

**PROBATE
SELF-SERVICE PACKET
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Use and Disclaimer

Court staff cannot provide legal advice.

The Court assumes no responsibility and accepts no liability for actions taken by the users of these forms or in reliance upon the instructions or information provided. The forms may be updated from time to time and it is the individual's responsibility to ensure that the most recent form is being used. A party may also create documents in a format that meets the Courts Rules and requirements.

Court cases can be very complicated, and even if you are representing yourself, you may want to see a legal practitioner for legal advice about how the law applies to you and what may be best for your particular situation. This might save you time, money, and trips to the courthouse, and may avoid serious mistakes. A list of legal practitioners authorized to practice before the Tohono O'odham courts is available at the Justice Center reception window and online at: <https://tojcnnsn.gov/>.

Probate in Tohono O'odham Courts

Where you can begin a probate case depends on the location of the property that you want the court to distribute.

- If the property is trust or restricted lands → probate must be done through the Bureau of Indian Affairs' Probate Process.
- If the property is located on the Tohono O'odham Nation → probate must be done through the Tohono O'odham courts.
- If the property is located in Arizona or another state → probate must be done in the state where it is located.

Sometimes, property will be located in two or three of these locations. In that case, you must have a separate probate proceeding for each location.

- For information about the Bureau of Indian Affairs' Probate Process, you can visit <https://www.bia.gov/bia/ots/dop/your-land>
- For information about probate in the State of Arizona, you can visit <https://www.azcourts.gov/probate/>

What you request from the Court must follow Tohono O'odham law. You can find the Tohono O'odham Code online for free, on the Tohono O'odham Nation Legislative Branch website (<https://tolc-nnsn.org/tohono-oodham-code/>). The Tohono O'odham Rules of Court are available on the Judicial Branch website (<https://tojcnnsn.gov/rules-and-opinions/>).

You may also request a copy of these documents at the Justice Center. There is a charge for these copies.



NOTE: If your case is or becomes complicated, you may wish to seek the advice of a legal practitioner. See the Judicial Branch website homepage at <https://tojcnnsn.gov/> for the List of Legal Practitioners Accepting Clients.

Important Terms to Know

PROBATE: The name for the legal process of determining how the belongings of someone who died will legally be passed on to other people. During the probate process, the Court: (1) determines who will inherit the property; (2) determines the validity of any existing wills and who should be given what property; (3) if there are any claims that money is owed, determines how that money should be paid; (4) orders the transfer of property to the people who it decides are entitled to receive them.

PETITIONER: The individual filing the Petition is called the PETITIONER on all documents relating to the case, regardless of who files any later documents.

DECEDENT: The person who has died and whose estate is the subject of the proceeding.

INTERESTED PARTIES: The person or people who might be able to inherit from the deceased, but won't necessarily do so.

HEIRS: The person or people who will inherit property from the deceased.

PERSONAL REPRESENTATIVE: After this person is appointed by the court, they administer the estate by giving notice to heirs and creditors, taking inventory of the estate, receiving and disallowing creditors' claims, filing tax returns, and managing, accounting, and distributing assets.

PRIORITY AS PERSONAL REPRESENTATIVE: The laws of the Tohono O'odham Nation do not state a priority for who may serve as personal representative. The court may, in its discretion, choose to use Arizona law to determine who is first in line to serve as Personal Representative. Arizona's laws may be helpful for explaining why you should serve as Personal Representative in your application. Under A.R.S. 14-3202(A), the priority for personal representative is as follows:

- (1) a person named in a will;
- (2) the surviving spouse who is named in a will;
- (3) other persons named in a will;
- (4) the surviving spouse, even if not named in a will;

- (5) other heirs of the deceased;
- (6) if the deceased was a veteran, spouse of a veteran, or child of a veteran, the department of veterans' services;
- (7) any creditor, after forty-five days following the person's death, but not a funeral director or establishment in control of the remains of deceased;
- (8) Arizona's public fiduciary.

ESTATE: Everything that the person who passes away has left behind. This usually includes items such as land or a house, personal items, and a bank account, but may also include other items of value.

BOND: A bond is a cash payment or pledge of property that guarantees the personal representative will fulfill the person's duties. However, the requirement is commonly waived by the heirs.

INTESTATE: The term for when a person dies without a will. The Court can determine who should inherit based on tribal custom or Arizona intestacy laws.

TESTATE: The term for when a person dies with a will. To determine who should inherit property, the Court will follow the directions left by the deceased in their will, unless the will violates tribal custom.

FEE DEFERRAL: You may ask the Court for a payment plan so that you can pay your fees in installments or over time. A form is available on the Court's website.

FEE WAIVER: You may ask the Court to waive any fees if you permanently lack the ability to pay them. This means you will not have to pay these fees. A form is available on the Court's website.

Basic Overview of the Probate Process

Step 1: Court Fees. The court charges a fee to file a petition. A list of current Court Fees and Costs can be found on the Tohono O’odham Judicial Branch website: [Court Fees and Costs | Tohono O’odham Judicial Branch \(tojc-nsn.gov\)](https://tojc-nsn.gov). If you are unable to afford court fees, you may be eligible to receive a deferral or waiver of these fees by filing a request. The form is available at the Justice Center reception window or on the website: [Financial-Affidavit-and-Request-for-Fee-Waiver](#).



Fees must be paid before the case can proceed. If you cannot afford the fee/s, please fill out a waiver request. A judge will make a decision on the fee waiver form before anything else is done for the case.

Step 2: File a petition to start probate and appoint a personal representative. All of the documents required can be found at the Justice Center reception window or on the Court’s website at <https://tojc-nsn.gov/forms/>.

- a) The entire probate packet must include (1) the Petition, (2) a copy of the will (if there is one), (3) waiver of bond forms (if heir or interested parties have signed these already), (4) a summons/notice to each individual who might be an heir of the deceased, and (5) the Cover Sheet.
- b) You must file a [Civil-Cover-Sheet](#) with your petition pursuant to Rule 2 of the Rules of Civil Procedure.
- c) The Court Clerk will set a hearing within 45 days of the filing.

Step 3: File a Summons form for each individual person who may be an heir or interested party. Each [Civil Summons Form](#) should be filled out and handed in when you file your Petition so that the Court Clerk can put the hearing date on each summons. All of the summons/es will be returned to you for you to deliver.

Step 4: Serve the petition paperwork along with a summons. Under 9 T.O.C. § 16, copies of your petition and summons form must be delivered to all *possible* heirs (these are the “interested parties”). This is called “service of process.” Service allows interested parties the chance to respond to your request for probate. If a party does not live on the reservation and the court has no jurisdiction over them, under 9 T.O.C. § 16, you must notify them by U.S. mail with a return receipt requested so that you can prove it was delivered. If a party lives on the reservation or the court has jurisdiction over them, you can deliver the documents in person, by U.S. mail with a return receipt, or under limited

situations, by publication or community posting. See T.O. Rules of Civil Procedure, Rule 3 for more guidance. <https://tojcnnsn.gov/rules-and-opinions/>

- a) **Time Frames to Serve Process:** Generally, you must give **all** heirs or interested parties notice of the court action. If a party receives a summons less than seven (7) days before any hearing, the party may notify the Court in writing and ask for a continuance of the hearing. T.O. Rules of Civil Procedure, Rule 3(g).
- b) **Proof of Service:** You must file proof that all heirs or interested parties were served all the documents. The [Proof of Service Form](#) can be found at the Justice Center reception window or on the Judicial Branch website. If there is only one person served, you may place a diagonal line through the sections that do not apply, then sign and date the document in front of a notary public before filing with the Court. There is usually a notary available at the Justice Center. Call ahead to ensure a notary is available.



NOTE: Proof of Service must be filed with the Court so that the judge knows who has been given notice. Failure to file this document may result in a continuance of the hearing to allow more time for heirs or interested parties to be provided with notice of the probate case.



A party who wishes to object to the petition, complaint, or motion **MUST** file a written objection at least three days before the scheduled hearing or appear at the hearing with a written objection. If no written objection is filed within the required time, the request will usually be granted without further review by the court.

Step 5: Hearing. At the hearing, the Court will appoint you or another person as the personal representative. The Court will also address any other preliminary issues, like if you haven't been able to serve someone, at this time.



NOTE: At this point, how the case moves forward will likely depend on the specifics of each situation. The steps that follow are examples of what you might expect. However, please remember that each case is different and proceeds at its own pace.

Step 6: Inventory and appraisal. At the judge's discretion, the personal representative will be asked to inventory and value the estate. At this step the personal representative must create a list of all property owned by the deceased on the date of death along with the fair market value, any money owed on any property, and the net value of each item. If other parties who have the potential to inherit from the deceased request the form, it must be given to them.

Step 7: Notice to creditors. If the deceased owes money to a bank, person, or any other party, you must mail or personally deliver a notice to all known or reasonably discoverable creditors of the Estate. The notice must announce your appointment as personal representative, provide your mailing address, and advise the creditors that their claims will be barred unless the creditors present those claims within 4 months after the date the notice is first published.

Step 8: Distributing the Estate. The personal representative divides up the assets of the Estate to the people who should lawfully inherit, and keeps track of this division. When this is done, the personal representative lets the court know they have done this work by filing a verification of distribution. Depending on the situation, the Court may require the personal representative to file an accounting.

Step 9: Closing the Estate. Probate cases do not automatically close after a certain amount of time. When everything is finished, the judge may set a closing hearing. If you are ready for the process to end but the judge has not done this, you may file a request asking the court to close the estate.

- If there is disagreement about who should inherit what, a judge will decide any contested issues.
- If there are no contested issues, a judge will review the evidence and approve the distribution of the estate.

Checklist of Documents to Fill Out

- ☐ Civil Cover Sheet – Probate/Guardianship – to be filed at the beginning of the case
- ☐ Petition for Probate and Appointment of a Personal Representative – to be filed at the beginning of the case
- ☐ Waiver of Bond – but only if you have already talked to heirs or interested parties and they have signed this form. This can also be filed at a later date.
- ☐ Civil Summons – to be filed at the beginning of the case
- ☐ Proof of Service – filed after any heirs or interested parties have been given the Petition and summons

All of these documents are available at the Justice Center reception window or on the website at <https://tojc-nsn.gov/forms/> as downloadable and fillable PDF forms. You will need Adobe Acrobat Reader to view them. Adobe is free software available from Adobe's website at <https://get.adobe.com/reader/>. You may fill the forms out online before printing or print and fill them out by hand.

Completing the Civil Cover Sheet

Type or print in black or blue ink in all blanks except the CASE NUMBER. The Court Clerk will assign the case number after you file the Petition.

If you are the filing party, you are the Petitioner.

PETITIONER'S LEGAL PRACTITIONER (if applicable)

- Leave blank if you do not have a lawyer or legal practitioner.

ATTORNEY BAR NUMBER (if applicable)

- Leave blank if you do not have a lawyer.

PETITIONER'S NAME

- Fill in your name, birthdate, and full address.
- If you are completing this form with someone else, fill out all information for them as well.

INTERESTED PARTY'S NAME

- Fill in the names, birthdates, and full addresses of all heirs or interested parties. If you do not know or have an address, list the person's name with "Address Unknown."

NATURE OF ACTION

- Check or place an "X" in the box that says "Probate." Choose only this category as it most accurately describes your primary case.

Completing the Petition

Pursuant to the General Rules of Practice and Civil Rules of Procedure

CAPTION

- Name of Petitioner – Enter your name as the Petitioner
- Name of deceased
- Dates of Birth and Death
- Case No. – Leave this blank. The Clerk will fill this information in when you file your documents.

Fill in the following information where requested:

1. Your name, address (city, state, zip code), telephone number, email address, Legal Practitioner information if applicable.
2. The name of the decedent, date of their passing, age, and address.
3. Check the appropriate box in #2. Provide an explanation if needed.
4. Check each appropriate box in #3.
5. List heirs and interested parties in #4. If you need more room, attach a separate paper listing the information in the same format and place the title “In Re the Estate of _____” at the top of each additional page.
6. If there is a will, proceed and complete numbers 5-10. If there is not a will, proceed and complete numbers 11-15. Place **N/A** or **Not Applicable** in the section/s you do not answer. Select the responses that apply to your situation.
7. In #16, describe the property owned by the deceased that is subject to probate in the Tohono O'odham Court. Then list any property owned by the deceased that is subject to probate in other courts, along with the court names. Ex., house located at 1234 E Main St, Ajo, AZ; Arizona Court.



Before you submit your documents, make sure you sign and date the petition, verifying that the information you are submitting is true, accurate, and complete to the best of your knowledge and belief.

Completing the Summons

Pursuant to Rule 3 of the Rules of Civil Procedure

- Fill in the following information where requested: your name, address (city, state, zip code), and telephone number. Check the box “Self (without legal counsel)” if you are representing yourself. If you are representing yourself, leave the Attorney Bar Number blank.
- If your lawyer or legal practitioner is filing the summons on your behalf, they will need to fill out this section with their personal information (name, address, telephone number, attorney bar number if applicable) and check the box for Legal Counsel for Petitioner.

CAPTION

- Fill in the name of the deceased.
- Case No. – Leave this blank. The Clerk will fill in this information for you when you file your Summons.
- Fill in the name and address of the heir or interested party. Complete a summons for each heir or interested party.
- Leave the rest of the form blank.

Checklist of Documents to File at the Courthouse

- ☐ Petition for Probate and Appointment of a Personal Representative
- ☐ Waiver of Bond (if this has been done)
- ☐ Copy of Will (if one exists)
- ☐ Documents proving land ownership, if applicable
- ☐ Any other documentation that you think might be important for determining what is in the deceased's Estate
- ☐ Summons for all heirs or interested parties

Completing the Filing

There are three options for filing your documents with the Court. No matter which you choose, the Clerk will date/time stamp the Petition and each copy, and complete the summons/es by filling in the hearing information. The copies of the Petition and the summons/es will be returned to you, one for your file and one to serve on each heir or interested party.

- Option 1. **Bring the Originals and Copies to the Clerk to be Filed:** Bring the original Petition with all of your attachments and full copies to the Judicial Center Receptionist. The number of copies that you will need to bring depends on how many heirs or interested parties are involved in the case. You will need to bring one copy for yourself and one for each heir or interested party to the Reception window at the Justice Center, along with the summons/es and your filing fee or fee waiver form.
- Option 2. **File the documents by email or fax:** See T.O. [Rules of Civil Procedure](#) 4.2(c)-(d) for guidance. Electronically filed documents must be in a PDF format and named in a precise way. Before filing electronically, be sure that you fully understand the Rules of Court that apply. If you file by email or fax you only need to file one document and your filing fee must be received by the Clerk's Office within three business days of the Clerk's written confirmation of receipt. Failure to submit a filing fee will result in the filing being rejected by the Clerk.
- Option 3. **Mail the documents and your filing fee (by money order or check made payable to the Justice Center) to:**

Office of the Clerk
Tohono O'odham Justice Center
P.O. Box 761
Sells, AZ 85634

- **Pay Your Filing Fee:** The filing fee is due at the time you file the Petition and can be paid by money order, cashier's check, or cash. If you are unable to pay the filing fee, file the Financial Affidavit and Request for Deferral, Reduction, or Waiver of Court Fees form. See T.O. [General Rules of Practice](#), Rule 10. The form is available here: <https://tojcnnsn.gov/forms/>.

Completing the Proof of Service

Pursuant to Rule 3(d)-(i) of the Rules of Civil Procedure

- You must fill out the [Proof of Service Form](#) for Probate or Guardianship after you have served the documents on all heirs or interested parties. Provide documents to prove the service, such as the receipt returned from the U.S. Post Office or a copy of the publication. See [Rules of Civil Procedure 3.1\(f\)](#) for details about how to serve someone by publication or community posting. It is important to return the Proof of Service document because if there is any question about whether you served the documents or you need to request action because an heir or interested party did not respond, this document will provide evidence of your service or attempted service of the documents.
- Fill in the following information where requested: your name, address (city, state, zip code), and telephone number. Check the box "Self (without legal counsel)" if you are representing yourself. If you have a lawyer, fill out their Attorney Bar Number.
- If your attorney is filing the Proof of Service on your behalf, they will need to fill out this section with their personal information (name, address, telephone number, attorney bar number) and check the box for Legal Counsel of Petitioner.

CAPTION

- In Re: Name of Deceased
- Case Number – you will have the case number at this point in the proceeding and need to enter it here.
- Check the box that best describes the person filing the PROOF OF SERVICE either Legal Practitioner or Petitioner

Fill out the following information where requested for each person served:

- Name: Enter the name of the person who is/was served, i.e., the person to whom you gave or mailed the documents
- Method: Check the method you used to deliver the documents –

- by Personal Service (enter the name of the person who served the documents; date, time, and location of that service; the name of the person who accepted the documents; and signature of the person who accepted the documents). If the person refuses to sign for the documents, simply check the “Person Refused to Sign” box. If someone other than the person named on the summons accepts the documents, be sure to check the box affirming the person was over 16 years old.
 - by Mail (enter the address used, mail delivery service used (USPS, FedEx, etc.), date mailed. Attach a copy of the envelope, and the original return receipt proof. Be sure to keep copies for your file.
 - by Publication (provide a printed copy of the publication or community posting along with an affidavit telling the Court the way and dates the publication was done)
- Fill out the date when SERVICE is completed. If you are serving multiple parties, all of the dates for service may not be the same. Use the date the summons and documents were actually delivered, mailed, or published/posted.
 - Date and sign on the signature line above the Verification section, in front of a notary public. Notary service may be available at the Judicial Center.
 - Have a notary fill out the verification section to verify the information and signature



DO NOT sign the Verification section until you are in front of a Notary Public.

After completing the form, make copies of the following documents for each party, including yourself: the Proof of Service document (if served by first-class mail, the postal receipt card and a photocopy of the mailing envelope or the Affidavit of Publication (if any)), and assemble the documents into complete packets (one original and copies for each heir or interested party).

Take or mail the packets to the Court Clerk. The **original will be kept by the Clerk and the copies** will be returned to you for delivery to the heir or interested parties. You must ensure the heir or interested parties receive a complete copy of the Proof of Service and any attachments filed with the Court.