

Office of the Secretary, Interior

§ 4.201

(Name of Contractor) _____
 (Address) _____
 Contract No. _____
 (Invitation No.) _____
 Specifications No. _____
 (Name and Location of Project) _____
 (Name of Bureau or Office) _____

The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated _____, by: _____
 (Name of Contracting Officer)

The decision or findings of fact is erroneous because: (State specific facts and circumstances and the contractual provisions involved.)

(Signature) _____
 (Title) _____

[46 FR 57499, Nov. 24, 1981, as amended at 67 FR 4368, Jan. 30, 2002]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410; Pub. L. 99-264, 100 Stat. 61, as amended.

CROSS REFERENCE: See 25 CFR part 15 for rules setting forth the responsibilities and practices of the Bureau of Indian Affairs in the probate of Indian estates. See subpart A of this part for the authority, jurisdiction, and membership of the Board of Indian Appeals within the Office of Hearings and Appeals. For general rules applicable to proceeding before the Hearings Division, Board of Indian Appeals, and other Appeals Boards of the Office of Hearings and Appeals, see subpart B of this part.

DETERMINATIONS OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS; TRIBAL PURCHASES OF INTERESTS UNDER SPECIAL STATUTES

SCOPE OF SUBPART; DEFINITIONS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.200 How to use this subpart.

(a) The following table is a guide to the contents of this subpart by subject matter.

For provisions relating to . . .	consult . . .
(1) All proceedings in subpart D	§§ 4.200 and 4.201.
(2) The probate of trust estates of Indians who die possessed of trust property.	§§ 4.202 through 4.282 and 4.310 through 4.323.
(i) Probate matters generally	§§ 4.202, 4.206, 4.208, 4.210, 4.211, 4.250 through 4.270, 4.273 through 4.282, and 4.310 through 4.323.
(ii) Informal probate proceedings before an attorney decision maker.	§§ 4.212 through 4.215.
(iii) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 4.203 through 4.205, 4.207, 4.216 through 4.242, 4.271, and 4.272.
(3) Tribal purchase of certain property interests of decedents under special laws applicable to particular tribes.	§§ 4.300 through 4.308.
(4) Appeals to the Board of Indian Appeals from actions or decisions of BIA.	§§ 4.330 through 4.340.
(5) Determinations under the White Earth Reservation Land Settlement Act.	§§ 4.350 through 4.357.

(b)(1) Except as provided in paragraph (b)(2) of this section, the regulations referred to in paragraph (a)(2) of this section do not apply to the restricted property of deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and members of any tribe organized under 25 U.S.C. 476, to the extent that the constitution, by-laws or charter of such tribe may be inconsistent with this subpart.

(2) The regulations referred to in paragraph (a)(2) of this section do apply to trust or restricted property inherited by such deceased Indian or

member of such tribe from someone who was a member of a tribe not included in paragraph (b)(1) of this section.

(c) Except as limited by the provisions in this subpart, the rules in subparts A and B of this part apply to these proceedings.

[70 FR 11812, Mar. 9, 2005]

§ 4.201 Definitions.

Administrative law judge means an administrative law judge with the Office

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of Hearings and Appeals (OHA) appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105.

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 BIA probate function under 25 U.S.C. 450f or 458cc.

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 administrative law judge or Indian probate judge.

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).

Bequeath means to give personal property to someone in a will.

Bequest (or legacy) means a gift of personal property in a will.

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

Board means the Board of Indian Appeals within OHA, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by OHA deciding officials on petitions for rehearing or reopening, and allowance of attorney fees, and from actions of BIA officials as provided in §4.1(b)(2).

Child or children includes any child adopted by the decedent.

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.

43 CFR Subtitle A (10-1-06 Edition)

Deciding official means an administrative law judge, 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.

De novo review means a process in which an administrative law judge or Indian probate judge will, without regard to the decision previously issued in the case by an attorney decision maker:

- (1) Take a fresh look at a probate case;
- (2) Conduct a formal hearing as necessary or appropriate; and
- (3) Issue a decision.

Department means the Department of the Interior.

Devise when used as a verb means to give real property to someone in a will. When used as a noun, it means a gift of real property in a will.

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.

Formal hearing means a trial-type proceeding, conducted by an administrative law judge or Indian probate judge, in which interested parties present evidence 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.

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

Interested party means:

- (1) Any probable or actual heir;
- (2) Any beneficiary under a will;
- (3) Any party asserting a claim against a deceased Indian's estate; and
- (4) 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.

Minor means an individual who has not reached the age of majority as defined by the applicable tribal or state law.

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 specialist means a BIA or tribal employee who is trained in Indian probate matters.

Restricted property means real or personal property held by an Indian that he or she cannot alienate or encumber without the consent of the Secretary. In this subpart, restricted property is treated as if it were trust property. Except with respect to § 4.200(b)(1), the term "restricted property" as used in this subpart does not include the restricted lands of the Five Civilized Tribes or Osage Tribe of Indians.

Secretary means the Secretary of the Interior or an authorized representative.

Solicitor means the Solicitor of the Department of the Interior or an authorized representative.

Superintendent means a BIA Superintendent or other BIA official having jurisdiction over an estate, including an area field representative or one holding equivalent authority.

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 property means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

Will or last will and testament 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.

[70 FR 11812, Mar. 9, 2005]

DETERMINATION OF HEIRS; APPROVAL OF WILLS; SETTLEMENT OF INDIAN TRUST ESTATES

SOURCE: 70 FR 11812, Mar. 9, 2005, unless otherwise noted.

§ 4.202 General authority of deciding officials.

(a) An attorney decision maker may conduct an informal hearing and render a decision in any probate case that does not require a formal hearing and a decision by an administrative law judge or Indian probate judge.

(b) Cases that require a formal hearing and a decision by an administrative law judge or Indian probate judge are those that meet one or more of the following criteria:

(1) A probable heir or beneficiary requests a formal hearing at any time before the attorney decision maker renders a decision;

(2) A will exists that is complex, ambiguous, of questionable validity, or contested;

(3) An interested party contests a claim from a creditor or family member;

(4) Questions exist about family relationships, including questions about adoption of an heir or paternity;

(5) The case involves a minor heir whose rights might be jeopardized;