

How do I file?

You may find the form for a Release of a Decedent's Per Capita Distribution with the HCN Trial Court by going to our website at:

www.ho-chunknation.com/?PageId=28.



Where can I find the Nation's Laws and Codes?

The HCN Laws are available on the Legislature's website at:

www.ho-chunknation.com/?PageId=168.

HCN TRIAL COURT

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HCN TRIAL COURT

Answering Your Question:

What Does It Mean To Be a Personal Representative?

The Ho-Chunk Nation places per capita payments into trust funds on behalf of minor children, adults under 25 years of age without a high school diploma, and legally incompetent individuals. In the event that such an individual passes away, the Court requires proof of a personal representative appointment before releasing the respective trust fund to the individual's heirs.

How am I appointed a personal representative?

You can be named the personal representative in a will. In the absence of a will, you must **probate** the estate. Currently, the Ho-Chunk Nation has not enacted a Probate Code. Therefore, the proposed personal representative would go to their local, or state court and request assistance.

What does Probate mean?

Probate is a legal process that takes place after a person dies. In current usage, this term has been expanded to generally refer to the legal process wherein the estate of a decedent is administered. According to Black's Law Dictionary, probate means a court procedure by which a will proved to be valid or invalid. Generally, the probate process involves "collecting a decedent's assets, liquidating liabilities, paying necessary taxes, and distributing property to heirs."

What is the purpose of probate?

- Proving in court that a person's will is valid
- If there is no will, determining who will inherit the property
- Identifying and listing the property
- Protecting the property
- Having the property appraised (determining its value)
- Paying outstanding debts and taxes

- Determining who is entitled to a share of the estate
- Distributing all of the property by court order to the proper parties.

What are the duties of a personal representative?

As personal representative, you are the impartial representative of all parties with an interest in the estate. It is a great responsibility, which requires that you must take possession of all of the property of the estate and distribute it properly.

Under Wisconsin state statute, a personal representative "shall collect, inventory and possess all the decedent's estate; collect all income and rent from the decedent's estate; manage the estate and, when reasonable, maintain in force or purchase all casualty and liability insurance; contest all claim except claims which the personal representative believes are valid; pay and discharge out of the estate all expenses of administration, taxes, charges, claims allowed by the court, or such payment on claims as directed by the court; render accurate accounts; make distribution and do any other things directed by the court or required by law.: Wis State. 857.03 (1) 2005).

What happens if I don't fulfill my duties?

Under Wisconsin statute, the creditor or the plaintiff "shall be entitled to recover only for the value of good taken, including any unjust enrichment of the defendant, or for damages actually sustained, without any vindictive or exemplary damages or damages for alleged outrage to the feelings of the injured party." Wis Stat. 895.02. In other words, IF YOU FAIL TO PERFORM YOUR DUTIES, THEN YOU ARE LIABLE FOR THE LOSS OF THE ESTATE.

What do all those legal definitions mean?

ASSETS: Assets are the property the decedent owns at death that are worth money. IN state probate, assets include, but are not limited to, fee land, vehicles, personal property, and checking/savings account balances.

BENEFICIARIES: Beneficiaries are the people who actually inherit property. If there is a will, they are the people named in the will to inherit the property.

CODICIL: Codicil is a written document that changes a will. It has to be written and signed all the legal formalities of a will. It is like an "add-on" to the will, and it does not change the remaining provisions.

DEBT: Debt is money that is owed to someone (typically a creditor) at the time of death.

ESTATE: Estate if all the property left by a decedent.

HEIR(S): Heir(s) is/are people who could potentially inherit property, but who may not receive any if there is a will that names only other beneficiaries.

INTERESTED PARTIES: Interested parties are people who think they might have inherited assets from the decedent.

INTESTATE: Intestate means to die without a will. A person dies intestate when he/she dies without a will or dies without leaving anything to testify what his/her wishes were with respect to the disposal of the property after death.

LIABILITIES: Liabilities are the debts and other claims that reduce the value of an estate, including mortgages, liens and easements. (Easements give people or entities the right to come onto or use your property in a continuing way.)

WILL

Will is a legal document that tells others how the decedent wants his/her estate distributed after his/her death. Wills can be in the decedent's own handwriting, they can be typed, or they can be on a Statutory Will Form. Each style has special rules and requirements to make it a valid document.