

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: MAY 01 2025

ORDINANCE NO.: 453 (2025)

An ordinance to amend C.C. Section 28-4 to provide that, absent a will that states otherwise, an enrolled member surviving spouse shall inherit the deceased spouse's possessory holding.

WHEREAS, Cherokee Code (C.C.) Section 28-4 governs inheritance of possessory holdings; and

WHEREAS, subsection (a)(1) states that "If the holder of the possessory right shall die and leave surviving a wife or a husband who is also a member of the Band, the survivor shall have a life interest in the possessory holding";

WHEREAS, a life estate is temporary and prevents the enrolled member surviving spouse from selling the possessory holding or giving it to somebody else in the surviving spouse's own will; and

WHEREAS, giving an enrolled member surviving spouse a mere life estate deprives that person the full value and ownership of the possessory holding; and

WHEREAS, C.C. Section 28-4 should be amended to provide that absent a will that says otherwise, an enrolled member surviving spouse shall inherit all of the interest of that the deceased spouse had in the possessory holding, so the surviving spouse will be recognized as the owner of the holding and can later sell the holding or give it to somebody else in a will.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled at which a quorum is present, that C.C. Section 28-4 shall be amended to read as follows

Sec. 28-4. Inheritance of Tribal possessory holdings.

(a) Any improvements placed on the land are considered the personal property of the possessory holder in which the Tribe has no interest. They may be bequeathed by will, or absent a will, shall be distributed to the next of kin in the manner provided by the laws of the State of North Carolina.

- 1 (1) If the holder of the possessory right shall die and leave surviving a wife or a
2 husband who is also a member of the Band, the survivor shall ~~have a life interest~~
3 inherit all of the deceased owner's interest in the possessory holding.
- 4 (2) If the holder of the possessory right shall die and leave surviving a wife who is not
5 a member of the Tribe, the surviving widow shall, at the option of the Tribal
6 Council, be permitted to use and occupy the holding during her lifetime if she does
7 not remarry, but will not be recognized to have any possessory rights in the
8 holding.
- 9 (3) If the holder of the possessory right shall die and leave a surviving husband or wife
10 who is a nonmember, together with surviving minors who are Tribal members, the
11 surviving spouse may use the possessory holding and improvements for the benefit
12 of such minors during the period of their minority; then the possessory holding
13 shall, with the approval of the Tribal Council, be partitioned by agreement to the
14 heirs. A surviving nonmember wife shall, with the approval of the Tribal Council,
15 be permitted to use a portion equal to a child's share under conditions set forth in
16 section 28-4(a)(2). A surviving nonmember husband shall, with the approval of the
17 Tribal Council, be permitted to use a portion equal to a child's share under
18 conditions set forth in section 28-4(a)(4).
- 19 (4) If the holder of the possessory right shall die and leave a surviving husband or
20 children or heirs other than a nonmember wife who are nonmembers of the Tribe,
21 but who under state law would be entitled to inherit personal property from the
22 holder of the possessory right, the Tribal Council, at their option, shall (A)
23 purchase the improvements recognized to be the personal property of the holder of
24 the possessory rights at their fair appraised value, or (B) give Tribal approval for a
25 permit or lease to the surviving husband or other nonmember for use of the
26 improvements and premises on which they are located for such period of time as
27 will enable the nonmember husband or other nonmember heirs to amortize the
28 value of such improvements under leasing and permitting regulations.
- 29 (5) In any event as described in section 28-4(a)(1) - (4), this certificate must be
30 surrendered to the officers of the Tribe who shall issue new certificates to the new
31 possessory holder or rightful users thereof in such manner as to show their interest
32 therein.
- 33 (6) The above rights of the holder or user of possessory rights are subject to any Tribal
34 laws of general application which may be enacted by the Tribal Council and which
35 by reference are made a part hereof.
- 36

1 BE IT FINALLY ORDAINED, that all ordinances and resolutions inconsistent with this ordinance
2 are rescinded, and this ordinance shall become effective upon ratification by the
3 Principal Chief.
4

5
6 *Submitted by Sasha McCoy Watty.*