

4

**CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY (NC)**

Date: _____

ORDINANCE NO.: _____ (2018)

WHEREAS, the rights of First Generation Descendants to inherit a possessory holding in Tribal trust land from an enrolled member parent are expressed in Cherokee Code Sec. 28-2 and Sec. 16 of the Charter and Governing Document; and

WHEREAS, neither the Charter or Cherokee Code Sec. 28-2 express who should have ownership of the possessory holding if the holding is not transferred to a Tribal member or the Tribal government by the First Generation Descendant during the Descendant's lifetime; and

WHEREAS, Tribal policy has been that a possessory holding held by a First Generation Descendant, that is not transferred by the Descendant to an enrolled member or to the Tribal government during the Descendant's lifetime, reverts to the Tribal government; and

WHEREAS, Cherokee Code Sec. 28-2 should be amended to make express this policy as law.

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 Cherokee Code Sec. 28-2 shall be amended to read as follows:

Sec. 28-2. - First Generation heirs.

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

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

(c) Prohibited use. A First Generation Descendant shall not be authorized to decrease the value of their parents holding by either altering or removing permanent improvements, by selling

1 or depleting any minerals, or by selling or cutting timber. First Generation Descendants
2 shall have the right to cut wood for their personal non-business use.

3
4 (d) Transfer valuation.

5
6 (1) A First Generation Descendant shall have the right to rent, lease, or transfer a
7 possessory holding to an enrolled member.

8
9 (2) All such rentals, leases or transfers must be approved by the Tribe and must be
10 at fair market value. The Business Committee shall not approve a lease of such
11 property for a First Generation Descendant for a period of time longer than the
12 actuarial life expectancy of any individual descendant lessor.

13
14 (e) Determination of value. In the event of a dispute concerning the fair market rental value of
15 property to be rented, leased, or transferred by a non-enrolled First Generation Descendant,
16 the value shall be established by professional appraisal. In the event the appraisal value is
17 not agreed upon by the Descendant, the Tribe and the BIA, the fair market value shall be
18 established by arbitration, with the costs of arbitration to be shared equally between the
19 descendants and the Tribe.

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

27
28 (g) Reversion to Tribe. All possessory holdings which a First Generation Descendant is
29 permitted to enjoy, use or occupy under this section and Sec. 16 of the Charter and
30 Governing Document shall, immediately upon the death of the respective First Generation
31 Descendant, revert to the Tribal government if the possessory holding at issue was not
32 transferred to an enrolled member or to the Tribal government during the First Generation
33 Descendant's lifetime, and such holdings shall not become part of the probate estate of the
34 deceased First Generation Descendant. In the reversion to the Tribe, the Tribe shall take
35 the possessory holding subject to lawful leases, use permits and other encumbrances that
36 were recorded with the Tribal Realty Office and/or the Cherokee Agency (BIA) before the
37 death of the First Generation Descendant.

38
39
40 BE IT FURTHER ORDAINED, that all ordinances and resolutions inconsistent with this ordinance
41 are rescinded, and this ordinance shall become effective upon ratification by the
42 Principal Chief.

1 *Submitted by Michael W. McConnell, Interim Attorney General*