

§ 15.108

§ 15.108 What agency prepares the probate package if the decedent was not an enrolled member of a tribe or is a member of more than one tribe?

(a) If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, the agency that has jurisdiction over the tribe with the strongest association with the decedent will prepare the probate package, unless otherwise provided by federal law.

(b) If the decedent was is a member of more than one tribe, the agency that has jurisdiction over the tribe with the strongest association with the decedent will prepare the probate package, unless otherwise provided by federal law.

§ 15.109 Can a probable heir or beneficiary give up his/her interest in trust or restricted lands or trust funds?

Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, you must file a statement renouncing your interest with the BIA or the OHA before the deciding official issues an order.

(a) If you are a non-Indian and 21 years or older, you may give up all or part of your interest by submitting a notarized statement in which you renounce your interest in the estate.

(b) If you are an Indian and 21 years or older and you wish to give up all or part of your interest in the estate, we must refer your request to the OHA in accordance with 43 CFR 4.208.

Subpart C—Preparing the Probate Package

§ 15.201 What will the BIA do with the documents that I provide?

Once we receive the documents that you provide us under § 15.105, the probate specialist or probate clerk will:

(a) Use the documents to prepare a probate package; and

(b) Consult with you and any other sources to obtain any additional information needed for a complete package.

25 CFR Ch. I (4–1–03 Edition)

§ 15.202 What must the complete probate package contain?

The complete probate package must contain all of the following:

(a) A certified copy of the death certificate, if one exists, or some other reliable evidence of death as required by § 15.101;

(b) A completed Form OHA-7, “Data for Heirship Findings and Family History,” certified by the BIA;

(c) A certified inventory of trust or restricted real property;

(d) A statement describing all income generating activity;

(e) A copy of the decedent’s IIM account ledger showing:

(1) The balance of the account at the date of death; and

(2) The balance of the account at the date of probate package submission;

(f) All original or certified copies of wills, codicils and any revocations of wills or codicils;

(g) Any statements renouncing interest that have been submitted to the agency;

(h) Claims of creditors against the estate;

(i) All documentation of payment of claims paid prior to probate proceeding;

(j) All other documents required in § 15.105;

(k) Tribal options to purchase interests of a decedent;

(l) Affidavit of the probate clerk or probate specialist that all efforts to locate the probable heirs and beneficiaries have been exhausted; and

(m) Any other documentation that may be required at the time of probate proceedings.

§ 15.203 What happens after the BIA prepares the probate package?

Within 30 days after all the documents required by § 15.105 and § 15.202 are received, a probate specialist will review the probate package and determine who will be the appropriate deciding official.

(a) If the decedent’s estate contains only trust cash assets of a value less than \$5,000 not including any interest that may have accrued after the death of the decedent, the probate package may be processed in accordance with § 15.206 and may be referred to a BIA

Bureau of Indian Affairs, Interior

§ 15.206

deciding official subject to the provisions in § 15.205.

(b) All other probate cases will be referred to a BIA attorney decision maker or an OHA deciding official subject to the provisions in § 15.205.

(c) We will notify all interested parties of:

(1) The right of the probable heirs or beneficiaries to request a formal hearing before an ALJ;

(2) The identification of the probable legal heirs; or

(3) The submission of an original or certified copy of a will or revocation and listed beneficiaries;

(4) Any known claims against the estate; and (5) The address of the designated office where the probate package has been sent.

(d) If the deciding official is at the BIA and you have not requested a formal hearing before an ALJ, the probate specialist will send the probate package to the BIA deciding official within 30 days after the date the probate specialists mailed the notice to you.

(e) If the deciding official is at the OHA, then we will send the probate package to the OHA deciding official and notify the probable heirs that they may ask the OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available), or a decision based on documents in the probate package.

(f) On the same day that the probate specialist has determined who will be the designated deciding official, we will notify you of this determination by certified mail, return receipt requested.

§ 15.204 After the probate package has been sent to a BIA deciding official, may I still request a formal hearing with an ALJ?

Yes, you may request a formal hearing before an ALJ at any time up until the date the BIA deciding official renders a decision.

§ 15.205 When will the BIA refer a probate to the OHA?

We will refer a probate to the OHA under § 15.203(d) if the probate specialist determines that a referral is appropriate. In determining whether to refer a probate to the OHA, the probate

specialist will consider all of the criteria listed below:

(a) *Problems with the will.* The probate specialist will refer the probate package to the OHA if it appears that the will:

(1) Is likely to be contested;

(2) Is complex or ambiguous; or

(3) Is of questionable validity.

(b) *Contested claims.* The probate specialist will refer the probate package to the OHA if you:

(1) Contest a creditor claim; or

(2) Contest a claim made by a family member.

(c) *Other problems.* The probate specialist will refer the probate package to the OHA if it appears there are:

(1) Questions about family relationships;

(2) Conflict in prior probate orders;

(3) Problems with the evidence;

(4) Questions about adoption of an heir;

(5) Questions involving paternity;

(6) Presumptions of death;

(7) Rights of minor heirs that might be jeopardized;

(8) Disclaimers of interests by Indian probable heirs or beneficiaries;

(9) Determinations of escheat under 43 CFR § 4.205;

(10) Challenges to the jurisdiction of any court that issued an order that has been used as a supporting document; or

(11) Questions concerning the decedent's domicile.

(d) *Approval of settlement agreements.* The probate specialist will refer the case to the OHA if there is a settlement agreement between heirs or beneficiaries as to the disposition of the estate.

§ 15.206 Is there a summary process for distributing an estate with only trust cash assets?

Yes. Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, a decedent's estate that contains only trust cash assets of a value less than \$5,000 not including any interest that may have accrued after the death of the decedent, may be summarily processed by a BIA deciding official.

(a) Within 30 days after notice under § 15.203 has been sent, the probable heirs may request a formal hearing before an ALJ to determine the proper