator. If \_\_\_\_\_ is unwilling or unable to serve as my conservator, I designate \_\_\_\_\_. No bond shall be required of either of them in any jurisdiction.

ATTESTATION

This document was signed in our presence by \_\_\_\_\_ the author of this document, who appeared to be eighteen years of age or older, of sound mind and able to understand the nature and consequences of health care decisions at the time this document was signed. The author appeared to be under no improper influence. We have subscribed this document in the author's presence and at the author's request and in the presence of each other.

\_\_\_\_\_  
(Witness)      (Witness)

\_\_\_\_\_  
(Address)      (Address)

\_\_\_\_\_  
(City, State and Zip Code)      (City, State and Zip Code)

\_\_\_\_\_  
(Date) (Date)

MASHANTUCKET)

)

PEQUOT RESERVATION)

We, the subscribing witnesses, being duly sworn and over the age of eighteen years, attest that we witnessed the execution of these health care instructions, the appointments of a health care agent and an attorney-in-fact, and the designation of a conservator for future incapacity by the author of this document; that the author has declared the same to be the author's instructions, appointments and designation in our presence; that we thereafter subscribed the document as witnesses in the author's presence, at the author's request, and in the presence of each other; that at the time of the execution of said document the author appeared to us to be eighteen years of age or older, of sound mind, able to understand the nature and consequences of said document, and under no improper influence, and we make this attestation at the author's request this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_

(Witness) (Witness)

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_ of 200\_\_.

\_\_\_\_\_ Notary Public

My commission expires: \_\_\_\_\_

(Print or type name of all persons signing under all signatures)

**Historical and Statutory Notes**

**Derivation.**

Effective August 28, 1996, TCR082896-03 enacted 24 M.P.T.L. the "Mashantucket Pequot Probate Code".

**Amendments.**

Effective June 29, 1999, TCR062999-04 amended 24 M.P.T.L. to include jurisdiction over probate matter for all residents of the Reservation.

Effective December 29, 2004, TCR122904-02 amended 24 M.P.T.L. to include inheritance and probate matters of Tribal Members.

Effective June 7, 2005, TCR060705-02 amended 24 M.P.T.L. ch.4 § 4 adopting the "Uniform Prudent Investor Act".

Effective May 5, 2009, TCR050509-01 amended 24 M.P.T.L. to recognize special needs trusts.

Effective July 27, 2023, TCR072723-01 amended 24 M.P.T.L. ch 6. § 36 to clarify that tribal government issued benefit successor designation forms be treated as other beneficiary designations, exempt from laws governing transfer by will.