

TABLED

AMENDED

PASSED

OCT 17 2022

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: APR 07 2022

ORDINANCE NO. 222 (2022)

*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) All such rentals, leases or transfers must be approved by the Tribe and must be at  
31 fair market value. The Business Committee shall not approve a lease of such  
32 property for a First Generation Descendent for a period of time longer than the  
33 actuarial life expectancy of any individual descendant lessor. The duration of a rent  
34 or lease agreement by which a First Generation Descendant, as lessor, rents or  
35 leases their possessory holding to an enrolled member shall, by default, terminate  
36 upon the death of the First Generation Descendant plus one year; provided,  
37 however, that the Tribe, as successor in interest to the First Generation Descendant,  
38 may assume the rent or lease agreement and the role of lessor and the assumption  
39 shall be exercised by the Tribe through majority voted of the Tribal Business  
40 Committee.  
41

42 (3) All such rentals, leases or transfers must be approved by the Tribe. The Business  
43 Committee shall not approve a lease of such property for a First Generation  
44 Descendent for a period of time longer than the actuarial life expectancy of any  
45 individual First Generation Descendant lessor.  
46



1 (e) Determination of value. In the event of a dispute concerning the ~~fair market~~ rental value of  
2 property to be rented, leased, or transferred by a non-enrolled First Generation Descendant,  
3 the value shall be established by professional appraisal. In the event the appraisal value is  
4 not agreed upon by the Descendant, and the Tribe ~~and the BIA~~, the ~~fair market~~ value shall  
5 be established by arbitration, with the costs of arbitration to be shared equally between the  
6 descendants and the Tribe.

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

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

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

25  
26 *Submitted by Teresa McCoy, Big Cove Representative*

# AMENDED TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: JUL 14 2022

ORDINANCE NO 222 (2022)

## Floor Amendment

On page 2, line 35, strike the words, "to an enrolled member".

# AMENDED PASSED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

OCT 17 2022

DATE

## **AMENDMENT TO ORDINANCE NO. 222 (2022)**

- On page 2, beginning at line 26, strike the word, "Neither" so that the sentence begins with, "the" and insert, "and/or" in place of "nor" and after the word, "instrument" insert, "to an enrolled member only" so that this now reads, "Neither, the right ~~nor~~ and/or the possessory holding may be devised by the First Generation Descendant in his or her Last Will and Testament or other testamentary instrument to an enrolled member only"

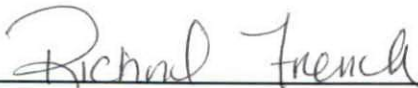
The attached **Resolution**/Ordinance No. 222 dated APRIL 7, 2022 was:

**PASSED** ( X )

**KILLED** ( )

and ratified in open Council on OCTOBER 17, 2022 by 70 voting for the act  
and 12 members voting against it as follows:

| VOTE            | FOR | AGAINST | ABSTAIN | ABSENT |
|-----------------|-----|---------|---------|--------|
| Richard French  | X   |         |         |        |
| Teresa McCoy    | X   |         |         |        |
| Boyd Owle       |     | X       |         |        |
| Bucky Brown     | X   |         |         |        |
| TW Saunooke     | X   |         |         |        |
| David Wolfe     | X   |         |         |        |
| Adam Wachacha   | X   |         |         |        |
| Bo Crowe        | X   |         |         |        |
| Bill Taylor     |     |         |         | X      |
| Albert Rose     | X   |         |         |        |
| Dike Sneed      | X   |         |         |        |
| Tommye Saunooke |     |         |         | X      |
|                 | 70  | 12      | 0       | 18     |



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED ( ☒ ) VETOED ( )

VETO UPHELD ( ) VETO DENIED ( )

DATE: 10/18/22

I hereby certify that the foregoing act of the Council was duly:

**PASSED** ( ☒ )

**KILLED** ( )

and ratified in open Council after the same has been interpreted by the Official Interpreter and  
has been fully and freely discussed.

INTERPRETED ( )

OMITTED ( )