

9-9-403 Ownership and disposition of Native American remains.

- (1) If Native American remains are discovered on nonfederal lands on or after April 30, 2007, the ownership or control of the Native American remains shall be determined in the following priority:
 - (a) first, in the lineal descendants of the Native American;
 - (b) second, if the lineal descendants cannot be ascertained, in the Indian tribe that:
 - (i) has the closest cultural affiliation with the Native American remains; and
 - (ii) states a claim for the Native American remains; or
 - (c) third:
 - (i) in the Indian tribe that is recognized as aboriginally occupying the area in which the Native American remains are discovered, if:
 - (A) cultural affiliation of the Native American remains cannot be reasonably ascertained;
 - (B) the land is recognized either by a final judgment of the Indian Claims Commission or through other evidence as the exclusive or joint aboriginal land of some Indian tribe; and
 - (C) that tribe states a claim for the Native American remains; or
 - (ii) in a different tribe if:
 - (A) it can be shown by a preponderance of the evidence that that different tribe has a stronger genetic or cultural relationship with the Native American remains; and
 - (B) that different tribe states a claim for the Native American remains.
- (2) Subject to Subsection (7), Native American remains discovered on nonfederal lands that are not claimed under Subsection (1) shall be disposed of in accordance with rules made by the division:
 - (a) consistent with Chapter 8, Part 3, Antiquities; and
 - (b) in consultation with Native American groups, representatives of repositories, and the review committee established under Section 9-9-405.
- (3) The intentional removal or excavation of Native American remains from state lands may be permitted only if:
 - (a) the Native American remains are excavated or removed pursuant to a permit issued under Section 9-8-305;
 - (b) the Native American remains are excavated or removed after consultation with and written consent of the owner of the state land; and
 - (c) the ownership or right of control of the disposition of the Native American remains is determined as provided in Subsections (1) and (2).
- (4)
 - (a) A person who knows or has reason to know that the person has discovered Native American remains on state lands after March 17, 1992 shall notify, in writing, the appropriate state agency having primary management authority over the lands as provided in Chapter 8, Part 3, Antiquities.
 - (b) If the discovery occurs in connection with construction, mining, logging, agriculture, or a related activity, the person shall:
 - (i) cease the activity in the area of the discovery;
 - (ii) make a reasonable effort to protect the Native American remains discovered before resuming the activity; and
 - (iii) provide notice of discovery to the appropriate state agency under Subsection (4)(a).
 - (c) Following notification under Subsections (4)(a) and (b) and upon certification by the head of the appropriate state agency that notification is received, the activity may resume after compliance with Section 76-9-704.
- (5)

- (a) Scientific study of Native American remains may be carried out only with approval of the owner of the Native American remains as established in Subsections (1) and (2).
 - (b)
 - (i) If ownership is unknown, study before identifying ownership is restricted to those sufficient to identify ownership.
 - (ii) Study to identify ownership shall be approved only in accordance with rules made by the division in consultation with the review committee.
 - (c) The Native American remains may not be retained longer than 90 days after the date of establishing ownership.
- (6)
- (a) Ownership of Native American remains shall be determined in accordance with this Subsection (6) if:
 - (i) there are multiple claims of ownership under Subsection (1) of Native American remains; and
 - (ii) the division cannot clearly determine which claimant is the most appropriate claimant.
 - (b) If the conditions of Subsection (6)(a) are met, the appropriate state agency having primary authority over the lands as provided in Chapter 8, Part 3, Antiquities, may retain the remains until:
 - (i) the multiple claimants for the Native American remains enter into an agreement concerning the disposition of the Native American remains;
 - (ii) the dispute is resolved through an administrative process:
 - (A) established by rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (B) that is exempt from Title 63G, Chapter 4, Administrative Procedures Act; or
 - (iii) after the administrative process described in Subsection (6)(b)(ii) is complete, the dispute is resolved by a court of competent jurisdiction.
- (7) The division may not make rules that impose any requirement on a person who discovers Native American remains or owns or controls nonfederal land that is not state land on which Native American remains are discovered that is not expressly provided for in Section 9-8-309.
- (8) For purposes of this part, if Native American remains are discovered on nonfederal land that is not state land, the Antiquities Section is considered the state agency having primary authority over the nonfederal land.
- (9) This part does not modify any property rights of a person that owns or controls nonfederal land except as to the ownership of Native American remains.

Amended by Chapter 114, 2008 General Session