

§ 4.204

(c) If an OHA deciding official determines under paragraph (a) of this section that a person did not exist or that more than one allotment was issued to the same person, the OHA deciding official must issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

§ 4.204 Presumption of death.

(a) An OHA deciding official will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an OHA deciding official determines that an Indian person possessed of trust property is to be presumed dead, the OHA deciding official must proceed as provided in § 4.202.

§ 4.205 Escheat.

An OHA deciding official will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a.

(b) With respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

§ 4.206 Determinations of nationality or citizenship and status affecting character of land titles.

In cases where the right and duty of the Government to hold property in trust depends thereon, an OHA deciding official will determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated in current probate proceedings or in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

§ 4.207 Compromise settlement.

(a) If during the course of the probate of an estate it develops that an issue

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between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the OHA deciding official upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the OHA deciding official may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers must supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the OHA deciding official will issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order will be construed as any other order of distribution establishing title in heirs and devisees and will not be construed as a partition or sale transaction within the provisions of 25 CFR part 152. If land titles are to be transferred, the necessary deeds must be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the OHA deciding official will settle the issues and enter an order as if no agreement had been attempted.

(d) OHA deciding officials are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

§ 4.208 Renunciation of interest.

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust

or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the OHA deciding official prior to entry of the final order by the OHA deciding official. No interest in the property so renounced is considered to have vested in the heir or devisee and the renunciation is not considered a transfer by gift of the property renounced, but the property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in accordance herewith will be considered accepted when implemented in an order by an OHA deciding official and will be irrevocable thereafter. All disclaimers or renunciations heretofore filed with and implemented in an order by an OHA deciding official are hereby ratified as valid and effective.

COMMENCEMENT OF PROBATE
PROCEEDINGS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.210 Commencement of probate.

The probate of a trust estate before an OHA deciding official will commence when the probate specialist or BIA deciding official files with the OHA deciding official all information shown in the records relative to the family of the deceased and his or her property. The information must include the complete probate package described in 25 CFR 15.104 and 15.202 and any other relevant information. The agency or BIA deciding official must promptly transmit to the OHA deciding official any creditor's or other claims that are received after the case is transmitted to the OHA deciding official, for a determination of their timeliness, validity, priority, and allowance under §§ 4.250 and 4.251.

§4.211 Notice.

(a) An OHA deciding official may receive and hear evidence at a hearing to determine the heirs of a deceased Indian or probate his or her will only after the OHA deciding official has caused notice of the time and place of the hearing to be posted at least 20

days prior to the hearing date in five or more conspicuous places in the vicinity of the designated place of hearing, and the OHA deciding official may cause postings in such other places and reservations as he or she deems appropriate. A certificate showing the date and place of posting must be signed by the person or official who performs the act.

(b) The OHA deciding official must serve or cause to be served a copy of the notice on each party in interest known to the OHA deciding official and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his or her last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The OHA deciding official must cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

(c) All parties in interest, known and unknown, including creditors, will be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice will arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the office of the OHA deciding official unclaimed by the addressee.

(d) Tribes to be charged with notice of death and probate. When a record reveals that a Tribe has a statutory option to purchase interests of a decedent, such Tribe must be notified of the pendency of a proceeding by the the OHA deciding official having probate jurisdiction in such proceeding, and the certificate of mailing of notice of probate hearing or of a final decision in probate to the Tribe at its record address will be conclusive evidence for all purposes that the Tribe had notice of