

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: AUG 06 2020

ORDINANCE NO. 234 (2020)

Short Title: an ordinance amending C.C. § 28-2 to provide that Tribal Council authorizes the Business Committee to approve transfers of possessory holdings from first generation descendants to enrolled members of the Tribe and to remove the requirement for the Realty Office to issue First Generation Heir Certificates.

WHEREAS, the Eastern Band of Cherokee Indians established the Tribal Realty Office in 2016 to take over and perform certain realty services for Tribal members from the Bureau of Indian Affairs (BIA); and

WHEREAS, as the Tribal Realty Office has grown and expanded, it has continually looked to improve the efficiency of administrative services it carries out on behalf of Tribal members; and

WHEREAS, the current practice for a first generation descendant to transfer a possessory holding to an enrolled member requires submitting a resolution to Tribal Council to request permission to transfer the possessory holding to an enrolled member; and

WHEREAS, this practice causes an unnecessary frustration and delay for Tribal members to receive and enjoy possessory holdings and does not serve any practical purpose; and

WHEREAS, delegating authority for such approvals to the Tribal Business Committee would improve consistency with how other transfers are handled, would remove unnecessary delay, and would make the administration of possessory holdings more efficient; and

WHEREAS, additionally, Cherokee Code Chapter 28 also contains a section requiring that the Tribal Realty Office issue status certificates to First Generation Descendants; and

WHEREAS, this section is not regularly exercised, makes the administration of possessory holdings more complex, and should be removed; and

WHEREAS, Cherokee Code § 28-2(d)(2) should be amended to expressly allow the Tribal Business Committee to approve rentals, leases or transfers from first generation descendants to enrolled members, and to remove subsection (f) governing the issuing of first generation descendant certificates.

1 **NOW, THEREFORE, BE IT ORDAINED** by the Eastern Band of Cherokee Indians in Tribal
2 Council assembled, at which a quorum is present, that Cherokee Code Chapter 28 is hereby
3 amended as follows:
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5 Sec. 28-2. - First Generation Descendants. ~~heirs.~~

6 (a) *Definition.* The Charter and Governing Document of the Eastern Band of Cherokee Indians,
7 as enacted and adopted May 8, 1986, and amended by Tribal referendum on October 8, 1987,
8 provides in section 16 for the First Generation of an enrolled member to enjoy all property,
9 both real and personal, that is held in an enrolled member's possession at their death. By
10 definition in the Charter, a First Generation Descendant ~~Descendent~~ shall include all children
11 born to or adopted by an enrolled member.

12 (b) *Use.* A First Generation Descendant ~~Descendent~~ of an enrolled member of the Eastern Band
13 of Cherokee Indians shall be allowed to use or occupy Cherokee trust lands that were validly
14 assigned to their enrolled parent on the date of their death. Such use shall be permitted only if
15 the enrolled parent assigns such right to a non-enrolled child by a valid written will. Use or
16 occupancy shall include, but not be limited to: the right to occupy a house or dwelling, to
17 operate a business owned or operated by an enrolled parent and located on lands assigned to
18 them by the Tribe, to make agricultural use of lands assigned to such enrolled parent.

19 (c) *Prohibited use.* A First Generation Descendant shall not be authorized to decrease the value
20 of their parents holding by either altering or removing permanent improvements, by selling or
21 depleting any minerals, or by selling or cutting timber. First Generation Descendants shall
22 have the right to cut wood for their personal non-business use.

23 (d) *Transfer valuation.*

24 (1) A First Generation Descendant shall have the right to rent, lease, or transfer a possessory
25 holding to an enrolled member.

26 (2) All such rentals, leases or transfers must be approved by the Tribe through either Tribal
27 Council or the Tribal Business Committee and must be at fair market value. The Tribal
28 Business Committee shall not approve a lease of such property for a First Generation
29 Descendant ~~Descendent~~ for a period of time longer than the actuarial life expectancy of
30 any individual descendant lessor.

31 (e) *Determination of value.* In the event of a dispute concerning the fair market rental value of
32 property to be rented, leased, or transferred by a non-enrolled First Generation Descendant,
33 the value shall be established by professional appraisal. In the event the appraisal value is not
34 agreed upon by the Descendant, or the Tribe ~~and the BIA~~, the fair market value shall be
35 established by arbitration, with the costs of arbitration to be shared equally between the
36 descendants and the Tribe.

37 ~~(f) *Certificate.* The Realty Office shall issue a certificate for use of trust lands to be identified~~
38 ~~as "First Generation Heir Certificate," to each such Descendant who applies and qualifies. The~~
39 ~~issuance of each certificate must be specifically approved by the Tribal Business Committee,~~
40 ~~as well as all leases entered with First Generation Descendants as lessors. The forms of the~~
41 ~~certificate itself shall be approved by the Business Committee, which shall contain the~~
42 ~~pertinent provisions of this chapter on the reverse side of the certificate form.~~

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

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5 *Submitted by Tribal Realty Services and the Office of the Attorney General*