

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

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distribution of the trust cash assets. Upon notice of a request for a formal hearing, the probate specialist will forward the probate package to the appropriate ALJ within five days.

(b) Within 60 days after notice under § 15.203 has been sent and if the probable heirs have not requested a formal hearing with an ALJ, the BIA deciding official to whom the probate has been referred will assemble the probable heirs and hold an informal hearing to determine the distribution of the trust cash assets.

(c) Within 30 days after the informal hearing, the BIA deciding official will prepare an order in accordance with § 15.302 through § 15.311.

(d) Any interested party may appeal a summary distribution decision in accordance with subpart E of this part.

### **Subpart D—Probate Processing, Claims and Distributions**

#### **§ 15.301 What does an attorney decision maker do with the probate package?**

(a) Upon receipt of the probate package, the attorney decision maker reviews the probate package and determines whether there are issues of fact or law of the case that indicate that the probate package should be referred to the OHA. If any issues of fact or law that require a hearing are apparent from the review of the case, the attorney decision maker will refer the probate package to the appropriate ALJ within five days.

(b) 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 distribution of the estate. Within five days of the receipt of notice of a request for a formal hearing, the attorney decision maker will forward the probate package to the appropriate ALJ.

(c) Within 120 days after the notice under § 15.203 has been sent and if the probable heirs have not requested a formal hearing with an ALJ, the attorney decision maker will assemble the probable heirs and hold an informal hearing to determine the distribution of the estate.

(d) Within 60 days after the informal hearing, the attorney decision maker

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will issue an written order in accordance with § 15.310.

#### **§ 15.302 What law is used by the deciding official to determine the distribution of the trust estate?**

Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, the law of the state where the decedent was domiciled will determine the distribution of the estate.

#### **§ 15.303 If the decedent owed me money, how do I file a claim against the estate?**

(a) If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt showing the amount of the original debt and the remaining balance on the date of the decedent's death.

(b) The itemized statement must state whether you have filed a claim against the decedent's non-trust assets.

(c) We must receive your claim within 60 days from the date the BIA receives the verification of the decedent's death in § 15.101 to be included as part of the probate package.

#### **§ 15.304 How does the BIA deciding official determine if a claim will be allowed and paid?**

(a) The BIA deciding official may direct the payment of some or all of the debts of the decedent after reviewing the probate package in accordance with the standards provided at 43 CFR 4.250 (c) through (g), and no claim prohibited by 43 CFR 4.250 will be paid.

(b) No claim will be paid from trust or restricted assets where the BIA deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

#### **§ 15.305 What claims will be paid first?**

(a) The first claims to be paid, referred to as priority claims, are paid in order of priority. The priority claims are:

- (1) Funeral expenses (including the cemetery marker);
- (2) Medical expenses for the last illness;
- (3) Nursing home or other care facility expenses;
- (4) A claim of an Indian tribe;