

### § 15.3

### 25 CFR Ch. I (4–1–01 Edition)

any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

*Probate clerk* means a BIA or tribal employee who is responsible for processing a probate package.

*Probate specialist* means the BIA or tribal employee who is trained in Indian probate matters.

*Restricted land* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Superintendent or Field Representative* means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

*Testate* means the decedent executed a will before his death.

*Trust cash assets* means the funds held in an IIM account.

*Trust land* means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

*Vendor or Creditor* means any individual or company who submits a claim for payment from a decedent's estate.

*We/Us* means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

*Will* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

*You/I* means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

#### § 15.3 Will the Secretary probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

#### § 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C for details);

(c) We refer the completed probate package to a deciding official in the BIA or the OHA (see subpart D for details);

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account (see subparts D and E for details).

### Subpart B—Starting the Probate Process

#### § 15.101 How do I begin the BIA probate process?

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death. You must provide a certified copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper; or

(b) Any other document that we accept that verifies the death, such as a church record or a court record; and

(c) An affidavit of death prepared by the tribe with whom the decedent was