

**FOREST COUNTY POTAWATOMI COMMUNITY
INTERIM REGULATIONS**

**TRANSFER OF INTERESTS IN REAL PROPERTY ON
TRIBAL TRUST LANDS**

Title One: General Provisions

101 Purpose

The purpose of these interim regulations is to provide a legal process to determine the heirship rights of survivors of tribal members who, at the time of death, own in real property on tribal trust lands. These regulations are intended to regulate the rights of members pending enactment of law by the General Council.

102 Jurisdiction of Tribal Court

The Forest County Tribal Court shall have exclusive jurisdiction to regulate and enforce rights under these regulations.

103 Applicability

These regulations apply only to interests in tribal trust lands and do not extend to interests in fee land owned by tribal members. With respect to property that is mortgaged to secure a loan made by the Tribe, these regulations are not intended to regulate the right of members to assume loans held by deceased members. The right of members to assume loans held by deceased relatives is determined under the Tribe's Housing Loan Program Policies and Procedures.

104 Relationship to Other Laws

These regulations are intended to regulate transfer of certain property rights. In determining property rights, the Tribe and the Tribal Court shall rely on ordinances and other enactments of the General Council to the extent they exist. These regulations may serve to define property rights only to the extent such rights are not defined in enactments of the General Council.

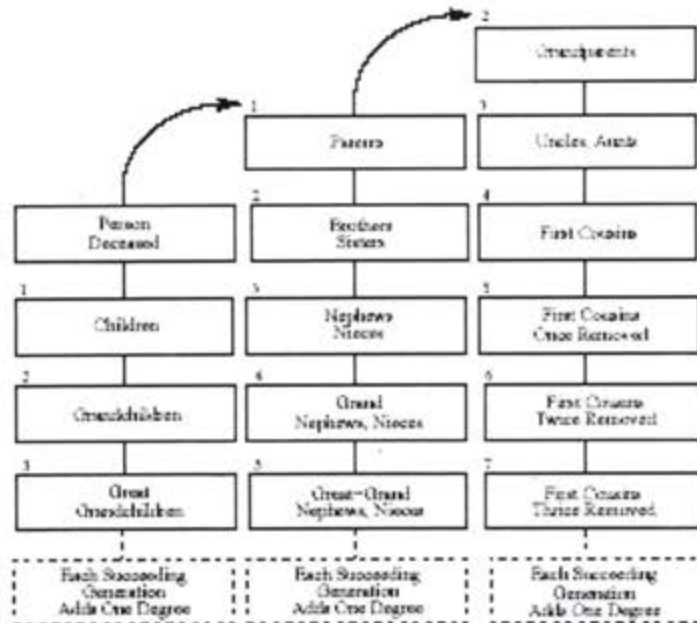
105 Definitions.

Beneficiary Designation means a document signed by a Lessee or Assignment Holder and filed with the Realty Office that designates a person or persons to inherit the Leasehold or Assignment upon the death of the person making the designation.

Child, for purposes of determining Lineal Descendants, includes a person's natural or legally adopted child, regardless whether the child was born in wedlock

Court means the court of the Tribe unless the court of another jurisdiction is specified.

Degree of Kinship is determined as follows:



Dwelling Permit means a document evidencing the right to occupy tribal trust lands temporarily, for a period not to exceed one year, on such terms as the Tribe deems appropriate to protect its interests. A dwelling permit is a form of license and does not grant the permittee an interest in real property.

Eligible Lessee means the Tribe, a Member, or a Tribal Entity.

Executive Council means the Executive Council of the Forest County Potawatomi Indian Tribe.

FZI Loan means a forgivable/zero interest home loan from the Tribe to a tribal member pursuant to which the member repays 25% of the loan at 0% interest over a fifteen year period and is forgiven 5% of the remaining portion of the loan each year until, after 15 years, the entire loan has been paid and forgiven.

General Council means the General Council of the Forest County Potawatomi Indian Tribe.

Housing Office means the Tribal Office that administers the FZI Loan Program.

Interested Party means a person who is named in the will of a decedent owner of a Property Interest, a relative of such decedent or person alleging another valid interest in the disposition of the decedent's Property Interest.

Lease means a lease that is valid under tribal law, which grants the lessee a Leasehold interest in Reservation land for a period of not more than fifty years.

Leasehold means the property interest conveyed by a Lease and includes all of the improvements authorized under the Lease and tribal law.

Lessee means the holder of Lease.

Lineal Descendant means a person's descendants in a straight line including children, grandchildren, great-grandchildren, great-great-grandchildren and so forth in more remote degrees. Lineal Descendant includes those who occupy that relation by reason of adoption and non-marital children and their lineal descendants.

Member means an enrolled member of the Tribe.

Mortgagee means an entity that has made a loan under a lending program approved by the Executive Council for which the security is a Leasehold interest or Assignment, or the successor in interest to such entity.

Next of Kin means the person who is within the nearest degree of kinship to a deceased person.

Property means Tribal Land and permanent improvements and fixtures thereon.

Property Interest means the right of a tribal member to possess real property, or improvements to real property, for residential purposes, on tribal trust land, arising from resolution of the General Council, a lease, approved lease application, Dwelling Permit, or Assignment.

Spouse means a person to whom one is legally married under State or tribal law, including a traditional ceremony, as attested in writing by the tribal spiritual leader who conducted the ceremony or, if the spiritual leader is unavailable, by other credible evidence.

Tribal Land means land held in trust for the benefit of the Tribe or land owned by the Tribe.

Tribe means the Forest County Potawatomi Indian Community.

Title Two: Interests in Tribal Trust Land

201 Leases

The preferred form of ownership in a home on the Reservation is a long-term lease. Authority to grant a lease is vested by the Tribal Constitution in the General Council. Pursuant to the Tribal Constitution, the General Council may delegate its leasing authority.

202 Dwelling Permits

A Dwelling Permit may be issued by the Housing Board

- A. Pending approval of a lease, where a tribal member has applied for an FZI loan and a lease application has been granted by the Executive Council. A temporary Dwelling Permit under this paragraph may be extended indefinitely until such time as the member's application for a lease is finally rejected or approved;
- B. Pending an heirship determination by the Tribal Court pursuant to Title Four of these regulations. A temporary Dwelling Permit under this paragraph shall be issued for a period only as long as necessary for the Court to make an heirship determination and may be renewed or extended only for good cause.
- C. For humanitarian reasons, to provide for a temporary legal right of occupancy under conditions of extreme hardship where no other legal basis exists for occupancy.

203 Assignment Rights

In the event that the Tribe adopts a form of occupancy right known as assignment rights, documented by a certificate of assignment, such interest in Reservation land shall be subject to these regulations.

Title Three: Non-Judicial Transfers by Beneficiary Designation

301 Form of Beneficiary Designation

The Housing Office shall encourage each member who purchases or otherwise acquires a home on the Reservation to execute a beneficiary designation, which shall be separate from the Member's will, if any. The Beneficiary Designation shall be signed by the Lessee and the signature shall be authenticated or acknowledged. The Beneficiary Designation shall be maintained at the Tribal Housing Office. At any time during the term of a Member's occupancy, he or she shall have the right to amend the Beneficiary Designation to name a new beneficiary and such amendment shall not require amendment of the lease or other document evidencing the Member's Property Interest.

302 Transfer of Property Interests at Death by Beneficiary Designation

A Property Interest may be assigned without judicial process pursuant to a Beneficiary Designation provided the Beneficiary is a tribal member. The assignment document shall be a form approved by the Legal Department and shall be approved by the tribal agency authorized to issue the type of Property Interest being transferred.

Title Four: Judicial Determination of Heirship Rights in Property Interests

401 Applicability

This Title applies where a decedent owning a Property Interest dies without a will or a Beneficiary Designation or where a will purports to devise an interest in contradiction to a Beneficiary Designation.

402 Petition for Determination of Heirs. Any Interested Person may file a petition for Determination of Heirs with the Court, which shall include:

- A. a statement of the interest of the applicant;
- B. the name, and date of death of the decedent, his age, and the location of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- C. if the decedent was not domiciled in the Reservation at the time of his death, a statement showing venue;
- D. a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed elsewhere.

403 Informal Probate of a Will or for Appointment to Administer Estate Under a Will

- A. An application for informal probate of a will shall state the following in addition to the statements required by 402:
 - 1. that the original of the decedent's last will is in the possession of the Tribal Court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
 - 2. that the applicant, to the best of his knowledge, believes the will to have been validly executed;
 - 3. that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

- B. An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.
- C. The Court's function in connection with an informal probate is to determine and carry out the wishes of the testator, subject to any protections of the family provided under tribal law.
- D. If an informal probate is granted, within 30 days thereafter the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the location of the Tribal Court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate.

404 Application for Appointment of Personal Representative in Intestacy.

- A. An application for informal appointment of a personal representative in intestacy shall state in addition to the statements required by 402 (i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in the Reservation or, a statement why any such instrument of which he may be aware is not being probated; (ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment.
- B. Upon receipt of an application for informal appointment of a personal representative, the Registrar shall appoint the applicant subject to qualification and acceptance, unless the Registrar is not satisfied that a requested informal appointment of a personal representative should be made for any reason.
- C. The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment.

405 Applicant's Submission to Jurisdiction of the Court.

By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the Tribal Court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

406 Determination of Heirs When Decedent Dies Intestate

- A. Where the Decedent dies intestate, the Court shall hold a hearing to determine the decedent's Next of Kin.
- B. The Next of Kin shall inherit the decedent's Property Interest, subject to any restrictions, under tribal law, on the right of non-members to hold Property Interests.
- C. Where there are multiple heirs of the same degree of kinship, the court shall order the Property sold and the proceeds divided evenly among the heirs of equal degree of kinship unless the heirs otherwise agree, in writing, to transfer of the decedent's Property Interest to fewer than all of the heirs.
- D. If the heirs have agreed to the transfer of the decedent's Property Interest to a single heir, the Court shall satisfy itself that any waivers of rights of heirship are freely and voluntarily made. The Court shall advise the heirs of their equal rights to inherit under tribal law and their rights, in the event the parties cannot reach agreement, to a sale of the Property Interest and equal division of the proceeds.
- E. Following the hearing, the Court shall make written findings of fact and shall issue judgment ordering execution of an assignment of the decedent's Property Interest by the tribal agency authorized to approve the Property Interest under tribal law.

407 Applicable Law

To the extent that there exists no tribal law governing the probate of wills or transfer of property through intestacy, the Court shall apply the law of the state of Wisconsin, except that marital property law shall not apply to Interests in Property.