

Subpart B—Commencement of Probate Proceedings

§ 30.110 When does OHA commence a probate case?

OHA commences probate of a trust estate when OHA receives a probate file from the agency.

§ 30.111 How does OHA commence a probate case?

OHA commences a probate case by confirming the case number assigned by BIA, assigning the case to a judge or ADM, and designating the case as a summary probate proceeding or formal probate proceeding.

§ 30.112 What must a complete probate file contain?

A probate file must contain the documents and information described in 25 CFR 15.202 and any other relevant information.

§ 30.113 What will OHA do if it receives an incomplete probate file?

If OHA determines that the probate file received from the agency is incomplete or lacks the certification described in 25 CFR 15.204, OHA may do any of the following:

- (a) Request the missing information from the agency;
- (b) Dismiss the case and return the probate file to the agency for further processing;
- (c) Issue a subpoena, interrogatories, or requests for production of documents as appropriate to obtain the missing information; or
- (d) Proceed with a hearing in the case.

§ 30.114 Will I receive notice of the probate proceeding?

(a) If the case is designated as a formal probate proceeding, OHA will send a notice of hearing to:

- (1) Potential heirs and devisees named in the probate file;
- (2) Those creditors whose claims are included in the probate file; and
- (3) Other interested parties identified by OHA.

(b) In a case designated a summary probate proceeding, OHA will send a notice of the designation to potential heirs and devisees and will inform

them that a formal probate proceeding may be requested instead of the summary probate proceeding.

§ 30.115 May I review the probate record?

After OHA receives the case, you may examine the probate record at the relevant office during regular business hours and make copies at your own expense. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

Subpart C—Judicial Authority and Duties

§ 30.120 What authority does the judge have in probate cases?

A judge who is assigned a probate case under this part has the authority to:

- (a) Determine the manner, location, and time of any hearing conducted under this part, and otherwise to administer the cases;
- (b) Determine whether an individual is deemed deceased by reason of extended unexplained absence or other pertinent circumstances;
- (c) Determine the heirs of any Indian or eligible heir who dies intestate possessed of trust or restricted property;
- (d) Approve or disapprove a will disposing of trust or restricted property;
- (e) Accept or reject any full or partial renunciation of interest in either a testate or intestate proceeding;
- (f) Approve or disapprove any consolidation agreement;
- (g) Conduct sales at probate and provide for the distribution of interests in the probate decision and order;
- (h) Allow or disallow claims by creditors;
 - (i) Order the distribution of trust property to heirs and devisees and determine and reserve the share to which any potential heir or devisee who is missing but not found to be deceased is entitled;
 - (j) Determine whether a tribe has jurisdiction over the trust or restricted property and, if so, the right of the tribe to receive a decedent's trust or restricted property under 25 U.S.C. 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV), or other applicable law;