

§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.