

## SUBCHAPTER C—PROBATE

### PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE OSAGE NATION AND THE FIVE CIVILIZED TRIBES

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

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, and part 30; 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?

(a) This part contains the procedures that we follow to initiate the probate of the trust estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personalty. This part tells you how to file the necessary documents to probate the trust estate. This part also

## § 15.2

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describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of Hearings and Appeals (OHA) for disposition.

(b) The following provisions do not apply to Alaska property interests:

- (1) Section 15.202(c), (d), (e)(2), (n), and (o); and
- (2) Section 15.401(b).

### § 15.2 What definitions do I need to know?

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Pub. L. 108–374, as codified at 25 U.S.C. 2201 *et seq.*

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

*Affidavit* means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

*Agency means:*

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*Attorney Decision Maker (ADM)* means an attorney with OHA who conducts a summary probate proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

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

*Child* means a natural or adopted child.

*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.

*Consolidation agreement* means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered

during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

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

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order (or decision and order)* means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is dead by reason of unexplained absence.

*Department* means the Department of the Interior.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Eligible heir* means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are any of the following:

(1) Indian;

(2) Lineal descendants within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting—by descent, renunciation, or consolidation agreement—another trust or restricted interest in such parcel from the decedent.

*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.