

Your Land Your Decision
INITIATIVE

Probate Process



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What is a Probate?

A Guide to help American Indians & Alaska Natives understand the Department of the Interior's (DOI) Probate Process.

How can this guide help me?

This guide is intended to provide American Indians and Alaska Natives (AI/AN) trust or restricted landowners with basic information about the Department of the Interior's (DOI) probate process. This information pertains only to the probate of Trust or Restricted Property and Trust Personality as defined by 25 CFR part 15 and 43 CFR part 30.

This guide is for informational purposes only, and is not intended to provide legal advice. Probate laws can and do change and are sometimes complex. Each case is unique and may have special factors; therefore, if you want professional advice for your legal situation you should seek the advice and counsel of an attorney.

You may call or visit your local Bureau of Indian Affairs office (Agency), Tribal Probate Program office, Office of the Special Trustee for American Indians (OST), Office of Hearings and Appeals (OHA) or visit our website at www.bia.gov/yourland/ for more information.

For information regarding your Individual Indian Money (IIM) account, you may contact the **Office of the Special Trustee for American Indians (OST)**, Trust Beneficiary Call Center, toll-free at (888) 678-6836 ext 0 or visit their website at www.doi.gov/ost.

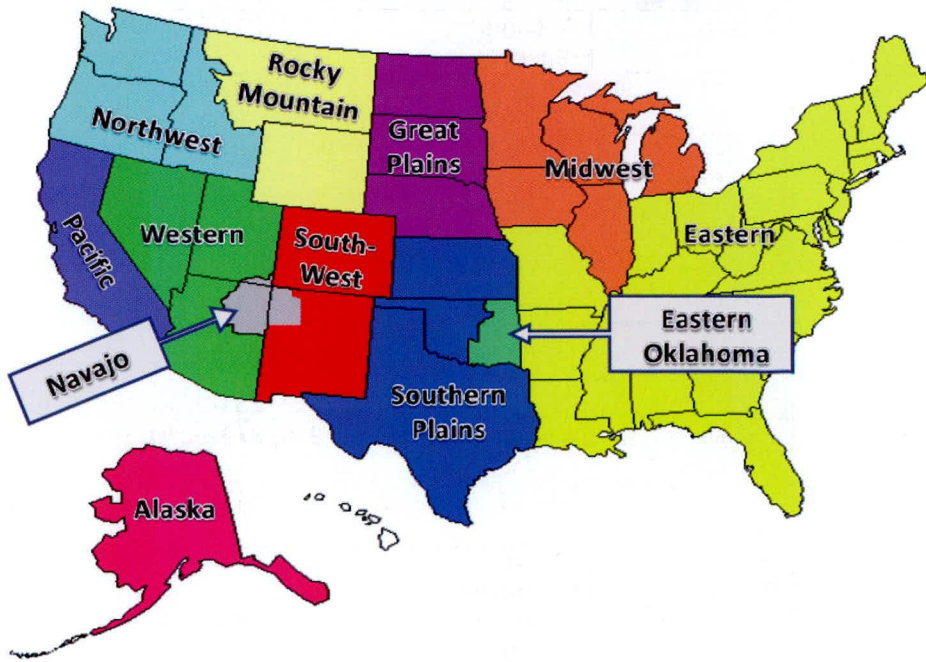
Please visit our website for contact information on the **Office of Hearings and Appeals (OHA)**, Hearing Office locations and a PDF version of the BIA Tribal Leaders Directory. The BIA Tribal Leaders Directory contains contact information for BIA region/agency offices and contact information for the tribes in each BIA Region.

Contact Information

BIA Regional Office	Location	DPES Telephone #
Alaska	Anchorage, Alaska	(907) 271-3911
Eastern	Nashville, Tennessee	(615) 564-6770
Eastern Oklahoma	Muskogee, Oklahoma	(918) 781-4611
Great Plains	Aberdeen, South Dakota	(605) 226-7665
Midwest	Bloomington, Minnesota	(612) 725-4500
Navajo	Gallup, New Mexico	(928) 871-5935
Northwest	Portland, Oregon	(503) 231-2276
Pacific	Sacramento, California	(916) 978-6070
Rocky Mountain	Billings, Montana	(406) 247-7907
Southern Plains	Shawnee, Oklahoma	(405) 273-0317
Southwest	Albuquerque, New Mexico	(505) 563-3334
Western	Phoenix, Arizona	(602) 379-4299

- (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.

Below is a map of the 12 BIA Regions and contact information for the BIA, Division of Probate & Estate Services (DPES) at each Regional Office. Please see our website at www.bia.gov/yourland/ for a complete listing of regional and field offices for the BIA, OHA, OST and Tribal Probate Programs.



What is a Probate?

25 CFR part 15 defines a Probate as:

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

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

*For purposes of this guide "trust personality" will be referred to as "trust funds" throughout the remainder of this guide.

In other words, when an AI/AN passes away and owned trust or restricted lands and/or trust funds at the time of death, there must be a way of transferring the trust lands/funds to the deceased person's heirs or to whoever is to take ownership under the terms of a will. OHA will determine what trust lands/funds the deceased person owned, determine the deceased person's legal heirs or devisees and order distribution of the trust or restricted lands or funds to the appropriate persons.

Who will process the probate?

Several federal agencies within the DOI are involved in the probate of an AI/AN's trust or restricted property and trust funds. Below are the agencies/tribal programs that are involved in the probate process along with a brief description of their role in this process:

- **DOI, Bureau of Indian Affairs and/or Tribes** (tribes that contract or compact with the Federal government for the BIA's probate function). For purposes of this brochure, the word Agency applies to both the BIA Agency Office and Tribes that contract or compact with the Federal government.

- Agency learns of, or receives notification of, an AI/AN's death and verifies.

- Agency determines if the decedent owned trust or restricted property and/or trust funds at the time of his/her death. Requests and/or gathers the appropriate documents and prepares a probate file according to the regulation.

- Agency refers the completed probate file to OHA for assignment to a judge or Attorney Decision Maker (ADM).

- **DOI, Office of Hearings and Appeals (OHA)**

- OHA judge or ADM decides how the trust or restricted lands and/or trust funds will be distributed among the eligible heirs or devisees.

- After the OHA judge or ADM issues a decision, the **BIA, Land, Titles, and Records Office (LTRO)** will update the land title record of the deceased AI/AN's trust or restricted lands to reflect the heirs or devisees as the current owners.

May a closed probate case be reopened? 43 CFR part 30, § 30.243

(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.

What notice of the decision will the judge provide?
43 CFR part 30, § 30.237

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.

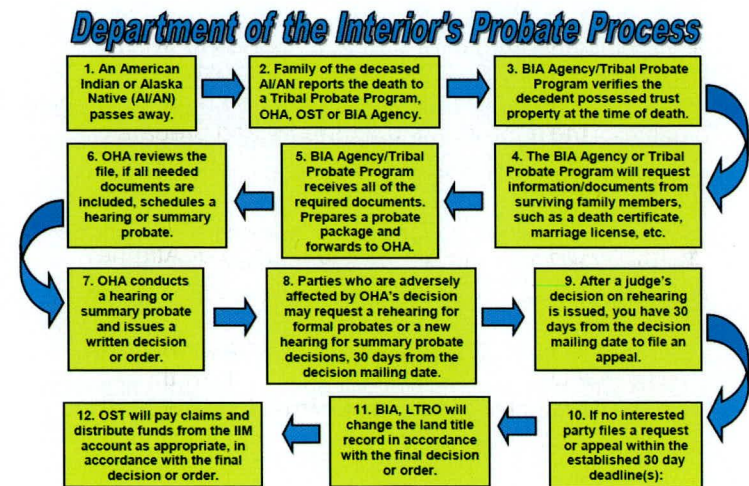
What happens after the probate order is issued? 25 CFR part 15, § 15.403

- (a) If the probate decision or order is issued by an ADM, you have 30 days from the decision mailing date to file a written request for a de novo review.
- (b) If the probate decision or order is issued by a judge, you have 30 days from the decision mailing date to file a written request for rehearing. After a judge's decision on rehearing, you have 30 days from the mailing date of the decision to file an appeal, in accordance with 43 CFR parts 4 and 30.
- (c) When an interested party files a timely request for de novo review, a request for rehearing, or an appeal, we will not pay claims, transfer title to land, or distribute trust personalty until the request or appeal is resolved.
- (d) If no interested party files a request or appeal within the 30 day deadlines, BIA will wait at least 15 additional days before paying claims, transferring title to land, and distributing trust personalty. At that time:
 - (1) The LTRO will change the land title records for the trust and restricted land in accordance with the final decision or order; and
 - (2) We will pay claims and distribute funds from the IIM account in accordance with the final decision or order.

• DOI, Office of the Special Trustee for the American Indians (OST)

◦ After the OHA judge or ADM issues the decision, and following any appeals, OST will distribute the assets in the deceased AI/AN's Individual Indian Money (IIM) account to the eligible heirs or devisees listed in OHA's decision.

PROBATE PROCESS



Why is it taking so long?

One of the most frequently asked questions is, “**Why does it take so long to complete the probate process?**” The completion of a probate requires the coordination and collaboration of the Agency, LTRO, OHA, and OST. Gathering the required documents such as death certificates, marriage licenses, and adoption records requires the cooperation of the decedent’s heirs. The gathering of these documents can sometimes take months to complete; therefore, it is important that interested parties respond to requests for information in a timely manner.

When the Agency has gathered all of the required documents, they will forward the case to OHA for adjudication. OHA will review, prioritize, and ultimately schedule the estate for a formal hearing or summary probate. There is no set timeline for the scheduling of hearings. OHA sometimes returns a probate package to the Agency for clarification and/or further documentation; this can cause delays in the scheduling of the hearing.

Once OHA issues an Order, an interested party may appeal OHA’s Order which can result in further delays. Some cases are more complex than others, requiring more review time, and the entire process can, at times, take a year or more to complete. Once the OHA Order is final, LTRO will update the land title record to reflect OHA’s Order and OST will distribute the trust funds from the estate.

- (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.

How will I receive notice of the formal probate proceeding? 43 CFR part 30, § 30.210

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

May I receive funds from the decedent's IIM account for funeral services? 25 CFR part 15, § 15.301

- (a) You may request an amount of no more than \$1,000 from the decedent's IIM account if:
 - (1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;
 - (2) You have an immediate need to pay for funeral arrangements before burial; and
 - (3) The decedent's IIM account contains more than \$2,500 on the date of death.
- (b) You must apply for funds under paragraph (a) of this section and submit to us an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.
- (c) We may approve reasonable costs of no more than \$1,000 that are necessary for the burial services, taking into consideration:
 - (1) The total amount in the IIM account;
 - (2) The availability of non-trust funds; and
 - (3) Any other relevant factors.
- (d) We will make payments directly to the providers of the services.

How may I find out the status of a probate? 25 CFR part 15, § 15.501

You may get information about the status of an Indian probate by contacting any BIA agency or regional office, an OST Fiduciary Trust Officer, OHA, or the Trust Beneficiary Call Center in OST.

Will I receive notice of the probate proceeding? 43 CFR part 30, § 30.114

- (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.*

The following Question & Answers are from the Code of Federal Regulations (CFR). Please visit our website at www.bia.gov/yourland/ to view 25 CFR part 15 and 43 CFR part 30 in their entirety.

What assets will the Secretary probate? 25 CFR part 15, § 15.10

- (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 land and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or Osage Nation.

How do I begin the probate process? 25 CFR part 15, § 15.103

As soon as possible, contact any of the following offices to inform us of the decedent's death:

- (a) The agency or BIA regional office nearest to where the decedent was enrolled;
- (b) Any agency or BIA regional office; or
- (c) The Trust Beneficiary Call Center in OST.

(Anyone may notify us of a death and there is no deadline to notify us; however, notifying us as soon as possible assures a more timely distribution of the estate.)

Does the agency need a death certificate to prepare a probate file? 25 CFR part 15, § 15.104

- (a) Yes. You must provide us with a certified copy of the death certificate if a death certificate exists. If necessary, we will make a copy from your certified copy for our use and return your copy.
- (b) If a death certificate does not exist, you must provide an affidavit containing as much information as you have concerning the deceased, such as:
 - (1) The State, city, reservation, location, date, and cause of death;
 - (2) The last known address of the deceased;
 - (3) Names and addresses of others who may have information about the deceased; and
 - (4) Any other information that is available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

What other documents does the agency need to prepare a probate file? 25 CFR part 15, § 15.105

In addition to the certified copy of a death certificate or other reliable evidence of death listed in §15.104, we need the following information and documents:

- (a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;
- (b) The Social Security number of the decedent;
- (c) The place of enrollment and the tribal enrollment or census number of the decedent and potential heirs or devisees;
- (d) Current names and addresses of the decedent's potential heirs and devisees;
- (e) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;
- (f) Any statements renouncing an interest in the estate including identification of the person or entity in whose favor the interest is renounced, if any;
- (g) A list of claims by known creditors of the decedent and their addresses, including copies of any court judgments; and
- (h) Documents from the appropriate authorities, certified if possible, concerning the public record of the decedent, including but not limited to, any:
 - (1) Marriage licenses and certificates of the decedent;
 - (2) Divorce decrees of the decedent;
 - (3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;
 - (4) Use of other names by the decedent, including copies of name changes by court order; and
 - (5) Orders requiring payment of child support or spousal support.