

[4337-15-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

43 CFR Part 30

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Probate Regulation Updates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Tribal consultation; Reopening of comment period.

SUMMARY: On June 20, 2016, the Bureau of Indian Affairs announced Tribal consultation on potential updates to probate regulations and announced that it would accept written comments until August 1, 2016. We are reopening the comment period to allow additional time for Tribal and public comment and will accept all comments received before [INSERT DATE 30 DAYS AFTER PUBLICATION].

DATES: The comment period announced on June 20, 2016 (81 FR 39874) is reopened.

Written comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION].

ADDRESSES: You may submit comments by one of the following methods:

- *Email:* consultation@bia.gov
- *By hard copy:* Submit by U.S. mail or hand delivery to: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., MS-3071-MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary – Indian Affairs;

telephone (202) 273-4680, elizabeth.appel@bia.gov.

SUPPLEMENTARY INFORMATION:

As described below, we have identified three areas for modification that will have an immediate impact in streamlining the probate process. We are seeking comments with regard to the following topics, and welcome insight on other aspects of the probate regulatory framework that could be improved.

Probate Revisions Currently Under Consideration

1. Increasing the monetary limit for distribution of IIM account funds to pay for funeral services from \$1,000 to \$5,000.

The regulation, at 25 CFR 15.301, currently establishes a monetary limit of \$1,000 for distribution of Individual Indian Money (IIM) account funds to pay for funeral expenses. There is an ongoing concern that \$1,000 is not sufficient to pay for funeral expenses. While individuals may submit funeral related claims to be paid from estate account funds at any time before the conclusion of the first hearing by the Office of Hearings and Appeals (OHA), the Bureau of Indian Affairs (BIA) is aware that family members sometimes suffer financial hardship and lengthy delays as the estate is finalized and claims are approved.

Revisions under consideration:

- The BIA is considering a modification to this subpart that would increase the amount of funds available to use for funeral expenses. One proposed modification would amend current regulations by increasing the amount an individual may request from the decedent's IIM to no more than \$5,000 for

funeral expenses. The account must still contain a minimum balance of \$2,500 in order to approve an expense under this section.

- In the interests of preserving estate account funds for heirs and other claimants, an alternative option would be to likewise raise the maximum payout to \$5,000, *but* with the limitation that the total payments could not exceed 40% of the available account balance.

2. Allowing BIA to make minor estate inventory corrections.

The current regulation, at 43 CFR 30.126, requires a judge to issue a modification order if trust or restricted property belonging to a decedent is omitted from the inventory of an estate. As a result, it can take significant time to make minor estate inventory corrections to include omitted property.

Revision under consideration:

- The BIA is considering a regulatory modification to grant the BIA the authority to make estate inventory modifications when heirship has already been determined by an OHA order. The BIA would notify all interested parties to an estate in the event property interests were to be added. As in this current regulatory section, any modification that would result in property taking a different line of descent would still require OHA issuing a decision to re-determine heirs. For example, if adding property to a decedent's estate would cause that interest to become 5% or more of the parcel, and thus no longer subject to the American Indian Probate Reform Act's highly fractionated interest provisions, OHA would need to issue a new decision to re-determine descent and distribution of

those interests. There would be no change to the requirement that any *removal* of property from a decedent's inventory would require action by OHA. *See* 43 CFR 30.127.

3. Clarifying OHA's authority to order distribution of trust funds.

The current regulation at 43 CFR 30.254 governs how a judge distributes a decedent's trust or restricted property when the decedent died without a valid will and has no heirs. The rule establishes different distributions based on whether 25 U.S.C. 2206(a) applies, but does not identify trust personalty as a stand-alone category of trust property for distribution (where there are no land interests in the decedent's estate or within the jurisdiction of any tribe).

Revision under consideration:

- A modification to this regulation would provide clear authority for OHA to order distribution of trust funds when there are either no land interests in a decedent's estate or no land interests within the jurisdiction of any tribe. Additionally, where the estate contains trust personalty associated with one tribe but interests in trust lands associated with another, OHA would order the trust personalty distributed to the tribe with sufficient nexus to the funds, as determined by the judge, and the land distributed to the tribe with jurisdiction over those interests.

Dated: November 18, 2016.

Lawrence S. Roberts,
Principal Deputy Assistant Secretary – Indian Affairs.
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