

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. 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.

FORMS INVOLVED. The form is a **Petition to Contest the Validity of the Will** form. You will need to fill in the necessary information with help from the instructions below and then file the form with the court.

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 holds 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. .

The party seeking to contest the will needs 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. There are forms and instructions for subpoenaing witnesses.

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.

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.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form. You can print this page in its entirety or you can scroll down to the form. There will be a blank screen between these instructions and the form and between the form so keep scrolling or just copy this page in its entirety.

FILE THE PETITION WITH THE CLERK OF COURTS OF THE TRIBAL COURT.

Instructions for filling out the petition:

- (1) on this line insert the name of the decedent.
- (2) on this line insert the name of person contesting the validity of the will.
- (3) on this line insert explain how you have an interest in the decedent's estate. You must be able to prove you are an heir, devisee or legatee of the decedent.
- (4) on this line explain why the decedent's will admitted to probate is invalid.
- (5) on this line insert the day.
- (6) on this line insert the month.
- (7) on this line insert the year.
- (8) on this line insert your name by signing.

WHEREFORE, Petitioner(s) prays that this Court order that

A. The Court declare the decedent's will admitted to probate invalid and decedent's estate be distributed according to the laws of the Rosebud Sioux Tribe; and

B. In the alternative, if there is a later valid will executed by the decedent, the decedent's estate be distributed in accordance with the later valid will;

C. For such other and further relief the Court finds just and equitable.

Dated this (5)_____ day of (6)_____, (7)_____.

(8)_____
Petitioner(s)