

### § 15.3

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Testate means* the decedent executed a valid will before his or her death.

*Trust cash assets* means the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.

*Trust land* means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

*We or us* means either an official of BIA or a tribe performing probate functions under a BIA contract or compact.

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

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

#### **§ 15.3 Will the Secretary probate all the property in Indian estates?**

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property 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.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

#### **§ 15.4 How does the probate process work?**

The basic steps of the probate process are:

(a) We find out about a person's death (*see* subpart B of this part for details);

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(b) We prepare a probate package that includes documents you send us (*see* subpart C of this part for details);

(c) We refer the completed probate package to OHA for assignment to a deciding official (*see* subpart D of this part for details); and

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account and we make the distribution (*see* subpart D of this part for details).

#### **Subpart B—Starting the Probate Process**

##### **§ 15.101 How do I begin the BIA probate process?**

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death.

(a) You should provide a certified copy of the death certificate, if one exists.

(b) If a death certificate does not exist, you should provide an affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that specifies what is known about the date and cause of the decedent's death. A copy of any supporting documents that may be available, such as an obituary or death notice or a church or court record, should be provided along with the affidavit.

##### **§ 15.102 May I notify BIA of a death if I am not related to the decedent?**

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

##### **§ 15.103 When should BIA be notified of a death?**

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

##### **§ 15.104 What other documents does BIA need to prepare a probate package?**

(a) You should provide us with the following documents and information

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before we can begin to process the probate package:

- (1) Social Security number of the decedent;
  - (2) The birth certificate or other record of birth of the decedent, if available;
  - (3) The death certificate or other reliable evidence of death as required by §15.101;
  - (4) A list of known creditors against the estate and their addresses;
  - (5) Current names and addresses of potential heirs and beneficiaries;
  - (6) Any statements renouncing an interest in the estate;
  - (7) Documents from a court of competent jurisdiction, including but not limited to:
    - (i) All marriage licenses of the decedent;
    - (ii) All divorce decrees of the decedent;
    - (iii) Adoption and guardianship records relevant to the decedent;
    - (iv) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;
    - (v) Any name changes; and
    - (vi) Any order requiring payment of child support;
  - (8) All originals or copies of wills and codicils, and any revocations; and
  - (9) Any additional documents you provide or that we request.
- (b) You must inform us if any of the documents or information identified in this part are not available.

**§ 15.105 Will BIA wait to begin the probate process until it is notified of the decedent's death?**

No, we will not wait to begin the probate process until we are notified of the decedent's death. If we find out about the death of a person, and if the decedent meets the criteria in §15.3, we will initiate the process to collect the necessary documentation. You should not assume that we will find out about a death. To assure timely distribution of the estate, you should notify us as provided in §15.101.

**§ 15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?**

(a) You may ask BIA for up to \$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 assistance under paragraph (a) of this section and submit to BIA 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 up to \$1,000 that are necessary for the burial services, taking into consideration:

- (1) The total amount in the account;
- (2) The number of probable heirs or beneficiaries of whom we are aware;
- (3) The amount of any claims against the account of which we are aware; and
- (4) The availability of non-trust funds, and any other relevant factor.

(d) We will make payments directly to the providers of the services.

**§ 15.107 Who prepares an Indian probate package?**

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package in consultation with the probable heirs or beneficiaries who can be located.

**§ 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 package?**

Unless otherwise provided by Federal law, the BIA 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 package if the decedent either:

- (a) Was not an enrolled member of a tribe, but owns interests in trust or restricted property; or
- (b) Was a member of more than one tribe.