

§ 4.205 Escheat.

An administrative law judge or Indian probate judge will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a; or

(b) With respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

§ 4.206 Determinations of nationality, citizenship, or status affecting character of land titles.

(a) In cases where the right and duty of the Government to hold property in trust depends thereon:

(1) A deciding official will determine the Indian or non-Indian status of heirs or beneficiaries; and

(2) An administrative law judge or Indian probate judge will determine the nationality or citizenship of heirs or beneficiaries, or whether Indian heirs or beneficiaries of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated.

(b) Determinations under paragraph (a) of this section will be made either in current probate proceedings or in completed estates after reopening such estates under, but without regard to the 3-year limit in, § 4.242.

§ 4.207 Settlement agreement.

(a) An administrative law judge or Indian probate judge may approve a settlement agreement between interested parties resolving any issue in the probate proceeding if he or she finds that:

(1) All parties to the agreement are fully advised as to all material facts;

(2) All parties to the agreement are fully cognizant of the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement agreement, the administrative law judge or Indian probate judge may

take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers must supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) If the administrative law judge or Indian probate judge approves the settlement agreement under paragraph (a) of this section, he or she will issue a final order approving the settlement agreement and distributing the estate in accordance with its provisions. This order will be construed as any other order of distribution establishing title in heirs and beneficiaries and will not be construed as a partition or sale transaction within the provisions of 25 CFR part 152.

(1) If land titles are to be transferred, the necessary deeds must be prepared and executed at the earliest possible date.

(2) Upon failure or refusal of any interested party to execute and deliver any deed necessary to accomplish the settlement, the administrative law judge or Indian probate judge will settle the issues and enter an order as if no agreement had been attempted.

(d) Administrative law judges or Indian probate judges are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

§ 4.208 Renunciation of interest.

(a) Any probable heir or beneficiary, not a minor, may wholly or partially renounce intestate succession or a devise or bequest of trust or restricted property, including the retention of a life estate. To do this, the probable heir or beneficiary must file a signed and acknowledged declaration of renunciation with the deciding official before entry of the final order.

(b) No interest in property renounced under paragraph (a) of this section is considered to have vested in the heir or beneficiary, and the renunciation is not considered a transfer by gift of the property renounced. Rather, the renounced property passes as if the person renouncing the interest had predeceased the decedent.

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(c) A renunciation filed in accordance with this section will be considered accepted when implemented in an order by a deciding official and will be irrevocable thereafter.

(d) All disclaimers or renunciations previously filed with and implemented in an order by a deciding official are hereby ratified as valid and effective.

COMMENCEMENT OF PROBATE
PROCEEDINGS

SOURCE: 70 FR 11815, Mar. 9, 2005, unless otherwise noted.

§4.210 Commencement of probate.

(a) The probate of a trust estate before a deciding official will commence when the probate specialist files with OHA all information shown in the records relative to the family of the deceased and his or her property.

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(1) The information must include the complete probate package described in 25 CFR 15.203 and any other relevant information.

(2) If OHA determines that the probate package is not complete, it may request the missing information from BIA or return the case to BIA for further processing.

(b) The agency must promptly transmit to the deciding official any creditor's or other claims that are received after the case is transmitted to OHA, for a determination of their timeliness, validity, priority, and allowance under §§4.250 and 4.251.

§4.211 Assignment to deciding official.

Within 30 days after OHA receives the complete probate package, OHA will assign the case to an attorney decision maker, administrative law judge, or Indian probate judge, as shown in the following table:

The case will be assigned to . . .	for . . .	if . . .	and if . . .
(a) An attorney decision maker	summary processing under §§ 4.212 and 4.214.	as of the date of the decedent's death, the estate contained only trust cash assets of less than \$5,000.	the case meets the other criteria in § 4.212(a).
(b) An attorney decision maker	an informal hearing and decision under §§ 4.213 and 4.214.	as of the date of the decedent's death, the estate contained trust cash assets of \$5,000 or more or other trust property.	the case meets the other criteria in § 4.213(a).
(c) An administrative law judge or Indian probate judge.	a formal hearing and decision under §§ 4.216 through 4.240.	the case does not meet the criteria in paragraphs (a) or (b) of this section.	
(d) An administrative law judge or Indian probate judge.	Summary or informal processing under §§ 4.212 through 4.214.	no attorney decision maker is available to handle a case under paragraphs (a) or (b) of this section.	

SUMMARY AND INFORMAL PROBATE
PROCEEDINGS

SOURCE: 70 FR 11815, Mar. 9, 2005, unless otherwise noted.

§4.212 Summary process for estates containing only trust cash estates of less than \$5,000.

(a) A decedent's estate may be processed summarily by an attorney decision maker if:

(1) The estate contained only trust cash assets of less than \$5,000 as of the date of the decedent's death;

(2) The case does not meet the criteria in § 4.202(b);

(3) Federal law or a tribal inheritance code approved by the Secretary does not provide otherwise.

(b) Any interested party may request a formal hearing before an administrative law judge or Indian probate judge to determine the proper distribution of the trust cash assets. This request for a formal hearing, if desired, must be made before the attorney decision maker renders a decision. Upon receiving a request for a formal hearing, OHA will assign or transfer the case to an administrative law judge or Indian probate judge.