

Subpart C—Preparing the Probate Package

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

Once we receive the documents that you provide us under §15.104, 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.

§ 15.202 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. The statement must show 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 we received the verification of the decedent's death in §15.101 to include the claim as part of the probate package.

§ 15.203 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, or if one does not exist, 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 BIA, with the enrollment or other identifying number shown for each potential heir or beneficiary, if such number has been assigned;
- (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 the balance of the account at the date of death and 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, date stamped to show when the agency received them;

(i) All documentation of payment of claims before the probate proceeding;

(j) All other documents required in §15.104;

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

(l) Affidavit of the probate clerk or probate specialist describing what efforts have been made to locate any missing probable heirs and beneficiaries; and

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

Subpart D—Probate Processing and Distributions

§ 15.301 What happens after BIA prepares the probate package?

(a) After we have assembled all the documents required by §15.203, a probate specialist will refer the case to OHA for assignment to a deciding official.

(b) At the same time the probate specialist refers the case to OHA, we will notify all interested parties of:

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

(2) The identification of the probable legal heirs or the submission of an original or certified copy of a will or revocation and listed beneficiaries;

(3) Any known claims against the estate; and

(4) The address of the OHA office where the probate package has been sent.

(c) We will send the notice described in paragraph (b) of this section by regular mail. It will inform the probable heirs or beneficiaries that:

(1) They may ask 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; and

(2) If they do not request a formal hearing, the probate case may be assigned to an attorney decision maker, who will convene an in-person informal hearing at a site convenient to most of the parties.

§ 15.302 What happens after the probate package is referred to OHA?

After OHA receives the probate package, it will assign the case to a deciding official, who will conduct the probate proceeding and issue a written decision or order in accordance with 43 CFR part 4, subpart D.

§ 15.303 What happens after the probate decision is made?

(a) We will not pay claims, transfer title to land, or distribute trust cash assets for 75 days after the final OHA decision or order is mailed to the interested parties.

(b) If an interested party files a timely request for de novo review, a request for rehearing, or an appeal in accordance with 43 CFR part 4, subpart D, we will not pay claims, transfer title to land, or distribute trust cash assets until the request or appeal is resolved.

(c) After 75 days, if no request for de novo review, request for rehearing, or appeal has been filed, or after any request or appeal has been resolved, the following actions will take place:

(1) The LTRO will change its land title records for the trust and restricted property in accordance with the final decision or order; and

(2) OST will pay claims and distribute the IIM account in accordance with the final decision or order.

Subpart E—Information and Records

§ 15.401 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.

§ 15.402 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.

(b) Records are the property of the tribe if they are:

(1) Not covered by paragraph (a) of this section; and

(2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

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

(a) Any organization, including tribes and tribal organizations, that has records identified in § 15.402(a):

(1) 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; and

(2) Is subject to inspection by the Secretary and the Archivist of the United States with respect to these records and related records management practices and safeguards required under the Federal Records Act.

(b) A tribe or tribal organization should preserve the records identified in § 15.402(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. Chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

Sec.

16.1 Definitions.

16.2 Scope of regulations.

16.3 Legal representation in State courts.

16.4 Exchange of information within the Department.

16.5 Acceptance and acknowledgement of service of process.