

- (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;

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(6) Prior probate orders conflict on an issue relevant to the case;

(7) The jurisdiction of any court that issued an order that has been used as a supporting document in the case is challenged;

(8) Questions exist concerning the decedent's domicile;

(9) There are other problems with the case requiring an evidentiary hearing;

(10) The case requires a determination as to a nonexistent person or other allotment irregularity under § 4.203;

(11) The case involves a presumption of death under § 4.204;

(12) The case requires a determination of escheat under § 4.205;

(13) The case requires a determination of nationality, citizenship, or status affecting the character of land titles under § 4.206(a)(2);

(14) The interested parties reach a settlement agreement under § 4.207; or

(15) The case involves a tribal purchase of a decedent's interest under § 4.300 *et seq.*

(c) For probate cases within their respective jurisdictions, deciding officials will:

(1) Determine the heirs of any Indian who dies intestate possessed of trust property;

(2) Approve or disapprove the will of a deceased Indian disposing of trust property;

(3) Accept or reject any full or partial renunciation of interest in both testate and intestate proceedings;

(4) Allow or disallow creditors' claims against the estate of a deceased Indian; and

(5) Decree the distribution of trust property to heirs and beneficiaries.

(d) "Distribution" under paragraph (c)(5) of this section includes partial distribution to known heirs or beneficiaries where one or more potential heirs or beneficiaries are missing but not presumed dead. In these cases, the deciding official will first attribute to and set aside for the missing person or persons the share or shares that the missing person or persons would be entitled to if living.

(e) In any case in which de novo review is sought following a decision by an attorney decision maker under § 4.215, an administrative law judge or

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Indian probate judge will review the case de novo, hold hearings as necessary or appropriate, and issue a decision.

§ 4.203 Determination as to non-existent persons and other irregularities of allotments.

(a) An administrative law judge or Indian probate judge will hear and determine:

(1) Whether trust patents covering allotments of land were issued to non-existent persons; and

(2) Whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The administrative law judge or Indian probate judge will proceed as provided in § 4.202(c) if he or she determines under paragraph (a) of this section that:

(1) A trust patent was issued to an existing person, or separate persons received the allotments under consideration; and

(2) Any such person is deceased without having had his or her estate probated.

(c) The administrative law judge or Indian probate judge will issue a decision setting forth his or her determination, and will provide notice thereof to interested parties under § 4.240(b), if he or she determines under paragraph (a) of this section that either:

(1) A person did not exist; or

(2) More than one allotment was issued to the same person.

§ 4.204 Presumption of death.

(a) An administrative law judge or Indian probate judge will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an administrative law judge or Indian probate judge determines that an Indian person possessed of trust property is to be presumed dead, the administrative law judge or Indian probate judge will proceed as provided in § 4.202(c).