

## Bureau of Indian Affairs, Interior

## § 15.2

Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five Civilized Tribes, see Title 25 Code of Federal Regulations, Part 115.

SOURCE: 66 FR 7089, Jan. 22, 2001, unless otherwise noted.

### Subpart A—Introduction

#### § 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to initiate the probate of the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by the BIA, and how probates may be sent to the OHA for disposition.

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

*ALJ* means an administrative law judge or other employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom authority has been conferred by the Secretary to conduct hearings in accordance with 43 CFR Part 4 Subpart D.

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

*IIM account* means Individual Indian Money Account.

*LTRO* means the Land Titles and Records Office within the BIA.

*OHA* means the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

*OTFM* means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*Agency* means the agency office or any other designated office in the BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the BIA probate function under 25 U.S.C. § 450f or 25 U.S.C. § 458cc.

*Attorney decision maker* means an attorney with the BIA, who reviews a probate package, determines heirs, approves wills and beneficiaries of the will, determines creditors claims, and issues a written decision.

*Beneficiary* means any individual who receives trust or restricted property or money in a decedent's will.

*Day* means a calendar day, unless otherwise stated.

*Decedent* means a person who is deceased.

*Deciding official* means the official with the delegated authority to make a decision on a probate matter, and may include a BIA regional director, agency superintendent, field representative, or attorney decision maker (BIA deciding official); or an OHA ALJ or other OHA designated official (OHA deciding official).

*Decision/order* means a written document issued by the deciding official determining heirs, approving wills and beneficiaries of the will, approving creditors claims, and ordering distribution of property and money.

*Domicile* means the legal residence of the person.

*Estate* means the trust cash assets, restricted or trust lands owned by the decedent at the time of his death.

*Form OHA-7* means a form issued by the OHA which lists data for heirship and family history, and provides information on any wills, trust and restricted property, adoptions, names and addresses of all interested parties.

*Heir* means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

*IIM account* means funds held in an individual Indian monies account by the OTFM or a tribe performing this function under a contract or compact.

*Interested parties* means any probable or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

*Intestate* means the decedent died without a will.

*Minor* means an individual that has not reached age of majority as defined by the applicable tribal or state law.

*Probate* means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of the decedent's estate is applied to: (1) determine the heirs; (2) approve wills and beneficiaries; and (3) transfer

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any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

*Probate clerk* means a BIA or tribal employee who is responsible for processing a probate package.

*Probate specialist* means the BIA or tribal employee who is trained in Indian probate matters.

*Restricted land* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Superintendent or Field Representative* means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

*Testate* means the decedent executed a will before his death.

*Trust cash assets* means the funds held in an IIM account.

*Trust land* means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

*Vendor or Creditor* means any individual or company who submits a claim for payment from a decedent's estate.

*We/Us* means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

*Will* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

*You/I* means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

#### § 15.3 Will the Secretary probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

#### § 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C for details);

(c) We refer the completed probate package to a deciding official in the BIA or the OHA (see subpart D for details);

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account (see subparts D and E for details).

### Subpart B—Starting the Probate Process

#### § 15.101 How do I begin the BIA probate process?

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death. You must provide a certified copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper; or

(b) Any other document that we accept that verifies the death, such as a church record or a court record; and

(c) An affidavit of death prepared by the tribe with whom the decedent was