

## SUBCHAPTER C—PROBATE

### PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410; 44 U.S.C. 3101 *et seq.*

*Cross Reference:* For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of 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.

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#### 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 BIA, and how probates will be sent to the OHA for disposition.

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

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

*ALJ* means an administrative law judge with the Office of Hearings and Appeals (OHA) appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105.

*Attorney decision maker* means an attorney with OHA who conducts an informal hearing and renders a decision in any probate case that does not require a formal hearing and a decision by an ALJ or Indian probate judge.

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*Beneficiary* means any individual who is designated in a decedent's will to receive trust or restricted property or money. The term includes both a devisee (someone who receives real property in a will) and a legatee (someone who receives personal property in a will).

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

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

*Creditor* means any individual or entity that submits a claim for payment from a decedent's estate.

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

*Decedent* means a person who is deceased.

*Deciding official* means an ALJ, Indian probate judge, or attorney decision maker.

*Decision or order* means a written document issued by a deciding official making determinations as to heirs, wills, beneficiaries, and creditors' claims, and ordering distribution of property and money.

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

*Form OHA-7* means a form used by OHA (or an automated database equivalent) to record data for heirship and family history and to provide information on any wills, trust and restricted property, adoptions, and names and addresses of all interested parties.

*Formal hearing* means a trial-type proceeding, conducted by an ALJ or Indian probate judge, in which evidence is obtained through the testimony of witnesses and the introduction of relevant documents.

*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 money (IIM) account by the Office of the Special Trustee for American Indians (OST) or by a tribe performing this function under a contract or compact.

*Indian probate judge* means an employee of OHA, other than an administrative law judge or attorney decision maker, to whom the Secretary has delegated authority to conduct hearings in probate cases in accordance with 43 CFR part 4, subpart D.

*Informal hearing* means a meeting convened by an attorney decision maker in which interested parties are asked to present relevant information on uncontested issues.

*Interested party* 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 valid will.

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

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

*OST* means the Office of the Special Trustee for American Indians, Department of the Interior.

*Probate* means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of a decedent's estate is applied to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine beneficiaries;
- (3) Determine whether claims against the estate will be paid from trust funds; and
- (4) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities entitled by law to receive it.

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

*Probate specialist* means a 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 be alienated or encumbered by the owner only with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

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*Secretary* means the Secretary of the Interior or his or her authorized representative.

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

*Trust cash assets* means the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.

*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.

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

*Will* means a written testamentary document that was signed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent's trust 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 of this part for details);

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

(c) We refer the completed probate package to OHA for assignment to a deciding official (*see* subpart D of this part for details); and

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account and we make the distribution (*see* subpart D of this part 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.

(a) You should provide a certified copy of the death certificate, if one exists.

(b) If a death certificate does not exist, you should provide an affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that specifies what is known about the date and cause of the decedent's death. A copy of any supporting documents that may be available, such as an obituary or death notice or a church or court record, should be provided along with the affidavit.

##### § 15.102 May I notify BIA of a death if I am not related to the decedent?

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

##### § 15.103 When should BIA be notified of a death?

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

##### § 15.104 What other documents does BIA need to prepare a probate package?

(a) You should provide us with the following documents and information