

Petitioner's Packet



Probate

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PETITIONER'S PROBATE GUIDE

This guide is for informational purposes only and the accuracy of this information is not guaranteed. This information is not legal advice and is not a substitute for legal advice. Court Clerks cannot give you legal advice.

Probate is the legal process of identifying property owned by a decedent (the estate), identifying the legitimacy of debts owed, ensuring payment of legitimate debts, and distributing the estate. Under Puyallup Tribal law, Puyallup Tribal Court is vested with the authority to probate all estates located on the Puyallup Reservation. However, the Puyallup Tribal Court is not vested with the authority to probate two types of property owned by the decedent: (1) real property that is restricted or held in trust or (2) Individual Indian Money Account. As such, filers must contact the Bureau of Indian Affairs (BIA) regional office or their local agency to start the probate process for those types of property. See Puyallup Tribal Code (PTC), Probate Code § 8.04.010.

Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169
Telephone: (503) 231-6702
<https://www.bia.gov/regional-offices/northwest/contact-us>

Puget Sound Agency
Bureau of Indian Affairs
2707 Colby Avenue, Suite 1101
Everett, Washington 98201-3528
Telephone: (503) 258-2651
<https://www.bia.gov/regional-offices/northwest/puget-sound-agency>

1. Am I required to file a petition to probate an estate?

Any person(s) acting as custodian of a decedent's will is required to file the decedent's will with the Court within thirty (30) days after being informed of the death. PTC § 8.04.090. The filer may file the Will into an existing probate case, with an accompanying petition, or with an accompanying rationale on the decision not to probate estate with the Court.

Generally, the probate process is available as a service to the Tribal community rather than a requirement. Puyallup Tribal law does not require that the interested party(ies) file a petition to probate an estate located on the Puyallup Reservation. Rather, the law provides that an interested party *may* file a petition to probate an estate located on the Puyallup Reservation so long as the decedent is "(a) Members or persons eligible for membership in the Puyallup Tribe; (b) The parent, grandparent, child, grandchild, spouse or sibling of a Puyallup Tribal member who, at the time of death, resided within the boundaries of the Puyallup Reservation; and (c) Indians residing, at the time of death, on trust land within the boundaries of the Puyallup Reservation." PTC § 8.04.010.

2. Who can file a petition to probate an estate?

Any individual with an interest in the estate may file a petition to probate an estate located on the Puyallup Reservation. This includes, but is not limited to, the decedent's surviving spouse, child(ren), parent(s), etc.

3. When should I file a petition to probate an estate?

Any person(s) acting as custodian of a decedent's will is required to file the decedent's will with the Court within thirty (30) days after being informed of the death. PTC § 8.04.090. Regardless of whether or not the decedent has a will, due to the time it may take to complete the probate process, it is best to file a petition to probate as soon as practicable.

4. What is the process if the decedent left a will?

Any person(s) acting as custodian of a decedent's will is required to file the decedent's will with the Court within thirty (30) days after being informed of the death. PTC § 8.04.090. The Will filed with the Court must be "authenticated" prior to or at the first hearing. PTC § 8.04.100. There are two ways to authenticate a will:

a) By affidavit: A will may be authenticated by at least one witness who signed the Will filing an affidavit with the Court. The affidavit must certify, under penalty of perjury under the laws of the Puyallup Tribe of Indians, that the Will filed is a true and correct copy signed by the decedent and the witness(es). (For your convenience, a template affidavit is attached to the Petitioner's Probate Packet. The witness does not have to use the template provided, but the affidavit must be legally sufficient.)

Note: an affidavit is sometimes attached as a separate document to the Will, so be sure to check the contents of the Will before requesting an affidavit from the witness(es).

b) By other evidence: If you present reasoning and/or evidence to the Court as to why an affidavit is not an available option and the Court determines that an affidavit cannot be reasonably obtained, then the Court may allow testimony or other evidence to verify that the Will filed is a true and correct copy signed by the decedent and witnesses.

5. What if the Decedent's estate is less than \$2,500?

The estate cannot be deemed exempt until an administrator is appointed, an inventory is completed, and the estate is appraised. After inventory and appraisal, the estate may be exempt from creditor claims if it is clear that the estate's value "does not exceed \$2,500, after payment of the expenses of last illness and funeral [...]" and if the estate will be inherited by a spouse or minor child(ren). PTC § 8.04.300.

If the estate is exempt, then the petitioner or administrator may petition the Court for an order declaring the estate exempt. If granted, then the probate process will end unless an interested person objects.

Note: decedent's estate includes Tribal assets held by the Tribe. For example: if the decedent had a representative payee, then funds held by the RPP Department are part of the estate.

6. What is an administrator of the estate?

An administrator (sometimes called an executor) is an individual appointed by the Court to manage the estate and complete each step in the probate process. The administrator may be an individual named in the Will, the petitioner, or another qualified person.

To be an administrator, a person must be over the age of twenty-one (21), willing to take on all responsibilities of an administrator, and capable of performing all responsibility of an administrator in accordance with Puyallup Tribal Law, including but not limited to PTC § 8.04.230. Administrators are expected to know which laws and rules apply to the probate matter and how the laws and rules relate to one another.

If you are interested in being appointed or have been designated via the decedent’s will as the administrator of the estate, the Court has an Administrator’s Guide and accompanying packet that provides further information on the general duties and responsibilities of an administrator available on its website at <http://Puyallup-Tribe.com/Court/Forms.php>. See also PTC §§ 8.04.200-260.

7. Who is an heir?

An heir is a living relative of the decedent. Heirs include a surviving spouse, child(ren), parent(s), sibling(s), etc. Heirs may or may not receive a portion of the estate. It is very important to list all heirs and potential heirs on the petition.

8. Who is a devisee and legatee?

A devisee and legatee are people specifically named in the Will to inherit property. Devisees and legatees may or may not receive a portion of the estate dependent on the inventory and appraisal. It is very important to list any and all devisees and legatees on the petition. If there is no will, then there are no devisees or legatees.

9. How do I file a petition to probate an estate?

STEP 1: Read this guide carefully

Read this guide, and the Petition to Probate Estate, carefully in its entirety before completing the petition.

STEP 2: Gather Documentation/Information

Locate documents and information that will help you complete the petition. This includes documents with information such as: bank statements, vehicle titles, land ownership, etc. You will need to include a copy of the following documents when filing your petition with the Court (Step 4):

- Will (if there is one)
- Copy of death certificate

STEP 3: Complete the Petition

Do not leave any sections blank. It is important to complete each section of the petition with as much detail as possible so the judge has enough information to conduct a probate hearing. Accurately providing all the requested information will help prevent unnecessary delays in the process.

STEP 4: File the Petition

To file the petition with the Court, submit the petition, any supplemental documents, and pay the filing fee to the Court, located at 1451 East 31st St. Tacoma, WA 98404, during business hours (Monday through Friday 8:00 a.m. – 5:00 p.m., closed for holidays).

Step 4.1: Submit to the Court Clerk

- Completed & signed petition
- Statement of Address
- Will (if there is one)
- Copy death certificate
- Affidavit of attesting witness, if available (*See point 4*)

Step 4.2: Pay the filing fee to the Court Clerk

- Pay the \$20 filing fee or
- File a motion to request a fee waiver (*if applicable*)

Step 4.3: Receive from the Court Clerk

- Your receipt or a copy of the order waiving filing fees
- A file-stamped copy of your petition and supplemental filings

10. What happens after I file the petition?

The Court will review your filings and determine whether or not a hearing is required. If required, then the Court Clerk will set a hearing date and notice of that hearing date will be mailed to you and all interested parties (such as heirs, devisees, and legatees) listed in the petition at the addresses you provided in the petition.

11. What happens at the hearing?

At the hearing, the Court will make several determinations based on the petition that was filed. Ultimately, the Court will determine whether or not to admit the estate to probate with or without a will and whether or not there is a qualified administrator to appoint.

The administrator is responsible for ensuring each heir, devisee, and legatee of the decedent is served. The Court will confirm service requirements at the hearing.

12. What happens after the hearing?

What happens after the hearing will ultimately depend on what the Court orders. Therefore, it is important to fully read the order and understand the contents because it will outline the next steps in the process.

If the Court determines that it may admit the estate to probate, then the Court will generally issue an Order to Probate Estate and an Order Appointing Administrator of the Estate. The Administrator's first duty is to serve the case filings by certified mail to each heir, devisee, and legatee of the decedent, at their last known address known to the Court. Delays in service will keep your case from moving forward. A case cannot go forward if the indispensable parties are not served or are not served properly.

If the Court determines that it may not admit the estate to probate, then the Court will detail the reasons why and whether or not the filer is granted leave of Court to amend the petition due to specified deficiencies.

2. The address where I agree to accept legal papers for this matter is:

Street Address or P.O. Box

City

State

Zip Code

3. (**Optional**) I also agree to accept legal papers for this matter at the following email address: _____

4. My contact phone number(s) is(are) (**check preferred**):

_____ _____ _____

Home

Cell

Work

Co-Party: _____ _____ _____

(if any)

Home

Cell

Work

5. I understand that it is my responsibility to inform the Court of any address or contact information changes while this case is open. I understand that if my address or contact information changes, then I must submit to this Court a new *Statement of Address* form with accompanying proof of service to all parties (*if applicable*).

I certify, under penalty of perjury under the laws of the Puyallup Tribe of Indians, that the foregoing statement and any attachments are true and correct to the best of my knowledge and belief. Puyallup Tribal Code § 5.12.1180.

Party Signature

Date

/s/

Print Name – Party Electronic Signature

Attorney/Advocate Bar No. (if applicable)

Co-Party Signature (if any)

Date

/s/

Print Name – Party Electronic Signature

Attorney/Advocate Bar No. (if applicable)

Case No. _____

STATEMENT OF ADDRESS

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**IN THE COURT OF THE PUYALLUP TRIBE OF INDIANS
FOR THE PUYALLUP INDIAN RESERVATION
TACOMA, WASHINGTON**

In re the estate of: _____

Case No. _____

Decedent.

PETITION TO PROBATE ESTATE

COMES NOW, _____, Petitioner, and requests the Court to administer the Decedent's estate to probate.

1. Petitioner Information

Petitioner's Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

Tribal Affiliation: none; Puyallup Tribe of Indians; _____

2. Decedent Information

Decedent's Name: _____

Date of Birth: _____

Date of Passing: _____

Physical Address: _____

3. Decedent's Residence (*check all that apply*)

- a. Decedent resided on the Puyallup Indian Reservation at the time of death.
 Decedent did not reside on the Puyallup Indian Reservation at the time of death.
- b. Decedent resided on trust or restricted property within the boundaries of the Puyallup Indian Reservation at the time of death.
 Decedent did not reside on trust or restricted property within the boundaries of the Puyallup Indian Reservation at the time of death.
- c. Unknown whether the Decedent resided on trust or restricted property within the boundaries of the Puyallup Reservation at the time of death.

4. Decedent's Tribal Affiliation (*check all that apply*)

- Decedent is a Puyallup Tribal member.
- Decedent is eligible for membership in the Puyallup Tribe.
- Decedent is the parent, grandparent, child, grandchild, spouse, or sibling of a Puyallup Tribal member.
- Decedent is an enrolled member of the _____ Tribe.
- Decedent is not an enrolled member of any Indian Tribe.

5. Nature of the Estate

- a. Decedent did not leave a written Will.
- Decedent left a written Will, which I have *attached* to this filing.

- b. Decedent does not have personal property within the Puyallup Indian Reservation.
- Decedent's personal property within the Puyallup Indian Reservation:

- Indian artifacts and finery
 - Fishing/Diving/Hunting Equipment
 - Electronics
 - Appliances
 - Other: _____
 - Vehicle(s)
 - Bank Account(s)
 - Household Items
 - Tools
- _____
- _____

- c. Decedent does not have Indian artifacts and finery.
- Decedent's Indian artifacts and finery:
 - i. Have not been distributed.
 - ii. Have been distributed in accordance with Puyallup Tribal custom. I have *attached* to this filing a distribution list. The items were distributed by:

Name: _____

Relationship to Decedent: _____

Address: _____

- d. Decedent does not have real property within the Puyallup Indian Reservation.
- Decedent has real property situated within the Puyallup Indian Reservation:
 - i. Trust or restricted property, which can only be probated by the Bureau of Indian Affairs. Address(es): _____

- ii. Property that is neither trust nor restricted property. Address(es): _____
 - iii. Property that is unknown to Petitioner whether it is trust or restricted property. Address(es): _____
- _____

6. Administrator of the Estate

- a. Decedent did not propose an administrator (*person(s) to administer the estate*).
- Decedent's Will proposed the following person(s) to administer the estate:

- i. Petitioner.
- ii. Name: _____
- Relationship to Decedent: _____
- Date of Birth: _____
- Address: _____

- iii. Name: _____
Relationship to Decedent: _____
Date of Birth: _____
Address: _____
- iv. To the best of Petitioner's knowledge and belief, the proposed administrator(s) is(are) qualified not qualified to be appointed and serve as Administrator.
- b. Petitioner proposes the following person(s) be appointed to administer the estate:
 - i. Petitioner.
 - ii. Name: _____
Relationship to Decedent: _____
Date of Birth: _____
Address: _____
 - iii. Name: _____
Relationship to Decedent: _____
Date of Birth: _____
Address: _____
 - iv. To the best of Petitioner's knowledge and belief, the proposed administrator(s) is(are) qualified not qualified to be appointed and serve as Administrator.
- c. To the best of Petitioner's knowledge and belief:
 - i. no individual would object to the proposed administrator(s).
 the following person(s) would likely object to the proposed administrator(s):
 1. Name: _____
Relationship to Decedent: _____
Date of Birth: _____
Address: _____
 2. Name: _____
Relationship to Decedent: _____
Date of Birth: _____
Address: _____
 3. Name: _____
Relationship to Decedent: _____
Date of Birth: _____
Address: _____
 4. I have *attached* to this filing additional page(s) listing the names, relationship status, birth dates, and addresses of additional person(s) who would likely object to the proposed administrator(s).

7. Heirs, devisees, and legatees

- a. To the best of Petitioner's knowledge and belief, there are no known heirs, devisees, or legatees. (*person(s) mentioned in Will and surviving spouse, children, parents, etc.*).

To the best of Petitioner's knowledge and belief, the following are the Decedent's heirs, devisees, and legatees:

i. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

ii. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

iii. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

iv. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

v. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

vi. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

vii. Name: _____

Relationship to Decedent: _____

Date of Birth: _____

Address: _____

viii. I have *attached* to this filing additional page(s) listing the names, relationship status, birth dates, and addresses for additional heirs, devisees, and legatees.

8. Appraisal

a. Petitioner requests a Court proposal of an appraiser for the Decedent's estate.

b. So far as is known to Petitioner, following are disinterested and competent person(s) proposed to appraise the value of the Decedent's estate:

i. Name (*and Company, if applicable*): _____

Address: _____

ii. Name (*and Company, if applicable*): _____

Address: _____

