

**CODE OF FEDERAL REGULATIONS**

**TITLE 43—PUBLIC LANDS: INTERIOR**

**PART 30—INDIAN PROBATE HEARINGS PROCEDURES**

Current as of October 1, 2011

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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.

<b>For provisions relating to...</b>	<b>consult...</b>
(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 estates of Indians who die possessed of trust or restricted 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.
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(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 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 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.

*Covered permanent improvement* means a permanent improvement (including an interest in such an improvement) that is:

- (1) Owned by the decedent at the time of death; and
- (2) Attached to a parcel of trust or restricted land that is also, in whole or in part, owned by the decedent at the time of death.

*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* 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, 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.

*Individual Indian Money (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.

*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 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 did 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 estate unless a specific section states otherwise.

### **§ 30.102 What assets will the Secretary probate?**

(a) We will probate only the trust or restricted land or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(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 lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned either 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 the Osage Nation.

## **Subpart B—Commencement of Probate Proceedings**

### **§ 30.110 When does OHA commence a probate case?**

OHA commences probate of an 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 at your own expense. Access to

records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

### **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 receive 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 interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the decision is mailed, and giving the Board's address. The judge's modification order or decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

### **§ 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 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 giving the Board's address. The judge's decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

(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 should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent’s lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;

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

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

(4) Trust property included in the inventory is described improperly, 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 estate if the decedent’s non-trust estate was or is available?**

The judge will not authorize payment of a claim from the estate if the judge determines that the decedent’s non-trust property was or is 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 will 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 the date of decedent’s death;

(2) Is a tort claim that 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 in trust property already owned by the devisees or heirs or 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;

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory; and

(iii) Interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in 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, 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?**

(a) Except as provided in paragraphs (b) and (c) of this section, to purchase an interest in trust or restricted land at probate you must have the consent of:

(1) The heirs or devisees of such interest; and

(2) Any surviving spouse who receives a life estate under 25 U.S.C. 2206(a)(2)(A) or (D).

(b) If you are the Tribe with jurisdiction over the parcel containing the interest, you do not need consent under paragraph (a) of this section if the following four conditions are met:

(1) The interest will pass by intestate succession;

(2) The judge determines based on our records that the decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the parcel of land;

(3) The heir or surviving spouse was not residing on the property at the time of the decedent's death; and

(4) The heir or surviving spouse is not a member of your Tribe or eligible to become a member.

(c) We may purchase an interest in trust or restricted land on behalf of the Tribe with jurisdiction over the parcel containing the interest. If we do so, we must obtain consent under paragraph (a) of this section, unless the conditions in paragraphs (b)(1) through (3) of this section are met.

### **§ 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...
(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, determined in accordance with § 30.167(b), 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.

(1) In cases where the sale of the interest does not require consent under § 30.163(b), OHA will sell the interest to the eligible purchaser.

(2) In all other cases, OHA will sell the interest to the eligible purchaser selected by the applicable heir, devisee, or surviving spouse.

(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), or on a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

**§ 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 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 interested parties who are adversely affected 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 § 30.238 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 personality?**

You may renounce an inherited or devised interest in trust or restricted property, including a life estate, or in trust personality 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 or an ADM, 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 trustee, 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 on any other interested party written interrogatories and requests for admission of facts and documents 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

- (1) 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 How are covered permanent improvements treated?**

(a) In an intestate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If...	then the covered permanent improvement passes to...
(1) A Tribal probate code approved under 25 CFR part 18 specifies how the covered permanent improvement will be handled.	the person(s) designated in the Tribal probate code to receive it.
(2) A consolidation agreement approved under subpart F of this part specifies how the covered permanent improvement will be handled.	the person(s) designated in the consolidation agreement to receive it.
(3) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, but there is a renunciation of the trust or restricted interest in the parcel under subpart H of this part.	the recipient of the trust or restricted interest in the parcel under the renunciation.
(4) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, and there is no renunciation of the trust or restricted interest in the parcel under subpart H of this part.	each eligible heir to whom the trust or restricted interest in the parcel descends.

(b) In a testate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If...	then the covered permanent improvement passes to...
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(1) The will expressly states how the covered permanent improvement will be handled.	the person(s) designated in the will to receive it.
(2) The will does not expressly state how the covered permanent improvement will be handled.	the person(s) designated in the will to receive the trust or restricted interest in the parcel.

(c) The provisions of the Act apply to a covered permanent improvement:

- (1) Even though it is not held in trust; and
- (2) Without altering or otherwise affecting its non-trust status.

(d) The judge's decision will specifically direct the distribution only of the decedent's trust or restricted property, and not any non-trust permanent improvement attached to a parcel of trust or restricted land. However, the judge:

- (1) Will include in the decision a general statement of the substantive law of descent or devise of permanent improvements; and
- (2) Can approve a consolidation agreement under subpart F of this part that includes a covered permanent improvement.

**§ 30.237 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 the end of this 30-day period, unless a timely petition for rehearing is filed with the judge.

**§ 30.238 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 § 30.237.

(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.

**§ 30.239 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.

**§ 30.240 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 stating 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 giving the Board's address.

**§ 30.241 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.

**§ 30.242 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 and § 4.320 of this chapter.

**§ 30.243 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.
(3) 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.	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 and within 1 year after the petitioner's discovery of an alleged error.	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.

**§ 30.244 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.

**§ 30.245 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 stating 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 giving 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.

**§ 30.246 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...
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.

(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).
(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 § 30.238 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, 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 or other valuation method developed by the Secretary under 25 U.S.C. 2214, 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 § 30.237.

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

If you are an interested party who is 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 an interested party who is 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 stating 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 giving 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 other valuation report, 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.