

25 CFR 15

Probate Regulations

15.11 – The Basic Steps of Probate

- BIA learns of the person's death.
- BIA Probate prepares that case file for the Office of Hearings and Appeals (OHA)
- BIA Probate submits the probate case file to OHA for probate proceedings.
- Judge or ADM issues for distribution of decedent's estate to proper heirs or devisees.

Starting the Probate Process

- There is no deadline to report a death (15.101)
- Any one may notify BIA of a death (15.102)
- Death can be reported to the BIA home agency where the decedent is enrolled, the Office of the Special (OST) Call Center, and to any BIA agency or regional office (15.103).

Proof of Death

- Is a Certified Death Certificate required (15.104a).
 - Yes – if a death certificate exists all efforts are to made to obtain and certified copy of the death certificate.
- If a death certificate is does not exist (15.104b).
 - You must provide an affidavit containing the following information:
 - The state, city, reservation, location, date, and cause of death.
 - The last known address for the decedent.

Proof of Death

- If a death certificate does not exist (continued)
 - Names and addresses of people who may have information about the deceased.
 - Any other information available about the decedent such as:
 - Newspaper articles
 - An obituary
 - Death Notice
 - Church or court record.

Other required documents (15.105)

- Original or copies of all wills, codils, and revocations, or other evidence that a will may exist.
- Social Security number of the decedent.
- Place of enrollment and the tribal enrollment or census number of the decedent and potential heirs/devisees.
- Current name and addresses of the potential heirs and devisees.
- Any sworn statements regarding the decedent's family.
 - Including statement of paternity or maternity.

Other required documents

- Any statements renouncing an interest in the estate including identification of the person or entity whose favor the interest is renounced.
- A list of all claims to the estate with current addresses including copies of any court judgements.
- Marriage licenses and certificates of the decedent.
- Divorce decrees of the decedent.
- Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees

Other required documents

- All additional names used by the decedent, including copies of name changes by court order.
- Orders requiring payment of child support or spousal support.

Presumed Deceased or Missing

15.106

- How reported?
 - Information is provided that an owner of an interest in trust or restricted land or trust personalty has been absent without explanation for a period of 6 years.
 - BIA becomes aware of other facts or circumstances that the person has died.
- What BIA probate does?
 - BIA probate will investigate the validity of the information and may attempt to locate the person.

How the investigation is done.

- BIA probate conducts a search of all available electronic databases.
- Inquire into other published information sources such as telephone directories and other available directories.
- Examine BIA land title and lease records and IIM account records.
- Hire independent firm to search for the missing owner.
- Once investigation is complete and if unable to locate the owner the documentation developed in the investigation is included in the probate case file.
- BIA may file a claim to recover the costs for search for missing owner.

Who prepare the probate file?

15.107 and 15.108

- The agency that serves the tribe where the decedent was enrolled.
- If the decedent is not enrolled, or has multiple tribal membership?
 - The agency the has jurisdiction over the tribe the decedent has the strongest association.

What must be include in the probate case file?

15.202

- Evidence of Death
- Completed Date for Heirship
 - Certified by BIA Superintendent or Regional Director
 - With the enrollment or other identifying number for each potential heir or devisee.
- Information by provided by potential heirs, devisees, or the tribes on:
 - Whether the potential heirs or devises meet the definition of “Indian for probate purposes, including enrollment or eligibility for enrollment in a tribe.

What must be in the probate file (con't)

- Information is the potential heirs or devisees are within two degrees of consanguinity of an “Indian”
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- In an individual qualifies as an Indian only because of ownership of a trust or restricted interest in land, the date on which the individual became the owner of the trust or restricted interest.
- A CERTIFIED inventory of trust or restricted land including:
 - Land descriptions and appurtenances
 - Identification of any interests that represent less than 5 percent of the undivided interest in a parcel.
 - A Statement showing the balance and source of the IIM funds in the decedent’s account at the date of death. (Certification of IIM Account Balance at DOD).

What must be in the probate case file (con't)

- Statement showing all receipts and sources of income to and disbursements, if any, from the decedent's IIM account after the date of death.
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- Original or copies of all wills, codicils, and revocations that have been provided to BIA.
 - Any statement or renouncing an interest in the estate.
 - Lists of claims from creditors with list of payments made and final balance owed.
 - All tribal or individual request to purchase a trust or restricted land interest at probate.
 - Any request for a consolidation agreement.

What about Birth Certificates?

- No specific mention in the regulations, but...
 - DOB required in decisions
 - Relationship to decedent required in decisions
- Required in most cases to establish the above information
- So **YES**, birth certificates are required.

What information must the tribe provide to BIA (15.203)

- The tribes must provide any information that BIA require or request to complete the probate file.
- Information may include:
 - Tribal Enrollment
 - Family History information for decedent
 - Property title documents that pertain to any pending probate matter.

When is a probate file complete? (15.204)

- When BIA official includes a certification that:
 - The probate file includes all the information listed in 15.202 that is available.
 - Lists all sources of information BIA queried in an attempt to locate information listed in 15.202 that is not available.