

PROCESS AND PROCEDURES FOR PROBATE COURT

Filing a Petition

An action for Probate is commenced by filing a Petition for Probate. Petition forms are provided by the Clerk of Court, A Petition must be filled out completely before it will be accepted. The Petition also must be accompanied by a \$ 40.00 filing fee, money order only. made out to: Red lake Nation Tribal Court.

Once a Petition for Probate has been filed, the Court determines if the Petition meets the requirements of the Red Lake Nation Tribal Code. If so, the Court issues a Notice of Probate, which shall set forth a date and time of Hearing on the petition. If the Court is not satisfied that the requirements of the Code have been met, it will decline to accept the Petition.

Notice of Probate

As stated above, once a valid Petition for Probate has been filed, the Court will issue a Notice of Probate. The Notice contained the following information:

1. Notice to all interested persons that a Petition for Probate of the Estate of the named deceased has been filed with the Court.
2. A date for a hearing on the Petition and a statement that any objections to the Petition will be heard by the Court at that time.
3. A statement notifying creditors who have claims against the estate that they are required to present the claim to the Clerk of Court within two (2) months of the date of the Notice by the Court at that time.

A copy of the Notice is served by the Court upon the person named in the Petition as spouse, children, heirs at law, devisees, or interested persons in the same manner as in the service of summons in Civil action. In addition a copy of the Notice shall be posted in fourteen (14) conspicuous public places on the Red Lake Indian Reservation for thirty (30) days prior to the date set forth in the Notice for the hearing. The person making the service and doing the posting shall make an affidavit after service and posting is completed describing the manner in which service and posting was completed.

Proof and Findings at Hearing

At the hearing on the Petition for Probate, the Court must determine and find:

- a. That the Petition for Probate is complete
- b. That the Petitioner is an interested person;
- c. The heirs at law and devisees of the decedent;
- d. The residence of the decedent at date of death;
- e. The location of the real and personal property of the decedent;
- f. the validity or non-existence of any Will or Testament.
- g. That the decedent is an Indian

At the hearing the Court shall consider and determine any objections raised to the Petition for Probate or for good cause shown may continue to a later date any hearing on objections.

At the conclusion of the hearing, the Court will enter an Order wither granting or denying Probate of the Estate. The Court also will appoint an Administrator of the Estate. This is typically the Petitioner. The Red Lake Nation Tribal Code imposes several duties on the Administrator of the Estate which are explained below.

Inventory

Within thirty (30) days after an Order granting Probate is signed, the Administrator of the Estate must file an inventory with the Clerk of Court. The inventory must list all property owned by the decedent at the time of death which is subject to the Probate Court. The inventory must list each item of property individually and must include the fair market value of each item as of the date of death of the decedent.

The Court will provide a copy of the inventory to the surviving spouse, heirs at law of the decedent, the devisees and legatees named in the Last Will of the Decedent and to other interested persons or creditors who request a copy of the inventory.

Claims and Creditors

All claims against the decedent's estate by creditors are barred against the Estate, heirs and devisees of the decedent unless the claim is filed with the Court within two (2) months after the date of the Notice of Probate.

Claims are presented by filing with the Clerk of Court a written statement of the claim which describes the nature of the claim, when it was incurred and the amount remaining unpaid. When any such written claim statement is filed, the Clerk of Court will provide notice of the claim to the Petitioner, surviving spouse of decedent, heirs of decedent and devisees and legatees of decedent.

Any of the individuals who receive written notice of the claim from the Clerk of Court may file with the Clerk of Court a written objection to the claim within the two (2) month period allowed for filing claims.

If no written objections to the claim are filed with the Clerk of Court within the time set forth herein, the claim shall be automatically allowed and it shall be paid from the assets of the Estate to the extent possible.

If a written objection to a claim is filed within the time set forth in this Section, the Clerk of Court shall, as soon as possible, after the two (2) month period for filing claims has expired, set a time, place and date for a hearing on all objections filed against claims which shall be held before the Court without a Jury and shall give notice to all interested persons of the hearing. The Court, after the hearing is concluded, shall determine whether or not the claim is a valid charge against the Estate and shall enter its Order accordingly.

Distribution of the Estate

Anytime after the expiration of the two (2) month period allowed for filing claims has expired and after all claims against the Estate have been resolved, the Administrator of the Estate must file with the Clerk of Court a plan for distribution of the Estate.

Plan for Distribution

The plan for distribution must contain the following information:

1. A description of the claims against the Estate that have been allowed and a statement that the same are entitled to be paid.
2. A description of the costs involved in probating the Estate and a statement that the same are entitled to be paid.
3. In a Probate without a Will, a list of heirs at law of the Estate and the share of the Estate that each heir is entitled to pursuant to this code.
4. In an Estate with a Will, a list of persons listed in the Will and the share of the Estate that each is entitled to pursuant to the terms of the Will.

According to the Red Lake Nation Tribal Code, the following priorities must be followed in making distributions:

1. All claims which have been allowed against the Estate shall first be paid in full from Estate assets and if the assets are insufficient to pay the same in full payment shall be made on a pro-rata basis.
2. After the allowable claims have been paid in full, the costs of Probating the Estate shall be paid in full and if assets are insufficient to make such payment in full, the same shall be paid on a pro-rata basis.
3. After the costs of Probating the Estate have been paid in full, the heirs at law, devisees or legatees, as the case may be, shall be paid according to the provisions on the law of intestate succession or pursuant to the terms of the Will.
4. A devisee in a Will is entitled to distribution of the thing devised to Him / Her but under certain circumstance this may not be attainable if assets are insufficient to pay the items set forth in the Subdivision which have priority. If the assets of the Estate are insufficient to pay or distribute pursuant to the terms of the Will, the devisees shall be entitled to a payment or distribution on a pro-rata basis from the remaining assets of the Estate.

Once the Court has received the plan for distribution, a copy of that plan will be mailed to all interested parties.

If there is an objection to the Plan for Distribution

Any interested person may object to the plan by filing a written objection within ten (10) days after receiving the copy of the plan. The written objection must specifically state the grounds for the objection. Objections to the plan shall be heard and determined by the Court.

If there is No Objections to the Plan for Distribution

If no one files an objection, the Court will determine, without a hearing, whether the plan proposes to distribute the Estate to the persons entitled. If the plan is appropriate, the Court will enter an Order approving the plan directing the distribution of the Estate pursuant to the plan. If the Court determines that the plan does not propose to distribute the Estate to the persons entitled, it shall set a time and date for hearing on the proposed plan and will give notice to all interested persons. The Court shall determine at the hearing the persons entitled to the distribution of the decedent's Estate and shall issue its Order accordingly.

Distribution of Assets

Once a plan has been approved, the Administrator must distribute the assets according to the plan. The Administrator should prepare and keep receipts showing the distribution of the assets.

Liability of Administrator

It is important to know that the person possessing or having control or direction over the assets of the Estate is personally liable for the distribution of the assets pursuant to the plan and is subject to liability for wrongful and negligence appropriation of assets pursuant to the plan of distribution of Estate assets.

Closing the Estate

Upon filing of receipt with the Court evidencing that persons entitled to the distributions pursuant to the plan have in fact received their distribution, the Estate shall automatically be closed without further Order of the Court and the liability of the person making the distribution pursuant to the provisions herein shall terminate. Until all receipts have been filed, the Estate shall not close and the liability imposed herein shall not terminate.