

after the mailing of the notice of the summary probate.

§ 30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?

Yes. Interested parties who are devisees or eligible heirs have 30 days after the mailing of the notice to file a written request for a formal probate hearing.

§ 30.204 What must a summary probate decision contain?

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with a proposed decision and order for distribution. The judge or ADM must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The decision must satisfy the requirements of this section.

(a) Each decision must contain one of the following:

(1) If the decedent did not leave heirs or devisees a statement to that effect; or

(2) If the decedent left heirs or devisees:

(i) The names of each heir or devisee and their relationships to the decedent;

(ii) The distribution of shares to each heir or devisee; and

(iii) The names of the recipients of renounced or disclaimed interests.

(b) Each decision must contain all of the following:

(1) Citations to the law of descent and distribution under which the decision is made;

(2) A statement allowing or disallowing claims against the estate under this part, and an order directing the amount of payment for all approved claims;

(3) A statement approving or disapproving any renunciation;

(4) A statement advising all interested parties that they have a right to seek de novo review under § 30.205, and that, if they fail to do so, the decision will become final 30 days after it is mailed; and

(5) A statement of whether the heirs or devisees are:

(i) Indian;

(ii) Non-Indian but eligible to hold property in trust status; or

(iii) Non-Indian and ineligible to hold property in trust status.

(c) In a testate case only, the decision must contain a statement that:

(1) Approves or disapproves a will;

(2) Interprets provisions of the approved will; and

(3) Describes the share each devisee is to receive, subject to any encumbrances.

§ 30.205 How do I seek review of a summary probate proceeding?

(a) If you are adversely affected by the written decision in a summary probate proceeding, you may seek de novo review of the case. To do this, you must file a request with the OHA office that issued the decision within 30 days after the date the decision was mailed.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

(1) The name of the decedent;

(2) A description of your relationship to the decedent;

(3) An explanation of what errors you allege were made in the summary probate decision; and

(4) An explanation of how you are adversely affected by the decision.

§ 30.206 What happens after I file a request for de novo review?

(a) Within 10 days of receiving a request for de novo review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the de novo review, and assign the case to a judge.

(b) The judge will review the merits of the case, conduct a hearing as necessary or appropriate under the regulations in this part, and issue a new decision under this part.

§ 30.207 What happens if nobody files for de novo review?

If no interested party requests de novo review within 30 days of the date of the written decision, it will be final for the Department. OHA will send:

(a) The complete original record and the final order to the agency that prepared the probate file; and

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(b) A copy of any relevant portions of the record to any other affected agency.

Subpart J—Formal Probate Proceedings

NOTICE

§ 30.210 How will I receive notice of the formal probate proceeding?

OHA will provide notice of the formal probate proceeding under §30.114(a) by mail and by posting. A posted and published notice may contain notices for more than one hearing, and need only specify the names of the decedents, the captions of the cases and the dates, times, places, and purposes of the hearings.

(a) The notice must:

- (1) Be sent by first class mail;
- (2) Be sent and posted at least 21 days before the date of the hearing; and
- (3) Include a certificate of mailing with the date of mailing, signed by the person mailing the notice.

(b) A presumption of actual notice exists with respect to any person to whom OHA sent a notice under paragraph (a) of this section, unless the notice is returned by the Postal Service as undeliverable to the addressee.

(c) OHA must post the notice in each of the following locations:

- (1) Five or more conspicuous places in the vicinity of the designated place of hearing; and
- (2) The agency with jurisdiction over each parcel of trust or restricted property in the estate.

(d) OHA may also post the notice in other places and on other reservations as the judge deems appropriate.

§ 30.211 Will the notice be published in a newspaper?

The judge may cause advance notice of hearing to be published in a newspaper of general circulation in the vicinity of the designated place of hearing. The cost of publication may be paid from the assets of the estate under §30.144.

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§ 30.212 May I waive notice of the hearing or the form of notice?

You may waive your right to notice of the hearing and the form of notice by:

- (a) Appearing at the hearing and participating in the hearing without objection; or
- (b) Filing a written waiver with the judge before the hearing.

§ 30.213 What notice to a tribe is required in a formal probate proceeding?

(a) In probate cases in which the decedent died on or after June 20, 2006, the judge must notify any tribe with jurisdiction over the trust or restricted land in the estate of the pendency of a proceeding.

(b) A certificate of mailing of a notice of probate hearing to the tribe at its record address will be conclusive evidence that the tribe had notice of the decedent's death, of the probate proceedings, and of the right to purchase.

§ 30.214 What must a notice of hearing contain?

The notice of hearing under §30.114(a) must:

- (a) State the name of the decedent and caption of the case;
- (b) Specify the date, time, and place that the judge will hold a hearing to determine the heirs of the decedent and, if a will is offered for probate, to determine the validity of the will;
- (c) Name all potential heirs of the decedent known to OHA, and, if a will is offered for probate, the devisees under the will and the attesting witnesses to the will;
- (d) Cite this part as the authority and jurisdiction for holding the hearing;
- (e) Advise all persons who claim to have an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing to preserve the right to present evidence at the hearing;
- (f) Include notice of the opportunity to consolidate interests at the probate hearing, including that the heirs or