

TRIBAL MEMBER DISTRIBUTION ORDINANCE

Hoh Tribal Ordinance

§ 4.100 INTRODUCTION

The Business Committee enacts this Distribution Ordinance to ensure that such distributions occur in a fair, timely, and equitable manner.

§ 4.101 SCOPE

(a) **Source of Monies.** This Ordinance covers distributions of monies to enrolled tribal members. Per capita distributions of gaming revenues will be governed by the provisions of the Indian Gaming Regulatory Act and this Ordinance. It also covers any distributions of one-time funds to enrolled tribal members.

(b) **Size of Distribution.** This Ordinance covers "per capita" distributions of monies to enrolled tribal members. Such per capita distributions may be made to all enrolled members of the Tribe.

(c) **Exclusions.** This Ordinance does not cover distributions of monies to tribal members which are subject to restrictions in use, or tribal monies which are distributed to individual tribal members or groups of tribal members in response to an application for services or financial assistance, or in response to an assessment of need for a service or program. This Ordinance is intended to cover monies which are distributed by the Tribe to enrolled tribal

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members for no specified purpose.

§ 4.102 PROCEDURE

(a) **Preparation of Distribution List by Enrollment Office Action.** Distributions of monies under this Ordinance shall be limited to enrolled members of the Hoh Indian Tribe. Tribal enrollment must be final, with no relinquishment or removal actions pending, as of that date to qualify for a distribution. For one-time distributions of funds, upon passage of a Business Committee distribution resolution, the resolution shall be provided to the Tribal Enrollment Office for preparation of a distribution enrollment list. Such list shall consist of all enrolled tribal members who are eligible for the distribution and who have not disclaimed their right to distribution as provided in subsection (4) below.

(1) Notice of Proposed Distribution. The Enrollment Officer shall provide thirty days' notice of the proposed distribution to the tribal membership, by any appropriate means.

(2) Distribution Requirements. To receive a distribution, a tribal member must have on file with the Enrollment Office:

- a) a current address; and
- b) a valid Social Security number.
- c) If a tribal member does not already have a valid Social Security number on file with the Enrollment Office, the tribal member must provide a copy of a valid Social Security card to the Enrollment Office.
- d) If a tribal member provides evidence to the Enrollment Office that the

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member is not a U.S. citizen and is not eligible to receive a valid Social Security card, the Enrollment Office shall, within 45 days of receipt of such evidence, provide the Trust Officer with the information necessary to petition Business Committee for a waiver of the Social Security card requirement, which shall be narrowly construed and available only to persons who are not eligible to obtain a valid U.S. Social Security card.

(3) Right to Disclaim Distribution(s). If a Tribal Member, or the Tribal Member's court-approved Guardian, Conservator, or other Trustee, does not want to receive a distribution, for any reason, the Tribal Member or their Guardian, Conservator or other Trustee must obtain a Disclaimer form from the Trust Officer. The Disclaimer must be completed and signed before a Notary Public, then returned to the Trust Officer. The Trust Officer will route copies of the Disclaimer to the Enrollment Clerk, the Accounting Department, and to the Tribal Court, if a guardianship is involved. The Trust Officer will maintain a list of Tribal Members who have disclaimed future distribution funds. After a Disclaimer has been filed, the member will not receive any more distribution checks, and will only receive a 1099 Tax Form for any distribution funds received during that tax year. If the Tribal Member or their guardian changes their mind and decides to accept distribution funds again, a request must be made in writing to the Trust Officer to receive any future distributions, although the request will not be made retroactive. Funds disclaimed after Tribal Council has approved a distribution resolution will be deposited into the Excess Pledge Revenues member distribution funds for redistribution at the next

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regular distribution.

(4) Forwarding of Distribution List. Within two weeks of the distribution cut-off date, a list of the enrolled tribal members eligible for the distribution shall be forwarded by the Enrollment Office to the Business Committee (without addresses) for informational purposes and to the Tribal Accounting Office (with addresses) for processing of distribution checks.

(b) **Accounting Office Action.**

(1) Upon receipt of the distribution list from the Enrollment Office for one time distribution to tribal members from non-gaming revenues, the Accounting Office shall prepare checks or other documents as applicable for distribution to enrolled tribal members on the distribution list. The checks and documents shall be issued and mailed on the last business day before the distribution date specified in any Business Committee Resolution enacted pursuant to § 4.102 of this Ordinance.

(2) Per capita payments from gaming revenue will be distributed monthly on the 18th of each month.

§ 4.103 **DISTRIBUTIONS TO MINORS, ADULTS UNDER A LEGAL DISABILITY, AND TO DECEASED TRIBAL MEMBERS**

a) **Appointment of Trust Officer.** The Business Committee shall appoint a Trust Officer, for a specified term, to be responsible for distributions of monies to enrolled tribal members. The Trust Officer may be a designated tribal employee, a financial or investment institution, or any other appropriate person or entity. The Trust Officer shall be bonded to

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perform his or her duties under this Ordinance, but a Tribal Employee acting as Trust Officer shall not be liable for any action or failure to act, absent proof of bad faith or fraud.

Compensation for the performance of such duties shall be decided by the Business Committee.

(b) Distributions to Minors.

(1) For purposes of this Ordinance, a minor shall be defined as any enrolled tribal member who has not reached the age of twenty-seven as of the date of distribution of a particular per capita payment. When a distribution occurs pursuant to this ordinance, all distributions to enrolled tribal members who are minors as of the date of distribution shall not be distributed to the minor; instead, the distribution shall be maintained in trust for the benefit of the minor until he or she reaches the age of twenty-seven (27), except as allowed by sub-section (e) below and as provided by subsection (g) below.

(2) The Trust Officer shall be responsible for setting up and managing a trust account or accounts with an appropriate financial or investment institution to maintain distribution funds for minors and adults under a legal disability. The form of the trust account (for example, individual trust accounts for each minor or one trust account for all minors) shall be at the discretion of the Trust Officer, so long as the balance and accumulated earnings can be separately identified and monitored for each individual with funds held in trust and the account or accounts meets fiduciary standards.

(3) The Trust Officer shall determine the custodial parent(s) or legal custodian

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of any minor whose distribution funds are being held in trust, and shall develop regulations, subject to the approval of the Business Committee addressing how information about custodial status or changes in custodial status shall be supplied to the Trust Officer and in what form. In the event of a dispute about who is the legal custodian of a minor whose distribution funds are being maintained in trust by the Trust Officer, the Trust Officer may petition the Tribal Court for a determination of the issue.

(4) Reports of trust account status, including accumulated earnings, shall be sent on an annual basis to the parent or legal custodian of the minor whose distribution funds are being held in trust.

(5) The Trust Officer shall coordinate disbursement of a Statement of Account annually, and shall disburse 1099 forms by January 31st of each year.

(c) **Distributions to Adults Under a Legal Disability.**

(1) A presumption shall exist for any adult enrolled tribal member eligible for a distribution that such member is entitled to receive a distribution on the distribution date, except as provided in subsection (g) below. Certain adults, however, may have been adjudged legally incompetent by a court of competent jurisdiction or be under some other legal disability which makes it likely that such persons will be unable to receive, preserve or reasonably expend distribution funds if such funds were directly disbursed to such adult. In such event, the Trust Officer shall deposit distribution monies for that adult into a trust account(s) and

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maintain those funds under the same standards and principles set out for minors in subsection (b) of this section, unless the Tribal Court has ordered payment to a Guardian, Conservator, or Trustee of any other funds to which the tribal member is entitled under any other Tribal ordinance, policy, or program, in which case, the distribution funds may be distributed in the same manner as previously ordered by the Tribal Court and subject to any of the same reporting requirements.

(2) Status as an adult subject to a legal disability shall be determined by the Trust Officer or by the Tribal Court on a case by case basis. Such status shall normally be shown to the Trust Officer by a court order from a court of competent jurisdiction that has placed an adult in the legal custody of a guardian, conservator or institution because of a legal disability. The Trust Officer may recognize the designation of a guardian, conservator or other form of trustee made by a tribal, federal or state agency for purposes of distributing funds for the benefit of an adult who is subject to a legal disability without resorting to Tribal Court.

However, the Trust Officer shall have authority to petition the Tribal Court to adjudge an adult tribal member as subject to a legal disability if the Trust Officer determines that the adult requires assistance in preserving his or her distribution funds and that due process requires a Tribal Court hearing. In such case, if the Tribal Court issues an appropriate order, that member's distribution funds shall be placed in a trust account under this section.

(3) The Trust Officer may petition Tribal Court to allow funds belonging to an

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adult under a legal disability to be turned over to the tribal member's guardian, conservator or trustee or to be paid directly to a provider or vendor at times and in such amounts as are necessary for the health, education, or welfare of the tribal member, and may disburse such funds upon court approval.

(4) For purposes of this Ordinance, incarceration does not constitute a legal disability.

(d) **Deceased Individuals.**

(1) Any enrolled tribal member who is alive on the 12th of each month a tribal distribution asset set out in a resolution as required at §4.102 (b)(4) is entitled to disbursement of the distribution amount. In the event an eligible enrolled tribal member dies between the distribution cut-off date and the date when the distribution funds are to be disbursed, that member's distribution monies shall be disbursed to the member's legal heirs according to applicable probate law, or if all the legal heirs agree in writing on some alternative disbursement, then as agreed.

(2) It shall be the responsibility of the heirs to provide sufficient proof to the Trust Officer for the Trust Officer to prepare a petition to Tribal Court to determine who should receive the deceased tribal member's distribution monies. The Trust Officer may issue regulations, subject to Tribal Council approval, setting out the documentation necessary to release funds under this subsection.

(3) The Trust Officer shall petition the Tribal Court for a determination of this issue, and shall disburse the deceased member's distribution monies to the person

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or persons identified in the Tribal Court's order.

(4) In the event a deceased tribal member's estate is subject to a probate proceeding or other legal proceedings have been initiated by creditors or other persons or entities seeking to obtain the deceased member's assets, the Trust Officer may pay the distribution monies which would have been disbursed to that member into the court for disbursement as the court determines.

(e) **Interim Disbursement of Funds Held in Trust for Minors or Adult Under a Legal Disability.**

(1) Monies held in trust pursuant to this section on behalf of a minor or adult under a legal disability may be disbursed to a custodial parent or legal guardian only at times and in such amounts as are necessary for the health, education, or welfare of the minor, as determined for extraordinary purposes by the Trust Officer in his or her discretion to a parent, guardian, conservator, or other person or entity with legal custody of the minor or adult to meet specific needs of the minor. The Trust Officer shall develop regulations, subject to approval by the Business Committee, setting out the purposes for which funds may be disbursed under this subsection, and an application process by which requests for disbursement of funds may be made to the Trust Officer.

(2) A custodial parent or legal guardian may petition the Trust Officer for disbursement of monies held in trust for that minor tribal member for specific purposes. The Trust Officer shall decide, based on the criteria established in the

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Business Committee-approved regulations, whether to approve the disbursement request. The decision of the Trust Officer shall be the final decision for the Tribe. The Trust Officer must notify the petitioner in writing of the decision and notify petitioner of the appeal process if the Trust Officer denies the petition. Appeal of the Trust Officer's decision shall be made directly to the Tribal Court within sixty (60) days.

(f) **Accounting.** The Trust Officer shall submit an annual accounting of all monies held in trust under this Ordinance to the Business Committee and to the Tribal Accounting Office. Such accounting shall be completed no later than 270 days after the end of the calendar year.

(g) **Disbursement of Account Funds Upon Removal of Disability.**

(1) Funds Held for Minors. Funds held in tribal minors' trust accounts will be distributed as follows to tribal minors who have completed the required financial education course:

(a) First Disbursement. Tribal minors will receive a disbursement of thirty percent (30%) of the funds upon occurrence of the first of the following events:

(i) Upon the tribal minor's eighteenth (18th) birthday, if the tribal minor has already received his or her high school diploma or GED;

(ii) Upon the tribal minor receiving a high school diploma or

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GED following his or her eighteenth (18th) birthday; or

(iii) Upon the tribal minor's nineteenth (19th) birthday, if the tribal minor has not received his or her high school diploma or GED.

(b) Second Disbursement. Upon the tribal minor's twenty-third (23rd) birthday, tribal minors will receive his or her second disbursement as follows:

(i) Tribal minors who have completed trade school or higher education will receive a disbursement of 40% of the funds.

(ii) Tribal minors who have not completed trade school or higher education will receive a disbursement of 20% of the funds.

(c) Third Disbursement. Upon the tribal minor's twenty-seventh (27th) birthday, he or she will receive a final disbursement of the remaining funds.

(d) The first month following his or her twenty-seventh (27th) birthday as set out above, the now adult tribal member shall receive his or her per capita distribution amount on the same basis as every other adult tribal member in addition to the account asset balance distribution process set forth herein.

(2) Funds Held for Adults Under Disability. In the event a court of competent jurisdiction determines that an adult is no longer subject to a legal disability and

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releases the adult from the custody of a guardian, conservator or institution, the Trust Officer shall disburse all distribution funds held in trust for the benefit of that member. The applicant shall submit the Order that released the applicant from disability, along with a notarized application in writing to the Trust Officer, who shall have thirty (30) days to review and process the application.

(h) **Incarcerated Individuals.**

(1) A presumption shall exist for any adult enrolled tribal member eligible for a distribution that such member is entitled to receive a distribution on the distribution date, and that the distribution shall be sent to the current address on file for the member. However, incarcerated tribal members may require additional or alternative arrangements because of the various institutions' regulations and/or policies. The Trust Officer may, in his/her discretion, allow the following:

(a) Submission of an address and instructions to facilitate the deposit of funds into a state, federal, or local institution's "trust" or similar account for the deposit of funds to be credited to and used by the incarcerated tribal member.

(1) This address may be in addition to the incarcerated Tribal Member's regular address (at which the member receives tribal correspondence, election materials, etc.).

(2) The incarcerated member must submit their written request

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to the Tribal Accounting Department, in writing with an original signature, two weeks prior to any one time non-gaming revenue distribution and the twelve (12th) of each month for gaming per capita distributions.

(b) Submission of an original notarized Power of Attorney for Distributions, in the form approved by the Trust Officer, along with the address for the person named in the Power of Attorney.

(1) This address may be in addition to the incarcerated Tribal Member's regular address (at which the member receives tribal correspondence, election materials, etc.).

(2) The incarcerated member must submit, in writing with an original signature, a copy of the validly executed Power of Attorney and the member's request to honor the Power of Attorney to Hoh Accounting.

(c) An incarcerated member may, in writing, inform the Trust Officer of his/her incarceration and request the Trust Officer to hold their distribution funds in the Unclaimed Funds account, subject to the requirements of sub-section (i) below.

(2) In all circumstances, the Hoh Tribe shall have no responsibility for the use or disposition of distribution funds after the Hoh Tribe distributes the funds in accordance with this section.

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(i) **Unclaimed Account Funds.** The Trust Officer shall establish an Unclaimed Distribution Funds account. If an adult tribal member, not under any disability, fails to claim a disbursement check distributed under this Ordinance within 180 days or if an incarcerated Tribal member requests that his/her distribution check be held pursuant to sub-section (h)(1)(c) above, the funds shall be moved to the Unclaimed Distribution Funds account. The Trust Officer shall cause the names of the tribal members with funds in the Unclaimed Distribution Funds account to be published in the Hoh Newsletter annually. Upon receipt of a complete notarized application requesting distribution of the funds to the owner, the Trust Officer shall disburse the funds, which will consist of the principal amounts deposited into Unclaimed Funds pursuant to the applicable resolution(s) (and not including any interest thereon) to that tribal member. If such funds are not claimed within five (5) years of the date they were distributed, such funds will be deposited into the Excess Pledge Revenues member distribution funds for redistribution at the next regular distribution.

(j) **Reissuance of per capita checks.** The Trust Officer may deduct any fees related to the costs associated with issuing replacement checks to Tribal members who loose per capita checks and ask for a replacement check from the Tribe. The first time a tribal member requests a replacement check, the Trust Officer may deduct the fees charged by the financial institution for stop payment on the original check and fees associated with reissuing a per capita check from the tribal member's per capita payment. For each subsequent request for the tribal member, in addition to the fees outlined above, the Trust Officer may also deduct a fee to pay the tribal administration's costs for reissuing the check provided that such administration fee will not

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exceed \$40.00.

§ 4.104 ATTACHMENT OF DISTRIBUTION MONIES

(a) Unless otherwise authorized by Hoh Tribal Ordinance(s), monies held by the Tribe or Trust Officer for distribution to eligible enrolled tribal members shall not be subject to attachment while in possession of the Tribe.

(b) The availability of attachment and/or offset of assets of enrolled tribal members is strictly limited to debts owed to the Tribe including but not limited to tribal court fees, tribal court judgments, tribal housing debts, tribal government travel, bank fees related to monthly per capita distributions, child support orders, or debts owed to the Internal Revenue Service.

(c) The Hoh Tribe shall have first priority if it is exercising offset, and child support shall have second priority.

(d) **Offset of Funds for Debts Owed to Tribe:** If an enrolled tribal member is not current in his or her payments on a debt owed to the Tribe or Tribal entity, the Tribe may request the Tribal Court to order an offset of his or her per capita distributions to the extent needed to pay the debt.

(1) Upon request for an offset to pay debt owed to the Tribe, the Tribal Court shall send a 14-day Notice of Intent to Offset and any form(s) developed to protest the offset to the tribal member.

(2) A tribal member who contests the validity of any request for an offset to pay debt owed to the Tribe shall file a protest to the Tribal Court to obtain relief.

(3) The Tribe and Trust Officer shall have no responsibility to take any

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independent action with regard to a tribal member's protest of the request for offset, except that the Department or Tribal entity responsible for the request for offset shall gather and submit a brief explanation and supporting evidence showing the basis for the debt owed to the Tribe.

(4) The Tribal Court shall consider the Tribal member's Protest and the information submitted by the Tribal Department requesting the offset. Based on the information before it, the Tribal Court may, in its discretion:

- a) Grant an offset of up to 30% of the tribal member's total distribution payment as requested by the Tribe; or
- b) Increase or decrease the amount originally submitted as the requested offset, taking into consideration the facts and argument before the Court.

(e) **Attachment of Funds for Debts Owed to Other Entities:** Upon request of an entity other than the Tribe for an attachment of assets, the Trust Officer shall first ascertain whether attachment is available pursuant to sub-section (b) above. If it is, the Trust Officer shall refer the request, along with any supporting documentation, to the Tribal Court.

(1) Upon receipt of a request for attachment, the Tribal Court shall send a 14-day Notice of Intent to Attach Per Capita Funds and any form(s) developed to Protest the Attachment to the tribal member.

(2) A tribal member who contests the validity of any non-Tribal request for an attachment, or who believes that he or she will be unfairly harmed by an

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attachment and having taken steps to mitigate that harm, shall file a protest to the Tribal Court to obtain relief. The types of harm contemplated by this section include, but are not limited to, tribal members whose public benefits will be severely cut even though the tribal member took steps to mitigate the cuts (for example, some programs will take into account the once-yearly per capita distribution so that each monthly benefit is decreased slightly, instead of being curtailed completely in the distribution month). A tribal member may also request that the Court consider ordering a decreased attachment, even when the tribal member does not contest the validity of the request, where the tribal member can show an equitable basis for the request. For example, a tribal member may acknowledge that child support or federal taxes are due, but may show the Court that he or she has made regular payments and has an extraordinary current need for the per capita funds at issue.

(3) The Tribe and Trust Officer shall have no responsibility to take any independent action with regard to a tribal member's protest of the request for attachment from another entity.

(4) The Tribal Court shall consider the Tribal member's Protest and the information submitted by any party at the date and time set by the Tribal Court for hearing, and shall weigh the evidence and argument according to the Court's discretion, and shall make an order taking into account the following:

(a) A tribal member who files a good-faith Protest under sub-section 2

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of this section shall receive no less than 25% of their per-capita distribution remaining after off-set of any amounts due to the Tribe under sub-section(d), even if the Court does not otherwise find in favor of their protest.

(f) Upon receipt of a certified court order from a court of competent jurisdiction attaching assets of an enrolled tribal member limited to child support orders, debts owed to the Tribe, or debts owed to the Internal Revenue Service, the Trust Officer shall forward per capita distribution monies belonging to the tribal member subject to such order to the person or entity designated therein in an amount, if available, sufficient to satisfy the order.

§ 4.105 TAXATION OF DISTRIBUTION MONIES

The Tribe shall not deduct taxes – federal, state, tribal or otherwise – when monies are distributed to enrolled tribal members under this Ordinance, except as required by duly-promulgated United States Internal Revenue Service regulations. It shall be the responsibility of each tribal member, and of the Trust Officer in appropriate circumstances, to decide whether to pay taxes on monies distributed to enrolled tribal members under this Ordinance, and to actually pay such taxes, and a statement to this effect shall be included when any monies are disbursed to tribal members pursuant to this Ordinance.

§ 4.106 ENFORCEMENT

The Trust Officer shall have authority to petition the Tribal Court to determine any dispute or issue which may arise under this Ordinance, in his or her discretion, and the Tribal Court shall have original jurisdiction over such petitions.

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Except as otherwise specified in this Ordinance, the Hoh Tribal Court shall have exclusive jurisdiction to resolve disputes concerning the allocation of net gaming revenues and the distribution of per capita funds. The Tribal Court may overturn a decision only if it finds that the decision was arbitrary and capricious or an abuse of discretion.

§ 4.107 SEVERABILITY

It is the Business Committee's intent that if any provision of this Ordinance shall be found unconstitutional under the Hoh Constitution or found to be a violation of the Indian Civil Rights Act, that the remainder of this Ordinance shall remain in effect.