

PROBATE IN TRIBAL COURT

It is critical that you read this entire page before you start any probate proceeding in tribal court. Probating an estate is a very complex area of the law involving various notices and pleadings with different time frames. It is not advisable to probate an estate without the assistance of an attorney. An attorney has expertise and knowledge about the law you probably do not possess. Before you attempt to probate an estate you should consult an attorney. If for some reason you cannot hire an attorney to help, please read this page carefully and copy it for guidance. You should only attempt to probate the simplest of estates.

This guide and the forms are tailored towards probating simple estates involving personal property only. It does give information probating non-trust real estate in Tribal Court but no forms are provided except a Petition to Sell Real Property of the Estate. The reason for this is that there are deeds of transfer and other paperwork that must be prepared by an attorney to be recorded with the state in the county clerk's office. Any misstep could effect the title of such real estate and create problems and costs later. If at any point during the probate it is discovered that the estate has non-trust real estate, an attorney should be consulted as soon as possible.

Anyone attempting to probate an estate should consult Title 1 Chapter 1 (1-1-1) of the Rosebud Sioux Tribal Law and Order Code (Probate of Decedent's Estate).

DEFINITION OF TERMS

You should become familiar with several terms before attempting to administer an estate. While these terms are not defined in the Tribal probate code, these are the generally accepted legal definition of the terms.

DECEDENT. The person who has died and who may have an estate that needs to be probated by the Tribal Court.

WILL. A legal document prepared by a person before they die that dictates who will administer their estate after they die and who will get their property.

TESTATE. When a person dies testate they die leaving a will. If a will is proved and admitted into probate, the will dictates how the estate is distributed.

INTESTATE. When a person dies without a will and has died leaving property. In this case tribal law dictates who will get the deceased's property.

HEIR. A person who is legally entitled under Tribal law to receive property from the decedent's estate when there is no will.

DEVISEE. A person who receives an interest in real estate by will from the decedent's estate.

LEGATEE. A person who receives an interest in personal property by will from the decedent's

estate.

ADMINISTRATOR OF THE ESTATE. The person nominated by will and approved by the court to administer the deceased's estate. If the deceased died without a valid will then the court appoints an administrator.

JURISDICTION OF TRIBAL COURT TO ADMINISTER A PROBATE

The Tribal probate code gives the Tribal Court jurisdiction to administer in probate the estate of a deceased Indian who at the time of their death resided on or owned real or personal property located/situated on the Rosebud Reservation and the property is not trust property. So for the Tribal Court to have jurisdiction the deceased person must be an Indian who at the time of their death either lived on or owned non-trust property located on the reservation.

At the present, tribal court does not have jurisdiction to distribute trust property of the deceased. Such property will be probated by the Bureau of Indian Affairs Probate Courts.

DUTY TO PRESENT WILL FOR PROBATE

Any custodian (person who has possession or knowledge of a will) is required to deliver the will to the Tribal Court within 30 days after they have knowledge of the decedent's death. Failure of the custodian to deliver the will to the court can result in the custodian of the will being found liable for damages to any injured party.

PROVING AND ADMITTING A WILL

The Tribal probate code requires that any known will be filed with the Court when starting a probate. The will can be admitted and proven by filing an affidavit of an attesting witness to the will that identifies the will as being the will that the decedent executed and declared to be his or her last will. Use the **Affidavit to Prove and Admit a Will** form. If none of the attesting witnesses is available to attest to the will, the Court can allow the will to be proved through testimony or other evidence that the signature of the testator or one of the witnesses to the will is genuine. This may require requesting a hearing to prove and admit a will where witnesses and other evidence would need to be provided to authenticate the will and prove signatures.

WILL CONTEST

The Tribal probate code allows any person interested in the decedent's estate to contest the validity of the will but they must do so within 90 days after the will is admitted to probate or when the Court declares the estate exempt by having an appraised value of less than \$1,500. Once a will is contested, the Court will take no action on the probate until it can hold a hearing on the validity of the will.

At the hearing to contest the will, the parties can provide evidence and testimony regarding the validity of the will. The party contesting the will has the burden of proving to the Court that the

will is invalid. It will be necessary for the parties to introduce all relevant evidence regarding the decedent's capacity to execute a valid will and the circumstances surrounding its execution. The testimony of the attesting witnesses to the execution of the will be necessary. If the testimony of attesting witnesses is not reasonably available an effort will need to be made to identify signature to the will through other evidence.

The most common reasons a will is contested is because that another party exercised undue influence on the decedent to execute the will, or that the decedent lacked the mental or testamentary capacity to execute the will, or that the will is legally invalid because either the decedent was not the person who signed or executed the will without the decedent's consent, or the will did not conform to the requirements of tribal law (e.g. the execution of will was not witnessed or attested to by witnesses). Another reason for a will contest could arise if a second later will of the decedent is found.

Currently Tribal law only requires the will be witnessed and attested to by witnesses, implying it must be in writing and witnessed by two attesting witnesses. For a will to be valid under federal law for Indian will disposing of trust/restricted property in BIA probate it must be in writing, dated and signed by the person and attested to by two disinterested adult witnesses and the person making the will must be 18 years of age and have testamentary capacity. For a will to be valid under state of South Dakota law probating property under state jurisdiction it must be in writing, dated and signed by the testator in the conscious presence of two or more individuals who witness the testator sign the will or the testator acknowledges their signature to the witness. State law will find a handwritten will (holographic will) valid, whether it is witnessed or not, if the signature and material portions of the document are in the testator's handwriting.

The party seeking to contest the will need to call witnesses such as medical professionals and others who can testify that the decedent was not of sound mind at the time they executed the will or was susceptible to undue influence by another to execute the will.

Do not file a petition to contest the validity of a will unless you have some evidence to back up your claims. There must be a basis in fact (credible evidence) that the will you are contesting is not valid.

A party wishing to contest a will that has been admitted to probate can use the **Petition to Contest the Validity of the Will** form.

The Court will decide whether the will is valid. It will admit the will if it finds the will is valid and the estate will pass in accordance to the will. If the Court finds the will is not valid it will reject the will and the Court will pass the estate as if the decedent had no will and the estate will pass intestate (without the will) according to the Tribal Probate Code in accordance with intestate succession.

HOW TO START A PROBATE

Under the Tribal probate code a probate can be started by any person having an interest in the

estate by filing a petition with the court requesting the estate be administered in probate.

The Tribal probate code does not define who a person having an interest in the estate is. But it would appear that any person appointed by will to be administrator of the estate, any person claiming to be an heir, devisees, legatees or a creditor of the deceased can petition the court to probate an estate would be a person having an interest in an estate.

A petition to administer an estate in probate must contain the following information:

1. The name, date of death and residential address of the decedent at the time of their death. The code does not require it but the petitioner should attach a copy of the decedent's death certificate for proof the decedent is actually dead. The petitioner should attach a copy of the decedent's death certificate to the petition as proof the decedent passed away and when.
2. The decedent is an Indian who at the time of their death resided or owned real or personal property located/situated on the Rosebud Reservation which is not under the jurisdiction of Secretary of the Interior (i.e. trust property). The petitioner should provide the Court proof that the decedent was an Indian.
3. The nature of the estate and any other facts that would give the Tribal Court jurisdiction to probate the estate. This would include what personal and real property is in the estate
4. Whether the decedent did or did not leave a will to the petitioner's knowledge and if any will has been presented to the Court for admission to probate.
5. The name, age and residential address of the person nominated in the decedent's will, if any, to administer the decedent's estate and whether person nominated desires to be appointed Administrator and attach a sworn statement by the person that they are willing to serve as Administrator of the decedent's estate. The Tribal probate code is silent on who will be appointed Administrator in the event there is no will appointing one. In those cases the Court will normally appoint a family member in closeness of relationship to the decedent as Administrator as long as they are qualified. The surviving spouse will normally be appointed Administrator, then to children of the deceased in descending order of age (older child has preference over a younger child), then to other blood relatives in the order of their closeness of relationship to the deceased, then to other adult tribal members who is a creditor of the deceased unless there are good reasons not to.
6. The names, ages, relationship to the decedent and residential address of all of the decedent's heirs, devisees and legatees, so far as are known to the petitioner. This would include spouse, children (even if adopted by the decedent), mother, father, brothers and sisters and grandparents and anyone named in the will as an heir (someone who is bequeathed decedent's property in the decedent's will. And if none of these people survive the decedent then it would include their children. Use the Probate in Tribal Court Pro Se Guide Section 8 Decent and Distribution on How to Administer an Estate for reference.
7. The name and address of a disinterested and competent person to appraise the value of the decedent's estate.

A petitioner can use the **Petition Requesting Estate be Administered in Probate** form.

How to File a Petition Requesting Estate be Administered in Probate. A petition is filed

when you take it to the courthouse and file it along with the filing fee with the clerk of courts. When you file your petition with the clerk, please date and sign the form in front of the clerk so they can notarize your signature.

Filing fee. The court will require payment of a filing fee unless waived to file your petition with the court.

Order to Probate Estate. Once the Court finds that the decedent is an Indian who at the time of their death was domiciled or owned real or personal property on the reservation which does not come under the jurisdiction of the Secretary of the Interior and that the Court has jurisdiction, the Court will enter an order to probate the estate. The order will state whether a will of the decedent has been admitted to probate and if it has that any person who desires to contest the validity of the will must do so within 90 days of the date of the order. The order to probate the estate will also appoint an Administrator to administer the estate and an Appraiser to appraise the value of the estate.

Notice of Probate. The Tribal probate code requires the Administrator to immediately send by certified mail copies of the Order to Probate the Estate and any will admitted to probate to the Business Manager of the Rosebud Sioux Tribe and to each heir, devisee and legatee of the decedent at their last known address that is known to the Administrator. The Administrator is required to prove to the Court that the Administrator sent by certified mail the Order to Probate and any will admitted to probate by filing an affidavit of such mailing within 30 days of the date the Order to Probate the Estate is entered. The Administrator can use the **Affidavit of Mailing Notice of Probate** form to prove to the Court of such mailing to each heirs, devisee and legatee of the decedent at their last known address that is known to the Administrator.

ADMINISTRATOR OF THE DECEDENT'S ESTATE

Appointment of Administrator. When the Court orders the estate to be probated, it will also appoint a guardian in accordance to the probate code. The person nominated in a will admitted to probate to administer the estate will be appointed Administrator so long as they are qualified and will consent to serve as Administrator.

Qualifications of Nominated Administrator. To be qualified to act as the Administrator of the decedent's estate the person must reside on the Rosebud Sioux Indian Reservation, is over the age of 21 and competent to perform the duties of Administrator, The Court may require the Administrator to post a bond to act as Administrator unless the will directs the Administrator serve without posting a bond.

Duties and Powers of Administrator.

Once an administrator or representative has been appointed by the court, that person or persons has several responsibilities and duties to the estate. These would include taking an oath, giving notice to creditor's of the deceased, collecting and protecting the assets of the deceased's estate, accounting for the assets, account for any estate receipts and disbursements, paying legitimate

creditor claims and finally distributing the estate of the deceased to the heirs according to the deceased's will or if no will then by operation of law.

The Administrator of the decedent's estate has a fiduciary duty to the estate and the legal heirs (persons entitled to the estate by will or law). This means the Administrator must act in the best interest of the estate, heirs, devisees and legatees of the estate and not for the Administrator's personal benefit. The Administrator is not allowed to convert any of the estate assets to their own use without a court order. The Administrator cannot use any of the estate for their personal use. If they do, they will be in hot water and can face criminal theft charges and could also be sued in civil court by the heirs, devisees and legatees of the estate.

Upon being appointed administrator or representative of an estate, such person being appointed will take an oath that they will faithfully and honestly perform the duties. The court may require the administrator or representative to post some time of bond to serve as administrator. The court will then issue letters of appointment which will give the administrator the powers they will need to probate the estate.

The administrator of the estate has the following duties and powers:

1. To preserve and protect the decedent's property in the estate for the benefit of the estate and heirs
2. To promptly investigate all claims against the estate and to determine whether any claim is item of property warranted
3. To promptly determine the names, ages, relationship to the decedent and residential address of all of the decedent's heirs, devisees and legatees
4. To promptly prepare a written inventory of all of decedent's property with each piece of property being itemized for the appraiser to appraise and file an inventory and appraisal with the Court.
5. To promptly provide notice to all persons entitled to notice under the code.
6. To account for all property of the estate that comes into the Administrator's possession or control and maintain accurate records of income received and disbursements made during administration of the estate.

Removal of Administrator. The Court can order the Administrator to show cause why the Administrator should not be removed for failure, neglect or improper performance of duties in administering the estate if good cause is shown.

Please refer to Duties and Powers of the Administrator above and Title 1 Chapter 1 Section 5 (1-1-5) of the RST Probate Code to determine if the Administrator failed, neglected or improperly performed his or her duties. If there is cause for removal of the Administrator use the **Motion for Order to Show Cause Why the Administrator Should Not be Removed** form.

APPOINTMENT OF APPRAISER TO APPRAISE THE PROPERTY OF THE DECEDENT'S ESTATE

The Court will appoint a disinterested and competent person as an appraiser to appraise all of

decedent's real and personal property in the estate. The appraiser is required to file an oath of office with the Court stating the appraiser has no interest in the estate and that they will honestly, impartially and to the best of their ability appraise all property in the estate using the inventory and appraisal form provided by the Administrator. The Administrator will itemize and inventory each item of property using the Inventory and Appraisal form. The Appraiser will then appraise and value each item of property using the Inventory and Appraisal form. Once completed the Administrator is required to file the Inventory and Appraisal with the Court.

The Appraiser can use the **Oath of Office of Appointed Appraiser** form and file it with the Court before the Appraiser makes an appraisal of the estate. The Administrator may have to ensure the Appraiser completes and files an Oath of Office of Appointed Appraiser.

SUMMARY PROBATE OF EXEMPT ESTATES

The probate code provides that the estate is exempt from the claims of general creditors and can be summarily probated if the appraised value of the estate is \$1,500 or less and is to be inherited by the surviving spouse and/or children of the decedent.

The appointed Administrator can petition the Court for summary probate of exempt estate if the appointed appraiser's appraises the estate with a value of \$1,500 or less and the estate is to be inherited by the surviving spouse and/or children of the decedent. The court will set a time for hearing objections from any interested person why the whole estate should not be declared exempt from the claims from all general creditors and distributed to the surviving spouse and/or children of the decedent.

The Administrator can use the **Petition for Summary Probate of an Exempt Estate** form if the Appointed Appraiser determines the value of the decedent's estate is \$1,500 or less and is to be inherited by the surviving spouse and/or children of the decedent.

Once a hearing is ordered by the Court, the Administrator is required to post the order setting a date and hour to hear to objections in three conspicuous places on the reservation (three suggested posting sites would be the Tribal Court House in Rosebud, the RST Tribal building in Rosebud and the Post Office where the decedent resided before his or her death) for at least 10 days before the hearing and to send a copy of the order by certified mail to each heir, devisee and legatee of the decedent as known to the Administrator at least 10 days before the hearing. The Administrator is further required to file an affidavit with the Court on or before the hearing date indicating compliance with the notice requirements.

The Administrator can use the **Affidavit of Mailing and Posting Order Setting Hearing Date for Objections to Petition for Summary Probate of Exempt Estate** form to prove to the Court of such posting in three conspicuous places on the reservation and of mailing to each heirs, devisee and legatee of the decedent at their last known address that is known to the Administrator at least 10 days prior to the hearing.

If the Court finds the estate is valued at \$1,500 or less and is to be inherited by the surviving

spouse and/or children of the decedent, the will order the estate is exempt from the claims of creditors and the Court will distribute the estate to the surviving spouse and/or children of the decedent.

HOMESTEAD EXEMPTION

If after the estate is appraised it appears the dwelling is personal property (where the dwelling owned by the decedent sits on land not owned by the decedent such as on rented/leased land or on trust land) of the decedent that other heirs and/or creditors have an interest and the dwelling is occupied by the surviving spouse and/or children and the dwelling is necessary for the welfare and protection of the surviving spouse and/or children the Court can by order set aside the dwelling for the benefit of the surviving spouse and/or children as a homestead for a period of up to ten years and in case of special hardship or emergency the Court can extend the homestead from year to year after the initial ten year period as long as the any heirs or creditors of the decedent has an opportunity to appear before the Court and protest the extension. The Court will be required to hold a hearing on the extension to hear the evidence of any protest before ordering an extension of the homestead.

A petitioner can petition the Court for a homestead allowance using the **Petition for Homestead Allowance of Dwelling** form.

HOW TO ADMINISTER THE DECEDENT'S ESTATE

The duties and responsibilities of the Administrator is set forth in the Tribal Code. It can be confusing so a step by step guide is laid out here. It can't be stressed enough the Administrator has a fiduciary duty to act in the best interest of the estate and heirs. There are several tasks the Administrator must undertake to competently administer the estate.

1. Administrator to Preserve and Protect the Property of the Estate.

The Tribal probate code grants the Administrator the duty and responsibility to preserve and protect the decedent's property in the estate for the benefit of the estate and heirs. This may include finding and taking possession of property of the estate in the possession of third parties.

Along with the Order to Probate the Estate, the Court will issue Letters of Administration to the Administrator granting the Administrator of the estate with all general power and authority necessary to administer the estate. The Letters of Administration gives the Administrator the power to gather and inventory the decedent's property. For example, if the decedent had a savings account at the bank, the Administrator can present the Letter of Administration to the bank to determine the amount in the account and to when then to distribute the money to the heirs. Another example would be if a relative or friend had borrowed property such as a vehicle from the decedent and is still in possession of the vehicle, the Letters of Administration would allow the Administrator to preserve and protect the property by taking possession of it for safe-keeping. If a third party fails to comply with the Administrator's authority to administer the estate, the Administrator may have to file a court action on behalf of the estate for a return of the

property.

2. Administrator to Promptly Investigate and Determine the Ages, Relationship to Decedent and Residential Addresses of all Heirs, Devisees and Legatees.

The Administrator will need to determine who the decedent left property to in any will and if the decedent died leaving a spouse, children (natural born or legally adopted), any of the decedent's children's children and possibly mother, father and any brothers or sisters and any deceased brother and sister's children. See **8. Descent and Distribution** below for how to determine heirs. Anyone named in a will and any of the relatives listed above are potential heirs that need to be identified and included in the probate. This information must also be included in the initial Petition Requesting Estate be Administered in Probate form.

3. Administrator to Promptly Prepare a Written Inventory of all Property in the Decedent's Estate, to Transmit the Inventory to the Appraiser for an Appraisal of the Estate Property and to File the Inventory and Appraisal with the Court.

The Tribal Probate code requires the Administrator to promptly prepare a written inventory of all of decedent's property with each piece of property being itemized for the appraiser to appraise and file an inventory and appraisal with the Court.

The Court will appoint a disinterested and competent person as an appraiser to appraise all of decedent's real and personal property in the estate. The appraiser is required to file an oath of office with the Court stating the appraiser has no interest in the estate and that they will honestly, impartially and to the best of their ability appraise all property in the estate using the inventory and appraisal form provided by the Administrator. The Administrator will itemize and inventory each item of property using the Inventory and Appraisal form. The Appraiser will then appraise and value each item of property using the Inventory and Appraisal form.

Once completed the Administrator is required to file the Inventory and Appraisal with the Court.

The Administrator and the Appointed Appraiser can use the **Inventory and Appraisal** form. In order to complete this form it will be necessary for the Administrator to coordinate with the Appointed Appraiser and to transmit the Inventory list of all property in the decedent's estate subject to the jurisdiction of the Court to the Appointed Appraiser to appraise the listed property.

Summary Probate of an Exempt Estate

At this point the appointed Administrator can petition the Court for summary probate of an exempt estate if the appointed appraiser's appraises the estate with a value of \$1,500 or less and is to be inherited by the surviving spouse and/or children of the decedent. The Administrator can use the **Petition for Summary Probate of an Exempt Estate** form if the Appointed Appraiser determines the value of the decedent's estate is \$1,500 or less and is to be inherited by the surviving spouse and/or children of the decedent.

4. Administrator to Promptly Investigate and Determine the Validity of all Claims Against the Estate.

Notice to Creditors. The Administrator is required to promptly give notice to creditors of the decedent and to the Business Manager of the Tribe to present their claims against the decedent's estate unless the Court determines the estate is exempt (having a value of \$1,500.00 or less) from claims by creditors. The code requires the Administrator to post notice in the three public places on the Reservation for a period of at least 30 days (three suggested posting sites would be the Tribal Court House in Rosebud, the RST Tribal building in Rosebud and the Post Office where the decedent resided before his or her death). Creditors have 90 days from the first posting of the notice to file their claim and failure to do so will not bar the creditor's claim but will give timely claims priority over it meaning timely claims are paid before any untimely claim.

Another requirement of the probate code is that the notice must contain the following information:

1. The name, age, date of death and residential address of the decedent at the time of their death
2. The date the notice was first posted
3. That all persons having claims against the estate are required to present their claims in writing, with proper vouchers, to the Administrator at a stated address within 90 days after the first day of posting of the notice.

The Administrator of the estate can use the **Notice to Creditors** form.

The Administrator is required to file verified affidavit showing they have fully complied with the notice requirement with the Court within 90 days from the first posting of the notice. The Administrator of the estate can use **Verified Affidavit Administrator Complied with the Notice to Creditors Requirements** form.

Allowance or Rejection of Claims. Any claim not presented to the Administrator within 90 days after the notice was first posted are not barred but cannot be paid until the claims that were presented to the Administrator within the 90 days after the notice was first posted have been paid. A claim against the estate is not barred and can be presented to the Administrator and paid out of any assets available in the estate that has not been already been allocated until a final account is filed. Once a final account is filed by the Administrator, any claims against the estate are time barred (meaning the Court will not allow such claims presented after the final account is filed).

The Administrator will be required to examine, date and endorse with the words "examined and allows" if the Administrator is satisfied that the claim is just or endorsed with the words "examined and rejected" if the Administrator is not satisfied the claim is just. If a claim is allowed it will be paid in the course of the administration of the estate. If a claim is rejected the Administrator must file notice with the Court that the claim has been rejected and serve a copy on the claimant by certified mail. The claim will be deemed rejected if the Administrator fails to allow or reject a claim within 60 days after receipt of the claim.

If a submitted claim was a debt or money owed by the decedent and was incurred more than 2

years before the claim was submitted to the Administrator, the claim may violate the Tribe's 2 year statute of limitations and should be rejected on those grounds unless the decedent was making payments in which case the 2 year statute of limitations may not apply.

The Administrator can use the **Notice of Rejected Claim** form.

Hearing on Rejected Claim. A claimant whose claim has been rejected can request a hearing on the rejected claim by filing a petition with the Court. The claimant is required to file their petition on the rejected claim within 30 days after the has been rejected or is deemed rejected if the Administrator fails to allow or reject the claim within 60 days after the claim was received by the Administrator. If the petition is not filed within 30 days after the claim has been rejected or is deemed rejected will be barred (meaning the Court will not entertain or hear the petition not timely filed).

A creditor of the estate who has a claim against the estate can use the **Petition for Hearing on Rejected Claim** form.

A hearing on a rejected claim will be a in the nature of a civil court proceeding where the rules of evidence will apply and the parties can bring or subpoena witnesses to testify and produce documents for the Court to consider on the rejected claim(s). The claimant that petitions for a hearing has the initial burden of convincing the Court that their claim is just at which point the Administrator will have the burden of convincing the Court the claim is not just.

Payment of Claims. Not all claims are treated equally. All claims and expenses of the estate that have been presented and allowed are to be paid by the Administrator in the following order:

1. Taxes and debts owed to the United States
2. Any money due to the Rosebud Sioux Tribe
3. Debts that are liens on property according to priority of the liens
4. Expenses of administration of the estate
5. All expenses of last illness and burial expenses of the decedent
6. All other claims of the estate

5. Sale of Estate Property.

There may be times when the Administrator will need to sale some of the estate property. The Administrator will be required to get Court approval to sale any estate property.

Sale of Personal Property. After filing the Inventory and Appraisal the Administration can petition the Court for authority to sell personal property of the estate to pay the expenses of the last illness and burial expenses of the decedent, expenses of administration, any claims of the estate and to distribute to heirs, legatees and devisees. If the Court finds that the sale of personal property is in the best interest of the estate it will order the personal property sold and how it to be sold.

The Administrator can use the **Petition for Authority to Sell Personal Property of the Estate**

form.

Sale of Real Estate (Land). If the sale of personal property and other funds of the estate have been exhausted and there are still pending charges, claims and expenses against the estate or it is found by the Court that it would be in the best interest of the heirs, devisees and legatees that all or part of the real estate of the estate be sold for the purpose of distribution can petition the Court for authority to sell real property. If the Court finds that the sale of real property is in the best interest of the estate it will order the personal property sold and how it to be sold in accordance with South Dakota law. However, any property specifically devised (allocated) in a will admitted into the probate is exempt from any order of sale and may not be sold without the consent of the person or persons it is devised to.

The Administrator can use the **Petition for Authority to Sell Real Property of the Estate** form.

At this point it is advisable to contact an attorney as there are deeds of transfer and other paperwork that must be prepared by an attorney to be recorded with the state in the county clerk's office. Any misstep could effect the title of such real estate and create problems and costs later.

6. Administrator to Account for All Property of the Estate and to Keep Accurate Records of Estate Income and Estate Disbursements.

Periodic Accounting. The Administrator is required to file an account with the Court during the first 15 days of April and October of each year the estate remains open showing the amount of money received and expended by the Administrator, who received and who was paid any estate money with proper vouchers for payments, the name and amount of each claim against the estate that have been presented and whether any claim has been rejected, any estate property sold and any other matter necessary to show the condition and affairs of the estate. If the Administrator is appointed within 60 days before April or October the filing of the periodic accounting is not due until the following April or October.

The Administrator can use the **Periodic Accounting** form.

7. Settlement of Final Account and Determination of Heirship.

After the affairs of the estate has been fully administered-meaning all claims have been disposed of, an inventory and appraisal has been completed and all potential heirs, legatees and devisees have been identified/determined and the remainder of the estate is ready to be distributed to the heirs of the decedent-the Administrator will need to file a verified final account under oath and must set forth the following information:

1. That all claims against the estate have been paid or list any unpaid claims and that the estate has adequate unexpended and unappropriated funds to fully pay all remaining claims
2. The amount of money received and expended by the Administrator, from whom received and to whom paid and attaching vouchers for each payment
3. That there is nothing further to be done in the administration of the estate except that is shown

in the final account.

4. The remaining assets of the estate, including unexpended and unappropriated money, at the time of the filing of the final account
5. The proposed determination of heirs and their ages, addresses and relationship to the decedent of each distribution and the proposed distributive share and value each heir, devisee or legatee is to receive
6. That the Administrator petition the Court to set a day and hour for conducting a hearing to approve the final account, to determine the heirs, devisees and legatees of the decedent and the distributive share each is to receive

The Administrator can use the **Verified Final Account and to Determine Heirs** form.

After filing the Final Account the Court will enter an order setting a date and hour to hear objections to the approval of the Administrator's final account on file with the Court, to the proposed determination of heirs, devisees and legatees or to the distributive share each distributee is to receive as set out in the final account.

The Administrator will be required to post the order setting a date and hour to hear to objections to the final account in three conspicuous places on the reservation (three suggested posting sites would be the Tribal Court House in Rosebud, the RST Tribal building in Rosebud and the Post Office where the decedent resided before his or her death) for at least 20 days before the hearing and to send a copy of the order by certified mail to the Business Manager of the Tribe and to each heir, devisee and legatee of the decedent at their last known addresses as known to the Administrator. The Administrator is further required to file an affidavit with the Court indicating compliance with the notice requirements.

The Administrator can use the **Affidavit of Compliance with Notice Requirements** form..

Any heir, devisee or legatee or the Business Manager of the Tribe is required to file an objection to Final Accounting at any time before the hearing and appear at the hearing in order to object to the final account and/or the proposed determination of heirs, devisees and legatees or the proposed distributive share to each heir, devisee or legatee is to receive specifying the reasons for the objection.

An heir who objects to the final account can use the **Objection to Final Account** form.

The Court will hold a hearing on the final accounting and determination of heirs and any objections. The Administrator will have to prove each allegation in the Final Account. Any heir, devisee or legatee or the Business Manager of the Tribe will have to prove their objection with reasonable certainty and can do this witnesses and documentary evidence. After the hearing the Court can then enter an order approving the final account in whole or part, directing the Administrator to pay any unpaid allowed claims not yet paid claims, charges or allowances against the estate and determining the heirs, devisees and legatees of the decedent and the share each is to receive from the remaining estate and order that the Administrator distribute the estate according to the Order.

However, all claims, final expenses of burial and last illness and cost of administering the estate are paid first and if there is any estate property left it is distributed to the heirs, devisees and legatees of the decedent. If there is nothing left after paying the claims and expenses then the will not receive anything.

8. Descent and Distribution.

Distribution of the Estate in Accordance with the Will. The Tribal Court will distribute the decedent's estate according to the terms of the decedent's will that has been admitted to probate. For example,

Intestate Distribution. If the decedent died without a will or a will has been rejected from probate, the Court will distribute the estate according to the Tribal Probate Code. The Court will distribute the estate according to closeness of relationship to the decedent.

1. If the decedent dies leaving a surviving spouse and children (even adopted children) the surviving spouse receives one-half of the estate and the other one-half of the remaining estate will pass to surviving children of the decedent equally. If a child does not survive the decedent and that child has children they will share the decedent's non-surviving child's share equally. However, if the decedent dies without ever having children the entire estate goes to the surviving spouse.
2. If there is no surviving spouse then the entire estate will pass to surviving children of the decedent equally. If a child does not survive the decedent and that child has children they will share the decedent's non-surviving child's share equally and if any non-surviving children's children do not survive and have children will take the non-surviving grandchildren's share equally and so on.
3. If there is no surviving spouse or children of the decedent then half the estate then the entire estate passes to the decedent's parents.
4. If there is no surviving spouse, children or parent of the decedent then the entire estate passes to the decedent's brothers and sisters in equal shares and if any brothers or sisters don't survive the decedent but have children those children share their non-surviving parent's share.
5. If there is no surviving spouse, children, parent or siblings of the decedent then the entire estate passes to the decedent's grandparents.
6. If the decedent does not leave any of the above heirs then the estate will escheat or go to the Rosebud Sioux Tribe.

Indian Custom Distribution of Indian Finery and Artifacts. The probate code allows the surviving spouse or other surviving kin to distribute any Indian artifacts or finery belonging to the decedent according to the custom of the Rosebud Sioux Tribe before the initiation of administration of the estate.

9. How To Distribute the Property Of the Estate

When all of the above has been accomplished, the estate is ready for distribution to the heirs as ordered by the Court. The court will order who gets what from the estate.

The Administrator is responsible for distributing the estate in accordance with the Court's Order of Distribution of the Estate. Once this is done the administrator is required to provide proof to the Court that the estate assets were distributed to those entitled in accordance with the order of distribution. This may require the administrator of the estate to transfer title to personal property and non-trust real estate that is part of the estate. This form will provide your proof to the Court that the estate's personal property of the estate has been distributed.

Have the distributee or heir sign the receipt of distribution of personal property. The Administrator will be required to keep the original and attach a copy to the **Petition to Close the Estate** as proof the Administrator did in fact distribute the estate property. Provide a copy of the signed receipt to the distributee or heir for their records.

For most personal property like clothes and personal affects of the estate can be given personally to the person(s) ordered to be distributed by the court and have that person sign the **Receipt of Distribution** form. The Administrator will need to attach the original to the Petition to Close the Estate and provide a copy of the signed receipt to the distributee or heir for their records.

A motor vehicle will require the administrator to execute a bill of sale and sign over the title to the person entitled to it. The administrator will need to attach a copy of the letter of administration and a copy of the order of distribution with the bill of sale and title so that the person receiving the motor vehicle can receive a title in their name from the State Department of Motor Vehicles. Have the person receiving the motor vehicle sign the **Receipt of Distribution** form and retain the original to submit to the court as proof of distribution.

The Administrator can use the **Receipt of Distribution** form to transfer title of personal property and to provide proof to the Court that the property was in fact distributed.

Distributing non-trust real estate will require the Administrator to prepare the **Deed of Distribution** and attach the Administrator's Letters of Administration to the Deed. At this point it is advisable to contact an attorney as there are deeds of transfer and other paperwork that must be prepared by an attorney to be recorded with the state in the county clerk's office. Any misstep could effect the title of such real estate and create problems and costs later.

Have the distributee or heir sign the receipt of distribution of real property. The Administrator will be required to keep the original and attach a copy to the **Petition to Close the Estate** as proof the Administrator did in fact distribute the estate property. Provide a copy of the signed receipt to the distributee or heir for their records.

10. Closing the Estate

When the estate is ready to be closed the probate code requires the Administrator to file a petition for an order closing the estate, discharging the Administrator and discharging any bond that posted. It further requires the Administrator to attach vouchers to the petition for any money paid since the approval of the final account and signed **Receipt of Distribution** from each distributee named in the order of distribution.

The Administrator can use the **Petition for an Order to Close the Estate** form.

If the Court finds that the estate has been fully administered and is ready to be closed the Court will enter an order closing the estate, discharging the Administrator and any bond posted.

The Administrator is required to file a written report with the Court stating the reasons why the estate remains open if an order to close the estate has not been entered by the end of nine months from the month the Administrator was appointed.

The Administrator can use the **Written Report to the Court Why Estate Remains Open** form.

FAMILY ALLOWANCE

The probate code provides for a family allowance although it does not provide any procedures or details on how a family allowance is accomplished. It provides that if the decedent was obligated to support a surviving spouse and minor children and is in fact supporting the children are entitled to a reasonable allowance in money out of the estate for their maintenance during the administration of the estate. This would seem to imply that if the decedent was court ordered to support a spouse and to pay child support to minor children the spouse could petition the court for a family allowance but this interpretation is open to debate. The allowance cannot continue for more than a year if the estate is inadequate to discharge allowed claims. The allowance can be paid in a lump sum or periodic installments. The family allowance is exempt from and has priority over all claims except the homestead allowance. The family allowance is not chargeable against any share of the estate passing to the surviving spouse or children.

BOOKKEEPING FORMS

The administrator of the estate has the following duties and powers:

1. to preserve and protect the decedent's property in the estate for the benefit of the estate and heirs
2. To promptly investigate all claims against the estate and to determine whether any claim is item of property warranted
3. To promptly determine the names, ages, relationship to the decedent and residential address of all of the decedent's heirs, devisees and legatees
- 4, To promptly prepare a written inventory of all of decedent's property with each piece of property being itemized for the appraiser to appraise and file an inventory and appraisal with the Court.
5. To promptly provide notice to all persons entitled to notice under the code
6. To account for all property of the estate that comes into the Administrator's possession or control and maintain accurate records of income received and disbursements made during administration of the estate.

The following forms can be used by the Administrator to maintain accurate records of income received and disbursements made during administration of the estate, of heirs, devisees and legatees of the decedent, inventory estate property and to have the estate property appraised:

Inventory of Property

Income received during administration of the estate

Disbursements made during administration of the estate

Claims Against the Estate

Determination of the decedent's heirs, devisees and legatees

It is equally important that the Administrator maintain all receipts/vouchers of estate money spent, proof of estate income, written submitted claims, receipts of any notices send by certified mail and copies of receipts of distribution.