

Yavapai-Apache Nation Probate Code Community Guidance Document

The Yavapai-Apache Nation Tribal Council passed a new Probate Code into law on June 26, 2024 (Resolution No. 113-24). This Community Guidance Document is designed to assist Yavapai-Apache Nation community members in navigating the new Probate Code. Section 1 of this document provides a list of Frequently Asked Questions about the probate process and about the new Yavapai-Apache Nation Probate Code. Section 2 is a flow chart to assist community members in determining how to start the probate process. Section 3 contains instructions for filling out the Yavapai-Apache Nation's Petition for Probate form, which is attached at the end of this document.

1. Frequently Asked Questions

What is probate?

Probate is the legal process by which the property of a deceased person is distributed. During the Yavapai-Apache Nation probate process, the Tribal Court determines what property the deceased person owned or had in their name, who the deceased person's legal heirs are, and what type of inheritance the heirs may be entitled to receive. If the deceased person left a valid will, the Tribal Court ensures the directives in that will are followed through the probate process. If the deceased person did not leave a will, the new Yavapai-Apache Nation Probate Code establishes a distribution process. The probate process also resolves the claims of any creditors and resolves the debts of the deceased person.

Does the new Yavapai-Apache Nation Probate Code apply to me or my family member?

The Yavapai-Apache Nation Probate Code applies to the distribution of possessions, money, and homes owned by quitclaim deed on the Yavapai-Apache Nation for two categories of deceased people:

1. Yavapai-Apache Nation Tribal Members, regardless of where the Tribal Member lived.
2. Non-Tribal Members who lived on the Yavapai-Apache Nation (for example, a non-member spouse of a Tribal Member).

The Yavapai-Apache Nation Tribal Court will only hear probate cases for the two categories of people listed above.

Is there property that is not subject to the Yavapai-Apache Nation Probate Code?

If the deceased person owned real property (land or a house) on fee land outside of the Yavapai-Apache Reservation, it is likely that a state court probate process in the county in which the real property is located will be required. If the deceased person had an interest in property or funds held in trust in an Individual Indian Money Account (IIM account) or otherwise held in trust by the United States for the benefit of the deceased person, it is likely that a federal probate process through the Bureau of Indian Affairs will be required.

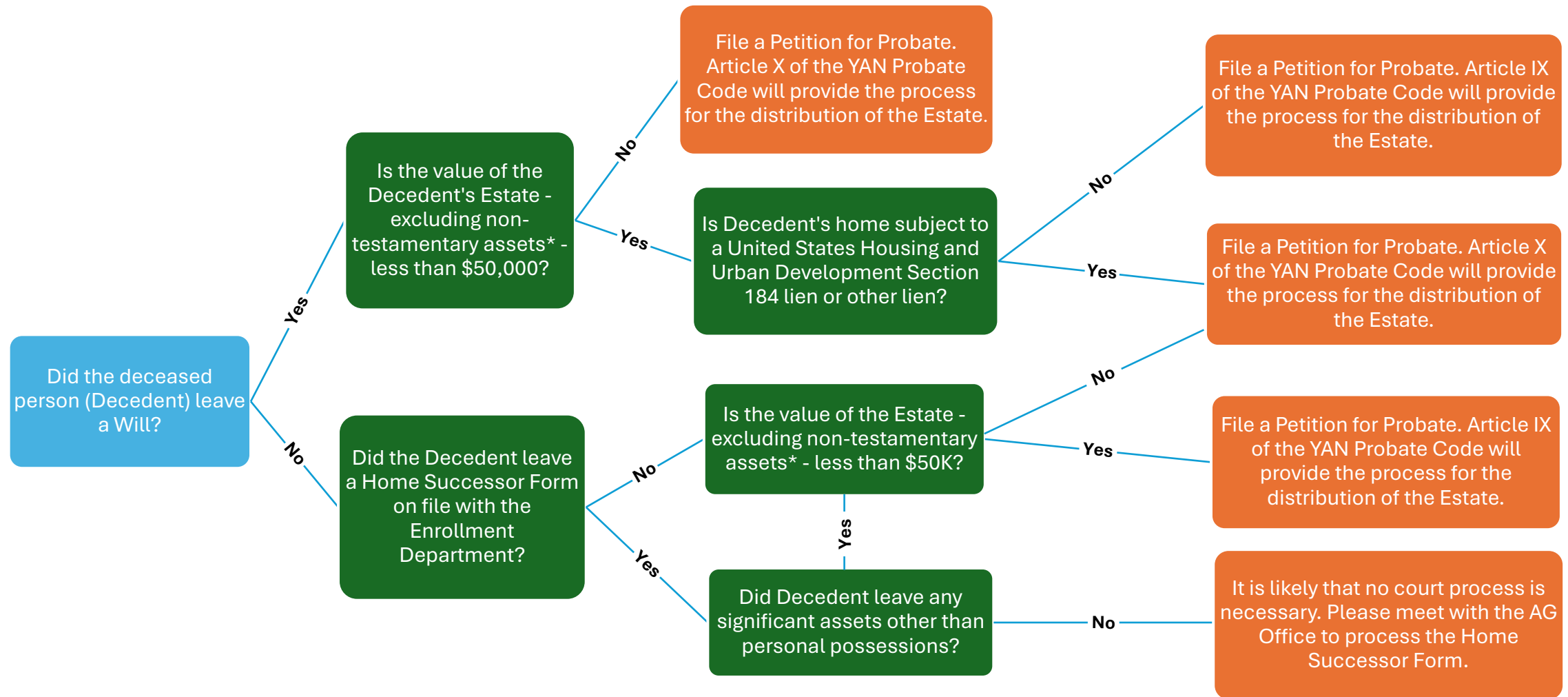
Do any of the deceased person’s possessions or money get distributed outside of the Yavapai-Apache Nation probate process?

The probate process does not apply to a certain category of assets called “**non-testamentary assets**”. This means assets controlled by a written document, other than a will, that directs a transfer of money, property, or other benefits to a specific, named person upon the death of the owner of those assets. Examples of non-testamentary assets include a 401(k) account with a named beneficiary or a life insurance policy with a named beneficiary. Under the new Yavapai-Apache Nation Probate Code, a Tribal Member who owns a home on the Yavapai-Apache Reservation can file a Home Successor Form with the Enrollment Department that directs who will inherit that home. If a Home Successor Form is filed with the Enrollment Department, then that home is considered a non-testamentary asset, and the transfer of the home can occur outside of the probate process.

How do I start the Yavapai-Apache Nation probate process?

In order to determine the first step in the Yavapai-Apache Nation probate process, please use the Probate Process Flow Chart found in Section 2. In many cases, the first step of the process is for a person to submit a Petition for Probate to the Yavapai-Apache Nation Tribal Court. The instructions for filling out the Petition for Probate form are found in Section 3. The Petition for Probate form is attached at the end of this document.

2. Probate Process Flow Chart



*Non-testamentary assets are assets controlled by a written instrument, other than a Will, that directs for non-Probate transfer on death of money, property, or other benefits to a Person designated in that written instrument. Examples include a 401(k) account with a named beneficiary or a life insurance policy with a named beneficiary. A home that is subject to a properly executed Home Successor Form filed with the Enrollment Department is a non-testamentary asset.

3. Petition for Probate Form Instructions

1. Please use the Probate Process Flow Chart in Section 2 to determine whether a Petition for Probate is required.
2. The person submitting the Petition for Probate is “the Petitioner.”
3. The deceased person is “the Decedent.”
4. All the personal possessions and money that the Decedent owned, except for any non-testamentary assets, are “the Estate.” If Decedent is a Tribal Member who owned a home on the Reservation but did not leave a Home Successor Form on file with the Enrollment Department, then Decedent’s home is part of the Estate.
5. To determine whether Decedent filed a Home Successor Form or Will with the Enrollment Department, a family member of the Decedent should contact the Enrollment Department. The family member must provide a valid death certificate to the Enrollment Department in order to obtain this information.
6. As part of the Probate Process in Tribal Court, the Tribal Court will appoint a person to be the “Administrator of Decedent’s Estate.” This person will manage the paperwork involved in distributing the Estate and serve as the main contact for the Tribal Court. Item #13 of the Petition for Probate requests that the Petitioner nominate one or more persons who would be suitable for the Tribal Court to consider appointing as the Administrator of the Decedent’s Estate. The Petitioner may nominate themselves, another person (such as a family member of the Decedent), or multiple other persons to be considered for this role. It is important to understand that the Tribal Court may not select the nominated person(s) to be the Administrator of Decedent’s Estate. The Tribal Court will follow the Probate Code process set forth in Article 10, Section 10.04 of the Probate Code to appoint an Administrator; however, the Tribal Court will take any nominations submitted in the Petition for Probate under consideration in making its decision of who to appoint.

**YAVAPAI-APACHE NATION TRIBAL COURT
MIDDLE VERDE RESERVATION, ARIZONA**

IN THE MATTER OF THE ESTATE OF: _____	
Deceased Name and Date of Death	▲ COURT USE ONLY ▲
	Case No: _____-PR-_____

PETITION TO PROBATE ESTATE

_____ hereby petitions this Court to open a probate case pursuant to Article IX or Article X of the Yavapai-Apache Nation Probate Code. In support of this request, the following information is provided:

1. Petitioner is a(n): Heir Creditor Other _____ of the Decedent

2. Decedent WAS WAS NOT an enrolled member of the Yavapai-Apache Nation. Provide Decedent's Enrollment Number if available _____

3. Decedent WAS WAS NOT domiciled on (resided on) the Yavapai-Apache Reservation. Provide Decedent's address if available _____

4. Decedent HAS DOES NOT HAVE personal property located within the exterior boundaries of the Yavapai-Apache Reservation.

5. The total estimated value of Decedent's Estate, excluding Decedent's 401(k), any other assets governed by Non-Testamentary Instruments, and, if Decedent left a Home Successor Form, the value of Decedent's home on the Reservation IS IS NOT more than \$50,000. Leave blank if this information is not known by petitioner.

6. Decedent passed away on or about the _____ day of _____ 20____

(please provide a certified copy of Decedent's death certificate).

7. Decedent is believed to have died leaving No Directives A Last Will A Home Successor Form. Please attach copies of the Will or Home Successor Form, if available.

8. Decedent's Estate consists of the following known property: [List any vehicle; property, both personal and real; bank accounts; etc., attach additional sheet(s) if necessary]. _____

9. Decedent WAS WAS NOT married at the time of death. List name and address of Decedent's spouse.

10. Decedent HAD DID NOT HAVE children, grandchildren, or great-grandchildren, living and deceased, natural or adopted. If applicable, list the child's name and provide the following information, also indicate if the child is still a minor. Attach additional sheet(s) if necessary.

Name and Mailing Address	Living/Deceased	Relationship to Decedent	MINOR Yes/No

11. Decedent HAD DID NOT HAVE any of the following known relatives: parents, grandparents, or siblings. If applicable, please list the relative's name and provide the following information. Attach additional sheets if necessary.

Name and Mailing Address	Living/Deceased	Relationship to Decedent	MINOR Yes/No

12. Probate proceedings for Decedent's Estate ARE ARE NOT occurring in another court. If applicable, please list the names and case numbers of the other proceedings and the name and address of any Administrator appointed for the other proceedings.

13. Please nominate a Person or Persons, such Person may include the Petitioner, to serve as the Administrator of Decedent's Estate. Please list the qualifications of the proposed Administrator, including the Person's relation to Decedent. Pursuant to Yavapai-Apache Nation Probate Code Article X, Section 10.04 (A), an Administrator must be at least eighteen (18) years of age and legally competent. Persons who have been convicted of any felony or misdemeanor involving moral turpitude may not serve as Administrator of an Estate. Attach additional sheets if necessary.

RESPECTFULLY SUBMITTED this _____ day of _____, 20_____

Petitioner's Name (Printed)

Mailing Address

City State Zip

Phone

Email

THIS DOCUMENT MUST BE SIGNED IN FRONT OF A NOTARY OR COURT CLERK

I, the above name petitioner, swear that the information contained in the petition is true and correct to the best of my knowledge.

Petitioner's Signature

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 20____.

Notary/Court Clerk

Date

My commission expires: _____