



EASTERN BAND OF CHEROKEE INDIANS

THE CHEROKEE COURT

P.O. Box 1629 • Cherokee, NC 28719
Telephone: (828) 359-1068 • Fax: (828) 520-7068

FILING AN ESTATE

- The deceased must have been a resident of the Qualla Boundary (Cherokee Reservation lands) at the time of death in order to file an estate with Tribal Court.

WAS THERE A WILL?

- Wills may be on file with the Clerk's office. If not, check with family members and the decedent's bank to see if there is knowledge of a will or safety deposit box. If a will is found, the original must be submitted to the Clerk.
- Are you qualified to serve as Personal Representative? A will usually names an Executor. In the absence of a will, the following is the order of persons qualified to serve as an Administrator (subject to the Clerk of Court's discretion):
 - Surviving spouse
 - Children
 - Next of kin
 - Any person of good character
- **Complete the application in full to open the estate.** The inventory attached will be used to evaluate assets of the estate.
- Submit a certified Death Certificate to the Clerk.
- There is a \$100.00 filing fee payable to the **Cherokee Courts**. This fee may be garnished if you are able to.
- You may attach any documentation that you would like for the court to consider.
- **Please call 828-359-1071 to make an appointment.**

Clerks are not allowed to provide legal advice. If legal assistance is needed, please speak to an attorney. A list of Cherokee Court Bar Member Attorneys may be obtained from the Clerk's Office. You may also contact the EBCI Legal Assistance Office.

CHECKLIST TO OPEN AN ESTATE

Obtain certified copy of Death Certificate

If there is a Will, get the original

- Check any place that your loved one may have kept important papers; examples: Filing cabinets; desk drawers; home safe; safety deposit boxes; attorney's office.
- Cherokee Courthouse has many wills on file; you may call or come by to inquire. Additionally, you may want to check the local county courthouses (especially if your loved one was a Snowbird resident).

Obtain an Estate Packet from the Clerk or the Legal Assistance Office

- Complete the Application for Probate and Letters (included in the Estate Packet), to the best of your ability, prior to appointment with the Clerk
 - There will naturally be information you may not have access to until you are appointed Personal Representative, but complete as much as possible.
 - You do not have to include any information about Tribal land.

If your loved one was a resident of the Qualla Boundary, at the time of their death, make an Appointment with the Clerk of Court of the Cherokee Court (Call 359.1060).

- The Tribe now offers a free* service where your Estate matters can be handled by a *Public Administrator*. The Public Administrator is an attorney who can guide and advise you through the confusing Estate process. Call the same number to make an appointment with the Public Administrator.
- If your loved one did not live on the Boundary, then contact the county court where the decedent resided at the time of death. You are not able to use the Tribal packet in any other county in North Carolina, nor in any other state.

Bring \$100.00 for Filing Fees (or you may garnish your per cap for an additional \$55.00; garnishing requires 2 forms of ID)

THINGS TO BRING TO THE INITIAL APPOINTMENT WITH THE CLERK OF COURT OR PUBLIC ADMINISTRATOR

- Certified Death Certificate
- Original Will (if applicable)
- Completed Estate Packet (Application for Probate and Letters)
- Filing Fees and, if garnishing, two forms of ID
- Any financial information you have

*The Public Administrator service is free if the total value of the Estate does not exceed \$30,000.00. If the Estate value exceeds \$30,000.00 fee, there will be a nominal fee charged to the Estate.

The Clerk's office cannot give you legal advice. If you elect not to use the Public Administrator, YOU will be responsible for filling out all paperwork correctly.

**INSTRUCTIONS FOR PRELIMINARY INVENTORY
ON SIDE TWO OF APPLICATION FOR PROBATE AND LETTERS,
FORM EBCI-E-201, REV. 3/18**

THE CLERK IS THE JUDGE OF PROBATE AND CANNOT PRACTICE LAW OR GIVE LEGAL ADVICE. ACCORDINGLY, THE CLERK'S STAFF CANNOT HELP YOU FILL OUT THIS FORM. PARTS OF THIS FORM ARE SELF-EXPLANATORY. HOWEVER, FOR ANY NECESSARY ASSISTANCE, YOU SHOULD CONSULT AN ATTORNEY.

Application for Probate and Letters Testamentary or Letters of Administration CTA, Form EBCI-E-201, Rev. 3/18

If the decedent left a will, the person named as executor in the will may qualify by applying to the Clerk of Superior Court using this form. Page 2 of this form contains a preliminary listing of the assets of the estate. This part of the form is intended as a preliminary report to the clerk, heirs and creditors of the nature and probable value of the property, real and personal, wherever located, owned by the decedent as of the date of death.

General Instructions:

Type or print neatly in black ink.

All values reported should be the fair market value of the item as of the date of death. If there is not sufficient space on the form, continue on a separate attachment.

Except where instructed to itemize, you should report in a lump sum the estimated total value of all property in each category. A complete itemization and valuation of decedent's property must be listed on the Inventory Form (EBCI-E-505) and filed with the clerk within three months after qualifying.

- "Account" includes accounts in banks, savings and loans and other financial institutions, including money market accounts with brokerage houses or similar institutions.
- "Joint Account with Right of Survivorship" is an account in the name of two or more persons in which the deposit agreement (1) is signed by all parties and (2) expressly provides that, upon the death of one of the joint depositors, the interest of the decedent passes to the survivor(s). Any joint account which is not "with right of survivorship" is a joint account without right of survivorship.
- "Stocks or Bonds with Right of Survivorship" are securities in which the certificate clearly states that upon the death of one of the joint owners the interest of the decedent passes to the survivor(s). Any jointly owned security which is not owned "with right of survivorship," is owned without right of survivorship.
- "Securities Registered in Beneficiary Form" means stocks, bonds, or other securities officially registered with the issuer of the security indicating the current owner of the security and the person who will automatically become the new owner of the security upon the death of the owner." (See G.S. 41-40 et. seq.)

PART I. PROPERTY OF THE ESTATE

1. Deposits in Sole Name of Decedent - For each account, list the name of the institution, the account number and the balance on the date of death.
2. Joint Accounts Without Right of Survivorship - For each account, list the name of the institution, the account number, and the name(s) of the other joint owner(s). If the percentage owned by the decedent can be determined, report that percentage and the value of that percentage on deposit on the date of death. If the percentage owned by the decedent is unclear, report the percentage as 100%, and list the total amount on deposit on the date of death. A copy of the signature card or depository contract should be attached either to this form or the inventory (EBCI-E-505.)
3. Stocks and Bonds in Sole Name of Decedent Or Jointly Owned Without Right Of Survivorship - If the percentage owned by the decedent can be determined, report that percentage and the value, in a lump sum, of that percentage. If the percentage owned is unclear, report the percentage as 100%, and list the total value, in a lump sum, of all such stocks and bonds. A detailed itemization of these assets must be reported in the Inventory (EBCI-E-505).
4. through 7. These categories should be self-explanatory.
8. Interest in Partnership or Sole Proprietor Businesses - Report all solely owned business interest and all partnerships in which the decedent was a general or limited partner. List the name of the business or partnership, the names of the surviving partners, the decedent's percentage interest in that partnership, and the value of that partnership interest or business.
9. through 11. These categories should be self-explanatory.
12. Real Estate Willed To The Estate - (NOTE: *Real property willed to any person or entity other than the estate must be reported in Part II, Item 4*) List only real estate which the decedent devised (willed) to the estate or to the executor in the capacity as executor (not as an individual). Usually, such a devise is accompanied by a direction to sell the real estate and distribute the proceeds as specified in the will.
13. Estimated Annual Income of The Estate - Income of the estate includes, for example, interest on checking and other accounts opened in the name of the estate, dividends and interest on stocks and bonds owned in the name of the estate, and other income to the estate. Income of the estate does not include interest on accounts, or dividends or interest on stocks or bonds, which pass directly to a surviving joint owner.

PART II. PROPERTY WHICH CAN BE ADDED TO ESTATE IF NEEDED TO PAY CLAIMS

This part of the form is used to list certain kinds of property which the decedent owned or in which the decedent had an interest during his or her life time, which are not ordinarily part of the estate, but which may be recovered by the personal representative if the assets of the estate are not sufficient to pay all the debts of the decedent and claims against the estate. (NOTE: *The personal representative should NOT receive or disburse any personal property in this category prior to meeting all statutory requirements for bond or bond increases.*)

1. **Joint Accounts with Right of Survivorship Under G.S. 41-2.1** - List all joint accounts with right of survivorship. For each account, list the name of the financial institution, the account number, the names of the other joint owners, and the total balance on the date of death. Attach a copy of the signature card or depository contract for each such account to this form or to your Inventory (EBCI-E-505.)
2. **Stocks/ Bonds/Securities Registered in Beneficiary Form or Jointly Owned with Right of Survivorship** - A lump sum total of the value of all such stocks or bonds should be reported here. A detailed itemization of these assets must be reported in the Inventory (EBCI-E-505). It also includes securities registered in beneficiary form and automatically transferred on death.
3. **Other Personal Property Recoverable Under G.S. 28A-15-10** - This category includes accounts which are called "Payable on Death or Trustee Accounts" in the signature card or deposit agreement or in which the decedent otherwise established a "Tentative" or "Totten" trust. It also includes property which the decedent gave to someone in contemplation of the decedent's own death, and property transferred by the decedent, without receiving adequate consideration, with the intent to hinder, delay or defraud the decedent's creditors. If you believe there may be any property which falls into these latter categories, you may wish to consult an attorney.
4. **Real Estate Owned by The Decedent and Not Listed Elsewhere** - (NOTE: *Real estate owned by the decedent and spouse as tenants by the entirety should be reported in Part III. Do not report real estate in which the decedent had an interest only for his or her lifetime.*) All other interests in real estate owned by the decedent should be reported here in a lump sum using fair market values as of date of death. A more detailed listing and identification of the properties should be made in the Inventory (EBCI-E-505).

PART III. OTHER PROPERTY

This part of the form is used to indicate certain property, rights and claims which are not administered by the personal representative as part of the decedent's estate and which the personal representative cannot generally recover to pay debts of the decedent or claims against the estate. However, this property may be included in the value of the "estate" for federal or state estate and inheritance tax purposes, or which are listed for the information of heirs and others to whom the property may pass.

1. **Entireties Real Estate** - Indicate whether or not there is real estate jointly owned by the decedent and his or her surviving spouse as tenants by the entireties.
2. **Insurance, Retirement Plan, IRA, Annuities, Etc., Payable To Persons Other Than the Estate** - This category includes all life insurance proceeds, death benefits under pension and retirement plans, the balance remaining in IRA, annuities, 401(k) and other similar accounts which, at the death of the decedent, pass to a beneficiary other than the estate.
3. **Claim For Wrongful Death** - This category is for cases in which the death of the decedent was caused by the wrongful act, neglect or default of another, who may be liable in action for damages brought by the personal representative. The potential existence of a claim for damages should be reported here. [NOTE: (a) *The personal representative should NOT receive or disburse wrongful death proceeds prior to meeting all statutory requirements for bond or bond increases.* (b) *Any recovery is not subject to the claims of creditors except for burial expenses of the decedent, reasonable hospital and medical expenses incident to the injury resulting in death and not totaling over \$4,500 (but not over 50%) of the damages recovered after deducting attorneys' fees, and Medicaid claims.* (c) *The proceeds of the recovery must be distributed by the personal representative in accordance with the Intestate Succession Act, regardless of the existence or terms of any will.* (d) *Except for payment of the expenses expressly allowed by statute, the personal representative must not commingle wrongful death proceeds with assets of the estate. The personal representative must file a separate accounting with the clerk of superior court regarding any and all wrongful death proceeds. If you believe there may be a wrongful death claim, consult an attorney.*

SIGNATURE - All applicants must sign. The signature of each must be separately notarized before a notary public or acknowledged before the clerk, assistant, or deputy.

EASTERN BAND OF CHEROKEE INDIANS

File No.

Cherokee, North Carolina

In the Tribal Court
Before the Clerk

IN THE MATTER OF THE ESTATE OF

Name, Street Address, City, State, And Zip Code Of Decedent

County Of Domicile At Time Of Death

Date Of Death

Date Of Will And Codicil(s), If Any

Place Of Death (if different from County Of Domicile)

G.S. 28A-2A-1, -2, -5; 28A-6-1; 28A-12-4

Name, Street Address, PO Box, City, State, And Zip Code Of Applicant

Name, Street Address, PO Box, City, State, And Zip Code Of Co-Applicant

Telephone No.

Telephone No.

Legal Residence (County, State)

Legal Residence (County, State)

Name, Street Address, PO Box, City, State, And Zip Code Of Attorney

Attorney Bar No.

Telephone No.

I, the undersigned, applying for probate and for letters in the above estate, being first duly sworn, say that:

- The decedent was domiciled in this county at the time of the decedent's death, or left property or assets in this county, or was a nonresident motorist who died in North Carolina; no other proceeding for probate or for administration is pending in any jurisdiction.
- The decedent left the paper-writing(s) purporting to be the decedent's Last Will and Testament and codicil(s), dated as shown above.
- a. I am an executor, devisee, or legatee named in the will, or a next-of-kin or creditor of the decedent.
 b. I am the person entitled to apply for letters or am applying after all persons having prior right to apply have renounced.
 c. I am applying subject to G.S. 28A-6-2(1) and move that all necessary notices be issued.
 d. I am the public administrator appointed by the Court.
- I am not disqualified pursuant to G.S. 28A-4-2 to administer the estate and have not renounced my right to do so.
- Following the execution of the will there were no children born to or adopted by the decedent, and the decedent did not thereafter marry or obtain a divorce. (If the facts are otherwise, state them on an attachment.)
- After diligent inquiry, I have determined that the persons listed below are all the persons entitled to share in the decedent's estate. (If there is a court-appointed guardian for any such person(s), list the guardian's name and address on an attachment.)

NAME	AGE	RELATIONSHIP	MAILING ADDRESS

Original - File Copy - Applicant
(Preliminary Inventory On Page 2)

PRELIMINARY INVENTORY

(Give values as of date of decedent's death. Continue on separate attachment if necessary.)

PART I. PROPERTY OF THE ESTATE

1. Accounts in sole name of decedent (List bank, etc., each account no., and balance.)		Est. Market Value
		\$
2. Joint accounts <u>without</u> right of survivorship (List bank, etc., each account no., balance, and joint owners.)		
	% Owned By Decedent	
	% Owned By Decedent	
	% Owned By Decedent	
	% Owned By Decedent	
3. Stocks/bonds/securities in sole name of decedent or jointly owned <u>without</u> right of survivorship		
	% Owned By Decedent	
4. Cash and undeposited checks on hand		
5. Household furnishings		
6. Farm products, livestock, equipment, and tools		
7. Vehicles		
8. Interests in partnership or sole proprietor businesses		
9. Insurance, Retirement Plans, IRAs, annuities, etc., payable to Estate		
10. Notes, judgments, and other debts due decedent		
11. Miscellaneous personal property		
12. Real estate willed to the Estate		\$
13. Estimated annual income of Estate		
14. Is there a pending lawsuit that involves the decedent? <input type="checkbox"/> Yes <input type="checkbox"/> No		
(Base bond on this amount, if applicable.) TOTAL PART I.		\$

PART II. PROPERTY WHICH CAN BE ADDED TO ESTATE IF NEEDED TO PAY CLAIMS

1. Joint accounts with right of survivorship (List bank, etc., each account no., balance, and joint owners.)		\$
2. Stocks/bonds/securities registered in beneficiary form and immediately transferred on death or jointly owned with right of survivorship		
3. Other personal property recoverable (G.S. 28A-15-10)		
4. Real estate owned by decedent and not listed elsewhere		
TOTAL PART II.		\$

PART III. OTHER PROPERTY

1. There <input type="checkbox"/> is <input type="checkbox"/> is not entireties real estate owned by decedent and spouse.	
2. There <input type="checkbox"/> are <input type="checkbox"/> are not Insurance, Retirement Plans, IRAs, annuities, etc., payable to named beneficiaries.	
3. There <input type="checkbox"/> is <input type="checkbox"/> is not a potential claim for wrongful death arising under G.S. 28A-18-2.	

Signature Of Applicant	Signature Of Co-Applicant
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SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date	Signature Of Person Authorized To Administer Oaths	Date	Signature Of Person Authorized To Administer Oaths
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<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
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<input type="checkbox"/> Notary	Date Commission Expires	Date Commission Expires	<input type="checkbox"/> Notary
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SEAL	County Where Notarized	County Where Notarized	SEAL
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