

Title 25 – Indians

Chapter 1- Bureau of Indian Affairs, Department of the Interior

PART 15–PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF OSAGE AND THE FIVE CIVILIZED TRIBES

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AUTHORITY: 5 U.S.C. 301, 503; 25 U.S.C. 9, 372-74, 410, 2201 et seq.; 43 U.S.C. 1201, 1457.

CROSS REFERENCE: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the appeal of decisions of the Probate Hearings Division, Office of Hearings and Appeals, to the Board of Indian Appeals, Office of Hearings and Appeals, see 43

CFR part 4, subpart D. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see 43 CFR part 4, subpart B.

Subpart A--Scope of Part; Definitions

§ 30.100 How do I use this part?

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

For provisions relating to...	consult...
(1) All proceedings in part 30	§§ 30.100 through 30.102
(2) Claims against probate estate	§§ 30.140 through 30.148.
(3) Commencement of probate	§§ 30.110 through 30.115.
(4) Consolidation of interests	§§ 30.150 through 30.153.
(5) Formal probate proceedings before an administrative law judge or Indian probate judge	§§ 30.210 through 30.246.
(6) Probate of trust estates of Indians who die possessed of trust property	All sections except §§ 30.260 through 30.274.
(7) Purchases at probate	§§ 30.160 through 30.175.
(8) Renunciation of interests	§§ 30.180 through 30.188.
(9) Summary probate proceedings before an attorney decision maker	§§ 30.200 through 30.207.
(10) Tribal purchase of certain property interests of decedents under special laws applicable to particular tribes	§§ 30.260 through 30.274.

(b) Except as limited by the provisions of this part, the regulations in part 4, subparts A and B of this subtitle apply to these proceedings.

(c) The following provisions do not apply to Alaska property interests:

- (1) § 30.151;

- (2) §§ 30.160 through 30.175;
- (3) § 30.182 through 30.185, except for § 30.184(c);
- (4) § 30.213; and
- (5) § 30.214(f) and (g).

§ 30.101 What definitions do I need to know?

Act means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108-374, as codified at 25 U.S.C. 2201 et seq.

Administrative law judge (ALJ) means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Affidavit means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

Agency means:

- (1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personality; and
- (2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

Attorney decision maker (ADM) means an attorney with OHA who conducts a summary proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

BIA means the Bureau of Indian Affairs within the Department.

BLM means the Bureau of Land Management within the Department.

Board means the Interior Board of Indian Appeals within OHA.

Chief ALJ means the Chief Administrative Law Judge, Probate Hearings Division, OHA.

Child means a natural or adopted child.

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.

Consolidation agreement means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

Creditor means any individual or entity that has a claim for payment from a decedent's estate.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or decision and order) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an ADM in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

De novo review means a process in which an administrative law judge or Indian

probate judge, without regard to the decision previously issued in the case, will:

- (1) Review all the relevant facts and issues in a probate case;
- (2) Reconsider the evidence introduced at a previous hearing;
- (3) Conduct a formal hearing as necessary or appropriate; and
- (4) Issue a decision.

Department or DOI means the Department of the Interior.

Deposition means a proceeding in which a party takes testimony from a witness during discovery.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Discovery means a process through which a party to a probate proceeding obtains information from another party. Examples of discovery include interrogatories, depositions, requests for admission, and requests for production of documents.

Eligible heir means, for the purposes of the Act (25 U.S.C. 2206) any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are:

- (1) Indian;
- (2) Lineal descendants within two degrees of consanguinity of an Indian; or
- (3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting – by descent, renunciation, or consolidation agreement – another trust or restricted interest in such a parcel from the decedent.

Estate means the trust or restricted land and trust personalty owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

IIM (Individual Indian Money) account means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

Indian means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian probate judge (IPJ) means an attorney employed with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

Interested party means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

Interrogatories means written questions submitted to another party for responses as part of discovery.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge means an ALJ or IPJ.

Lockbox means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

LTRO means the Land Titles and Records Office within BIA.

Master means a person who has been specially appointed by a judge to assist with the probate proceedings.

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

OHA means the Office of Hearings and Appeals within the Department.

OST means the Office of the Special Trustee for American Indians within the Department.

Per stirpes means by right of representation, dividing an estate into equal shares based on the number of decedent's surviving children and predeceased children who left issue who survive the decedent. The share of a predeceased child of the decedent is divided equally among the predeceased child's surviving children.

Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine devisees;
- (3) Determine whether claims against the estate will be paid from trust personalty;

and

- (4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

Purchase option at probate means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

Restricted property means real property whose title is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term "restricted property" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

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

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that does not exceed \$5,000 in value on the date of the death of the decedent.

Superintendent means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

Testate means that the decedent executed a valid will as determined in the probate

proceeding.

Testator means a person who has executed a valid will as determined in the probate proceeding.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

We or us means the Secretary or an authorized representative as defined in this section.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

You or I means an interested party, as defined herein, with an interest in the decedent's trust estate unless a specific section states otherwise.

§ 30.102 Will the Secretary probate all the land or assets in an estate?

- (a) We will probate only the trust or restricted land or trust personalty in an estate.
- (b) We will not probate the following property:
 - (1) Real or personal property other than trust or restricted land or trust personalty in an estate of a decedent;
 - (2) Restricted land derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and
 - (3) Restricted interests derived from allotments made to Osage Indians in

Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owned either:

(1) A trust interest in land; or

(2) A restricted interest in land derived from an individual Indian who was a member of a tribe other than the Five Civilized Tribes or Osage Nation.

Subpart B--Commencement of Probate Proceedings

§ 30.110 When does OHA commence a probate case?

OHA commences probate of a trust estate when OHA receives a probate file from the agency.

§ 30.111 How does OHA commence a probate case?

OHA commences a probate case by confirming the case number assigned by BIA, assigning the case to a judge or ADM, and designating the case as a summary probate proceeding or formal probate proceeding.

§30.112 What must a complete probate file contain?

A probate file must contain the documents and information described in 25 CFR 15.202 and any other relevant information.

§ 30.113 What will OHA do if it receives an incomplete probate file?

If OHA determines that the probate file received from the agency is incomplete or lacks the certification described in 25 CFR 15.204, OHA may do any of the following:

(a) Request the missing information from the agency;

(b) Dismiss the case and return the probate file to the agency for further processing;

(c) Issue a subpoena, interrogatories, or requests for production of documents as appropriate to obtain the missing information; or

(d) Proceed with a hearing in the case.

§ 30.114 Will I receive notice of the probate proceeding?

(a) If the case is designated as a formal probate proceeding, OHA will send a notice of hearing to:

(1) Potential heirs and devisees named in the probate file;

(2) Those creditors whose claims are included in the probate file; and

(3) Other interested parties identified by OHA.

(b) In a case designated a summary probate proceeding, OHA will send a notice of the designation to potential heirs and devisees and will inform them that a formal probate proceeding may be requested instead of the summary probate proceeding..

§ 30.115 May I review the probate record?

After OHA receives the case, you may examine the probate record at the relevant office during regular business hours and make copies if you pay the reasonable cost of copying.

Subpart C--Judicial Authority and Duties

§ 30.120 What authority does the judge have in probate cases?

A judge who is assigned a probate case under this part has the authority to:

(a) Determine the manner, location, and time of any hearing conducted under this part, and otherwise to administer the cases;

(b) Determine whether an individual is deemed deceased by reason of extended unexplained absence or other pertinent circumstances;

- (c) Determine the heirs of any Indian or eligible heir who dies intestate possessed of trust or restricted property;
- (d) Approve or disapprove a will disposing of trust or restricted property;
- (e) Accept or reject any full or partial renunciation of interest in either a testate or intestate proceeding;
- (f) Approve or disapprove any consolidation agreement;
- (g) Conduct sales at probate and provide for the distribution of interests in the probate decision and order;
- (h) Allow or disallow claims by creditors;
- (i) Order the distribution of trust property to heirs and devisees and determine and reserve the share to which any potential heir or devisee who is missing but not found to be deceased is entitled;
- (j) Determine whether a tribe has jurisdiction over the trust or restricted property and, if so, the right of the tribe to take a decedent's trust or restricted property under 25 U.S.C. 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV), or other applicable law;
- (k) Issue subpoenas for the appearance of persons, the testimony of witnesses, and the production of documents at hearings or depositions under 25 U.S.C. 374, on the judge's initiative or, within the judge's discretion, on the request of an interested party;
- (l) Administer oaths and affirmations;
- (m) Order the taking of depositions and determine the scope and use of deposition testimony;
- (n) Order the production of documents and determine the scope and use of the documents;

(o) Rule on matters involving interrogatories and any other requests for discovery, including requests for admissions;

(p) Grant or deny stays, waivers, and extensions;

(q) Rule on motions, requests, and objections;

(r) Rule on the admissibility of evidence;

(s) Permit the cross-examination of witnesses;

(t) Appoint a guardian ad litem for any interested party who is a minor or found by the judge not to be competent to represent his or her own interests;

(u) Regulate the course of any hearing and the conduct of witnesses, interested parties, attorneys, and attendees at a hearing;

(v) Determine and impose sanctions and penalties allowed by law; and

(w) Take any action necessary to preserve the trust assets of an estate.

§ 30.121 May a judge appoint a master in a probate case?

(a) In the exercise of any authority under this part, a judge may appoint a master to do all of the following:

(1) Conduct hearings on the record as to all or specific issues in probate cases as assigned by the judge;

(2) Make written reports including findings of fact and conclusions of law; and

(3) Propose a recommended decision to the judge.

(b) When the master files a report under this section, the master must also mail a copy of the report and recommended decision to all interested parties.

§ 30.122 Is the judge required to accept the master's recommended decision?

No, the judge is not required to accept the master's recommended decision.

(a) An interested party may file objections to the report and recommended decision within 30 days of the date of mailing. An objecting party must simultaneously mail or deliver copies of the objections to all other interested parties.

(b) Any other interested party may file responses to the objections within 15 days of the mailing or delivery of the objections. A responding party must simultaneously mail or deliver a copy of his or her responses to the objecting party.

(c) The judge will review the record of the proceedings heard by the master, including any objections and responses filed, and determine whether the master's report and recommended decision are supported by the evidence of record.

(1) If the judge finds that the report and recommended decision are supported by the evidence of record and are consistent with applicable law, the judge will enter an order adopting the recommended decision.

(2) If the judge finds that the report and recommended decision are not supported by the evidence of record, the judge may do any of the following:

(i) Remand the case to the master for further proceedings consistent with instructions in the remand order;

(ii) Make new findings of fact based on the evidence in the record, make conclusions of law, and enter a decision; or

(iii) Hear the case de novo, make findings of fact and conclusions of law, and enter a decision.

(3) The judge may find that the master's findings of fact are supported by the evidence in the record but the conclusions of law or the recommended decision is not consistent with applicable law. In this case, the judge will issue an order adopting the

findings of fact, making conclusions of law, and entering a decision.

§ 30.123 Will the judge determine matters of status and nationality?

(a) The judge in a probate proceeding will determine:

- (1) The status of eligible heirs or devisees as Indians;
- (2) If relevant, the nationality or citizenship of eligible heirs or devisees; and
- (3) Whether any of the Indian heirs or devisees with U.S. citizenship are

individuals for whom the supervision and trusteeship of the United States has been terminated.

(b) A judge may make determinations under this section in a current probate proceeding or in a completed probate case after a reopening without regard to a time limit.

§ 30.124 When may a judge make a finding of death?

(a) A judge may make a finding that an heir, devisee, or person for whom a probate case has been opened is deceased, by reason of extended unexplained absence or other pertinent circumstances. The judge must include the date of death in the finding.

The judge will make a finding of death only on:

- (1) A determination from a court of competent jurisdiction; or
- (2) Clear and convincing evidence.

(b) In any proceeding to determine whether a person is deceased, the following rebuttable presumptions apply:

- (1) The absent person is presumed to be alive if credible evidence establishes that the absent person has had contact with any person or entity during the 6-year period preceding the hearing; and

(2) The absent person is presumed to be deceased if clear and convincing evidence establishes that no person or entity with whom the absent person previously had regular contact has had any contact with the absent person during the 6 years preceding the hearing.

§ 30.125 May a judge reopen a probate case to correct errors and omissions?

(a) On the written request of an interested party, or on the basis of the judge's own order, at any time, a judge has the authority to reopen a probate case to:

- (1) Determine the correct identity of the original allottee, or any heir or devisee;
- (2) Determine whether different persons received the same allotment;
- (3) Decide whether trust patents covering allotments of land were issued incorrectly or to a non-existent person; or
- (4) Determine whether more than one allotment of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The judge will notify interested parties if a probate case is reopened and will conduct appropriate proceedings under this part.

§ 30.126 What happens if property was omitted from the inventory of the estate?

This section applies when, after issuance of a decision and order, it is found that trust or restricted property or an interest therein belonging to a decedent was not included in the inventory.

(a) A judge can issue an order modifying the inventory to include the omitted property for distribution under the original decision. The judge must furnish copies of any modification order to the agency and to all interested parties who share in the estate.

(b) When the property to be included takes a different line of descent from that

shown in the original decision, the judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

(c) The judge's modification order or decision will become final at the end of the 30 days after the date on which it was mailed, unless a timely notice of appeal is filed with the Board within that period.

(d) Any interested party who is adversely affected by the judge's modification order or decision may appeal it to the Board within 30 days after the date on which it was mailed.

(e) The judge's modification order or decision must include a notice stating that adversely affected parties have a right to appeal the decision to the Board within 30 days after the decision is mailed, and giving the Board's address.

§ 30.127 What happens if property was improperly included in the inventory?

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. A petition for modification may be filed by the superintendent of the agency where the property is located, or by any interested party. The petitioner must serve the petition on all parties whose interests may be affected by the requested modification.

(b) A judge will review the merits of the petition and the record of the title from the LTRO on which the modification is to be based, enter an appropriate decision, and give notice of the decision as follows:

(1) If the decision is entered without a formal hearing, the judge must give notice

of the decision to all interested parties whose rights are affected.

(2) If a formal hearing is held, the judge must:

(i) Enter a final decision based on his or her findings, modifying or refusing to modify the property inventory; and

(ii) Give notice of the decision to all interested parties whose rights are affected.

(c) Where appropriate, the judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted under this part.

(d) The judge's decision must include a notice stating that adversely affected parties have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address. The judge's decision will become final at the end of the 30 days after the date it was mailed, unless a timely notice of appeal is filed.

(e) The judge must forward the record of all proceedings under this section to the designated LTRO.

§ 30.128 What happens if an error in BIA's estate inventory is alleged?

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following:

(1) Trust property interests should be removed from the inventory because the decedent executed a gift deed during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed;

(2) Trust property interests should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property interests should be added to the inventory; and

(4) Trust property interests included in the inventory are improperly described, although an erroneous recitation of acreage alone is not considered an improper description.

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution under 25 CFR parts 150, 151, or 152 and the appeal procedures at 25 CFR part 2.

(1) If BIA makes a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the probate decision will reflect the inventory determination.

(2) If BIA does not make a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the final probate decision will:

(i) Include a reference to the pending inventory challenge; and

(ii) Note that the probate decision is subject to administrative modification once the inventory dispute has been resolved.

Subpart D--Recusal of a Judge or ADM

§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

§ 30.131 How will the case proceed after the judge's or ADM's recusal?

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

§ 30.132 May I appeal the judge's or ADM's recusal decision?

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

Subpart E--Claims

§ 30.140 Where and when may I file a claim against the probate estate?

You may file a claim against the estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be considered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

§ 30.141 How must I file a claim against a probate estate?

You must file your claim under 25 CFR 15.302 through 15.305.

§ 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?

The judge will not authorize payment of a claim from trust or restricted property if the judge determines that the decedent's non-trust estate may be available to pay the claim,. This provision does not apply to a claim that is secured by trust or restricted property.

§ 30.143 Are there any categories of claims that will not be allowed?

(a) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it:

(1) Has existed for such a period as to be barred by the applicable statute of limitations at date of decedent's death;

(2) Sounds in tort and has not been reduced to judgment in a court of competent jurisdiction;

(3) Is unliquidated; or

(4) Is from a government entity and relates to payments for:

(i) General assistance, welfare, unemployment compensation or similar benefits;

or

(ii) Social Security Administration supplemental security income or old-age, disability, or survivor benefits.

§ 30.144 May the judge authorize payment of the costs of administering the estate?

On motion of the superintendent or an interested party, the judge may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

§ 30.145 When can a judge reduce or disallow a claim?

The judge has discretion to decide whether part or all of an otherwise valid claim is unreasonable, and if so, to reduce the claim to a reasonable amount or disallow the claim in its entirety. If a claim is reduced, the judge will order payment only of the reduced amount.

§ 30.146 What property is subject to claims?

Except as prohibited by law, all intangible trust personalty of a decedent on hand or accrued at the date of death may be used for the payment of claims, including:

- (a) IIM account balances;
- (b) Bonds;
- (c) Unpaid judgments; and
- (d) Accounts receivable.

§ 30.147 What happens if there is not enough trust personalty to pay all the claims?

If, as of the date of death, there was not enough trust personalty to pay all allowed claims, the judge may order them paid on a pro rata basis. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

§ 30.148 Will interest or penalties charged after the date of death be paid?

Interest or penalties charged against claims after the date of death will not be paid.

Subpart F--Consolidation and Settlement Agreements

§ 30.150 What action will the judge take if the interested parties agree to settle matters

among themselves?

(a) A judge may approve a settlement agreement among interested parties resolving any issue in the probate proceeding if the judge finds that:

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

(2) All parties to the agreement understand the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle.

(b) In considering the proposed settlement agreement, the judge may consider evidence of the respective values of specific items of property and all encumbrances.

(c) If the judge approves the settlement agreement under paragraph (a) of this section, the judge will issue an order approving the settlement agreement and distributing the estate in accordance with the agreement.

§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The devisees or eligible heirs may consolidate interests under 25 U.S.C. 2206(e) in trust property already owned by the heirs or under 25 U.S.C. 2206(j)(9) in property from the inventory of the decedent's estate, or both.

(a) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

(i) Interests in trust or restricted land in the decedent's trust inventory; and

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are

not part of the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

(c) In order to approve an agreement, the judge must find that:

(1) The agreement to consolidate is voluntary;

(2) All parties to the agreement know the material facts;

(3) All parties to the agreement understand the effect of the agreement on their rights; and

(4) The agreement accomplishes consolidation.

(d) An interest included in an approved agreement may not be purchased at probate without consent of the owner of the consolidated interest.

§ 30.152 May the parties to an agreement waive valuation of trust property?

The parties to a settlement agreement or a consolidation agreement may waive valuation of trust property otherwise required by regulation or the Secretary's rules and requirements. If the parties waive valuation, the waiver must be included in the written agreement.

§ 30.153 Is an order approving an agreement considered a partition or sale transaction?

An order issued by a judge approving a consolidation or settlement agreement

will not be considered a partition or sale transaction under 25 CFR part 152.

Subpart G--Purchase at Probate

§ 30.160 What may be purchased at probate?

An eligible purchaser may purchase, during the probate of a trust or restricted estate, all or part of the estate of a person who died on or after June 20, 2006.

(a) Any interest in trust or restricted property, including a life estate that is part of the estate (i.e., a life estate owned by the decedent but measured by the life of someone who survives the decedent), may be purchased at probate with the following exceptions:

(1) If an interest is included in an approved consolidation agreement, that interest may not be purchased at probate without consent of the owner of the consolidated interest; and

(2) An interest that a devisee will receive under a valid will cannot be purchased without the consent of the devisee.

(b) A purchase option must be exercised before a decision or order is entered and must be included as part of the order in the estate.

§ 30.161 Who may purchase at probate?

An eligible purchaser is any of the following:

(a) Any devisee or eligible heir who is taking an interest in the same parcel of land in the probate proceeding;

(b) Any person who owns an undivided trust or restricted interest in the same parcel of land;

(c) The Indian tribe with jurisdiction over the parcel containing the interest; or

(d) The Secretary on behalf of the tribe.

§ 30.162 Does property purchased at probate remain in trust or restricted status?

Yes. The property interests purchased at probate must remain in trust or restricted status.

§ 30.163 Is consent required for a purchase at probate?

Consent is required for a purchase at probate if both of the following conditions are met:

(a) If the interest in trust or restricted property meets the criteria in § 30.160(a)(1) or (2); and

(b) If the interest an heir will receive by intestate succession in the parcel subject to the probate proceeding meets either of the following criteria:

(1) It is 5 percent or more of the entire undivided ownership interest in the parcel;
or

(2) It is less than 5 percent of the entire undivided ownership interest in the parcel and the heir was residing on the parcel on the date of the decedent's death.

(c) A devisee's consent is always required for a purchase at probate.

§ 30.164 What must I do to purchase at probate?

Any eligible purchaser must submit a written request to OHA to purchase at probate before the decision or order is issued.

§ 30.165 Who will OHA notify of a request to purchase at probate?

OHA will provide notice of a request to purchase at probate as shown in the following table:

OHA will provide notice to...	By...
--------------------------------------	--------------

OHA will provide notice to...	By...
(a) The heirs or devisees and the Indian tribe with jurisdiction over the interest	first class mail.
(b) The BIA agency with jurisdiction over the interest;	first class mail.
(c) All parties who have submitted a written request for purchase	first class mail.
(d) To all other eligible purchasers	posting written notice in: (1) At least five conspicuous places in the vicinity of the place of the hearing; and (2) One conspicuous place at the agency with jurisdiction over the parcel.

§ 30.166 What will the notice of the request to purchase at probate include?

The notice under § 30.165 will include:

- (a) The type of sale;
- (b) The date, time, and place of the sale;
- (c) A description of the interest to be sold; and

(d) The appraised market value, obtained from BIA with the probate file, of the parcel containing the interest to be sold, a description of the interest to be sold, and an estimate of the market value allocated to the interest being sold.

§ 30.167 How does OHA decide whether to approve a purchase at probate?

(a) OHA will approve a purchase at probate if an eligible purchaser submits a bid in an amount equal to or greater than the market value of the interest. OHA will sell the interest to the eligible purchaser submitting the highest such bid.

(b) The market value of the interest to be sold at probate must be based on an appraisal that meets the standards in the Uniform Standards for Professional Appraisal Practice (USPAP).

§ 30.168 How will the judge allocate the proceeds from a sale?

(a) The judge will allocate the proceeds of sale among the heirs based on the fractional ownership interests in the parcel.

(b) For the sale of an interest subject to a life estate, the judge must use the ratios in 25 CFR part 179 to allocate the proceeds of the sale among the holder of the life estate and the holders of any remainder interests.

§ 30.169 What may I do if I do not agree with the appraised market value?

(a) If you are the heir whose interest is to be sold or a potential purchaser or the heir whose interest is to be sold and you disagree with the appraised market value, you may:

(1) File a written objection with OHA within 30 days after the date on which the notice provided under § 30.165 was mailed, stating the reasons for the objection; and

(2) Submit any supporting documentation showing why the market value should be modified within 15 days after filing a written objection.

(b) The judge will consider your objection, make a determination of the market value, determine whether to approve the purchase under § 30.167, and notify all interested parties. The determination must include a notice stating that adversely affected interested parties may file written objections and request an interlocutory appeal to the Board as provided in § 30.170.

§ 30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?

(a) If you are adversely affected by the judge's determination to approve a purchase at probate under § 30.167(a), you may file a written objection with the judge

within 15 days after the mailing of a determination under § 30.169(b).

(1) The written objection must state the reasons for the objection and request an interlocutory appeal of the determination to the Board.

(2) You must serve a copy of the written objection on the other interested parties and the agencies, stating that you have done so in your written objection.

(b) If the objection is timely filed, the judge must forward a certified copy of the complete record in the case to the Board, together with a table of contents for the record, for review of the determination. The judge will not issue the decision in the probate case until the Board has issued its decision on interlocutory review of the determination.

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.237 after the judge issues a decision under § 30.235.

§ 30.171 What happens when the judge grants a request to purchase at probate?

When the judge grants a request to purchase at probate, the judge will:

(a) Notify all bidders by first class mail; and

(b) Notify OST, the agency that prepared the probate file, and the agency having jurisdiction over the interest sold, including the following information:

(1) The estate involved;

(2) The parcel and interest sold;

(3) The identity of the successful bidder; and

(4) The amount of the bid.

§ 30.172 When must the successful bidder pay for the interest purchased?

The successful bidder must pay to OST, by cashier's check or money order via the lockbox, or by electronic funds transfer, the full amount of the purchase price within 30 days after the mailing of the notice of successful bid.

§ 30.173 What happens after the successful bidder submits payment?

(a) When OST receives payment, it will notify OHA, and the judge will enter an order approving the sale and directing the LTRO to record the transfer of title of the interest to the successful bidder. The order will state the date of the title transfer, which is the date payment was received.

(b) OST will deposit the payment in the decedent's estate account.

§ 30.174 What happens if the successful bidder does not pay within 30 days?

(a) If the successful bidder fails to pay the full amount of the bid within 30 days, the sale will be canceled and the interest in the trust or restricted property will be distributed as determined by the judge.

(b) The time for payment may not be extended.

(c) Any partial payment received from the successful bidder will be returned.

§ 30.175 When does a purchased interest vest in the purchaser?

An interest in trust or restricted property purchased under this subpart is considered to have vested in the purchaser on the date specified in §30.173(a).

Subpart H--Renunciation of Interest

§ 30.180 May I give up an inherited interest in trust or restricted property or trust personalty?

You may renounce an inherited or devised interest in trust or restricted property,

including a life estate, or in trust personalty if you are 18 years old and not under a legal disability,

§ 30.181 How do I renounce an inherited interest?

To renounce an interest under § 30.180, you must file with the judge, before the issuance of the final order in the probate case, a signed and acknowledged declaration specifying the interest renounced.

(a) In your declaration, you may retain a life estate in a specified interest in trust or restricted land and renounce the remainder interest, or you may renounce the complete interest.

(b) If you renounce an interest in trust or restricted land, you may either:

(1) Designate an eligible person or entity meeting the requirements of § 30.182 or § 30.183 as the recipient; or

(2) Renounce without making a designation.

(c) If you choose to renounce your interests in favor of a designated recipient, the judge must notify the designated recipient.

§ 30.182 Who may receive a renounced interest in trust or restricted land?

(a) If the interest renounced is an interest in land, you may renounce only in favor of:

(1) An eligible heir of the decedent;

(2) A person eligible to be a devisee of the interest, if you are a devisee of the interest under a valid will; or

(3) The tribe with jurisdiction over the interest.

(b) For purposes of paragraph (a)(2) of this section, a person eligible to be a

devisee of the interest is:

- (1) A lineal descendant of the testator;
- (2) A person who owns a preexisting undivided trust or restricted interest in the same parcel;
- (3) Any Indian; or
- (4) The tribe with jurisdiction over the interest.

§ 30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land?

You may renounce an interest in trust or restricted land that is not disposed of by a valid will and that represents less than 5 percent of the entire undivided ownership of a parcel of land only in favor of:

- (a) One other eligible heir;
- (b) One Indian who is related to you by blood;
- (c) One co-owner of another trust or restricted interest in the same parcel; or
- (d) The Indian tribe with jurisdiction over the interest.

§ 30.184 Who may receive a renounced interest in trust personalty?

(a) You may renounce an interest in trust personalty in favor of any person or entity.

(b) The Secretary will maintain and continue to manage trust personalty transferred by renunciation to:

- (1) A lineal descendant of the testator;
- (2) A tribe; or
- (3) Any Indian.

(c) The Secretary will directly disburse and distribute trust personalty transferred by renunciation to a person or entity other than those listed in paragraph (b) of this section.

§ 30.185 May my designated recipient refuse to accept the interest?

Yes. Your designated recipient may refuse to accept the interest, in which case the renounced interest passes to the devisees or heirs of the decedent as if you had predeceased the decedent. The refusal must be made in writing and filed with the judge before the judge issues the final order in the probate case.

§ 30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?

Any renunciation filed and included as part of a probate decision or order issued before the effective date of the American Indian Probate Reform Act of 2004 remains valid.

§ 30.187 May I revoke my renunciation?

A written renunciation is irrevocable after the judge enters the final order in the probate proceeding. A revocation will not be effective unless the judge actually receives it before entry of a final order.

§ 30.188 Does a renounced interest vest in the person who renounced it?

No. An interest in trust or restricted property renounced under § 30.181 is not considered to have vested in the renouncing heir or devisee, and the renunciation is not considered a transfer by gift of the property renounced.

(a) If the renunciation directs the interest to an eligible person or entity, the interest passes directly to that person or entity.

(b) If the renunciation does not direct the interest to an eligible person or entity, the renounced interest passes to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent, or if there are no other heirs, to the residuary devisees.

Subpart I--Summary Probate Proceedings

§ 30.200 What is a summary probate proceeding?

(a) A summary probate proceeding is the disposition of a probate case without a formal hearing on the basis of the probate file received from the agency. A summary probate proceeding may be conducted by a judge, an ADM, or a master, as determined by the supervising judge.

(b) A decedent's estate may be processed summarily if the estate involves only cash and the total value of the estate does not exceed \$5,000 on the date of death.

§ 30.201 What does a notice of a summary probate proceeding contain?

The notice of summary probate proceeding under § 30.114(b) will contain the following:

(a) Notice of the right of any interested party to request that OHA handle the probate case as a formal probate proceeding;

(b) A summary of the proposed distribution of the decedent's estate, a statement of the IIM account balance, and a copy of the death certificate;

(c) A notice that the only claims that will be considered are those from eligible heirs or devisees, or from any person or entity who filed a claim with BIA before the transfer of the probate file to OHA, with a copy of any such claim;

(d) A notice that an interested party may renounce or disclaim an interest, in

writing, either generally or in favor of a designated person or entity; and

(e) Any other information that OHA determines to be relevant.

§ 30.202 May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding?

(a) Claims that have been filed with the agency before the probate file is transferred to OHA will be considered in a summary probate proceeding.

(b) If you are a devisee or eligible heir, you may also file a claim with OHA as a creditor within 30 days after the mailing of the notice of the summary probate proceeding.

(c) You may renounce or disclaim an interest in the estate within 30 days after the mailing of the notice of the summary probate.

§ 30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?

Yes. Interested parties who are devisees or eligible heirs have 30 days after the mailing of the notice to file a written request for a formal probate hearing.

§ 30.204 What must a summary probate decision contain?

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with a proposed decision and order for distribution. The judge or ADM must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The decision must satisfy the requirements of this section.

(a) Each decision must contain one of the following:

(1) If the decedent did not leave heirs or devisees, a statement to that effect; or

(2) If the decedent left heirs or devisees:

(i) The names of each heir or devisee and their relationships to the decedent;

(ii) The distribution of shares to each heir or devisee; and

(iii) The names of the recipients of renounced or disclaimed interests.

(b) Each decision must contain all of the following:

(1) Citations to the law of descent and distribution under which the decision is made;

(2) A statement allowing or disallowing claims against the estate under this part, and an order directing the amount of payment for all approved claims;

(3) A statement approving or disapproving any renunciation;

(4) A statement advising all interested parties that they have a right to seek de novo review under § 30.205, and that, if they fail to do so, the decision will become final 30 days after it is mailed; and

(5) A statement of whether the heirs or devisees are:

(i) Indian;

(ii) Non-Indian but eligible to hold property in trust status; or

(iii) Non-Indian and ineligible to hold property in trust status.

(c) In a testate case only, the decision must contain a statement that:

(1) Approves or disapproves a will;

(2) Interprets provisions of the approved will; and

(3) Describes the share each devisee is to receive, subject to any encumbrances.

§ 30.205 How do I seek review of a summary probate proceeding?

(a) If you are adversely affected by the written decision in a summary probate

proceeding, you may seek de novo review of the case. To do this, you must file a request with the OHA office that issued the decision within 30 days after the date the decision was mailed.

(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 your relationship to the decedent;
- (3) An explanation of what errors you allege were made in the summary probate decision; and
- (4) An explanation of how you are adversely affected by the decision.

§ 30.206 What happens after I file a request for de novo review?

(a) Within 10 days of receiving a request for de novo review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the de novo review, and assign the case to a judge.

(b) The judge will review the merits of the case, conduct a hearing as necessary or appropriate under the regulations in this part, and issue a new decision under this part.

§ 30.207 What happens if nobody files for de novo review?

If no interested party requests de novo review within 30 days of the date of the written decision, it will be final for the Department. OHA will send:

(a) The complete original record and the final order to the agency that prepared the probate file; and

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

Subpart J--Formal Probate Proceedings

Notice

§ 30.210 How will I receive notice of the formal probate proceeding?

OHA will provide notice of the formal probate proceeding under § 30.114(a) by mail and by posting. A posted and published notice may contain notices for more than one hearing, and need only specify the names of the decedents, the captions of the cases and the dates, times, places and purposes of the hearings.

(a) The notice must:

(1) Be sent by first class mail;

(2) Be sent and posted at least 21 days before the date of the hearing; and

(3) Include a certificate of mailing with the date of mailing, signed by the person mailing the notice.

(b) A presumption of actual notice exists with respect to any person to whom OHA sent a notice under paragraph (a) of this section, unless the notice is returned by the Postal Service as undeliverable to the addressee.

(c) OHA must post the notice in each of the following locations:

(1) Five or more conspicuous places in the vicinity of the designated place of hearing; and

(2) The agency with jurisdiction over each parcel of trust or restricted property in the estate.

(d) OHA may also post the notice in other places and on other reservations as the judge deems appropriate.

§ 30.211 Will the notice be published in a newspaper?

The judge may cause advance notice of hearing to be published in a newspaper of

general circulation in the vicinity of the designated place of hearing. The cost of publication may be paid from the assets of the estate under § 30.144.

§ 30.212 May I waive notice of the hearing or the form of notice?

You may waive your right to notice of the hearing and the form of notice by:

- (a) Appearing at the hearing and participating in the hearing without objection; or
- (b) Filing a written waiver with the judge before the hearing.

§ 30.213 What notice to a tribe is required in a formal probate proceeding?

(a) In probate cases in which the decedent died on or after June 20, 2006, the judge must notify any tribe with jurisdiction over the trust or restricted land in the estate of the pendency of a proceeding.

(b) A certificate of mailing of a notice of probate hearing to the tribe at its record address will be conclusive evidence that the tribe had notice of the decedent's death, of the probate proceedings, and of the right to purchase.

§ 30.214 What must a notice of hearing contain?

The notice of hearing under § 30.114(a) must:

- (a) State the name of the decedent and caption of the case;
- (b) Specify the date, time, and place that the judge will hold a hearing to determine the heirs of the decedent and, if a will is offered for probate, to determine the validity of the will;
- (c) Name all potential heirs of the decedent known to OHA, and, if a will is offered for probate, the devisees under the will and the attesting witnesses to the will;
- (d) Cite this part as the authority and jurisdiction for holding the hearing;
- (e) Advise all persons who claim to have an interest in the estate of the decedent,

including persons having claims against the estate, to be present at the hearing to preserve the right to present evidence at the hearing;

(f) Include notice of the opportunity to consolidate interests at the probate hearing, including that the heirs or devisees may propose additional interests for consolidation, and include notice of the opportunity for renunciation either generally or in favor of a designated recipient;

(g) In estates for decedents whose date of death is on or after June 20, 2006, include notice of the possibilities of purchase and sale of trust or restricted property by heirs, devisees, co-owners, a tribe, or the Secretary; and

(h) State that the hearing may be continued to another time and place.

Depositions, Discovery, and Prehearing Conference

§ 30.215 How may I obtain documents related to the probate proceeding?

(a) You may make a written demand to produce documents for inspection and copying. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the hearing;

(2) May be made on any other party to the proceeding or on a custodian of records concerning interested parties or their trust property;

(3) Must be made in writing, and a copy must be filed with the judge; and

(4) May demand copies of any documents, photographs, or other tangible things that are relevant to the issues, not privileged, and in another party's or custodian's possession, custody, or control.

(b) Custodians of official records will furnish and reproduce documents, or permit

their reproduction, under the rules governing the custody and control of the records.

(1) Subject to any law to the contrary, documents may be made available to any member of the public upon payment of the cost of producing the documents, as determined reasonable by the custodians of the records

(2) Information within federal records will be maintained and disclosed as provided in 25 U.S.C. § 2216(e), the Privacy Act, and the Freedom of Information Act.

§ 30.216 How do I obtain permission to take depositions?

(a) You may take the sworn testimony of any person by deposition on oral examination for the purpose of discovery or for use as evidence at a hearing:

- (1) On stipulation of the parties; or
- (2) By order of the judge.

(b) To obtain an order from the judge for the taking of a deposition, you must file a motion that sets forth:

- (1) The name and address of the proposed witness;
- (2) The reasons why the deposition should be taken;
- (3) The name and address of the person qualified under § 30.217(a) to take depositions; and

(4) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the motion.

(c) An order for the taking of a deposition must be served upon all interested parties and must state:

- (1) The name of the witness;
- (2) The time and place of the examination, which must be at least 15 days after

the date of the order; and

(3) The name and address of the officer before whom the examination is to be made.

(d) The officer and the time and place specified in paragraphs (c)(2) and (c)(3) of this section need not be the same as those requested in the motion under paragraph (b) of this section.

(e) You may request that the judge issue a subpoena for the witness to be deposed under § 30.224.

§ 30.217 How is a deposition taken?

(a) The witness to be deposed must appear before the judge or before an officer authorized to administer oaths by the laws of the United States or by the laws of the place of the examination, as specified in:

(1) The judge's order under § 30.216(c); or

(2) The stipulation of the parties under § 30.216(a)(1).

(b) The witness must be examined under oath or affirmation and subject to cross-examination. The witness's testimony must be recorded by the officer or someone in the officer's presence.

(c) When the testimony is fully transcribed, it must be submitted to the witness for examination and must be read to or by him or her, unless examination and reading are waived.

(1) Any changes in form or substance that the witness desires to make must be entered on the transcript by the officer, with a statement of the reasons given by the witness for making them.

(2) The transcript must then be signed by the witness, unless the interested parties by stipulation waive the signing, or the witness is unavailable or refuses to sign.

(3) If the transcript is not signed by the witness, the officer must sign it and state on the record the fact of the waiver, the unavailability of the witness, or the refusal to sign together with the reason given, if any. The transcript may then be used as if it were signed, unless the judge determines that the reason given for refusal to sign requires rejection of the transcript in whole or in part.

(d) The officer must certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the witness's testimony. The officer must then hand deliver or mail the original and two copies of the transcript to the judge.

§ 30.218 How may the transcript of a deposition be used?

A transcript of a deposition taken under this part may be offered by any party or the judge in a hearing if the judge finds that the evidence is otherwise admissible and if either:

- (a) The witness is unavailable; or
- (b) The interest of fairness is served by allowing the transcript to be used.

§ 30.219 Who pays for the costs of taking a deposition?

The party who requests the taking of a deposition must make arrangements for payment of any costs incurred. The judge may assign the costs in the order.

§ 30.220 How do I obtain written interrogatories and admission of facts and documents?

(a) You may serve upon any other interested party written interrogatories and requests for admission of facts and documents. The interested party may do this only if:

- (1) The interrogatories and requests are served in sufficient time to permit

answers to be filed before the hearing, or as otherwise ordered by the judge; and

(2) Copies of the interrogatories and requests are filed with the judge.

(b) A party receiving interrogatories or requests served under paragraph (a) of this section must:

(1) Serve answers upon the requesting party within 30 days after the date of service of the interrogatories or requests, or within another deadline agreed to by the parties or prescribed by the judge; and

(2) File a copy of the answers with the judge.

§ 30.221 May the judge limit the time, place, and scope of discovery?

Yes. The judge may limit the time, place, and scope of discovery either:

(a) On timely motion by any interested party, if that party also gives notice to all interested parties and shows good cause; or

(b) When the judge determines that limits are necessary to prevent delay of the proceeding or prevent undue hardship to a party or witness.

§ 30.222 What happens if a party fails to comply with discovery?

(a) If a party fails to respond to a request for admission, the facts for which admission was requested will be deemed to be admitted, unless the judge finds good cause for the failure to respond.

(b) If a party fails without good cause to comply with any other discovery under this part or any order issued, the judge may:

(1) Draw inferences with respect to the discovery request adverse to the claims of the party who has failed to comply with discovery or the order, or

(2) Make any other ruling that the judge determines just and proper.

(c) Failure to comply with discovery includes failure to:

(1) Produce a document as requested;

(2) Appear for examination;

(3) Respond to interrogatories; or

(4) Comply with an order of the judge.

§ 30.223 What is a prehearing conference?

Before a hearing, the judge may order the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Facilitate agreements disposing of all or any of the issues in dispute; or

(e) Resolve such other matters as may simplify and shorten the hearing.

Hearings

§ 30.224 May a judge compel a witness to appear and testify at a hearing or deposition?

(a) The judge can issue a subpoena for a witness to appear and testify at a hearing or deposition and to bring documents or other material to the hearing or deposition.

(1) You may request that the judge issue a subpoena for the appearance of a witness to testify. The request must state the name, address, and telephone number or other means of contacting the witness, and the reason for the request. The request must be timely. The requesting party must mail the request to all other interested parties and to the witness at the time of filing.

(2) The request must specify the documents or other material sought for production under the subpoena.

(3) The judge will grant or deny the request in writing and mail copies of the order to all the interested parties and the witness.

(4) A person subpoenaed may seek to avoid a subpoena by filing a motion to quash with the judge and sending copies to the interested parties.

(b) Anyone whose legal residence is more than 100 miles from the hearing location may ask the judge to excuse his or her attendance under subpoena. The judge will inform the interested parties in writing of the request and the judge's decision on the request in writing in a timely manner.

(c) A witness who is subpoenaed to a hearing under this section is entitled to the fees and allowances provided by law for a witness in the courts of the United States (see 28 U.S.C. 1821).

(d) If a subpoenaed person fails or refuses to appear at a hearing or to testify, the judge may file a petition in United States District Court for issuance of an order requiring the subpoenaed person to appear and testify.

§ 30.225 Must testimony in a probate proceeding be under oath or affirmation?

Yes. Testimony in a probate proceeding must be under oath or affirmation.

§ 30.226 Is a record made of formal probate hearings?

(a) The judge must make a verbatim recording of all formal probate hearings. The judge will order the transcription of recordings of hearings as the judge determines necessary.

(b) If the judge orders the transcription of a hearing, the judge will make the

transcript available to interested parties on request.

§ 30.227 What evidence is admissible at a probate hearing?

(a) A judge conducting probate proceedings under this part may admit any written, oral, documentary, or demonstrative evidence that is:

- (1) Relevant, reliable, and probative;
- (2) Not privileged under Federal law; and
- (3) Not unduly repetitious or cumulative.

(b) The judge may exclude evidence if its probative value is substantially outweighed by the risk of undue confusion of the issues or delay.

(c) Hearsay evidence is admissible. The judge may consider the fact that evidence is hearsay when determining its probative value.

(d) A judge may admit a copy of a document into evidence or may require the admission of the original document. After examining the original document, the judge may substitute a copy of the original document and return the original.

(e) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the judge and the parties in interpreting and applying the provisions of this section.

(f) The judge may take official notice of any public record of the Department and of any matter of which federal courts may take judicial notice.

(g) The judge will determine the weight given to any evidence admitted.

(h) Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

(i) There is no privilege under this part for any communication that:

- (1) Occurred between a decedent and any attorney advising a decedent; and
- (2) Pertained to a matter relevant to an issue between parties, all of whom claim through the decedent.

§ 30.228 Is testimony required for self-proved wills, codicils, or revocations?

The judge may approve a self-proved will, codicil, or revocation, if uncontested, and order distribution, with or without the testimony of any attesting witness.

§ 30.229 When will testimony be required for approval of a will, codicil, or revocation?

(a) The judge will require testimony if someone contests the approval of a self-proved will, codicil, or revocation, or submits a non-self-proved will for approval. In any of these cases, the attesting witnesses who are in the reasonable vicinity of the place of hearing must appear and be examined, unless they are unable to appear and testify because of physical or mental infirmity.

(b) If an attesting witness is not in the reasonable vicinity of the place of hearing or is unable to appear and testify because of physical or mental infirmity, the judge may:

(1) Order the deposition of the attesting witness at a location reasonably near the residence of the witness;

(2) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

(3) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

§ 30.230 Who pays witnesses' costs?

Interested parties who desire a witness to testify at a hearing must make their own financial and other arrangements for the witness.

§ 30.231 May a judge schedule a supplemental hearing?

Yes. A judge may schedule a supplemental hearing if he or she deems it necessary.

§ 30.232 What will the official record of the probate case contain?

The official record of the probate case will contain:

- (a) A copy of the posted public notice of hearing showing the posting certifications;
- (b) A copy of each notice served on interested parties with proof of mailing;
- (c) The record of the evidence received at the hearing, including any transcript made of the testimony;
- (d) Claims filed against the estate;
- (e) Any wills, codicils, and revocations;
- (f) Inventories and valuations of the estate;
- (g) Pleadings and briefs filed;
- (h) Interlocutory orders;
- (i) Copies of all proposed or accepted settlement agreements, consolidation agreements, and renunciations and acceptances of renounced property;
- (j) In the case of sale of estate property at probate, copies of notices of sale, appraisals and objections to appraisals, requests for purchases, all bids received, and proof of payment;
- (k) The decision, order, and the notices thereof; and
- (l) Any other documents or items deemed material by the judge.

§ 30.233 What will the judge do with the original record?

(a) The judge must send the original record to the designated LTRO under 25 CFR part 150.

(b) The judge must also send a copy of:

(1) The order to the agency originating the probate, and

(2) The order and inventory to other affected agencies.

§ 30.234 What happens if a hearing transcript has not been prepared?

When a hearing transcript has not been prepared:

(a) The recording of the hearing must be retained in the office of the judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(b) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

Decisions in Formal Proceedings

§ 30.235 What will the judge's decision in a formal probate proceeding contain?

The judge must decide the issues of fact and law involved in any proceeding and issue a written decision that meets the requirements of this section.

(a) In all cases, the judge's decision must:

(1) Include the name, birth date, and relationship to the decedent of each heir or devisee;

(2) State whether the heir or devisee is Indian or non-Indian;

(3) State whether the heir or devisee is eligible to hold property in trust status;

(4) Provide information necessary to identify the persons or entities and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;

(5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;

(6) Allow or disallow claims against the estate under this part, and order the amount of payment for all approved claims;

(7) Include the probate case number that has been assigned to the case in any case management or tracking system then in use within the Department;

(8) Make any other findings of fact and conclusions of law necessary to decide the issues in the case; and

(9) Include the signature of the judge and date of the decision.

(b) In a case involving a will, the decision must include the information in paragraph (a) of this section and must also:

(1) Approve or disapprove the will;

(2) Interpret provisions of an approved will as necessary; and

(3) Describe the share each devisee is to receive under an approved will, subject to any encumbrances.

(c) In all intestate cases, including a case in which a will is not approved, and any case in which an approved will does not dispose of all of the decedent's trust or restricted property, the decision will include the information in paragraph (a) of this section and must also:

(1) Cite the law of descent and distribution under which the decision is made; and

(2) Describe the distribution of shares to which the heirs are entitled; and

(3) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

§ 30.236 What notice of the decision will the judge provide?

When the judge issues a decision, the judge must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The notice must include a statement that interested parties who are adversely affected have a right to file a petition for rehearing with the judge within 30 days after the date on which notice of the decision was mailed. The decision will become final at midnight on the thirtieth day after the date on which it was mailed, unless a timely petition for rehearing is filed.

§ 30.237 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.236.

(b) If the petition is based on newly discovered evidence, it must:

(1) Be accompanied by one or more affidavits of witnesses stating fully the content of the new evidence; and

(2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision.

(c) A petition for rehearing must state specifically and concisely the grounds on which it is based.

(d) The judge must forward a copy of the petition for rehearing to the affected agencies.

§ 30.238 Does any distribution of the estate occur while a petition for rehearing is

pending?

The agencies must not initiate payment of claims or distribute any portion of the estate while the petition is pending, unless otherwise directed by the judge.

§ 30.239 How will the judge decide a petition for rehearing?

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will:

(1) Issue an order denying the petition for rehearing and including the reasons for denial; and

(2) Furnish copies of the order to the petitioner, the agencies, and the interested parties.

(b) If the petition appears to show merit, the judge must:

(1) Cause copies of the petition and supporting papers to be served on all persons whose interest in the estate might be adversely affected if the petition is granted;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in response to the petition; and

(3) Consider, with or without a hearing, the issues raised in the petition.

(c) The judge may affirm, modify, or vacate the former decision.

(d) On entry of a final order, the judge must distribute the order as provided in this part. The order must include a notice to adversely affected parties stating that they have a right to appeal the final order to the Board, within 30 days of the date on which the order was mailed, and giving the Board's address.

§ 30.240 May I submit another petition for rehearing?

No. Successive petitions for rehearing are not permitted. The jurisdiction of the

judge terminates when he or she issues a decision finally disposing of a petition for rehearing, except for:

(a) The issuance of necessary orders nunc pro tunc to correct clerical errors in the decision; and

(b) The reopening of a case under this part.

§ 30.241 When does the judge’s decision on a petition for rehearing become final?

The decision on a petition for rehearing will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

§ 30.242 May a closed probate case be reopened?

(a) The judge may reopen a closed probate case as shown in the following table.

How the case can be reopened	Applicable deadline	Standard for reopening the case
(1) On the judge’s own motion	(i) Initiated within 3 years after the date of the original decision	To correct an error of fact or law in the original decision.
	(ii) Initiated more than 3 years after the date of the original decision	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(2) On a petition filed by the agency	(i) Filed within 3 years after the date of the original decision	To correct an error of fact or law in the original decision.
	(ii) Filed more than 3 years after the date of the original decision	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(2) On a petition filed by the interested party	(i) Filed within 3 years after the date of the original decision and within 1 year after the petitioner’s discovery of an alleged error, if the interested party did not have notice of the original decision	To correct an error of fact or law in the original decision.

(ii) Filed within 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error, if the interested party had notice of the original decision	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(iii) Filed more than 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error, without regard to notice	To correct an error of act or law in the original decision which, if not corrected, would result in a manifest injustice.

(b) All grounds for reopening must be set forth fully in the petition.

(c) A petition filed by an interested party must:

(1) Include all relevant evidence, in the form of documents or affidavits,

concerning when the petitioner discovered the alleged error; and

(2) If the grounds for reopening are based on alleged errors of fact, be supported by affidavit.

§ 30.243 How will the judge decide my petition for reopening?

(a) If the judge finds that proper grounds are not shown, the judge will issue an order denying the petition for reopening and giving the reasons for the denial. An order denying reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the order to the Board within 30 days of the date on which the order was mailed, and giving the Board's address. Copies of the judge's decision must be mailed to the petitioner, the agencies, and those persons whose rights would be affected.

(b) If the petition appears to show merit, the judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest

in the estate might be affected if the petition is granted. They may respond to the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the judge.

§ 30.244 What happens if the judge reopens the case?

On reopening, the judge may affirm, modify, or vacate the former decision.

(a) The final order on reopening must include a notice that:

(1) States that interested parties who are adversely affected have a right to appeal the final order to the Board within 30 days of the date on which the order was mailed; and

(2) Gives the Board's address.

(b) Copies of the judge's decision on reopening must be mailed to the petitioner and to all persons who received copies of the petition.

(c) By order directed to the agency, the judge may suspend further distribution of the estate or income during the reopening proceedings.

(d) The judge must file the record made on a reopening petition with the designated LTRO and must furnish a duplicate record to the affected agencies.

§ 30.245 When will the decision on reopening become final?

The decision on reopening will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

Subpart K--Miscellaneous Provisions

§ 30.250 When does the anti-lapse provision apply?

(a) The following table illustrates how the anti-lapse provision applies.

If...	And...	Then...
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A testator devises trust property to any of his or her grandparents or to the lineal descendant of a grandparent	the devisee dies before the testator, leaving lineal descendants	the lineal descendants take the right, title, or interest given by the will per stirpes.
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(b) For purposes of this section, relationship by adoption is equivalent to relationship by blood.

§ 30.251 What happens if an heir or devisee participates in the killing of the decedent?

Any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent may not take, directly or indirectly, any inheritance or devise under the decedent's will. This person will be treated as if he or she had predeceased the decedent.

§ 30.252 May a judge allow fees for attorneys representing interested parties?

(a) Except for attorneys representing creditors, the judge may allow fees for attorneys representing interested parties.

(1) At the discretion of the judge, these fees may be charged against the interests of the party represented or as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

§ 30.253 How must minors or other legal incompetents be represented?

Minors and other legal incompetents who are interested parties must be

represented by legally appointed guardians, or by guardians ad litem appointed by the judge. In appropriate cases, the judge may order the payment of fees to the guardian ad litem from the assets of the estate.

§ 30.254 What happens when a person dies without a valid will and has no heirs?

The judge will determine whether a person with trust or restricted property died intestate and without heirs, and the judge will determine whether 25 U.S.C. 2206(a) applies, as shown in the following table.

If...	Then...	Or...
(a) 25 U.S.C. 2206(a) applies	the judge will order distribution of the property under § 2206(a)(2)(B)(v) through (a)(2)(C)	the judge will order distribution of the property under § 2206(a)(2)(D)(iii)(IV) through (V).
(b) 25 U.S.C. 2206(a) does not apply	if the trust or restricted property is not on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373a	if the trust or restricted property is on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373b.

Subpart L--Tribal Purchase of Interests under Special Statutes

§ 30.260 What land is subject to a tribal purchase option at probate?

Sections 30.260 through 30.274 apply to formal Indian probate proceedings that relate to the tribal purchase of a decedent’s interests in trust and restricted land under the statutes shown in the following table.

Location of trust or restricted land	Statutes governing purchase
(a) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951)	The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968)

Location of trust or restricted land	Statutes governing purchase
(b) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37)	The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530)
(c) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957)	The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744)

§ 30.261 How does a tribe exercise its statutory option to purchase?

(a) To exercise its option to purchase, the tribe must file with the agency:

(1) A written notice of purchase; and

(2) A certification that the tribe has mailed copies of the notice on the same date to the judge and to the affected heirs or devisees.

(b) A tribe may purchase all or part of the available interests specified in the probate decision. A tribe may not, however, claim an interest less than decedent's total interest in any one individual tract.

§ 30.262 When may a tribe exercise its statutory option to purchase?

(a) A tribe may exercise its statutory option to purchase:

(1) Within 60 days after mailing of the probate decision unless a petition for rehearing has been filed under § 30.237 or a demand for hearing has been filed under § 30.268; or

(2) If a petition for rehearing or a demand for hearing has been filed, within 20 days after the date of the decision on rehearing or hearing, whichever is applicable, provided the decision on rehearing or hearing is favorable to the tribe.

(b) On failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

§ 30.263 May a surviving spouse reserve a life estate when a tribe exercises its statutory

option to purchase?

Yes. When the heir or devisee whose interests are subject to the tribal purchase option is a surviving spouse, the spouse may reserve a life estate in one-half of the interests.

(a) To reserve a life estate, the spouse must, within 30 days after the tribe has exercised its option to purchase the interest, file with the agency both:

(1) A written notice to reserve a life estate; and

(2) A certification that copies of the notice have been mailed on the same date to the judge and the tribe.

(b) Failure to file the notice on time, as required by paragraph (a)(1) of this section, constitutes a waiver of the option to reserve a life estate.

§30.264 When must BIA furnish a valuation of a decedent's interests?

(a) BIA must furnish a valuation report of the decedent's interests when the record reveals to the agency:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 30.260; and

(2) That one or more of the probable heirs or devisees who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) When required by paragraph (a) of this section, BIA must furnish a valuation report in the probate file when it is submitted to OHA. Interested parties may examine

and copy, at their expense, the valuation report at the agency.

(c) The valuation must be made on the basis of the fair market value of the property, including fixed improvements, as of the date of decedent's death.

(d) If there is a surviving spouse whose interests may be subject to the tribal purchase option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests.

§ 30.265 What determinations will a judge make with respect to a tribal purchase option?

(a) If a tribe files a written notice of purchase under § 30.261(a), a judge will determine:

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the applicable statute;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, as determined by an appraisal, including the value of any life estate reserved by a surviving spouse.

(b) In making a determination under paragraph (a)(1) of this section, the following issues will be determined by the official tribal roll, which is binding on the judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(c) For good cause shown, the judge may stay the probate proceeding to permit an interested party who is adversely affected to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

§ 30.266 When is a final decision issued?

This section applies when a decedent is shown to have owned land interests in any one or more of the reservations designated in § 30.260.

(a) The probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors must first be concluded as final for the Department under this part. This decision is referred to in this section as the “probate decision.”

(b) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal purchase option.

(1) The finding must be included in the probate decision and must state:

(i) The apparent rights of the tribe as against affected heirs or devisees; and

(ii) The right of a surviving spouse whose interests are subject to the tribal purchase option to reserve a life estate in one-half of the interests.

(2) If the finding is that there are no interests subject to the tribal purchase option, the decision must so state.

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.236.

§ 30.267 What if I disagree with the probate decision regarding tribal purchase option?

If you are adversely affected by the probate decision, you may, within 30 days after the date on which the probate decision was mailed, file with the judge a written petition for rehearing under this part.

§ 30.268 May I demand a hearing regarding the tribal purchase option decision?

Yes. You may file with the judge a written demand for hearing if you are

adversely affected by the exercise of the tribal purchase option or by the valuation of the interests in the valuation report,.

(a) The demand for hearing must be filed by whichever of the following deadlines is applicable:

- (1) Within 30 days after the date of the probate decision;
- (2) Within 30 days after the date of the decision on rehearing; or
- (3) Within 20 days after the date on which the tribe exercises its option to purchase available interests.

(b) The demand for hearing must:

- (1) Include a certification that copies of the demand have been mailed on the same date to the agency and to each interested party; and
- (2) State specifically and concisely the grounds on which it is based.

§ 30.269 What notice of the hearing will the judge provide?

On receiving a demand for hearing, the judge must:

- (a) Set a time and place for the hearing after expiration of the 30-day period fixed for the filing of the demand for hearing as provided in § 30.268; and
- (b) Mail a notice of the hearing to all interested parties not less than 20 days in advance of the hearing.

§ 30.270 How will the hearing be conducted?

- (a) At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests in the valuation report will have the burden of proving his or her position.
- (b) On conclusion of the hearing, the judge will issue a decision that determines

all of the issues including, but not limited to:

(1) The fair market value of the interests purchased by the tribe; and

(2) Any adjustment to the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(c) The decision must include a notice that:

(1) States that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed; and

(2) Gives the Board's address.

(d) The judge must:

(1) Forward the complete record relating to the demand for hearing to the LTRO as provided in § 30.233;

(2) Furnish a duplicate record thereof to the agency; and

(3) Mail a notice of such action together with a copy of the decision to each interested party.

§ 30.271 How must the tribe pay for the interests it purchases?

(a) A tribe must pay the full fair market value of the interests purchased, as set forth in the appraisal or as determined after hearing under § 30.268, whichever is applicable.

(b) Payment must be made within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever is later.

§ 30.272 What are BIA's duties on payment by the tribe?

On payment by the tribe of the interests purchased, the Superintendent must:

- (a) Issue a certificate to the judge that payment has been made; and
- (b) File with the certificate all supporting documents required by the judge.

§ 30.273 What action will the judge take to record title?

After receiving the certificate and supporting documents, the judge will:

- (a) Issue an order that the United States holds title to the interests in trust for the tribe;
- (b) File the complete record, including the decision, with the LTRO as provided in § 30.233;
- (c) Furnish a duplicate copy of the record to the agency; and
- (d) Mail a notice of the action together with a copy of the decision to each interested party.

§ 30.274 What happens to income from land interests during pendency of the probate?

During the pendency of the probate, there may be income received or accrued from the land interests purchased by the tribe, including the payment from the tribe. This income will be credited to the estate and paid to the heirs. For purposes of this section, pendency of the probate ends on the date of transfer of title to the United States in trust for the tribe under § 30.273.

TITLE 43 – PUBLIC LANDS: INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. Revise the authority citation for part 4 to read as follows:

AUTHORITY: 5 U.S.C. 301, 503-504; 25 U.S.C. 9, 372-74, 410, 2201 et seq.; 43 U.S.C. 1201, 1457; Pub. L. 99-264, 100 Stat. 61, as amended.

2. Revise the cross reference for part 4, subpart D, to read as follows:

CROSS REFERENCE: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the probate of Indian trust estates within the Probate Hearings Division, Office of Hearings and Appeals, see 43 CFR part 30. For regulations pertaining to the authority, jurisdiction, and membership of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart A of this part. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see subpart B of this part.

3. In subpart D, remove undesignated center heading, “Determination 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.”

4. Revise §§ 4.200 and 4.201 to read as follows:

§ 4.200 How to use this subpart.

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

For provisions relating to...	consult...
(1) Appeals to the Board of Indian Appeals generally	§§ 4.310 through 4.318.
(2) Appeals to the Board of Indian Appeals from decisions of the Probate Hearings Division in Indian probate matters	§§ 4.201 and 4.320 through 4.326.
(3) Appeals to the Board of Indian Appeals from actions or decisions of BIA	§§ 4.201 and 4.330 through 4.340.
(4) Review by the Board of Indian Appeals of other matters referred to it by the Secretary, Assistant Secretary-Indian Affairs, or Director-Office of Hearings and Appeals	§§ 4.201 and 4.330 through 4.340
(5) Determinations under the White Earth Reservation Land Settlement Act of 1985	§§ 4.350 through 4.357.

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

§ 4.201 Definitions.

Administrative law judge (ALJ) means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

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

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Board means the Interior Board of Indian Appeals within OHA.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or decision and order) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Estate means the trust or restricted land and trust personalty owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

IIM account means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

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Indian probate judge (IPJ) means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

Interested party means any of the following:

- (1) Any potential or actual heir;
- (2) Any devisee under a will;
- (3) Any person or entity asserting a claim against a decedent's estate;
- (4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or
- (5) Any co-owner exercising a purchase option.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge, except as used in the term "administrative judge," means an ALJ or IPJ.

LTRO means the Land Titles and Records Office within BIA.

Probate means the legal process by which applicable tribal, Federal, or state law that affects the distribution of a decedent's estate is applied in order to:

- (1) Determine the heirs;
 - (2) Determine the validity of wills and determine devisees;
 - (3) Determine whether claims against the estate will be paid from trust personality;
- and
- (4) Order the transfer of any trust or restricted land or trust personality to the heirs, devisees, or other persons or entities entitled by law to receive them.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the

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purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term “restricted property” as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

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

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent’s trust or restricted property.

5. Remove and reserve §§ 4.202 through 4.308, along with their undesignated center headings.

6. Revise § 4.320 to read as follows:

§ 4.320 Who may appeal a judge’s decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order or a judge under part 30 of this subtitle:

- (a) On a petition for rehearing;
- (b) On a petition for reopening;
- (c) Regarding purchase of interests in a deceased Indian’s trust estate; or

(d) Regarding modification of the inventory of a trust estate.

7. Redesignate §§ 4.321 through 4.323 as §§ 4.324 through 4.326 and add new §§ 4.321 through 4.323 to read as follows:

§ 4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of § 4.320 must file a written notice of appeal within 30 days after we have mailed judge's decision or order and accurate appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

§ 4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

§ 4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

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(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

8. Revise redesignated §§ 4.234 through 4.236 to read as follows:

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify the agency concerned, which must return the duplicate record filed under subpart J of part 30 of this subtitle to the designated LTRO.

(b) The LTRO must conform the duplicate record to the original. Thereafter, the duplicate record will be available for inspection either at the LTRO or at the agency.

(c) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original of the transcript in the record and make a copy of the transcript for the duplicate record.

(d) Within 30 days of the receipt of the transcript, the LTRO must prepare a table of contents for the record, certify that the record is complete, and forward the certified original record on appeal, together with the table of contents, to the Board by certified mail.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to

the Board:

- (1) An interlocutory appeal under § 4.28;
- (2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or
- (3) An appeal from a decision under § 30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

§ 4.325 How will the appeal be docketed?

The Board will docket the appeal on receiving the probate record from the LTRO or the administrative record from the judge, and will provide a notice of the docketing and the table of contents for the record to all interested parties as shown by the record on appeal. The docketing notice will specify the deadline for filing briefs and will cite the procedural regulations governing the appeal.

§ 4.326 What happens to the record after disposition?

- (a) After the Board makes a decision other than a remand, it must forward to the designated LTRO:
 - (1) The record filed with the Board under § 4.324(d) or (f); and
 - (2) All documents added during the appeal proceedings, including any transcripts and the Board's decision.
- (b) The LTRO must conform the duplicate record retained under § 4.324(b) to the original sent under paragraph (a) of this section and forward the conformed record to the agency concerned.

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Subpart A - General

Sec.

- 179.1 What is the purpose of this part?
- 179.2 What definitions do I need to know?
- 179.3 What law applies to life estates?
- 179.4 When does a life estate terminate?
- 179.5 What documents will the BIA use to record termination of a life estate?

Subpart B - Life Estates in General

- 179.101 How does the Secretary distribute principal and income to the holder of a life estate?
- 179.102 How does the Secretary calculate the value of a remainder and a life estate?

Subpart C - Life Estates subject to AIPRA

- 179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?
- 179.202 Can the holder of a life tenancy without regard to waste deplete the resources?

AUTHORITY: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201 et. seq.

Subpart A - General

§179.1 What is the purpose of this part?

This part contains the authorities, policies, and procedures governing the administration of life estates and future interests in trust and restricted property by the Secretary of Interior. This part does not apply to any use rights assigned to tribal members by tribes in the exercise of their jurisdiction over tribal lands.

- (a) Subpart A describes life estates in general, including non-probate life estates.
- (b) Subpart B describes life estates created before June 20, 2006.
- (c) Subpart C describes life estates created by operation of law on or after June 20, 2006, under the American Indian Probate Reform Act of 2004 (AIPRA).

§ 179.2 What definitions do I need to know?

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Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property. This term also means any office of a tribe that has entered into a contract or compact to fulfill BIA functions.

AIPRA means the American Indian Probate Reform Act of 2004.

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

Contract bonus means cash consideration paid or agreed to be paid as incentive for execution of the contract.

Income means the rents and profits of real property and the interest on invested principal.

Life estate means an interest in property held for only the duration of a designated person's life.

Life estate without regard to waste means, that the holder of the life estate interest in land is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen, for the purpose of describing the extent of the estate of a surviving spouse in an intestate case in which the decedent died on or after June 20, 2006.

Principal means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

Rents and profits means the income or profit arising from the ownership or possession of property.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the

purpose of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term “restricted property” as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Secretary means the Secretary of the Interior or authorized representative.

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

§179.3 What law applies to life estates?

(a) The American Indian Probate Reform Act of 2004 (AIPRA) applies to the creation of life estates by intestacy for an individual who died on or after June 20, 2006.

(b) State or tribal law applies to the creation of life estates by intestacy for an individual who died before June 20, 2006.

(c) Absent language in the conveyance or probate order, state or tribal law applies to the creation of life estates.

§ 179.4 When does a life estate terminate?

A life estate terminates upon relinquishment or upon the death of the measuring life.

§ 179.5 What documents will BIA use to record termination of a life estate?

Upon receipt of one of the following, the Agency will file a copy of the relinquishment of the interest or death certificate with the Bureau of Indian Affairs Land Title and Records Office for recording:

(a) The life estate holder’s relinquishment of interest; or

(b) Notice of death of a person who is the measuring life for the life estate in trust

or restricted property.

Subpart B - Life Estates in General

§ 179.101 How does the Secretary distribute principal and income to the holder of a life estate?

(a) This section applies to the following cases:

(1) Where the document creating the life estate does not specify a distribution of proceeds;

(2) Where the vested holders of remainder interests and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or

(3) Where, by the document or agreement or by the application of State law, the open mine doctrine does not apply.

(b) In all cases listed in paragraph (a) of this section, the Secretary must do all of the following.

(1) Distribute all rents and profits, as income, to the life tenant.

(2) Distribute any contract bonus one-half each to the life tenant and the holders of remainder interests.

(3) In the case of mineral contracts, invest the principal, with interest income to be paid to the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case paragraph (b)(4) of this section applies. The principal will be distributed to the holders of remainder interests upon termination of the life estate.

(4) In all other instances:

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(a) Distribute the principal immediately according to § 179.102; and

(b) Invest all proceeds attributable to any contingent holders of remainder interests in an account, with disbursement to take place upon determination of the contingent holders of remainder interests.

§ 179.102 How does the Secretary calculate the value of a remainder and a life estate?

(a) If income is subject to division, the Secretary will use Actuarial Table S, Valuation of Annuities, found at 26 CFR 20.2031, to determine the value of the interests of the holders of remainder interests and the life tenant .

(b) Table S specifies the share attributable to the life estate and remainder interests, given the age of the life tenant and an established rate of return published by the Secretary in the Federal Register. We may periodically review and revise the percent rate of return to be used to determine the share attributable to the interests of the life tenant and the holders of remainder interests. The life tenant will receive the balance of the distribution after the holders' of remainder interests shares have been calculated.

Subpart C - Life Estates Subject to AIPRA

§ 179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?

This section applies if a decedent died on or after June 20, 2006, without a valid will, and if a surviving spouse receives a life estate without regard to waste. The Secretary must distribute all income, including bonuses and royalties, to the life tenant to the exclusion of any holders of remainder interests.

§179.202 May the holder of a life tenancy without regard to waste deplete the resources?

Yes. The holder of a life tenancy without regard to waste may cause lawful

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depletion or benefit from the lawful depletion of the resources. However, a life tenant without regard to waste may not cause or allow damage to the trust property through culpable negligence or an affirmative act of malicious destruction that causes damage to the prejudice of the holders of remainder interests.

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PART 18—TRIBAL PROBATE CODES

Subpart A – General Provisions

Sec.

- 18.1 What is the purpose of this part?
- 18.2 What definitions do I need to know?
- 18.3 How does the Paperwork Reduction Act affect this part?

Subpart B – Approval of Tribal Probate Codes

- 18.101 May a tribe create and adopt its own tribal probate code?
- 18.102 When must a tribe submit its tribal probate code to the Department for approval?
- 18.103 Which provisions within a tribal probate code require the Department's approval?
- 18.104 May a tribe include provisions in its tribal probate code regarding the descent and distribution of trust personalty?
- 18.105 How does a tribe request approval for a tribal probate code?
- 18.106 What will the Department consider in the approval process?
- 18.107 When will the Department approve or disapprove a tribal probate code?
- 18.108 What happens if the Department approves the tribal probate code?
- 18.109 How will a tribe be notified of the disapproval of a tribal probate code?
- 18.110 When will a tribal probate code become effective?
- 18.111 What will happen if a tribe repeals its probate code?
- 18.112 May a tribe appeal the approval or disapproval of a probate code?

Subpart C – Approval of Tribal Probate Code Amendments

- 18.201 May tribe amend a tribal probate code?
- 18.202 How does a tribe request approval for a tribal probate code amendment?
- 18.203 Which probate code amendments require approval?
- 18.204 When will the Department approve an amendment?
- 18.205 What happens if the Department approves the amendment?
- 18.206 How will the tribe be notified of disapproval of the amendment?
- 18.207 When do amendments to tribal probate codes become effective?
- 18.208 May a tribe appeal an approval or disapproval of a probate code amendment?

Subpart D – Approval of Single Heir Rule

- 18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?
- 18.302 How does the tribe request approval for the single heir rule?
- 18.303 When will the Department approve or disapprove a single heir rule?
- 18.304 What happens if the Department approves a single heir rule?
- 18.305 How will a tribe be notified of the disapproval of a single heir rule?
- 18.306 When does the single heir rule become effective?
- 18.307 May a tribe appeal approval or disapproval of a single heir rule?

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410, 2201 et seq.; 44 U.S.C. 3101 et seq; 25 CFR part 15; 43 CFR part 4.

Subpart A – General Provisions

§ 18.1 What is the purpose of this part?

This part establishes the Department’s policies and procedures for reviewing and approving or disapproving tribal probate codes, amendments, and single heir rules that contain provisions regarding the descent and distribution of trust and restricted lands.

§ 18.2 What definitions do I need to know?

Act means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108-374, as codified at 25 U.S.C. 2201 et seq.

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

Day means a calendar day.

Decedent means a person who is deceased.

Department or DOI means the Department of the Interior.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Indian means, for the purposes of the Act (25 U.S.C. 2206):

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the

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State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Intestate means that the decedent died without a will.

OHA means the Office of Hearings and Appeals within the Department of the Interior.

Restricted lands means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted lands are treated as if they were trust lands. Except as the law may provide otherwise, the term "restricted lands" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Testator means a person who has executed a will.

Trust lands means real property, or an interest therein, for which the United States holds the title to the property in trust for the benefit of an individual Indian or tribe.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

We or us means, the Secretary, an authorized representative of the Secretary, or the authorized employee.

§ 18.3 How does the Paperwork Reduction Act affect this part?

The collection of information contained in section 18.102 of Part 18 has been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and assigned OMB Control Number 1076-0168. Response is

required to obtain a benefit. A Federal agency may not conduct or sponsor, and members of the public are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

Subpart B – Approval of Tribal Probate Codes

§ 18.101 May a tribe create and adopt its own tribal probate code?

Yes. A tribe may create and adopt a tribal probate code.

§18.102 When must a tribe submit its tribal probate code to the Department for approval?

The tribe must submit its probate code to the Department for approval if the tribal probate code contains provisions regarding the descent and distribution of trust and restricted lands.

§18.103 Which provisions within a tribal probate code require the Department's approval?

Only those tribal probate code provisions regarding the descent and distribution of trust and restricted lands require the Department's approval.

§ 18.104 May a tribe include provisions in its tribal probate code regarding the distribution and descent of trust personalty?

No. All trust personalty will be distributed in accordance with the American Indian Probate Reform Act of 2004, as amended.

§ 18.105 How does a tribe request approval for a tribal probate code?

The tribe must submit the tribal probate code and a duly executed tribal resolution adopting the code to the Assistant Secretary – Indian Affairs, Attn: Tribal Probate Code, 1849 C Street NW, Washington, DC 20240 for review and approval or disapproval.

§ 18.106 What will the Department consider in the approval process?

A tribal probate code must meet the requirements of this section in order to receive our approval under this part.

- (a) The code must be consistent with Federal law;
- (b) The code must promote the policies of the Indian Land Consolidation Act (ILCA) Amendments of 2000, which are to:
 - (1) Prevent further fractionation;
 - (2) Consolidate fractional interests into useable parcels;
 - (3) Consolidate fractional interests to enhance tribal sovereignty;
 - (4) Promote tribal self-sufficiency and self-determination; and
 - (5) Reverse the effects of the allotment policy on Indian tribes.
- (c) The code must allow the devise of an interest to:
 - (1) An Indian lineal descendant of the original allottee; and
 - (2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in the land.
- (d) If the tribal probate code places limits on the ability to inherit of the devisees in paragraphs (c)(1) and (c)(2) of this section, then the code must also allow:
 - (1) Those devisees to renounce their interests to eligible devisees as defined by the tribal probate code;
 - (2) A devisee who is the spouse or lineal descendant of the testator to reserve a life estate without regard to waste; and
 - (3) For the payment of fair market value as determined by the Department on the date of the decedent's death.

§ 18.107 When will the Department approve or disapprove a tribal probate code?

(a) We have 180 days from receipt by the Assistant Secretary – Indian Affairs of a submitted tribal probate code and duly executed tribal resolution adopting the tribal probate code to approve or disapprove a tribal probate code.

(b) If we do not meet the deadline in paragraph (a) of this section, the tribal probate code will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

§ 18.108 What happens if the Department approves the tribal probate code?

Our approval applies only to those sections of the tribal probate code that govern the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the tribal probate code to the Office of Hearings and Appeals.

§ 18.109 How will a tribe be notified of the disapproval of a tribal probate code?

If we disapprove a tribal probate code, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.110 When will a tribal probate code become effective?

(a) A tribal probate code may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a tribal probate code is deemed approved through inaction by the Department, then the code will become effective 180 days after it is deemed approved.

(c) The tribal probate code will apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

§ 18.111 What will happen if a tribe repeals its probate code?

If a tribe repeals its tribal probate code:

(a) The repeal will not become effective sooner than 180 days from the date we receive notification from the tribe of its decision to repeal the code; and

(b) We will forward a copy of the repeal to the Office of Hearings and Appeals.

§ 18.112 May a tribe appeal the approval or disapproval of a probate code?

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code.

Subpart C – Approval of Tribal Probate Code Amendments

§ 18.201 May a tribe amend a tribal probate code?

Yes. A tribe may amend a tribal probate code.

§ 18.202 How does a tribe request approval for a tribal probate code amendment?

To amend a tribal probate code, the tribe must follow the same procedures for submitting a tribal probate code to the Department for approval.

§18.203 Which probate code amendments require approval?

Only those tribal probate code amendments regarding the descent and distribution of trust and restricted lands require the Department's approval.

§ 18.204 When will the Department approve an amendment?

(a) We have 60 days from receipt by the Assistant Secretary of a submitted amendment to approve or disapprove the amendment.

(b) If we do not meet the deadline in paragraphs (a) of this section, the

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amendment will be deemed approved, but only to the extent that it:

- (1) Is consistent with Federal law; and
- (2) Promotes the policies of the ILCA Amendments of 2000 as listed in §

18.106(b).

§ 18.205 What happens if the Department approves the amendment?

Our approval applies only to those sections of the amendment that contain provisions regarding the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the amendment to the Office of Hearings and Appeals.

§ 18.206 How will a tribe be notified of the disapproval of an amendment?

If we disapprove an amendment we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.207 When do amendments to a tribal probate code become effective?

(a) An amendment may not become effective sooner than 180 days after the date of approval by the Department.

(b) If an amendment is deemed approved through inaction by the Department, then the amendment will become effective 180 days after it is deemed approved.

(c) The amendment will apply only to the estate of a decedent who dies on or after the effective date of the amendment.

§ 18.208 May a tribe appeal an approval or disapproval of a probate code amendment?

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code amendment.

Subpart D – Approval of Single Heir Rule

§ 18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?

Yes. A tribe may create and adopt a single heir rule for intestate succession. The single heir rule may specify a single recipient other than the one specified in 25 U.S.C. 2206(a)(2)(D).

§ 18.302 How does the tribe request approval for the single heir rule?

The tribe must follow the same procedures for submitting a tribal probate code to the Department for approval.

§ 18.303 When will the Department approve or disapprove a single heir rule?

We have 90 days from receipt by the Assistant Secretary of a single heir rule submitted separate from the tribal probate code to approve or disapprove a single heir rule.

§ 18.304 What happens if the Department approves the single heir rule?

If we approve the single heir rule, we will notify the tribe of the approval and forward a copy of the single heir rule to the Office of Hearings and Appeals.

§ 18.305 How will a tribe be notified of the disapproval of a single heir rule?

If we disapprove a single heir rule, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.306 When does the single heir rule become effective?

(a) A single heir rule may not become effective sooner than 180 days after the date of approval by the Department.

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(b) If a single heir rule is deemed approved through inaction by the Department, then the single heir rule will become effective 180 days after it is deemed approved.

(c) The single heir rule will apply only to the estate of a decedent who dies on or after the effective date of the single heir rule.

§ 18.307 May a tribe appeal approval or disapproval of a single heir rule?

No. There is no right of appeal within the Department from a decision to approve or disapprove a single heir rule.

Subpart D Obtaining Emergency Assistance and Filing Claims

- 15.301 May I receive funds from the decedent's IIM account for funeral services?
- 15.302 May I file a claim against an estate?
- 15.303 Where may I file my claim against an estate?
- 15.304 When must I file my claim?
- 15.305 What must I include with my claim?

Subpart E—Probate Processing and Distributions

- 15.401 What happens after BIA prepares the probate file?
- 15.402 What happens after the probate file is referred to OHA?
- 15.403 What happens after the probate order is issued?

Subpart F—Information and Records

- 15.501 How may I find out the status of a probate?
- 15.502 Who owns the records associated with this part?
- 15.503 How must records associated with this part be preserved?
- 15.504 Who may inspect records and records management practices?
- 15.505 How does the Paperwork Reduction Act affect this part?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410, 2201 et seq.; 44 U.S.C. 3101 et seq.

CROSS REFERENCE: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see title 43, Code of Federal Regulations, part 4, subpart D, and part 30; Funds of deceased Indians other than the Five Civilized Tribes, see title 25 Code of Federal Regulations, part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

(a) This part contains the procedures that we follow to initiate the probate of the trust estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personalty. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of

Hearings and Appeals (OHA) for disposition.

(b) The following provisions do not apply to Alaska property interests:

(1) Section 15.202(c), (d), (e)(2), (n), and (o); and

(2) Section 15.401(b).

§ 15.2 What definitions do I need to know?

Act means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108-374, as codified at 25 U.S.C. 2201 et seq.

Administrative law judge (ALJ) means an administrative law judge with the Office of Hearings and Appeals appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Affidavit means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

Attorney Decision Maker (ADM) means an attorney with OHA who conducts a summary probate proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

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

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Child means a natural or adopted child.

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.

Consolidation agreement means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

Creditor means any individual or entity that has a claim for payment from a decedent's estate.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or decision and order) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is dead by reason of unexplained absence.

Department means the Department of the Interior.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

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Eligible heir means, for the purposes of the Act (25 U.S.C. 2206), any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are any of the following:

- (1) Indian;
- (2) Lineal descendants within two degrees of consanguinity of an Indian; or
- (3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting -- by descent, renunciation, or consolidation agreement -- another trust or restricted interest in such parcel from the decedent.

Estate means the trust or restricted land and trust personality owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

IIM (Individual Indian Money) account means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

Indian means, for the purposes of the Act (25 U.S.C. 2206), any of the following:

- (1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;
- (2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

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(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian probate judge (IPJ) means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

Interested party means:

- (1) Any potential or actual heir;
- (2) Any devisee under a will;
- (3) Any person or entity asserting a claim against a decedent's estate;
- (4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or
- (5) A co-owner exercising a purchase option.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge means an ALJ or IPJ.

Lockbox means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

LTRO means the Land Titles and Records Office within BIA.

OHA means the Office of Hearings and Appeals within the Department of the Interior.

OST means the Office of the Special Trustee for American Indians within the Department of the Interior.

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Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine devisees;
- (3) Determine whether claims against the estate will be paid from trust personality;

and

- (4) Order the transfer of any trust or restricted land or trust personality to the heirs, devisees, or other persons or entities entitled by law to receive them.

Purchase option at probate means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term "restricted property" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

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

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that does not exceed \$5,000 in value on the date of the decedent's death.

Superintendent means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

Testate means that the decedent executed a valid will as determined in the probate

proceeding.

Testator means a person who has executed a valid will as determined in the probate proceeding.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

We or us means, the Secretary, an authorized representative of the Secretary, or the authorized employee or representative of a tribe performing probate functions under a contract or compact approved by the Secretary.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that States who will receive the decedent's trust or restricted property.

You or I means an interested party, as defined herein, with an interest in the decedent's trust estate unless a specific section states otherwise.

§ 15.3 Who can make a will disposing of trust or restricted land or trust personalty?

Any person 18 years of age or over and of testamentary capacity, who has any right, title, or interest in trust or restricted land or trust personalty, may dispose of trust or restricted land or trust personalty by will.

§ 15.4 What are the requirements for a valid will?

You must meet the requirements of § 15.3, date and execute your will, in writing and have it attested by two disinterested adult witnesses.

§ 15.5 May I revoke my will?

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Yes. You may revoke your will at any time. You may revoke your will by any means authorized by tribal or Federal law, including executing a subsequent will or other writing with the same formalities as are required for execution of a will.

§ 15.6 May my will be deemed revoked by operation of the law of any State?

No. A will that is subject to the regulations of this subpart will not be deemed to be revoked by operation of the law of any State.

§ 15.7 What is a self-proved will?

A self-proved will is a will with attached affidavits, signed by the testator and the witnesses before an officer authorized to administer oaths, certifying that they complied with the requirements of execution of the will.

§ 15.8 May I make my will, codicil, or revocation self-proved?

Yes. A will, codicil, or revocation may be made self-proved as provided in this section.

(a) A will, codicil, or revocation may be made self-proved by the testator and attesting witnesses at the time of its execution.

(b) The testator and the attesting witnesses must sign the required affidavits before an officer authorized to administer oaths, and the affidavits must be attached to the will, codicil, or revocation.

§ 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?

(a) A testator's affidavit must contain substantially the following content:

Tribe of _____ or

State of _____

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County of _____ .

I, _____, swear or affirm under penalty of perjury that I am an
_____ (enrolled or unenrolled) member of the _____ Tribe of
Indians in the State of _____; that on the ____ day of _____, 20__, I
requested _____ and _____ to act as witnesses to my will; that I
declared to them that the document was my last will; that I signed the will in the
presence of both witnesses; that they signed the will as witnesses in my presence
and in the presence of each other; that the will was read and explained to me (or
read by me), after being prepared and before I signed it, and it clearly and
accurately expresses my wishes; and that I willingly made and executed the will
as my free and voluntary act for the purposes expressed in the will.

Testator

(b) Each attesting witness' affidavit must contain substantially the following
content:

We, _____ and _____, swear or affirm under penalty of
perjury that on the ____ day of _____, 20__, _____, a member of the
_____ Tribe of Indians of the State of _____, published and declared the
attached document to be his/her last will, signed the will in the presence of both of
us, and requested both of us to sign the will as witnesses; that we, in compliance
with his/her request, signed the will as witnesses in his/her presence and in the
presence of each other; and that the testator was not acting under duress, menace,

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fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

Subscribed and sworn to or affirmed before me this ____ day of _____, 20__,
by _____ testator, and by _____ and _____, attesting
witnesses.

(Title)

§ 15.10 Will the Secretary probate all the land or assets in an estate?

- (a) We will probate only the trust or restricted land or trust personalty in an estate.
- (b) We will not probate the following property:
 - (1) Real or personal property other than trust or restricted land or trust personalty in an estate of a decedent;
 - (2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma;
and
 - (3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a tribe other than the Five Civilized Tribes or Osage Nation.

§ 15.11 What are the basic steps of the probate process?

The basic steps of the probate process are:

- (a) We learn about a person's death (see subpart B for details);
- (b) We prepare a probate file that includes documents sent to the agency (see subpart C for details);
- (c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D for details); and
- (d) The judge or ADM decides how to distribute any trust or restricted land and/or trust personalty, and we make the distribution (see subpart D for details).

§ 15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?

- (a) This section applies if an interested party or BIA:
 - (1) Learns of the death of a person owning trust or restricted property; and
 - (2) Believes that an emergency exists and the assets in the trust estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.
- (b) An interested party, the Superintendent, or other authorized representative of BIA has standing to request relief.
- (c) The interested party or BIA representative may request:

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- (1) That OHA immediately assign a judge or ADM to the probate case;
- (2) That BIA transfer a probate file to OHA containing sufficient information on potential interested parties and documentation concerning the alleged emergency for a judge to consider emergency relief in order to preserve estate assets; and
- (3) That OHA hold an expedited hearing or consider ex parte relief to prevent impending or further loss or destruction of trust assets.

Subpart B—Starting the Probate Process

§ 15.101 When should I notify the agency of the death of a person owning trust or restricted property?

There is no deadline for notifying us of a death.

- (a) Notify us as provided in § 15.103 to assure timely distribution of the estate.
- (b) If we find out about the death of a person owning trust or restricted property we may initiate the process to collect the necessary documentation.

§ 15.102 Who may notify the agency of a death?

Anyone may notify us of a death.

§ 15.103 How do I begin the probate process?

As soon as possible, contact any of the following offices to inform us of the decedent's death:

- (a) The agency or BIA regional office nearest to where the decedent was enrolled;
- (b) Any agency or BIA regional office; or
- (c) The Trust Beneficiary Call Center.

§ 15.104 Does the agency need a death certificate to prepare a probate file?

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(a) Yes. You must provide us with a certified copy of the death certificate if one exists. If necessary, we will make a copy from your certified copy for our use and return your copy.

(b) If a death certificate does not exist, you must provide an affidavit containing as much information as you have concerning the deceased, such as:

(1) The State, city, reservation, location, date, and cause of death;

(2) The last known address of the deceased;

(3) Names and addresses of others who may have information about the deceased;

and

(4) Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

§ 15.105 What other documents does the agency need to prepare a probate file?

In addition to the certified copy of a death certificate or other reliable evidence of death listed in § 15.104, we need the following information and documents:

(a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;

(b) The Social Security number of the decedent;

(c) The place of enrollment and the tribal enrollment or census number of the decedent and potential heirs or devisees;

(d) Current names and addresses of the decedent's potential heirs and devisees;

(e) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(f) Any statements renouncing an interest in the estate including identification of

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the person or entity in whose favor the interest is renounced, if any;

(g) A list of claims by known creditors of the decedent and their addresses, including copies of any court judgments; and

(h) Documents from the appropriate authorities, certified if possible, concerning the public record of the decedent, including but not limited to, any:

(1) Marriage licenses and certificates of the decedent;

(2) Divorce decrees of the decedent;

(3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;

(4) Use of other names by the decedent, including copies of name changes by court order; and

(5) Orders requiring payment of child support or spousal support.

§ 15.106 May a probate case be initiated when an owner of an interest has been absent?

(a) A probate case may be initiated when either:

(1) Information is provided to us that an owner of an interest in trust or restricted land or trust personalty has been absent without explanation for a period of at least 6 years; or

(2) We become aware of other facts or circumstances from which an inference may be drawn that the person has died.

(b) When we receive information as described in §15.106(a), we may begin an investigation into the circumstances, and may attempt to locate the person. We may:

(1) Search available electronic databases;

(2) Inquire into other published information sources such as telephone directories

and other available directories;

- (3) Examine BIA land title and lease records;
- (4) Examine the IIM account ledger for disbursements from the account; and
- (5) Engage the services of an independent firm to conduct a search for the owner.

(c) When we have completed our investigation, if we are unable to locate the person, we may initiate a probate case and prepare a file that may include all the documentation developed in the search.

(d) We may file a claim in the probate case to recover the reasonable costs expended to contract with an independent firm to conduct the search.

§ 15.107 Who prepares a probate file?

The agency that serves the tribe where the decedent was an enrolled member will prepare the probate file in consultation with the potential heirs or devisees who can be located, and with other people who have information about the decedent or the estate.

§ 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?

Unless otherwise provided by Federal law, the agency that has jurisdiction over the tribe with the strongest association with the decedent will serve as the home agency and will prepare the probate file if the decedent owned interests in trust or restricted land or trust personalty and either:

- (a) Was not an enrolled member of a tribe; or
- (b) Was a member of more than one tribe.

Subpart C—Preparing the Probate File

§ 15.201 What will the agency do with the documents that I provide?

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After we receive notice of the death of a person owning trust or restricted land or trust personalty, we will examine the documents provided under §§ 15.104 and 15.105, and other documents and information provided to us to prepare a complete probate file. We may consult with you and other individuals or entities to obtain additional information to complete the probate file. Then we will transfer the probate file to OHA.

§ 15.202 What items must the agency include in the probate file?

We will include the items listed in this section in the probate file.

- (a) The evidence of death of the decedent as provided under § 15.104.
- (b) A completed “Data for Heirship Findings and Family History Form” or successor form, certified by BIA, with the enrollment or other identifying number shown for each potential heir or devisee.
- (c) Information provided by potential heirs, devisees, or the tribes on:
 - (1) Whether the heirs and devisees meet the definition of “Indian” for probate purposes, including enrollment or eligibility for enrollment in a tribe; or
 - (2) Whether the potential heirs or devisees are within two degrees of consanguinity of an “Indian.”
- (d) If an individual qualifies as an Indian only because of ownership of a trust or restricted interest in land, the date on which the individual became the owner of the trust or restricted interest.
- (e) A certified inventory of trust or restricted land, including:
 - (1) Accurate and adequate descriptions of all land and appurtenances; and
 - (2) Identification of any interests that represent less than 5 percent of the undivided interest in a parcel.

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(f) A statement showing the balance and the source of funds in the decedent's IIM account on the date of death.

(g) A statement showing all receipts and sources of income to and disbursements, if any, from the decedent's IIM account after the date of death.

(h) Originals or copies of all wills, codicils, and revocations that have been provided to us.

(i) A copy of any statement or document concerning any wills, codicils, or revocations the BIA returned to the testator.

(j) Any statement renouncing an interest in the estate that has been submitted to us, and the information necessary to identify any person receiving a renounced interest.

(k) Claims of creditors that have been submitted to us under § 15.302 through 15.305, including documentation required by § 15.305.

(l) Documentation of any payments made on requests filed under the provisions of § 15.301.

(m) All the documents acquired under § 15.105.

(n) The record of each tribal or individual request to purchase a trust or restricted land interest at probate.

(o) The record of any individual request for a consolidation agreement, including a description, such as an Individual/Tribal Interest Report, of any lands not part of the decedent's estate that are proposed for inclusion in the consolidation agreement.

§ 15.203 What information must tribes provide BIA to complete the probate file?

Tribes must provide any information that we require or request to complete the probate file. This information may include enrollment and family history data or property

title documents that pertain to any pending probate matter.

§ 15.204 When is a probate file complete?

A probate file is complete for transfer to OHA when a BIA approving official includes a certification that:

(a) States that the probate file includes all information listed in § 15.202 that is available; and

(b) Lists all sources of information BIA queried in an attempt to locate information listed in § 15.202 that is not available.

Subpart D—Obtaining Emergency Assistance and Filing Claims

§ 15.301 May I receive funds from the decedent's IIM account for funeral services?

(a) You may request an amount of no more than \$1,000 from the decedent's IIM account if:

(1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;

(2) You have an immediate need to pay for funeral arrangements before burial;
and

(3) The decedent's IIM account contains more than \$2,500 on the date of death.

(b) You must apply for funds under paragraph (a) of this section and submit to us an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs of no more than \$1,000 that are necessary for the burial services, taking into consideration:

(1) The total amount in the IIM account;

- (2) The availability of non-trust funds; and
- (3) Any other relevant factors.
- (d) We will make payments directly to the providers of the services.

§ 15.302 May I file a claim against an estate?

If a decedent owed you money, you may make a claim against the estate of the decedent.

§ 15.303 Where may I file my claim against an estate?

(a) You may submit your claim to us before we transfer the probate file to OHA or you may file your claim with OHA after the probate file has been transferred if you comply with 43 CFR 30.140 through 30.148.

(b) If we receive your claim after the probate file has been transmitted to OHA but before the order is issued, we will promptly transmit your claim to OHA.

§ 15.304 When must I file my claim?

You must file your claim before the conclusion of the first hearing by OHA or, for cases designated as summary probate proceedings, as allowed under 43 CFR 30.140.

Claims not timely filed will be barred.

§ 15.305 What must I include with my claim?

(a) You must include an itemized statement of the claim, including copies of any supporting documents such as signed notes, account records, billing records, and journal entries. The itemized statement must also include:

- (1) The date and amount of the original debt;
- (2) The dates, amounts, and identity of the payor for any payments made;
- (3) The dates, amounts, product or service, and identity of any person making

charges on the account;

(4) The balance remaining on the debt on the date of the decedent's death; and

(5) Any evidence that the decedent disputed the amount of the claim.

(b) You must submit an affidavit that verifies the balance due and states whether:

(1) Parties other than the decedent are responsible for any portion of the debt

alleged;

(2) Any known or claimed offsets to the alleged debt exist;

(3) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's non-trust or non-restricted property in any other judicial or quasi-judicial proceeding, and the status of such action; and

(4) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

(c) A secured creditor must first exhaust the security before a claim against trust personalty for any deficiency will be allowed. You must submit a verified or certified copy of any judgment or other documents that establish the amount of the deficiency after exhaustion of the security.

Subpart E—Probate Processing and Distributions

§ 15.401 What happens after BIA prepares the probate file?

Within 30 days after we assemble all the documents required by §§ 15.202 and 15.204, we will:

(a) Refer the case and send the probate file to OHA for adjudication in accordance with 43 CFR part 30; and

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(b) Forward a list of fractional interests that represent less than 5 percent of the entire undivided ownership of each parcel of land in the decedent's estate to the tribes with jurisdiction over those interests.

§ 15.402 What happens after the probate file is referred to OHA?

When OHA receives the probate file from BIA, it will assign the case to a judge or ADM. The judge or ADM will conduct the probate proceeding and issue a written decision and order, in accordance with 43 CFR part 30.

§ 15.403 What happens after the probate order is issued?

(a) If the probate decision or order is issued by an ADM, you have 30 days from the decision mailing date to file a written request for a de novo review.

(b) If the probate decision or order is issued by a judge, you have 30 days from the decision mailing date to file a written request for rehearing. After a judge's decision on rehearing, you have 30 days from the mailing date of the decision to file an appeal, in accordance with 43 CFR parts 4 and 30.

(c) When any interested party files a timely request for de novo review, a request for rehearing, or an appeal, we will not pay claims, transfer title to land, or distribute trust personalty until the request or appeal is resolved.

(d) If no interested party files a request or appeal within the 30-day deadlines in paragraphs (a) and (b) of this section, we will wait at least 15 additional days before paying claims, transferring title to land, and distributing trust personalty. At that time:

(1) The LTRO will change the land title records for the trust and restricted land in accordance with the final decision or order; and

(3) We will pay claims and distribute funds from the IIM account in accordance

with the final decision or order.

Subpart F—Information and Records

§ 15.501 How may I find out the status of a probate?

You may get information about the status of an Indian probate by contacting any BIA agency or regional office, an OST fiduciary trust officer, OHA, or the Trust Beneficiary Call Center.

§ 15.502 Who owns the records associated with this part?

(a) The United States owns the records associated with this part if:

(1) They are evidence of the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part; and

(2) They are either:

(i) Made by or on behalf of the United States; or

(ii) Made or received by a tribe or tribal organization in the conduct of a Federal trust function under this part, including the operation of a trust program under Public Law 93-638 as amended.

(b) The tribe owns the records associated with this part if they:

(1) Are not covered by paragraph (a) of this section; and

(2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

§ 15.503 How must records associated with this part be preserved?

(a) Any organization that has records identified in § 15.502(a), including tribes and tribal organizations, must preserve the records in accordance with approved

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Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31, and 33; and

(b) A tribe or tribal organization must preserve the records identified in § 15.502(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

§ 15.504 Who may inspect records and records management practices?

The records and records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

§ 15.505 How does the Paperwork Reduction Act affect this part?

The collections of information contained in §§ 15.9, 15.104, 15.105, 15.203, 15.301, and 15.305, have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076–0169. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to a collection of information unless the form or regulation requesting the information has a currently valid OMB Control Number.