

Subpart E—Appeals

§ 15.401 May I appeal the decision of the BIA deciding official?

You have a right to appeal the decision made by the BIA deciding official if you are an interested party and are affected by the probate decision.

§ 15.402 How do I file an appeal of the decision/order?

(a) To file an appeal of the decision/order, you may send or deliver a signed, written statement to the BIA deciding official where the probate package was sent that contains:

- (1) The name of the decedent;
- (2) A description of your relationship to the decedent;
- (3) An explanation of why you are appealing; and
- (4) Any errors you believe the BIA deciding official made.

(b) Within ten days from the receipt of the appeal, the BIA deciding official will notify all other interested parties of the appeal and forward the case to the appropriate ALJ.

§ 15.403 How long do I have to file an appeal?

(a) You must send or deliver your written appeal within 60 days of the date that appears on the decision mailed to you. If you mail your appeal, it must be postmarked within 60 days of the date of the decision.

(b) If the 60-day appeal period is missed, you still have a right to file a written statement with the BIA deciding official asking to have the decision changed for one or more of the following reasons:

- (1) You did not receive notice of the probate;
- (2) You have obtained new evidence or information after the decision was made; or
- (3) You have evidence that was known at the time of the probate proceeding but was not included in the probate package.

(c) After we have received your request, we will forward it to the appropriate ALJ within ten days for action in accordance with 43 CFR Part 4, Subpart D.

§ 15.404 What will happen to the estate if an appeal is filed?

The BIA deciding official will refer your appeal to the appropriate ALJ in the same manner provided under 43 CFR § 4.210. Until the appeal has been resolved, the BIA will not distribute any of the decedent's property or modify the land title records and the OTFM will not pay claims or distribute any funds in the decedent's IIM account.

§ 15.405 How does the ALJ review a decision issued by a BIA deciding official?

The ALJ will conduct a *de novo* review; that is, conduct a formal hearing on the merits of the case.

Subpart F—Information and Records

§ 15.501 If I have a question about a probate that has been assigned to a BIA deciding official, may I contact the deciding official directly?

In order to avoid off-the-record communications with the BIA deciding official about your specific case that might be interpreted as an attempt to influence final decision on the probate case, you should direct your questions to the BIA deciding official's clerk or the probate specialist or probate clerk who prepared your probate package.

§ 15.502 How can I find out the status of a probate?

You may request information about the status of an Indian probate from any BIA agency or regional office.

§ 15.503 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

- (1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to Public Law 93–638 as amended; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

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(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 15.504 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 15.503(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 15.503(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, the tribe or tribal organization may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

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AUTHORITY: 5 U.S.C. 301 (Interprets or applies Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137,

see 25 U.S.C. 355nt (1970); Act of May 27, 1908, ch. 199, 35 Stat. 312, see 25 U.S.C. 355nt (1970); Act of June 14, 1918, ch. 101, 40 Stat. 606, 25 U.S.C. 355, 375 (1970); Act of Apr. 12, 1926, ch. 115, 44 Stat. 239, see 25 U.S.C. 355nt (1970); Act of June 26, 1936, ch. 831, 49 Stat. 1967, 25 U.S.C. 501-509 (1970); Act of Aug. 4, 1947, ch. 458, 61 Stat. 731, 25 U.S.C. 502 (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 12, 1953, ch. 409, 67 Stat. 558, 25 U.S.C. 375c (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 11, 1955, ch. 786, 69 Stat. 666, see 25 U.S.C. 355nt (1970); Act of Aug. 29, 1967, Pub. L. 90-76, 81 Stat. 177, 25 U.S.C. 786-788 (1970); and Act of May 7, 1970, Pub. L. 91-240, 84 Stat. 203, 25 U.S.C. 375d (1970)).

SOURCE: 37 FR 7082, Apr. 8, 1972, unless otherwise noted.

§ 16.1 Definitions.

(a) The term *Secretary* means the Secretary of the Interior and his authorized representatives.

(b) The term *Bureau* means the Bureau of Indian Affairs, acting through the Commissioner of Indian Affairs and his authorized representatives, including field officials who are responsible for matters affecting properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes.

(c) The term *Field Solicitor* means the Regional Solicitor, Southwest Region, Page Belcher Federal Building, P.O. Box 3156, Tulsa, Oklahoma 74101.

(d) The term *Indian of the Five Civilized Tribes* means an individual who is either an enrolled member of the Cherokee, Chickasaw, Choctaw, Creek, or Seminole Tribes of Oklahoma, or a descendant of an enrolled member thereof.

(e) The term *restricted interest* means an interest owned in real or personal property subject to restraints upon alienation imposed either by Federal statute or by administrative action authorized by Federal statute. Although this term includes property subject to restraints which may be removed by administrative action, its use in this part refers primarily to property subject to restraints which State courts have jurisdiction to remove in proceedings such as those specified in § 16.2.

[37 FR 7082, Apr. 8, 1972, as amended at 50 FR 12529, Mar. 29, 1985]