

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

DEC 09 2021

Date: _____

ORDINANCE NO. 84 (2021)

An ordinance amending C.C. § 28-2 to clarify that if a First Generation Descendant dies while still owning a possessory interest in Tribal trust land the possessory interest shall revert to the Tribe.

WHEREAS, § 16 of the Charter and Governing Document gives first generation descendant heirs of an enrolled member of the Tribe rights in the real and personal property held by the enrolled member parent at the time of the parent's death; and

WHEREAS, C.C. § 28-2 further defines the nature and scope of the interests in Tribal trust land that first generation descendants get under § 16 of the Charter; and

WHEREAS, the long-established policy of the Tribe is that a possessory interest in trust land reverts to the Tribe if it is held by a first generation descendant when the first generation descendant dies; and

WHEREAS, this policy is occasionally questioned and the Tribe should express it in Tribal law to give clear guidance to enrolled members and their families, including first generation descendants; and

WHEREAS, additionally, C.C. § 28-2(f) requires the "Realty Office" to issue status certificates to first generation descendants and the issuance of such a certificate is supposed to be "specifically approved by the Tribal Business Committee"; and

WHEREAS, the status certificates serve as convenient proof of status but do not determine one's qualifications to be a first generation descendant, they are rarely requested or issued, and the administrative burden they present to the Tribe adds an unnecessary layer of complexity to the administration of Tribal member estates; and

WHEREAS, C.C. § 28-2 should be amended to clearly state that a possessory interest in trust land held by a first generation descendant when they die shall revert to the Tribe, and to delete the provision governing the issuance of firsts generation status certificates.

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 28 is hereby amended as follows:

Sec. 28-2. First Generation Descendants, ~~heirs~~.

1
2 (a) Definition. The Charter and Governing Document of the Eastern Band of Cherokee
3 Indians, as enacted and adopted May 8, 1986, and amended by Tribal referendum on
4 October 8, 1987, provides in section 16 for the First Generation of an enrolled member to
5 enjoy all property, both real and personal, that is held in an enrolled member's possession
6 at their death. By definition in the Charter, a First Generation Descendent shall include all
7 children born to or adopted by an enrolled member.
8

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

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

22 (d) Transfer valuation.
23

24 (1) ~~A During his or her lifetime, a~~ First Generation Descendant shall have the right to
25 rent, lease, or transfer a possessory holding to an enrolled member. ~~The right~~
26 ~~terminates upon the death of the First Generation Descendant. Neither the right nor~~
27 ~~the possessory holding may be devised by the First Generation Descendant in his~~
28 ~~or her Last Will and Testament or other testamentary instrument.~~
29

30 (2) ~~The duration of a rent or lease agreement by which a First Generation Descendant,~~
31 ~~as lessor, rents or leases his possessory holding to an enrolled member shall, by~~
32 ~~default, terminate upon the death of the First Generation Descendant plus one year;~~
33 ~~provided, however, that the Tribe, as successor in interest to the First Generation~~
34 ~~Descendant, may assume the rent or lease agreement and the role of lessor and the~~
35 ~~assumption shall be exercised by the Tribe through majority voted of the Tribal~~
36 ~~Business Committee.~~
37

38 (3) All such rentals, leases or transfers must be approved by the Tribe ~~and must be at~~
39 ~~fair market value.~~ The Business Committee shall not approve a lease of such
40 property for a First Generation Descendent for a period of time longer than the
41 actuarial life expectancy of any individual ~~First Generation D~~descendant lessor.
42

43 (e) Determination of value. In the event of a dispute concerning the ~~fair-market~~ rental value of
44 property to be rented, leased, or transferred by a non-enrolled First Generation Descendant,
45 the value shall be established by professional appraisal. In the event the appraisal value is
46 not agreed upon by the Descendant, ~~and~~ the Tribe ~~and the BIA~~, the ~~fair-market~~ value shall

1 be established by arbitration, with the costs of arbitration to be shared equally between the
2 descendants and the Tribe.
3

4 (f) Reversion to Tribe. If a First Generation Descendant dies while still being the recognized
5 owner of a possessory interest in Cherokee trust lands under Tribal law, the interest shall
6 revert to the Tribe upon the death of the First Generation Descendant; provided, however
7 that if the First Generation Descendant has entered a rent or lease agreement, as lessor, as
8 authorized in subsection (d) of this section, the reversion to the Tribe shall occur upon the
9 death of the First Generation Descendant plus one year.

10
11 ~~(f) Certificate. The Realty Office shall issue a certificate for use of trust lands to be identified~~
12 ~~as "First Generation Heir Certificate," to each such Descendant who applies and qualifies.~~
13 ~~The issuance of each certificate must be specifically approved by the Tribal Business~~
14 ~~Committee, as well as all leases entered with First Generation Descendants as lessors. The~~
15 ~~forms of the certificate itself shall be approved by the Business Committee, which shall~~
16 ~~contain the pertinent provisions of this chapter on the reverse side of the certificate form.~~
17

18 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
19 rescinded, and that this ordinance shall become effective when ratified by the Principal
20 Chief.
21

22 *Submitted by Michael McConnell and Ryan Clayton, Office of the Attorney General*