

SUBCHAPTER C—PROBATE

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

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Cross Reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five Civilized Tribes, see Title 25 Code of Federal Regulations, Part 115.

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Subpart A—Introduction

§ 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to initiate the probate of the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by BIA, and how probates will be sent to the OHA for disposition.

§ 15.2 What terms do I need to know?

Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property and money. This term also means any office of a tribe that has contracted or compacted the BIA probate function under 25 U.S.C. 450f or 458cc.

ALJ means an administrative law judge with the Office of Hearings and Appeals (OHA) appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105.

Attorney decision maker means an attorney with OHA who conducts an informal hearing and renders a decision in any probate case that does not require a formal hearing and a decision by an ALJ or Indian probate judge.

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Beneficiary means any individual who is designated in a decedent's will to receive trust or restricted property or money. The term includes both a devisee (someone who receives real property in a will) and a legatee (someone who receives personal property in a will).

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Codicil means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

Creditor means any individual or entity that submits a claim for payment from a decedent's estate.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Deciding official means an ALJ, Indian probate judge, or attorney decision maker.

Decision or order means a written document issued by a deciding official making determinations as to heirs, wills, beneficiaries, and creditors' claims, and ordering distribution of property and money.

Estate means the trust cash assets, restricted or trust lands, and other trust property owned by the decedent at the time of his or her death.

Form OHA-7 means a form used by OHA (or an automated database equivalent) to record data for heirship and family history and to provide information on any wills, trust and restricted property, adoptions, and names and addresses of all interested parties.

Formal hearing means a trial-type proceeding, conducted by an ALJ or Indian probate judge, in which evidence is obtained through the testimony of witnesses and the introduction of relevant documents.

Heir means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

IIM account means funds held in an individual Indian money (IIM) account by the Office of the Special Trustee for American Indians (OST) or by a tribe performing this function under a contract or compact.

Indian probate judge means an employee of OHA, other than an administrative law judge or attorney decision maker, to whom the Secretary has delegated authority to conduct hearings in probate cases in accordance with 43 CFR part 4, subpart D.

Informal hearing means a meeting convened by an attorney decision maker in which interested parties are asked to present relevant information on uncontested issues.

Interested party means any probable or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate means the decedent died without a valid will.

LTRO means the Land Titles and Records Office within BIA.

OHA means the Office of Hearings and Appeals, Department of the Interior.

OST means the Office of the Special Trustee for American Indians, Department of the Interior.

Probate means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of a decedent's estate is applied to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine beneficiaries;
- (3) Determine whether claims against the estate will be paid from trust funds; and
- (4) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities entitled by law to receive it.

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

Probate specialist means a 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 be alienated or encumbered by the owner only with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

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Secretary means the Secretary of the Interior or his or her authorized representative.

Testate means the decedent executed a valid will before his or her death.

Trust cash assets means the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.

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.

We or us means either an official of BIA or a tribe performing probate functions under a BIA contract or compact.

Will means a written testamentary document that was signed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

You or I means an interested party, as defined herein, with an interest in the decedent's trust 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 of this part for details);

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

(c) We refer the completed probate package to OHA for assignment to a deciding official (*see* subpart D of this part for details); and

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account and we make the distribution (*see* subpart D of this part 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.

(a) You should provide a certified copy of the death certificate, if one exists.

(b) If a death certificate does not exist, you should provide an affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that specifies what is known about the date and cause of the decedent's death. A copy of any supporting documents that may be available, such as an obituary or death notice or a church or court record, should be provided along with the affidavit.

§ 15.102 May I notify BIA of a death if I am not related to the decedent?

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

§ 15.103 When should BIA be notified of a death?

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

§ 15.104 What other documents does BIA need to prepare a probate package?

(a) You should provide us with the following documents and information

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before we can begin to process the probate package:

- (1) Social Security number of the decedent;
 - (2) The birth certificate or other record of birth of the decedent, if available;
 - (3) The death certificate or other reliable evidence of death as required by §15.101;
 - (4) A list of known creditors against the estate and their addresses;
 - (5) Current names and addresses of potential heirs and beneficiaries;
 - (6) Any statements renouncing an interest in the estate;
 - (7) Documents from a court of competent jurisdiction, including but not limited to:
 - (i) All marriage licenses of the decedent;
 - (ii) All divorce decrees of the decedent;
 - (iii) Adoption and guardianship records relevant to the decedent;
 - (iv) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;
 - (v) Any name changes; and
 - (vi) Any order requiring payment of child support;
 - (8) All originals or copies of wills and codicils, and any revocations; and
 - (9) Any additional documents you provide or that we request.
- (b) You must inform us if any of the documents or information identified in this part are not available.

§ 15.105 Will BIA wait to begin the probate process until it is notified of the decedent's death?

No, we will not wait to begin the probate process until we are notified of the decedent's death. If we find out about the death of a person, and if the decedent meets the criteria in §15.3, we will initiate the process to collect the necessary documentation. You should not assume that we will find out about a death. To assure timely distribution of the estate, you should notify us as provided in §15.101.

§ 15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?

(a) You may ask BIA for up to \$1,000 from the decedent's IIM account if:

- (1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;
- (2) You have an immediate need to pay for funeral arrangements before burial; and
- (3) The decedent's IIM account contains more than \$2,500 on the date of death.
 - (b) You must apply for assistance under paragraph (a) of this section and submit to BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.
 - (c) We may approve reasonable costs up to \$1,000 that are necessary for the burial services, taking into consideration:
 - (1) The total amount in the account;
 - (2) The number of probable heirs or beneficiaries of whom we are aware;
 - (3) The amount of any claims against the account of which we are aware; and
 - (4) The availability of non-trust funds, and any other relevant factor.
 - (d) We will make payments directly to the providers of the services.

§ 15.107 Who prepares an Indian probate package?

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package in consultation with the probable heirs or beneficiaries who can be located.

§ 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate package?

Unless otherwise provided by Federal law, the BIA agency that has jurisdiction over the tribe with the strongest association with the decedent will serve as the home agency and will prepare the probate package if the decedent either:

- (a) Was not an enrolled member of a tribe, but owns interests in trust or restricted property; or
- (b) Was a member of more than one tribe.

Subpart C—Preparing the Probate Package

§ 15.201 What will BIA do with the documents that I provide?

Once we receive the documents that you provide us under §15.104, the probate specialist or probate clerk will:

- (a) Use the documents to prepare a probate package; and
- (b) Consult with you and any other sources to obtain any additional information needed for a complete package.

§ 15.202 If the decedent owed me money, how do I file a claim against the estate?

(a) If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt. The statement must show the amount of the original debt and the remaining balance on the date of the decedent's death.

(b) The itemized statement must state whether you have filed a claim against the decedent's non-trust assets.

(c) We must receive your claim within 60 days from the date we received the verification of the decedent's death in §15.101 to include the claim as part of the probate package.

§ 15.203 What must the complete probate package contain?

The complete probate package must contain all of the following:

- (a) A certified copy of the death certificate, or if one does not exist, some other reliable evidence of death as required by §15.101;
- (b) A completed Form OHA-7, "Data for Heirship Findings and Family History," certified by BIA, with the enrollment or other identifying number shown for each potential heir or beneficiary, if such number has been assigned;
- (c) A certified inventory of trust or restricted real property;
- (d) A statement describing all income generating activity;
- (e) A copy of the decedent's IIM account ledger showing the balance of the account at the date of death and the balance of the account at the date of probate package submission;

(f) All original or certified copies of wills, codicils, and any revocations of wills or codicils;

(g) Any statements renouncing interest that have been submitted to the agency;

(h) Claims of creditors against the estate, date stamped to show when the agency received them;

(i) All documentation of payment of claims before the probate proceeding;

(j) All other documents required in §15.104;

(k) Tribal options to purchase interests of a decedent;

(l) Affidavit of the probate clerk or probate specialist describing what efforts have been made to locate any missing probable heirs and beneficiaries; and

(m) Any other documentation that may be required at the time of probate proceedings.

Subpart D—Probate Processing and Distributions

§ 15.301 What happens after BIA prepares the probate package?

(a) After we have assembled all the documents required by §15.203, a probate specialist will refer the case to OHA for assignment to a deciding official.

(b) At the same time the probate specialist refers the case to OHA, we will notify all interested parties of:

(1) The right of the probable heirs or beneficiaries to request a formal hearing before an ALJ or Indian probate judge;

(2) The identification of the probable legal heirs or the submission of an original or certified copy of a will or revocation and listed beneficiaries;

(3) Any known claims against the estate; and

(4) The address of the OHA office where the probate package has been sent.

(c) We will send the notice described in paragraph (b) of this section by regular mail. It will inform the probable heirs or beneficiaries that:

(1) They may ask OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available),

or a decision based on documents in the probate package; and

(2) If they do not request a formal hearing, the probate case may be assigned to an attorney decision maker, who will convene an in-person informal hearing at a site convenient to most of the parties.

§ 15.302 What happens after the probate package is referred to OHA?

After OHA receives the probate package, it will assign the case to a deciding official, who will conduct the probate proceeding and issue a written decision or order in accordance with 43 CFR part 4, subpart D.

§ 15.303 What happens after the probate decision is made?

(a) We will not pay claims, transfer title to land, or distribute trust cash assets for 75 days after the final OHA decision or order is mailed to the interested parties.

(b) If an interested party files a timely request for de novo review, a request for rehearing, or an appeal in accordance with 43 CFR part 4, subpart D, we will not pay claims, transfer title to land, or distribute trust cash assets until the request or appeal is resolved.

(c) After 75 days, if no request for de novo review, request for rehearing, or appeal has been filed, or after any request or appeal has been resolved, the following actions will take place:

(1) The LTRO will change its land title records for the trust and restricted property in accordance with the final decision or order; and

(2) OST will pay claims and distribute the IIM account in accordance with the final decision or order.

Subpart E—Information and Records

§ 15.401 How can I find out the status of a probate?

You may request information about the status of an Indian probate from any BIA agency or regional office.

§ 15.402 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to Public Law 93-638 as amended; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records are the property of the tribe if they are:

(1) Not covered by paragraph (a) of this section; and

(2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

§ 15.403 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that has records identified in § 15.402(a):

(1) Must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33; and

(2) Is subject to inspection by the Secretary and the Archivist of the United States with respect to these records and related records management practices and safeguards required under the Federal Records Act.

(b) A tribe or tribal organization should preserve the records identified in § 15.402(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. Chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

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