

§ 16.1

- 16.6 Authority of attorneys in State court litigation.
- 16.7 Performance of Federal functions by successor State courts.
- 16.8 Summary distribution of small liquid estates.
- 16.9 Escheat of estates of decedents.

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 sub-

25 CFR Ch. I (4-1-05 Edition)

ject 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]

§ 16.2 Scope of regulations.

The regulations in this part set forth procedures for discharging the responsibilities of the Secretary in connection with the performance by State courts, as authorized by Federal statutes, of certain functions which affect properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes. These State court functions pertain to such proceedings as guardianship, heirship determination, will probate, estate administration, conveyance approval, partition of real property, confirmation of title to real property, and appeal from action removing or failing to remove restrictions against alienation. In addition, the regulations in this part set forth procedures for discharging certain other responsibilities of the Secretary not necessarily involving State court functions, such as escheat of estates of deceased Indians of the Five Civilized Tribes.

§ 16.3 Legal representation in State courts.

The statutory duties of the Secretary to furnish legal advice to any Indian of the Five Civilized Tribes, and to represent such Indian in State courts, in matters affecting a restricted interest owned by such Indian, shall be performed by attorneys on the staff of the Solicitor, under the supervision of the Field Solicitor. Such advice and representation shall be undertaken to the extent that the Field Solicitor in his discretion shall consider necessary to discharge said duties, with due regard to the complexity of the legal action contemplated, the availability of staff attorneys for such purposes, the value and extent of the restricted interests involved, possible conflicts between Indians claiming to be owners of such interests, the preference of such owners concerning legal representation, the financial resources available to such owners, the extent to which such owners require similar legal services in