

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

OCT 05 2020

Date: _____

ORDINANCE NO. 204 (2020)

Short title: an ordinance creating a Tribal statute of frauds expressing the minimum requirements for a valid transaction in Tribal land.

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Tribe with the powers of self-governance and Section 23 of the Charter and Governing Document authorizes and empowers Tribal Council to adopt laws for the general government of the Tribe; and

WHEREAS, Tribal law does not express the core requirements for what makes an agreement to sell, convey, transfer, or divide any interest in Tribal land valid and enforceable; and

WHEREAS, the lack of express Tribal law has resulted in an inconsistent process for answering questions about whether a particular agreement contains the necessary elements to be enforceable, and some would say has produced inconsistent results; and

WHEREAS, adopting a statute of frauds ordinance would provide direction and understanding to the Tribe and its members as to the core elements that have to be contained in every agreement for the transfer of possessory interests in Tribal land, and would improve efficiency in the Realty Office and at Business Committee, Lands Committee and Tribal Council when these questions are presented; and

WHEREAS, Cherokee Code Chapter 22 should be amended to express the minimum elements and details that have to be present in every transaction in Tribal trust land for the transaction to be enforceable.

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapter 22 is hereby amended as follows:

Chapter 22 – Statutes of Limitations

Article IV – Statute of Frauds

Sec. 22-17. Definitions:

- (a) “Grantee” means the person who is the intended recipient of the of the possessory interest in Tribal land conveyed by the Grantor.

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2 (b) “Grantor” means the person who is recognized by the Tribe as the owner of the possessory
3 interest in the parcel of Tribal land in question.

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5 (c) “Possessory interest” or “possessory holding” mean an area or parcel of Tribal land that
6 has been assigned to, or is recognized by the Tribal government as being the holding of,
7 the Tribe, a Tribal member or group of Tribal members. The assignment or recognition
8 grants to the holder of the interest certain rights, enumerated in Tribal law, in the possessory
9 interest.

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11 (d) “Transfer” means the legal process of changing ownership of a possessory interest in Tribal
12 land from the grantor to the grantee by a written instrument such as a “Transfer of
13 Possessory Interest” document or Tribal Council resolution. In this Article, “transfer”
14 includes convey, divide, sale, sell, exchange, trade, or quitclaim by which ownership is
15 moved from the grantor to the grantee; provided, however, that “transfer” does not include
16 outright gifts for which no consideration is required by the grantor or provided by the
17 grantee.

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19 (e) “Tribal land” means real property held in trust by the United States in the name of the
20 Eastern Band of Cherokee Indians and under the control and management of the Eastern
21 Band of Cherokee Indians for the benefit of the Tribe and its members.

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23 **Sec. 22-18. Statute of frauds for transactions in Tribal land.**

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25 Except as otherwise provided in this Article, any agreement to transfer any interest in Tribal lands,
26 including lease agreements and use permits when the lease or use permit exceeds one year in
27 duration, is void and unenforceable unless the agreement is expressed in a writing and signed by
28 the party transferring the interest (the grantor), or is signed by their lawful agent who has authority
29 to sign the instrument for the principal.

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31 **Sec. 22-19. Minimum contents and requirements for a valid transfer of Tribal land.**

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33 (a) Any agreement to transfer an interest in Tribal land must express all of the following:
34 a. it must identify the parties to the transaction;
35 b. it must contain a sufficient legal description of the Tribal land in question so that
36 the land can be identified with reasonable certainty;
37 c. it must identify the legal interest that is being transferred;
38 d. it must identify material consideration to be exchanged between the parties.

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40 (b) Any agreement that is subject to subsection (a) shall be signed by the grantor. If the
41 agreement is not signed by the grantor, the agreement is void. Such agreement also shall
42 be signed by the grantee if the agreement requires the grantee to provide consideration
43 (such as the payment of money or the performance of an act) in exchange for the land.

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45 (c) Notwithstanding any other provision of this Article, the statute of frauds is satisfied when
46 the land transfer at issue is authorized by Tribal Council resolution duly passed and ratified

1 under Tribal law and so long as the resolution names the parties and the parcels of Tribal
2 land at issue so the parties and parcels can be identified with reasonable certainty.
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5 **Sec. 22-20. Effect on estate resolutions by Tribal Council.**
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7 Except for the requirement for adequate identification of parties and property, nothing in this
8 Article shall apply to estate resolutions passed by Tribal Council recognizing eligible heirs and
9 providing for the distribution of the deceased's possessory interests to eligible heirs.
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12 **Sec. 22-21. Enforcement of the transfer of possessory interest.**
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14 A transfer of a possessory interest in Tribal land becomes enforceable upon approval of the
15 "Transfer of Possessory Interest" document by the Tribal Business Committee. After such
16 approval, the "Transfer of Possessory Interest" document shall be recorded as required by Tribal
17 law.
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20 **BE IT FINALLY ORDAINED** that all ordinances that are inconsistent with this ordinance are
21 rescinded, and that this ordinance shall become effective when ratified by the
22 Principal Chief.
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24 *Submitted by the Office of the Attorney General*