

(c) Within 60 days after OHA receives the complete probate package, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker to whom the case has been assigned will:

(1) Provide notice equivalent to that required for a formal hearing under §§4.216-4.217;

(2) Assemble the probable heirs and beneficiaries; and

(3) Hold an informal hearing to determine the distribution of the trust cash assets.

(d) The attorney decision maker may schedule a supplemental informal hearing as necessary, in accordance with §4.235.

(e) Within 30 days after the informal hearing, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker will issue a written order in accordance with §4.214.

(f) Any interested party may seek de novo review of the case following the decision of the attorney decision maker in accordance with §4.215.

(g) If de novo review has not been sought within 60 days of the date of the written order, the attorney decision maker must submit:

(1) The complete original record to the LTR0;

(2) A complete duplicate copy of the record to the agency that prepared the probate package; and

(3) A copy of any relevant portions of the record to any other affected agency.

**§4.213 Informal process for cases that do not require a formal hearing.**

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

(1) The estate contained trust cash assets of \$5,000 or more as of the date of the decedent's death or contained other trust property;

(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 administra-

tive law judge or Indian probate judge to determine the proper distribution of the estate. 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.

(c) Within 120 days after OHA receives the complete probate package, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker to whom the case has been assigned will:

(1) Provide notice equivalent to that required for a formal hearing under §§4.216-4.217;

(2) Assemble the probable heirs and beneficiaries; and

(3) Hold an informal hearing to determine the distribution of the trust assets.

(d) The attorney decision maker may schedule a supplemental informal hearing as necessary, in accordance with §4.235.

(e) Within 60 days after the informal hearing, if no interested party has requested a formal hearing before an administrative law judge or Indian probate judge, the attorney decision maker will issue a written order in accordance with §4.214.

(f) Any interested party may seek de novo review of the case following the decision of the attorney decision maker in accordance with §4.215.

(g) If de novo review has not been sought within 60 days of the date of the written order, the attorney decision maker must submit:

(1) The complete original record to the LTR0;

(2) A complete duplicate copy of the record to the agency that prepared the probate package; and

(3) A copy of any relevant portions of the record to any other affected agency.

**§4.214 Written decision of attorney decision maker.**

Following the informal hearing in §4.212 or 4.213, the attorney decision maker will issue a written decision that:

#### §4.215

(a) In all cases, lists the names, identifying numbers as assigned by BIA, birth dates, relationships to the decedent, and shares of the heirs, or finds that the decedent died leaving no legal heirs, and provides citations to the law of descent and distribution in accordance with which the decision is made;

(b) In testate cases, approves or disapproves a will, interprets provisions of the approved will, provides the names, identifying numbers as assigned by BIA, and relationships of the beneficiaries to the decedent, and describes the property each beneficiary is to receive;

(c) Allows or disallows claims against the estate in accordance with §§4.250-4.251, and orders the amount of payment for all approved claims;

(d) States whether the heirs or beneficiaries are Indian or non-Indian;

(e) Determines any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs;

(f) Attaches a certified copy of the inventory of trust or restricted lands, if any; and

(g) Advises all interested parties of their right to seek de novo review in accordance with §4.215, and that, if they fail to do so, the decision of the attorney decision maker will become final upon expiration of the 60-day period provided in §4.215(c).

#### §4.215 De novo review following decision of attorney decision maker.

(a) Any interested party who is adversely affected by a written decision of an attorney decision maker under §4.214 may seek de novo review of the case by an administrative law judge or Indian probate judge by filing a request with the attorney decision maker.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

- (1) The name of the decedent;
- (2) A description of the appellant's relationship to the decedent;
- (3) An explanation of how the appellant is adversely affected by the decision of the attorney decision maker; and

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

(4) An explanation of what errors the appellant believes the attorney decision maker made.

(c) The request for de novo review by an administrative law judge or Indian probate judge must be sent or delivered to the attorney decision maker within 60 days after the date that appears on the decision. If the request is mailed, it must be postmarked within 60 days after the date of the decision.

(d) After the 60-day period has expired, an interested party who is adversely affected by a written decision of an attorney decision maker under §4.214 may file with the attorney decision maker a request for de novo review by an administrative law judge or Indian probate judge for one or more of the following reasons:

(1) The party did not receive notice of the probate;

(2) The party obtained new evidence or information after the decision was made; or

(3) The party has evidence that was known at the time of the probate proceeding but was not included in the probate package.

(e) Within 10 days of receiving the request for de novo review, the attorney decision maker will notify the Superintendent and all other interested parties of the request, and OHA will assign the case to an administrative law judge or Indian probate judge.

(f) The administrative law judge or Indian probate judge will review the merits of the case de novo, conduct a formal hearing as necessary or appropriate pursuant to the regulations in this subpart, and issue a new decision in accordance with §4.240.

#### FORMAL PROBATE PROCEEDINGS

SOURCE: 70 FR 11816, Mar. 9, 2005, unless otherwise noted.

#### Notice

#### §4.216 Notice.

(a) Before conducting a formal hearing to determine the heirs of a deceased Indian or probate his or her will, the administrative law judge or Indian probate judge must cause notice of the time and place of the hearing to be posted.