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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: _____

ORDINANCE NO. _____ (2026)

*An ordinance amending Cherokee Code Chapter 28 regarding the spousal inheritance of
possessory holdings to create consistency within the Cherokee Code.*

WHEREAS, Chapter 28 governs the inheritance of real and personal property of enrolled members of the Tribe; and

WHEREAS, Section 28-1 states that the Tribe adopts North Carolina laws of inheritance for intestate succession and mandates a requirement that spouses be included as an heir; and

WHEREAS, Section 28-4 provides more express guidance for the spousal inheritance of possessory holdings by stating that enrolled member spouses only receive a life estate in possessory holdings of their deceased spouse; and

WHEREAS, this diminishes the inheritance that enrolled members would inherit from their spouses after building the assets throughout their lives and provides for less inheritance than would be allowed under North Carolina law; and

WHEREAS, Chapter 28 should be amended to provide consistency within the Cherokee Code, clearer direction for the Tribe in probating estates, and provide appropriate protections for enrolled members to inherit the assets that they should from their spouses.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Chapter 28 is amended as follows:

Sec. 28-4. ~~Inheritance of Tribal possessory holdings:~~ Spousal 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) 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.~~

~~(2) If the holder of the possessory right shall die and leave surviving a wife who is not a member of the Tribe, the surviving widow shall, at the option of the Tribal Council, be~~

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

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28 (a) The intestate share of the surviving enrolled spouse in a possessory holding is as follows:

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- 30 (1) If the intestate is survived by only one enrolled child or by any enrolled lineal
31 descendants of only one deceased enrolled child, the surviving enrolled spouse shall
32 receive a one-half undivided interest in the real property;
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- 34 (2) If the intestate is survived by two or more enrolled children, or by one enrolled child
35 and any enrolled lineal descendant of one or more deceased enrolled children, or by
36 enrolled lineal descendants of two or more deceased enrolled children, the surviving
37 enrolled spouse shall receive a one-third undivided interest in the real property;
- 38
- 39 (3) If the intestate is not survived by an enrolled child, enrolled children, or any enrolled
40 lineal descendant of a deceased child or children, but is survived by one or more
41 enrolled parents, the surviving enrolled spouse shall receive a one-half undivided
42 interest in the real property;
- 43
- 44 (4) If the intestate is not survived by an enrolled child, enrolled children, or any enrolled
45 lineal descendant of a deceased enrolled child or children, or by a enrolled parent, the
46 surviving enrolled spouse shall receive all the real property.

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2 (5) In all cases, if the intestate is survived by an enrolled spouse, the surviving enrolled
3 spouse shall receive a life estate in all possessory holdings owned by the intestate at
4 the time of their death.
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6 (b) If the holder of a possessory interest shall die without a last will and testament and leave a
7 surviving non-enrolled spouse, and if the possessory holding served as either the marital
8 home of the deceased enrolled member and non-enrolled spouse, or if the possessory
9 holding served as a place of business, then the non-enrolled spouse may receive a life estate
10 in the possessory holding as expressed in a Tribal Council resolution ratified by the
11 Principal Chief.
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13 (1) If Tribal Council grants the non-enrolled spouse a life estate in a possessory holding
14 that served as the location of the marital home, they shall be permitted to use and
15 occupy the possessory holding during their lifetime for so long as it serves as the non-
16 enrolled spouse's primary residence and they do not remarry.
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18 (2) If Tribal Council grants the non-enrolled spouse a life estate in a possessory holding
19 that serves as a business, the life estate shall remain in effect for so long as the non-
20 enrolled spouse may live or until such time as the business ceases operations.
21

22 (c) This ordinance shall take effect upon ratification of the Principal Chief and shall also apply
23 to all estates that have not yet been recognized by Tribal Council at the time of ratification.
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25 BE IT FINALLY ORDAINED that all resolutions and ordinances that are inconsistent with this
26 ordinance are rescinded and this ordinance shall become effective when ratified by
27 the Principal Chief.
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29 *Submitted by Michael Stamper, Painttown Community Representative, on behalf of Janet Arch.*