

## INSTRUCTIONS FOR FILLING OUT FORM

**PURPOSE.** This form is to be used to petition the Court to Administer the Decedent's Estate in Probate.

**FORMS INVOLVED.** The form is a **Petition the Court to Administer the Decedent's Estate in Probate**. You will need to fill in the necessary information with help from the instructions below and then file the form with the court. The petitioner must attach a copy of the Sworn Statement Consenting to Serve as Administrator of the Decedent's Estate by the person nominated to serve as Administrator by the decedent's will to the Petition Requesting Estate be Administered in Probate along with any other supporting documents (any documents that prove the decedent was an Indian, who lived on the reservation or had property located on the reservation) and file all with the Court to start the probate of the estate.

### 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 (a relative), 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 and either resided on the reservation or had property on the reservation at the time of his or her death.
3. The nature of the estate and any other facts that would give the Tribal Court jurisdiction to probate the estate.
4. Whether the decedent did or did not leave a will to the petitioner's knowledge and 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 no 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.

**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 to file the petition 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 heirs, 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 they 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.

**BURDEN OF PROOF.** In a typical civil case you have the burden of proving your claim by a **Preponderance of the Evidence.** This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). You as the petitioner have

the burden of proving by a preponderance of the evidence the following to the court:

1. You must show the court that it has jurisdiction to administer in probate the decedent's estate. 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 lived on or owned non-trust property located on the reservation. The petitioner should provide the Court proof that the decedent was an Indian and either resided on the reservation or had property on the reservation at the time of his or her death.

2. That decedent is actually deceased. You do this by obtaining a death certificate and attaching it to the petition. You can obtain the death certificate by contacting the hospital where decedent passed away or from the state bureau of vital statistics.

**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.

**ONCE COMPLETED, 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 your name.
- (3) on this line insert how you are related to the decedent.
- (4) insert your mailing address.
- (5) insert the full name of the decedent.
- (6) insert the date of the decedent's death. Attach a copy of decedent's death certificate to the petition.
- (7) insert the full residential address of the decedent at the time of his or her death.
- (8) on this line list the personal and real property of the decedent at the time of his or her death.
- (9) on this line insert whether the decedent did or did not leave a will to the petitioner's knowledge and whether any will has been presented to the Court for admission to probate.
- (10) insert the name of the person nominated in the decedent's will, if any, to administer the decedent's estate.
- (11) insert the age of the person nominated in the decedent's will, if any, to administer the decedent's estate.
- (12) insert the residential address of the person nominated in the decedent's will, if any, to administer the decedent's estate.
- (13) insert the name of the person nominated in the decedent's will, if any, to administer the decedent's estate if they consent to serving as administrator and has signed a sworn statement

consenting to serving.

(14) insert the name of all persons known to the petitioner who may be heirs, devisees, or legatees of the decedent. 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 no of these people survive the decedent then list their children. Use the Probate in Tribal Court Pro Se Guide Section 8 Decent and Distribution on How to Administer an Estate for reference.

(15) for each person listed in (14) insert above insert their mailing address.

(16) for each person listed in (14) insert above insert their relationship to the deceased.

(17) for each person listed (14) insert above insert their age or approximate age.

(18) insert the name of a disinterested and competent person to appraise the value of the decedent's estate.

(19) The address of the disinterested and competent person to appraise the value of the decedent's estate.

(20) on this line insert the day you sign the petition.

(21) on this line insert the month you sign the petition.

(22) on this line insert the year you sign the petition.

(23) on this line insert your name by signing the petition.

ROSEBUD SIOUX TRIBAL COURT )  
ROSEBUD INDIAN RESERVATION )SS  
ROSEBUD, SOUTH DAKOTA )

IN CIVIL COURT

<p>IN RE THE ESTATE OF:</p> <p>(1) _____ _____,</p> <p>Decedent.</p>	<p>DOCKET _____</p> <p>PETITION REQUESTING DECEDENT'S ESTATE BE ADMINISTERED IN PROBATE</p>
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Comes now (2) \_\_\_\_\_, petitioner(s) and petitions this Court as follows:

1. That petitioner(s) is the (3) \_\_\_\_\_ of the above named decedent.  
Petitioner(s)'s address is (4) \_\_\_\_\_.

2. The full name of the decedent is (5) \_\_\_\_\_

3. The decedent died on (6) \_\_\_\_\_

4. At the time of his or her death the decedent's residential address was (7) \_\_\_\_\_  
\_\_\_\_\_.

5. The decedent is an Indian who at the time of his or her 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. (Attach copies of any documents that prove the decedent was an Indian, who lived on the reservation or had property located on the reservation)

6. The decedent's estate consists of the following property located on the Rosebud Indian Reservation that would give the Tribal Court jurisdiction to probate the estate:(8) \_\_\_\_\_

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\_\_\_\_\_  
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nature of the estate and any other facts that would give the Tribal Court jurisdiction to probate the estate.

5. That the above named decedent (9) \_\_\_\_\_

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6. The name, age and residential address of the person nominated in the decedent's will, if any, to administer the decedent's estate is (10) \_\_\_\_\_  
(11) \_\_\_\_\_ (12) \_\_\_\_\_  
\_\_\_\_\_. Attached is sworn statement by (13) \_\_\_\_\_ who  
desires to be appointed Administrator and is willing to serve as Administrator of the decedent's estate. (Attach the sworn statement)

7. That the following is a list of 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:

a. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

b. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

c. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

d. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

e. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

f. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

g. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

h. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

i. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

j. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

k. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

l. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

m. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

n. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

o. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

p. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

q. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_  
is related to the above named decedent as their (16) \_\_\_\_\_ and  
is (17) \_\_\_\_\_ years old.

s. (14) \_\_\_\_\_ living at (15) \_\_\_\_\_

is related to the above named decedent as their (16)\_\_\_\_\_ and  
is (17)\_\_\_\_\_ years old.

t. (14)\_\_\_\_\_ living at (15)\_\_\_\_\_  
is related to the above named decedent as their (16)\_\_\_\_\_ and  
is (17)\_\_\_\_\_ years old.

8. That (18)\_\_\_\_\_ with an address of (19)\_\_\_\_\_  
\_\_\_\_\_ is a disinterested and competent person to appraise the value of the  
decedent's estate.

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

- A. This court has jurisdiction over decedent's estate;
- B. Appoint an Administrator and issue Letters of Administration to give the Administrator the authority to administer the estate in probate;
- C. Appoint an Appraiser;
- D. No bond be required of petitioner(s) to serve as administrator of the above named decedent's estate;
- E. For such other and further relief the Court finds just and equitable.

Dated this (20)\_\_\_\_\_ day of (21)\_\_\_\_\_, (22)\_\_\_\_\_.

(23)\_\_\_\_\_  
Petitioner(s)