

must furnish a valuation of the decedent's interests when the record reveals to the Superintendent:

(1) That the decedent owned interests in land located on one or more of those reservations designated in § 4.300 and

(2) That any one or more of the probable heirs or devisees, who may become a distributee of such interests upon completion of the probate proceeding, is not enrolled in or does not have the required blood quantum in the tribe of the reservation where the land is located to hold such interests against a claim thereto made by the tribe. If there is a surviving spouse whose interests may be subject to the tribal option, the valuation must include the value of a life estate based on the life of the surviving spouse in one half of such interests. The valuation must be made on the basis of the fair market value of the property, including fixed improvements, as of the date of decedent's death.

(b) BIA must submit the valuation report in the probate package submitted to the OHA deciding official. Interested parties may examine and copy, at their expense, the valuation report at the office of the Superintendent or the OHA deciding official.

§ 4.302 Conclusion of probate and tribal exercise of statutory option.

(a) Conclusion of probate; findings in the probate decision. When a decedent is shown to have owned land interests in any one or more of the reservations mentioned in the statutes enumerated in § 4.300, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors will first be concluded as final for the Department in accordance with §§ 4.200 through 4.282 and §§ 4.310 through 4.323. This decision will be referred to herein as the "probate decision." At the probate hearing a finding must be made on the record showing those interests in land, if any, which are subject to the tribal option. The finding must be reduced to writing in the probate decision setting forth the apparent rights of the tribe as against affected heirs or devisees and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-

half of such interests. If the finding is that there are no interests subject to the tribal option, the decision must so state. A copy of the probate decision, to which must be attached a copy of the valuation report, must be distributed to all parties in interest in accordance with §§ 4.201 and 4.240.

(b) Tribal exercise of statutory option. A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days from the date of the probate decision unless a petition for rehearing or a demand for hearing has been filed in accordance with § 4.304 or 4.305. If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may not, however, claim an interest less than the decedent's total interest in any one individual tract. The tribe must file a written notice of purchase with the Superintendent, together with the tribe's certification that copies thereof have been mailed on the same date to the OHA deciding official and to the affected heirs or devisees. Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

§ 4.303 Notice by surviving spouse to reserve a life estate.

When the heir or devisee whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such interests. The spouse must file a written notice to reserve with the Superintendent within 30 days after the tribe has exercised its option to purchase the interest in question, together with a certification that copies thereof have been mailed on the same date to the OHA deciding official and the tribe. Failure to timely file a notice to reserve a life estate will constitute a waiver thereof.

§ 4.304 Rehearing.

Any party in interest aggrieved by the probate decision may, within 60