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UNITED STATES DEPARTMENT OF THE INTERIOR  
Donald Paul Hodel, Secretary

OFFICE OF HEARINGS AND APPEALS  
Paul T. Baird, Director

INTERIOR BOARD OF INDIAN APPEALS  
Kathryn A. Lynn,  
Anita Vogt,  
Administrative Judges

DRAFTING  
OF  
INDIAN WILLS  
COVERING  
TRUST AND RESTRICTED PROPERTY

Prepared by the Interior Board of Indian Appeals  
Office of Hearings and Appeals  
United States Department of the Interior  
4015 Wilson Boulevard, Arlington, Virginia 22203

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## 1. GENERAL

1.1 Purpose. The purpose of this manual section is to:

A. Provide a reference to the Secretary's statutory authority and regulations governing the planning and administration of Indian trust/restricted estates.

B. Define areas of responsibility.

C. Furnish other guidelines and procedures to personnel responsible for assisting in estate planning and administering Indian trust/restricted estates, including the preparation of data for heirship findings and family histories, needed by Administrative Law Judges, in the Office of Hearings and Appeals, to probate such estates.

1.2 Authority.

A. All tribes, except the Five Civilized Tribes and the Osage Nation. The Secretary of the Interior is vested with statutory power to determine heirs and approve wills in inheritance proceedings affecting trust or restricted allotted lands and other trust or restricted property of deceased Indians, except members of the Five Civilized Tribes and the Osage Nation, under the Acts of February 8, 1887, 24 Stat. 389; February 28, 1891, 26 Stat. 795; June 25, 1910, 36 Stat. 855, amended February 14, 1913, 37 Stat. 678, March 3, 1928, 45 Stat. 161, and November 5, 1927, 101 Stat. 886; June 18, 1934, 48 Stat. 985, amended September 26, 1980, 94 Stat. 1207; November 24, 1942, 56 Stat. 1021, amended May 2, 1983, 97 Stat. 185; and January 12, 1983, 96 Stat. 1215, amended October 30, 1984, 98 Stat. 3171. See 25 U.S.C. 348, 371, 372, 373, 373a, 373b, 461, 464, 2201-2211. Title 43, Code of Federal Regulations, Part 4.200 is the primary authority on the probate of Indian trust/restricted estates. Attendant to such probate are the responsibilities of estate planning and administration as set forth by regulations in Titles 25 and 43 of the Code of Federal Regulations.

B. Five Civilized Tribes. The Secretary of the Interior is also vested with discretionary authority to represent Indians of the Five Civilized Tribes, in the state courts of Oklahoma, in heirship matters involving restricted allotments of those tribes, under the Acts of June 14, 1918, 40 Stat. 606, and August 4, 1947, 61 Stat. 731. Special estate administration procedures are provided in Section 2.2L of these guidelines.

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1.3 Responsibilities.

A. Superintendent. The Agency Superintendent is responsible for assisting in estate planning, and, in so doing, assuring that consideration is given to maintaining the economic value and usefulness of the property involved; and for administering trust/restricted estates, including the protection and management of such estates, reporting and furnishing data for heirship findings and family histories to the appropriate Administrative Law Judges, and payment of all authorized claims against such estates.

B. Administrative Law Judge. The Administrative Law Judge makes final determinations of heirs; approves wills of deceased Indians; determines the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees; makes probate modifications as warranted; acts on petitions for rehearings and reopenings of cases, and on renunciations, compromise settlements and citations; allows or disallows creditors' claims; and determines right of tribe, under appropriate authority, to purchase.

C. Office of the Solicitor. The Office of the Solicitor is responsible for providing legal counsel and, if appropriate, representation to the Superintendent in matters concerning estate planning and administration; and the review, as to the adequacy of form, of any Indian will or codicil filed with the Superintendent.

D. Board of Indian Appeals. The Board of Indian Appeals has the responsibility to hear, consider, and determine finally for the Department, appeals taken from decisions of the Administrative Law Judge on petitions for rehearing or reopening, and allowance of attorney fees.

E. Land Titles and Records Office. The Land Titles and Records Office shall be the repository of all original probate records assembled by the Administrative Law Judge in accordance with 25 CFR 150 and 43 CFR 4.236(b), and shall issue administrative corrections and modifications of inventories for omitted property where authorized by 43 CFR 4.272 and 25 CFR 150.7(b).

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**2. PROCEDURES**

**2.1 Estate Planning.** In the Bureau of Indian Affairs, estate planning is action taken by an individual owner of trust/restricted property (or by a co-owner of a non-trust/non-restricted interest), that sets out and provides for the future disposition or transfer of such property.

**A. Counseling.** Upon request, Agency personnel shall assist and counsel individual Indians in estate planning and in the preparation of wills covering trust/restricted property. This should include, but is not limited to:

(1) Conferring with the client to obtain vital information regarding domicile and the family group. If possible, obtain the client's social security number, current address, etc.

(2) Procuring descriptions of all trust/restricted assets and liabilities, including size, location, value, income and improvements, e.g. houses, barns, wells, etc.

(3) Examining documents, including mortgages, secured loans, leases, non-secured Federal loans, tribal zoning and land-use ordinances and codes, divorce decrees and wills, to determine their effects on title.

(4) Conducting a full technical analysis and advising the client of the impacts of applicable escheat statutes, tribal codes, testate and intestate inheritance, the merits of land consolidation, and the ownership and managerial problems associated with fractional and non-trust interests in trust/restricted land.

(5) Explaining options to avoid problems. Included among such options are the transfer of title by deed or will, and the use of life estates, partitions, joint tenancies, tenancies by the entirety, and renunciations.

(6) Ascertaining the client's exact wishes in regard to the disposition of his or her property interests.

(7) Drafting and supervising the execution of the deed, will, etc., necessary to satisfy the client's intent.

**B. Preparation of Wills.** For detailed instructions on the preparation of wills, see Illustration 1 entitled "Drafting Of

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Indian Wills Covering Trust And Restricted Property", prepared by the Office of Hearings and Appeals. As indicated in Illustration 1, the will may be prepared on a Bureau of Indian Affairs form (sample will). See Illustration 2, Form BIA-5407, Last Will and Testament.

(1) Agency personnel should seek the assistance of the Solicitor's Office in drafting unusual will provisions to comply with the intent of the testator/testatrix. All wills shall be submitted by the Superintendent to the Office of the Solicitor for review as to adequacy of form. See Illustration 3 for transmittal form, BIA-5470, Memorandum Transmitting Indian Will or Codicil For Review As To Adequacy Of Form.

(2) Within the Bureau of Indian Affairs, it is recommended that only personnel in realty specialist or paralegal positions (or above) draft wills. For reasons of personal liability, such personnel are encouraged not to draft wills which devise any fee property, whether by specific devise or through the residuary clause.

(3) A will shall be held in absolute confidence, and no person other than the testator/testatrix shall admit its existence or divulge its contents prior to the death of the testator/testatrix. After the death of the testator/testatrix has been confirmed, a copy of the will may be provided to any apparent heir-at-law or devisee named in the will or named in the next previous will, a copy of which may still be in the agency files. If in doubt, the Administrative Law Judge should be consulted.

(4) When transmitting a will, Agency estate personnel and Field/Regional Solicitors should always place the will in a sealed blue envelope marked CONFIDENTIAL for the "Special Attention" of the Field/Regional Solicitor or the Agency estate personnel, respectively. Because both the contents of a will and very existence of such will are strictly confidential, any cover memorandum affixed to and transmitting the sealed envelope between the two offices should not reveal the name or identification (ID) number of the testator/testatrix.

**2.2 Estate Administration.** In the Bureau of Indian Affairs, the administration of trust/restricted Indian estates involves the identification, management and distribution of such estates, not including the actual determinations of heirs or approvals of wills. The estate is administered by the Superintendent from the time of the decedent's death until the estate inventory is fully distributed and all claims are paid.

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A. Reporting Death Of An Indian.

(1) Upon receiving notice of death, the Superintendent having administrative jurisdiction over the decedent's tribe shall immediately notify the Land Titles and Records Office, and within the first seven days of the following month, notify the Administrative Law Judge of such fact as required by 43 CFR 4.210(a).

(2) Copies of the monthly death report shall also be furnished to the Land Titles and Records Office, Agency branch offices, other interested Indian agencies, tribal officials, etc.

(3) All appropriate inherited interest, tract ownership, and income payment records shall be noted accordingly. The purpose of such notation is to alert the Superintendent of his responsibility to administer and protect the estate.

(4) Upon receiving the monthly death report, the Land Titles and Records Office shall provide the agency with Bureau of Indian Affairs Inventory (BIAINV) and Individual Tribal Interest (ITI) reports for all decedents appearing thereon.

(5) Notification of the deaths of life tenants in trust/restricted property should also be provided to the Land Titles and Records Office. In those cases where the life tenants are non-Indians or non-citizens, such notification is necessary only when the remaindermen are Indians entitled to hold a future trust/restricted interest.

B. Data For Heirship Finding. The Superintendent having administrative jurisdiction over the decedent's tribe, as determined by his or her tribal code, shall complete and file with the appropriate Administrative Law Judge all data required by 43 CFR 4.210(b) within 90 days after the death is reported. See Illustrations 4, Instructions for Preparing Form OHA-7, Data For Heirship Finding And Family History, and 5, Form OHA-7, Data For Heirship Finding And Family History. For examples of completed forms, see Illustrations 6 and 7. For samples of collateral family histories, see Illustration . In the interest of timely probate, sensitivity to the Administrative Law Judge's schedule for hearings is encouraged when filing such data. In paraphrased language, the data required by section 4.210(b) and (c) includes, but is not limited to:

(1) A copy of the death certificate, if one exists, otherwise an equivalent document. To obtain a copy of the death certificate, see Illustration 9, "Instructions For Obtaining Copy Of Death Certificate."

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(2) Data for heirship findings and family history, certified by the Superintendent, on a form approved by the Director, Office of Hearings and Appeals, containing:

(a) The facts and alleged facts of decedent's marriages, separations and divorces, with copies of supporting documents as required by the Administrative Law Judge.

(b) The full names and last known addresses of probable heirs and other known parties in interest, including known creditors. Every effort must be made to locate missing persons who are probable heirs, and documentation of those efforts must be forwarded to the Administrative Law Judge when such a person's whereabouts cannot be established.

(c) Information on whether the relationship of the probable heirs to the decedent arose by marriage, blood, or adoption.

(d) The names, relationships to the decedent, and last known addresses of beneficiaries and attesting witnesses when a will or purported will is involved. If the beneficiary of a will is deceased, the beneficiary's date of death should be provided. If the beneficiary of a will predeceased the decedent, and such beneficiary falls within the categories set forth in the anti-lapse provisions in 43 CFR 4.261, his or her lineal descendants should be fully identified.

(e) If will beneficiaries are not probable heirs-at-law of the decedent, the names of the federally-recognized tribes in which they are members.

(f) A certified inventory of all trust/restricted real and personal property wherever situated, in which the decedent had any right, title, or interest at the time of his/her death. See Illustrations 4 and 10, Sample Inventory And Appraisalment Of Indian Trust/Restricted Lands. All inventories, of a given estate, should be submitted to the Administrative Law Judge at the same time.

(i) The certified inventory, or data for heirship finding, should include all moneys and credits in trust status, whether in the form of bonds, undistributed judgment funds, or any other form, and the source of each fund in the account, showing both the total estimated value of the real property and the estimated value of the decedent's interest therein.

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(ii) In those states where intestate inheritance may be limited or otherwise affected by the value of the estate, knowledge of the value of the estate is essential to the Administrative Law Judge when determining the heirs. Depending upon the state involved, additional factors may include the existence of a surviving spouse, whether all of the issue are of the surviving spouse, whether the decedent was survived by a parent or parents, etc.

(iii) If the decedent's estate meets all other statutory requirements which make state value criteria applicable, and it appears that the value of the estate at the time of death approached or exceeded the statutory value, a complete appraisal of the estate should be obtained and made a part of the inventory.

(iv) If the statutory value criteria are not applicable, the value of the estate shall be based upon comparable sales as indicated in "appraisal guidelines for probate and gift transactions," a "reservation land value summary," an "appraisal consultation memorandum" or other current sales data developed, maintained, and distributed by the area or agency appraisal section.

(v) Any approved encumbrances (lease, mortgage, deferred payment contracts, etc.) existing on each interest in the decedent's trust/restricted estate, showing the amounts, and the names and addresses of the persons holding such encumbrances, should be indicated on the inventory.

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~~(vi) Where the decedent died testate, possessed of an otherwise escheatable interest under Section 207 of the Indian Land Consolidation Act, 25 U.S.C. 2206, the estate inventory, or a signed certification attached to said inventory, should indicate whether the devisees to such interest were co-owners of the tract at the time of the decedent's death. See Illustration 11. Form BIA-5480, Certification of Co-ownership (Optional Format).~~

~~(vii) An actual five-year income report or equivalent declaration, specifically covering the five-year period preceding the decedent's death, should be made for each undivided interest amounting to two percent (.0200000) or less in a given tract of land. (A statement that an interest is "subject to Section 207 of Indian Land Consolidation Act" is insufficient, without such income report or declaration.)~~

(g) Where a tribe has the statutory option to purchase interests of a decedent, the Superintendent shall

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include, in addition to the data specified above:

(i) A showing of the enrollment status for every probable heir or devisee.

(ii) Where necessitated by the statute, a statement as to the blood quantum in the tribe concerned, for every probable heir or devisee.

(iii) Verification by the Land Titles and Records Office, as designated in 25 CFR 150.4 and 150.5, that the property interests are complete and accurate.

(iv) An appraisal report (43 CFR 4.301) based on the fair market value of the property, including fixed improvements, as of the date of the decedent's death.

(3) Of those in the custody of the Superintendent, the original and copies of any and all wills; the original and copies of any and all codicils to, and revocations of, wills; any papers, instruments, or documents that are purported to be wills; and the initial interview checklist. See Illustration 1, Appendix A.

(4) Claims against the estate of the decedent. The Superintendent shall transmit to the Administrative Law Judge all creditors' and other claims which have been filed and, thereafter, shall transmit all additional claims immediately upon the filing thereof. Persons having claims against the estate of the decedent may file the same with either the Superintendent or the Administrative Law Judge prior to the conclusion of the first hearing. See Illustration 12, Form BIA-5468, Affidavit In Support Of Claim. Claims filed with the Superintendent after the conclusion of the first hearing should be transmitted to the Administrative Law Judge as soon as filed.

(5) Special instructions regarding Section 207 of the Indian Land Consolidation Act of January 12, 1983, as amended on October 30, 1984, 25 U.S.C. 2206. For any individual dying after October 30, 1984, possessed of an undivided trust and/or restricted interest in a given tract of land, such interest may escheat to the tribe if all of the following circumstances exist:

~~(a) The tract is "within a tribe's reservation or otherwise subject to a tribe's jurisdiction," which means within the exterior boundaries of a tribe's reservation as determined by the Secretary, plus any additional area over which a tribe has been determined by the United States to have civil jurisdiction. Questions and controversies as to whether or not a tract is~~

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within a tribe's reservation, or whether or not an off-reservation tract is subject to a tribe's jurisdiction, should be presented to the Area Director for decision. The local Solicitor's Office should be consulted on all jurisdictional questions.

(b) The decedent's undivided interest amounted to two percent (.0200000) or less of the total.

(c) Such interest is incapable of earning \$100 "in any one of the five years" after the date of the decedent's death.

(i) It will be presumed that any interest of two percent or less will be incapable of generating the required \$100 if it has not, based on documentation of actual earnings, done so "in any one of the five years" before the date of the decedent's death. (Congressional Record, October 10, 1984, page E4408.)

(ii) If the interest has not earned \$100 or more "in any one of the five years" before the date of the decedent's death, the Bureau of Indian Affairs shall collect and provide to the Administrative Law Judge all evidence, within its knowledge, relating to the capability of the interest to earn \$100 or more "in any one of the five years from the date of the decedent's death." (If the Administrative Law Judge finds such evidence to be insufficient to rebut the above presumption, the heirs will have an opportunity to provide additional evidence of the interest's earning capability. In this case, the heirs will bear the burden of proving the interest's earning capability to the Administrative Law Judge.)

(iii) These earnings must constitute only earned monetary compensation and will not include any increase in the value of the individual interest resulting from appreciation and/or improvements.

(iv) To rebut the above presumption, the evidence provided by the Bureau of Indian Affairs to the Administrative Law Judge should demonstrate a likelihood or foreseeable potential of the interest to produce earnings. The evidence should include, but is not limited to, documents, proposals, plans, etc., which address clearly anticipated surface and/or subsurface earnings, such as those from leases, timber contracts, permits, rights-of-way, etc.

(d) The decedent had failed to devise such interest to any other owner of an undivided fractional interest

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in such tract. Such devise may be specific or by the residuary clause, and may be to multiple co-owner devisees as tenants in common or as joint tenants with the right of survivorship, provided such devisees were co-owners of the tract at the time of the decedent's death.

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(e) There was no tribal code or law, approved by the Secretary or established pursuant to special legislation, in effect at the time of the decedent's death which would preclude the escheat provisions set forth in (a) through (c), above. Any inheritance code which is adopted by a tribe pursuant to the Indian Land Consolidation Act must be submitted to the Central Office for review prior to approval by the Area Director. Such submission should include the comments and recommendations of the local Solicitor's Office and the Administrative Law Judge responsible for probating estates comprising trust or restricted lands within the reservation of the tribe adopting such code.

C. Presumption of Death. Administrative Law Judges are to receive evidence and determine whether persons, by reason of unexplained absence, are to be presumed dead. A declaration that, in the absence of proof, someone is presumed dead, is a very serious decision; the distribution of his or her property may become an irreversible act.

(1) The criteria for a "presumption of death" are set forth in state law (Solicitor's Opinion M-36127, April 17, 1952), and there are generally six basic elements which need to be proven before such presumption can be made.

- (a) Departure from home or place of residence.
- (b) Failure to return within a given number of years.
- (c) Failure to communicate with those with whom the absentee would most likely communicate, if alive, or with whom he or she is accustomed to communicating.
- (d) Due and diligent search and inquiry to locate absentee.
- (e) Lack of motive or reason for absentee's failure to communicate.
- (f) Lack of explanation for absence.

(2) Agency realty staff should be familiar with state statutes governing "presumption of death."

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(3) Evidence of discontinuance of any habitual or customary act is also useful for purposes of presuming an individual to be deceased (e.g. failing to collect lease income from an Individual Indian Money (IIM) account, when the individual had a record or history of doing so in the past).

(4) When a request for a proceeding (to determine a person as presumed dead) is received or initiated by the Superintendent, Agency personnel must conduct a diligent and extensive investigation to locate that person prior to submitting the case to the Administrative Law Judge.

(a) A log should be kept of all contacts made and the information obtained.

(b) Negative results must be recorded as completely and accurately as positive results.

(c) All copies of correspondence and a written record of all phone calls should be maintained.

(d) Inquiries should start with members of the decedent's immediate family, then with more remote relatives, in-laws, and friends or acquaintances. Involve the family as much as possible.

(e) Exhaust all possible leads.

D. Data For Determining Nationality or Citizenship and Status Affecting Character of Land Title. If membership or ancestry in a federally-recognized tribe, or the United States nationality or United States citizenship, of an Indian heir or decedent is in question, the Superintendent having administrative jurisdiction over the decedent's tribe shall complete and file, with the appropriate Administrative Law Judge, all data which would be of assistance in making the necessary determinations required by 43 CFR 4.206. See Illustration 13, Form BIA-5486, Instructions and Optional Format On Indian Status And Nationality.

E. Payment of Certain Pre-probate Expenses.

(1) Under delegated authority, published in Area Addenda to 10 BIAM, and with the consent of the Administrative Law Judge, the Superintendent may (prior to distribution of the estate) disburse funds from the decedent's trust estate account for the following purposes:

(a) For authorized expenses of last illness.

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- (b) For authorized funeral expenses.
- (c) For support of dependent members of the family of the decedent in such amounts deemed necessary to avoid hardship and consistent with the value of the estate and the interest of the probable heirs.
- (d) For expenses necessary to conserve the estate.
- (e) For tribal or other claims secured by an "Assignment of Income."

(2) Procedures.

(a) Any request for the payment of pre-probate expenses should be submitted in writing to the Superintendent by a relative or member of the decedent's family. The Superintendent may also initiate the payment of pre-probate expenses. In either case, a statement of need, accompanied by consents from the probable heirs, should be made of record.

(b) When acting favorably upon the request, or initiating payment on his or her own volition, the Superintendent shall forward the request, the statement of need and consents, and an accounting of the amount in the trust estate account, the income being earned by the estate, and the known creditor's claims to the Administrative Law Judge, with a recommendation that payment be approved. There is no appeal from the Judge's decision to approve or deny approval of the payment.

(c) If the Superintendent denies a request, the decision is appealable under 25 CFR 2.

**F. Management and Conservation of the Trust/Restricted Estate.** Included among estate administration responsibilities are the management and conservation of the estate. In those instances where, in the absence of a determination of heirs or devisees, Federal regulations authorize the Superintendent to encumber or dispose of an interest in property, or conserve the estate of the deceased owner, it is vitally important to employ extreme care and diligence in exercising such authorities. A sense of legal responsibility must be maintained. Considerations include, but are not limited to, the following:

- (1) Will the action benefit or injure the property in any way.
- (2) Will the benefit or injury be temporary or

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permanent.

(3) Will the action affect the economic value or usefulness of the property.

(4) Will fair compensation be paid.

(5) What must be done to preserve the economic value and usefulness of the property.

G. Renunciation of Interest. 43 CFR 4.208 allows persons entitled to inherit Indian trust or restricted property, or an interest in such property, to renounce or disclaim intestate succession to, or devise of, that property. This is done by filing a signed and acknowledged declaration of such renunciation with the Administrative Law Judge prior to entry of the Administrative Law Judge's final order. See Illustration 14, Form BIA-5485, Renunciations/Disclaimers (Optional Formats).

(1) To renounce succession, all of the following requirements must be met:

(a) The renouncing person must be 21 years of age or older.

(b) The renunciation must be a written document. See Illustration 12.

(c) The document must identify the property that is the subject of the renunciation.

(d) The document must state the extent (wholly or partially) of the property to which succession is being renounced. In renouncing succession to all but a portion of the estate to be inherited or devised, a probable heir or devisee may choose not only what specific property, but also the size and/or type of interest such person would like to retain. These include, but are not limited to, the following:

(i) Reservation of a life estate in all or specific parcels of property, with the further right to reserve all or only a chosen portion of any future income from such property;

(ii) Reservation of specific property, by tract or amount;

(iii) Reservation of either the surface or subsurface estate; etc.

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(e) The renunciation document must be notarized.

(2) A renunciation filed with the Administrative Law Judge will be considered accepted when implemented in an order by the judge and will be irrevocable thereafter. All renunciations filed with, and implemented in an order by, an Administrative Law Judge are considered valid and effective.

(3) Renunciation is an ideal method of allowing trust/restricted property to pass while retaining a life estate in the property. It is an expedient method and fits most situations where the renouncing person is a non-Indian spouse. Generally, this will allow the non-Indian to retain the use of, and income from, the property, without title leaving trust status.

H. Order Determining Heirs or Order Approving Will and Decree of Distribution. When the order becomes final, the Superintendent shall change all appropriate records to reflect the decedent's heirs or devisees as determined by said order. Probate orders or modifications should not be entered by Agency personnel until the 60-day waiting period required by 43 CFR 4.241 has expired or such orders otherwise become final.

I. Payment of Claims and Closing of the Estate. An estate is closed upon issuance of a final order by the Administrative Law Judge. Although an estate is closed at the time the Judge issues his final order, the estate account may remain open until the claims have been satisfied or the time allowance has expired, whichever occurs first. Once the estate is closed, under no circumstances shall the estate account be reopened. Upon expiration of the 60-day appeal period, these following procedures shall be used for distribution of the estate:

(1) Payment of claims.

(a) The Claim Settlement Authorization will be prepared in triplicate from data taken from the final order. See Illustration 15, Form BIA-5469, Claim Settlement Authorization.

(b) After approval by the Realty Officer, the original and one copy of the authorization shall be delivered to the Individual Indian Money (IIM) section. One copy of the authorization shall be retained in the probate file for information purposes only.

(c) The Agency Realty Officer shall distribute payments of claims, according to local procedures, as funds accrue and shall record the payment data on both copies of the

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authorization.

(2) Closing the estate.

(a) When all allowed claims have been paid or the time limit expires, the Agency Realty Officer, or his/her authorized representative shall prepare a Journal Voucher distributing any trust funds remaining in the estate account. Of the remaining trust funds, any originating as part of the proceeds in the estate account as of the time of the decedent's death shall be distributed according to the Order Determining Heirs or Order Approving Will and Decree of Distribution. (Generally, such funds not specifically allocated under a will, approved by the Administrative Law Judge, pass to the residuary beneficiary named in the will.) Any trust funds in the estate account originating as part of the income to the estate account after the date of the decedent's death, shall follow the same distribution as the property which is the source of such income. The Journal Voucher, absent computation of interest, shall be furnished by the Realty Officer to the IIM Section.

(b) Copies of the Claims Settlement Authorization and the completed Journal Voucher shall be retained in the probate record.

(c) At the request of the Agency Superintendent or employee having delegated authority, the IIM clerk shall assign the proper management code to all estate accounts closed.

J. Coordination With Other Bureau of Indian Affairs Programs and Other Federal, Tribal, State, and County Entities.  
It is important, desirable and frequently essential to coordinate activities related to estate administration with other interested parties.

(1) Agency realty personnel should apprise all other agency branches involved with obtaining consents to encumber property, or with the distribution of income, e.g. leasing, rights-of-way, grazing, forestry, housing, IIM accounts, etc., regarding name and address changes, deaths of owners; and, when a probate is final, the names of the new owners and their addresses.

(2) Agency realty personnel are encouraged to apprise other interested governmental entities, e.g. tribal census/enrollment offices, Indian Health Service (IHS), Farmers Home Administration (FHA), Veterans Administration (VA), State and county social service agencies, etc., of reported deaths and estate related activities, as a means of confirming and sharing

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ESTATE PLANNING AND ADMINISTRATION GUIDELINES  
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such information where it is helpful in achieving a common goal and is not otherwise protected by the Privacy Act.

K. Summary Distribution. By 43 CFR 4.271, the Secretary has delegated authority to the Superintendent to distribute the estate assets when the decedent died intestate possessed only of trust personal property, including cash (usually in the IIM account), having a value of less than \$1,000. If the decedent died testate, or possessed of trust real property, or trust personal property having a value of \$1,000 or more, the case must be forwarded to the Administrative Law Judge for probate. As in those cases probated by the Administrative Law Judges, personal property should be distributed to the heirs at law according to the inheritance laws of the State in which the decedent was domiciled at the time of death. (Domicile is defined as the true, fixed and permanent home, to which there is an intention of returning when absent.) The procedure for summary distribution is as follows:

(1) A Notice of Hearing for Summary Distribution must be sent to all interested parties, including probable heirs according to the laws governing the inheritance of personal property, and known creditors. The notice should be posted in public view at the tribal and Agency offices. See Illustration 16, Form BIA-5484, Notice Of Hearing For Summary Distribution (Optional Format). Although no specific time is stated in the regulations as to how many days notice such heirs should have before the hearing is held, a reasonable time period should be provided to allow the probable heirs to make arrangements to be present.

(2) The Superintendent may take either oral or written testimony at the hearing or may, by mail, obtain the heirship data in the form of written and acknowledged interrogatories or affidavits.

(a) Written testimony. The Superintendent may ask questions at the hearing and reduce them to writing and make the testimony a part of the Order Determining Distribution or Memorandum of Hearing and Distribution of Estate.

(b) Oral testimony. If the summary distribution is simple in terms of family history, etc., oral interrogatories may be taken at the time of the hearing and general reference made to them in the Memorandum of Hearing and Distribution of the Estate.

(c) Written interrogatories. This type of questioning would be in order when there are certain facts about

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the family which the Superintendent cannot obtain from the agency records, and/or it is unlikely that anyone will be present at the hearing. If the heirs at law live some distance from the agency, they cannot be expected to come to the hearing in view of the small sum or value involved. The interrogatories are usually sent to the probable heir(s) at law. The Superintendent may include any questions that are necessary and which will assist in determining the actual heirs at law. The questions should address data similar to that appearing in Form OHA-7, and should include the date of birth, tribal affiliation, address and relationship (to the decedent) of the person deposed. The completed interrogatories must be acknowledged by a notary public. They are to be admitted into evidence at the time of the hearing, and in so doing the Superintendent may employ the following language: "If there is no objection, I hereby admit into evidence the affidavit of \_\_\_\_\_."

(d) Affidavits. If the Superintendent has all the facts as to the heirs at law and no one is available for the hearing, the Superintendent may prepare an affidavit and mail it to the principal heir at law for execution before a notary public. The affidavit can be admitted into evidence in the same manner as the written interrogatories.

(3) Memorandum of Hearing and Summary Distribution of Estate. The Memorandum of Hearing and Summary Distribution of Estate, issued after all necessary evidence has been gathered, should be retained by the Agency realty office, with copies to be provided to the heirs at law and creditors, and one copy given to the Individual Indian Money (IIM) section for distribution of the estate and payment of the claims. See Illustration 17, Form BIA-5483, Memorandum Of Hearing And Summary Distribution Of Estate (Optional Format). The Memorandum of Hearing and Distribution of Estate must always include the following:

- (a) Name of decedent.
- (b) Date of birth.
- (c) Date of death.
- (d) Names of persons notified of hearing, including probable heirs and creditors.
- (e) Names of persons present at hearing.
- (f) Date of the hearing.
- (g) Value or dollar amount of the trust estate at

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the time of death and at the time of distribution.

- (h) List of claims and dispositions thereof.
- (i) Balance of estate to be distributed.
- (j) Distribution of the estate to the heirs at law, including name, relationship, tribal affiliation, and fractional amount distributed.
- (k) Citation of the state law of descent and distribution constituting the authority for the distribution to the heirs at law.

L. Special Procedures For The Five Civilized Tribes. The role of the Bureau of Indian Affairs in administering the restricted estates of members of the Five Civilized Tribes consists primarily of furnishing information to the Solicitor's Office when the Southwest Regional Solicitor elects to represent Indians in the state courts of Oklahoma in heirship proceedings. The information to be provided to the Solicitor's Office by the Superintendent includes the following:

(1) "Proof of Death and Heirship," signed by one or more of the probable heirs. The purpose of this document is to provide family history data, including an indication of the probable heirs' Indian blood quantum, especially if such persons are of one-half or more Indian blood. See Illustration 18, Form BIA-5488, Proof Of Death And Heirship, Five Civilized Tribes (Optional Format).

(2) Inventory of trust and restricted property (both taxable and non-taxable).

(3) Tax exemption certificate.

(4) Appraisals of restricted taxable land.

(5) Data regarding existing leases, including tenure, consideration, names and addresses of lessees, etc.

(6) "Certificate of Degree of Indian Blood" (CDIB) to reflect blood quantum only to the degree that it affects restrictions on the property. See Illustration 19, Form BIA-5487, Certificate Of Degree Of Indian Blood, Five Civilized Tribes (Optional Format).

(7) Unofficial death report. See Illustration 20, Form BIA-5482, Unofficial Death Report, Five Civilized Tribes

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ESTATE PLANNING AND ADMINISTRATION GUIDELINES

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(Optional Format).

M. Estate Administration Status. Upon receiving notice of an owner's death, Agency realty personnel should create and maintain an "Agency Record of Probate Status" for the decedent's estate. See Illustration 21, Form BIA-5481, Agency Record Of Probate Status (Optional Format). A paper copy of this record, updated as probate-related actions occur, may be computer generated and should be kept in the estate file. (For a comprehensive action plan, see Illustration 22, "Indian Probate - Action Plan".) At any given time, the record will serve as a ready reference as to the status of the estate.

## PREFACE

### DRAFTING WILLS

A properly drafted and executed will allows an individual to decide who will receive his/her property when he/she dies. The goal of every person drafting wills should be to prepare a document that accurately sets forth the individual's intentions and is executed with due regard to all legal requirements so that it will be upheld. Although the preparation of an individual's last will and testament is a serious undertaking with significant legal consequences, the task does not need to be frightening or overwhelming.

The materials included in this manual are intended to address the more common questions and problems that arise in drafting Indian wills. By using common sense in following these guidelines, you should be able to deal effectively with the vast majority of Indian will-drafting assignments.

Although this manual was prepared with the assistance of the Bureau and with input from the Solicitor's Office, there will be times when there is a legitimate disagreement about how a situation should be handled. In addition, there are some situations for which it is not possible to make a general guideline (such as, at what point does a person who has been drinking become intoxicated), or in which there is a difference of legal opinion (for instance, is it ever appropriate for a person to have two wills). In these cases, the manual attempts to set forth the problem and the issues involved. Your own judgment, advice from the Solicitor's Office, the requirements of your Bureau supervisors, and requests by the Administrative Law Judge for your area will all need to be considered, sometimes within a matter of minutes. This is one of the points at which a manual ends and your real job begins.

When a situation arises that is beyond the coverage of this manual or that is more complex than you feel comfortable undertaking alone, you may seek advice from the Office of the Solicitor. In some cases, you may even need to refer the individual to a private attorney.

### THE TESTATOR'S INTENT

When writing or interpreting a will, the primary objective is to ascertain the testator's intent. It is obviously better to know what the testator intended than to guess. In many places in this manual, you will be advised to explain different things to the testator and let him/her make a decision. Always record what the testator tells you.

## TOPICS NOT COVERED IN THIS MANUAL

There are three major topics not covered in this manual:

1. Wills of members of the Five Civilized Tribes and the Osage Tribe;
2. State laws relating to wills; and,
3. Tribal ordinances relating to wills.

### Five Civilized Tribes and Osage Tribe

Wills of members of the Five Civilized Tribes and the Osage Tribe are governed by different rules than those of most other Indian tribes. In most respects, these wills are subject to the laws of the State of Oklahoma. If your job normally includes preparing wills for members of these tribes, you should familiarize yourself with Oklahoma law and the special Federal legislation concerning the tribe. If preparing wills for members of these tribes is not a normal part of your job, you should seek advice from the Solicitor's Office or refer the individual to a private attorney.

### State Laws

State laws concerning wills vary widely. It is not possible or practical in a manual such as this to discuss the specifics of the laws of each state. You must remember, however, that any will passing non-trust property must conform to applicable state laws. The Solicitor's Office may be able to advise you of these laws. You should become thoroughly familiar with the probate laws of the states with which you deal frequently.

### Tribal Ordinances

The Indian Land Consolidation Act, 25 U.S.C. § 2205, gives tribes authority to write probate codes governing descent and distribution of trust or restricted land on their reservation or otherwise subject to their jurisdiction. Once approved, in most cases, tribal probate ordinances will replace Federal law with respect to trust or restricted property. You must keep informed as to whether a tribal ordinance applies to the particular will you are drafting, and ensure that any tribal requirements are met.

### ORGANIZATION OF THIS MANUAL

This manual starts with a general introduction to the probate process. For many people, this introduction will be unnecessary and can be skipped. The manual then discusses general rules applicable to any will-drafting assignment, and goes through the normal sequence of events arising when a person asks to have a will written.

Citations to Board of Indian Appeals cases are given as appropriate throughout the manual. These cases give examples of the situations discussed in the text.

The outline format was chosen for this manual because it leaves wide margins for you to make notes.

### USING THE GLOSSARY

The "Glossary of Terms Commonly Encountered in Indian Probate," beginning on page 125 of this manual, provides definitions of many of the terms used in the manual. If you are not familiar with a term, consult the Glossary. The Glossary also provides cross-references to the sections in the manual where a term is discussed in further detail.

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OVERVIEW OF THE PROBATE PROCESS

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I. OVERVIEW OF THE PROBATE PROCESS

A. WHAT IS A WILL?

1. As is discussed in more detail throughout this manual, a will is a document prepared with certain formalities required by law and intended to pass a person's property upon death.
  - a. A will takes effect upon the death of the testator.
  - b. Although there is no magic form in which a will must be prepared, and no magic words that must be present to make a document a will, there are certain legal requirements that must be met.
    - (1) The purpose of this manual is to tell you what those requirements are.
    - (2) See Estate of Daniel J. Pierre, 6 IBIA 17, 84 I.D. 68 (1977).
  - c. If the legal formalities are properly followed, any written statement expressing an individual's intentions for the disposition of his/her property upon death qualifies as a will.
    - (1) For example, a will does not have to be:
      - (a) Prepared by a lawyer;
      - (b) Prepared by the Bureau;
      - (c) On the Bureau will form;

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**I. Overview of the Probate Process**

**A. What is a Will?**

(1) A will does not have to be:

(d) Typewritten; or

(e) Shown to the Bureau before the person dies.

(2) Instead, a will can be:

(a) Prepared by anyone;

(b) Written, printed, typewritten;

(c) Written in pencil, pen, or even crayon; or

(d) On the Bureau will form, a commercially prepared will form, in a letter, on note paper, or on the back of a box top.

2. However, a will prepared by the Bureau should be done with knowledge of the legal requirements for valid execution and awareness of the consequences flowing from a will.

**B. WHAT IS AN INDIAN WILL?**

1. An Indian will is a will that passes trust or restricted property.

a. See Section I.D.2 (page 4).

b. Do not confuse a will passing trust or restricted property with a will prepared by an Indian who does not own trust or restricted property.

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I. Overview of the Probate Process

B. What is an Indian Will?

1. An Indian Will Passes Trust or Restricted Property

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(1) The Bureau has no authority to write wills that do not pass trust or restricted property, even if they are for an Indian.

2. An Indian will can also pass non-trust property.

a. See Section I.D.3 (page 5).

C. WHAT IS PROBATE?

1. Probate is the legal process by which wills are approved and heirs determined. Expressed another way, probate determines what happens to a person's property after death.

a. If there is a document that appears to be a will, the probate process determines whether:

(1) The document was prepared with the necessary legal formalities;

(2) The individual was legally competent to make a will when the document was executed; and

(3) The individual was acting upon his/her own desires as to the disposition of the property.

b. If there is not a valid will, the probate process determines who are the individual's intestate heirs.

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I. Overview of the Probate Process

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D. WHO CONDUCTS INDIAN PROBATE?

1. Indian probate is extremely complex.
  - a. An Indian may own property that is subject to probate by several different forums or under the laws of several different jurisdictions.
2. Trust or Restricted Property.
  - a. For trust or restricted property, probate is held before an Administrative Law Judge of the Office of Hearings and Appeals of the United States Department of the Interior.
  - b. Jurisdiction over these probate cases is given to the Department by Federal statute, and delegated to the Office of Hearings and Appeals. See 43 CFR 4.1(a).
    - (1) 25 U.S.C. § 372 deals with jurisdiction over the trust or restricted property of persons dying intestate.
      - (a) Section 372 states: "when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will \* \* \*, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive \* \* \*."

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I. Overview of the Probate Process  
D. Who Conducts Indian Probate?  
2. Trust or Restricted Property

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(2) 25 U.S.C. § 373 deals with jurisdiction over the trust or restricted property of Indians dying with wills.

(a) Section 373, as amended by section 2 of the Act of Nov. 5, 1987, 101 Stat. 886, states: "Any persons of the age of eighteen years or older having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: Provided, however, That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior \* \* \*."

3. Non-Trust Property.

a. Non-trust property owned by an Indian is not subject to probate by the Department of the Interior.

(1) NEVER prepare a will for an individual, even though he/she is Indian, if the person owns no trust or restricted property.

(2) Tell the person to see a private attorney.

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I. Overview of the Probate Process  
D. Who Conducts Indian Probate?  
3. Non-trust Property

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- b. Non-trust property is normally probated through the appropriate state or tribal court.
- c. Whether probate is conducted by a state or tribal court must be determined with respect to each tribe and the extent of its civil jurisdiction over tribal members.

E. WHAT LAW IS APPLIED?

1. Trust or Restricted Property.

- a. In general, the Department applies Federal law to determine the validity of a will and looks to state laws of intestate succession to determine the heirs of a person dying intestate.

(1) See 25 U.S.C. § 348.

- b. The Indian Land Consolidation Act, 25 U.S.C. § 2205, allows tribes to write their own probate codes governing descent and distribution of trust or restricted land on their reservation or otherwise under their jurisdiction, subject to approval by the Secretary of the Interior.

(1) If a tribe has written a probate code and that code has been approved, the Department must apply the tribal code as to trust or restricted land owned by the decedent.

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I. Overview of the Probate Process

E. What Law is Applied?

1. Trust or Restricted Property

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(2) It is possible that trust or restricted property other than land, such as an Individual Indian Money account, may remain subject to Federal laws governing the validity of wills and state laws of intestate succession, depending upon the source of the property.

2. Non-Trust Property.

a. State and tribal courts apply their own laws as to the disposition of non-trust property.

F. WHO MAKES THE FINAL DECISION?

1. Trust or Restricted Property.

a. Administrative Review by the Department of the Interior.

(1) The Administrative Law Judge.

(a) The initial decision in an Indian probate case before the Department is made by an Administrative Law Judge of the Office of Hearings and Appeals, United States Department of the Interior.

(b) This decision is final unless rehearing is sought under 43 CFR 4.241.

(c) The Administrative Law Judge's decision on rehearing is final unless an appeal is filed with the Interior Board of Indian Appeals.

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I. Overview of the Probate Process  
F. Who Makes the Final Decision?  
1. Trust or Restricted Property

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(2) The Interior Board of Indian Appeals.

(a) Decisions of the Interior Board of Indian Appeals are final for the Department.

(b) Under 25 U.S.C. § 372, the Department's determination of a deceased Indian's heirs is "final and conclusive." In Lane v. Mickadiet, 241 U.S. 201, 209 (1916), the Supreme Court held this language meant there was, in general, no right of appeal to Federal court from a Departmental determination of an individual's heirs.

(c) The Department's decision in will cases is subject to review in Federal court. 25 U.S.C. § 373. These decisions are reviewed under the Administrative Procedure Act, 5 U.S.C. § 706.

b. Federal Court appeal route.

(1) United States District Court.

(2) United States Circuit Court of Appeals.

(3) The United States Supreme Court.

2. Non-Trust Property.

a. Initial decisions in state and tribal courts will be made by a judge of the particular court.

b. Further appeal rights are determined by the rules of practice of the jurisdiction.

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I. Overview of the Probate Process

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G. WHERE DOES THE BUREAU FIT INTO THE PROBATE PROCESS?

1. The United States Government holds property in trust or restricted status for certain Indians.
  - a. The Department of the Interior, Bureau of Indian Affairs, has been delegated most of the authority and responsibility relating to the management and protection of this property.
  - b. The Bureau is also responsible for maintaining the records concerning ownership of this property, including both land title records and records relating to Individual Indian Money accounts.
2. The Bureau comes into the probate process at four major points.
  - a. When an Indian wishes to prepare a will.
    - (1) The preparation of an Indian will is the subject of this manual.
  - b. When an Indian who owns property in trust or restricted status dies, the Bureau:
    - (1) Notifies the Administrative Law Judge of the death;
    - (2) Prepares an inventory of:
      - (a) The trust or restricted property held by the decedent at the time of death; and
      - (b) Funds, and the source of those funds, accruing to the estate account between death and probate;

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I. Overview of the Probate Process

- G. Where does the Bureau Fit into the Probate Process?  
b. When an Indian dies, the Bureau:
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- (3) Prepares an heirship data sheet giving the Administrative Law Judge the best information available as to the decedent's family history, including information relating to his/her parents, marriages, and children;
- (4) Transmits to the Administrative Law Judge any will or wills in its custody executed by the decedent;
- (a) This includes any document the individual says is a will, even if you question whether or not it really is a will.
- (b) The Administrative Law Judge will determine whether or not the document is a will.
- (c) See 43 CFR 4.210; Estate of Fannie Newrobe Choate, 6 IBIA 144 (1977).
- (5) Informs the Administrative Law Judge of any will the Bureau may know about, that is not in Bureau custody, and makes a reasonable attempt to obtain a copy for the Administrative Law Judge;
- (6) Transmits to the Administrative Law Judge any claims against the estate that have been filed with it; and
- (7) Takes actions necessary to conserve the estate pending completion of probate.
- (a) See 43 CFR 4.270; In the Matter of the Estate of Madeline Bone Wells, 15 IBIA 165 (1987).

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I. Overview of the Probate Process

G. Where does the Bureau Fit into the Probate Process?

b. When an Indian dies, the Bureau:

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(8) When the decedent dies intestate with an estate consisting only of trust personal property or cash with a value of less than \$1,000, the Bureau determines the decedent's heirs.

(a) See 43 CFR 4.271.

c. When the probate of the deceased Indian's estate is completed.

(1) When the Administrative Law Judge has finished a case, and any appeals have been completed, the Bureau is responsible for posting the transfer of the trust or restricted property to the proper records in accordance with the final decision.

(a) See 43 CFR 4.274.

d. When an estate is modified or reopened.

(1) The Bureau furnishes any necessary information to the Administrative Law Judge when someone seeks to reopen a closed estate.

(2) When the Bureau becomes aware of mistakes in the probate of a deceased Indian's estate, it has a duty to:

(a) Seek reopening to correct those mistakes;  
see Estate of John Yazza Antonio, 12 IBIA 177 (1984).

(b) Make any modifications to the estate that are within its authority to correct;  
see 25 CFR 150.7.

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THE PURPOSE OF WRITING A WILL

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II. THE PURPOSE OF WRITING A WILL

A. WILLS ALLOW THE INDIVIDUAL TO DETERMINE THE DISPOSITION OF HIS/HER PROPERTY

1. The laws of intestate succession determine who will receive a person's property if he/she does not write a will.

a. These laws may give property in ways the individual would not choose. The laws:

(1) May leave property to people the individual does not want to have it.

(2) May leave property to people in amounts different than the individual would have chosen.

(3) May result in property being taken out of trust or restricted status, as, for example, when property passes to a non-Indian\* surviving spouse.

(4) Often further fractionate interests in Indian trust or restricted property.

2. By writing a will, a person can decide for him/herself:

a. Who gets his/her property;

b. In what amounts; and

c. Under what, if any, conditions.

\* See Glossary for definition of non-Indian. The phrase "non-Indian" will always appear with an \* to remind you to check the definition.

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**II. The Purpose of Writing a Will**

**A. Wills Allow the Individual to Determine the Disposition of Property**

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**3. Wills can be used to;**

- a. Change the distribution scheme established under state or tribal laws of intestate succession;
- b. Reduce fractionation of interests in trust or restricted property;
- c. Provide for non-Indian\* friends or relatives while maintaining property in trust or restricted status;
- d. Determine the amount of property received by each individual;
- e. Impose conditions on the receipt of property; and
- f. Prevent escheat of property if an individual has no legal heirs.

**B. PROBLEMS IN WILL DRAFTING FACED BY THE INDIAN TESTATOR**

**1. Fractionation.**

- a. Fractionation results when an individual dies without a will with more than one heir, or leaves a will which passes an interest in the same property to more than one devisee.
- b. Fractionation of interests in Indian trust or restricted land is a problem for both the owners and the Bureau.

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

1. Fractionation

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- (1) When small undivided interests in a piece of property are owned by a large number of people, management and use of the property are difficult and income from the property per owner becomes negligible.

~~c. Legislative Responses to Fractionation.~~

- ~~(1) One Congressional attempt to solve the fractionation problem, contained in the Indian Land Consolidation Act (ILCA), requires that certain small interests escheat to the tribe.~~
- ~~(2) As several small interest holders die and their interests escheat to the tribe, the interests will eventually be consolidated in the tribe.~~
- ~~(3) ILCA is discussed in more detail under Section II.B.3 (page 23).~~

~~c~~  
d. Will Drafting Responses to Fractionation.

- (1) The making of wills and the probate process can do much to remedy the problem of fractionation.
  - (a) Devises such as "I devise all my property to A, B, C, and D," perpetuate fractionation.
  - (b) Whenever possible, encourage a testator to make devises that do not perpetuate fractionation, but may actually consolidate interests.

*Delete per  
memo dated  
9/15/97*

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## II. The Purpose of Writing a Will

### B. Problems in Will Drafting Faced by the Indian Testator

#### b. Will Drafting Responses to Fractionation

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#### (2) Division of Property.

- (a) If the testator has interests that can be divided into relatively equal shares, you may suggest he/she leave interests in different allotments to different people.
- (b) For example: "I devise all my interest in Allotments 1 and 2 to A. I devise all my interest in Allotments 3, 4, 5, and 6 to B. I devise all my interest in Allotment 7 to C. I devise all my interest in Allotments 8 and 9 to D."
- (c) Such devises prevent further fractionation.
- (d) If a devisee already owns an interest in the allotment devised to him/her, the devise will actually allow consolidation of some interests.

#### (3) Option to Purchase Real Property.

- (a) A testamentary option to purchase real property can be used if the testator has only one allotment, only one potential devisee truly interested in the land, or interests that cannot be easily divided among the potential devisees.

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## II. The Purpose of Writing a Will

### B. Problems in Will Drafting Faced by the Indian Testator

#### b. Will Drafting Responses to Fractionation

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- (b) Under an option to purchase real property, the property generally is left to one person on the condition that he/she agrees to pay certain other people an amount either specified in the will or based on the appraised value of the property at the time of the testator's death.
- (c) For example: "I devise all my interest, now owned or hereafter acquired, in Allotments 4, 5, and 6 to F, on the condition that, within 5 years from the date of my death, he shall pay \$5,000 into a Bureau of Indian Affairs suspense account for each of G, H, I, and J. If F chooses not to exercise this option, or fails to make timely payment, I devise the above interests in equal shares to F, G, H, I, and J. If this option fails after F has made some payments, any amounts paid for the benefit of G, H, I, and J shall be repaid to F."
- (d) See Estate of Stella Valandry Williams, 13 IBIA 35 (1984); Estate of Thomas Hall, Sr., 10 IBIA 17, 89 I.D. 361 (1982).

#### (4) Sale of Real Property in Estate.

- (a) A testator can provide by will for the sale of trust or restricted property with the proceeds to be distributed to the beneficiaries.
- (b) See Estate of Mary Soulier, 2 IBIA 188, 81 I.D. 95 (1974).

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

1. Fractionation

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e. Inter Vivos Responses to Fractionation.

(1) Inter Vivos Conveyances.

- (a) A person may acquire or convey interests in trust or restricted property during his/her lifetime.
- (b) Conveyances can be used to transfer property to the person who might otherwise be named to receive it under a will.
- (c) If the individual wishes to impose restrictions on the transfer, he/she will be able to supervise the performance of the person(s) receiving the property.
- (d) See 25 CFR 151.7 and 25 CFR Part 152.

(2) Partitioning Before Death.

- (a) If a testator owns an undivided interest in a large piece of property, it might be possible to partition the property before death so that he/she would have the sole ownership of a smaller piece of property. The testator could then devise that property equally to his/her beneficiaries or could further divide it and devise sole ownership in portions of his/her partitioned property.

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

e. Inter vivos Responses to Fractionation

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- (b) For example, a testator owns an undivided 1/4 interest in 160 acres and has 4 children to whom he/she would like to leave property. By partitioning the 160 acres, the testator would receive 40 acres. He/she could then leave 10 acres to each of his children, or divide it in any other way that might be preferable.
- (c) See 25 CFR 152.33.
- (d) If the testator wants to devise sole ownership in portions of his/her property to different beneficiaries, the property should be surveyed and platted or partitioned before death in order to avoid ambiguities as to which portion of the property is being described.
- (e) If necessary, use the best description available at the time, then have the property surveyed and platted, and rewrite the will to include the legal description.
- (3) Joint Tenancy with Right of Survivorship.
- (a) Property can be held by or for more than one person.
- (b) A right of survivorship means that each owner has the right to use the property, which will eventually be owned by the last survivor.

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

e. Inter vivos Responses to Fractionation

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(c) Property owned with a right of survivorship is subject to probate only in the estate of the last survivor. This means that the survivor is the one who has the right to decide who will eventually get the property.

(d) In order to make a joint tenancy, the "four unities" must be observed. This means that all of the owners must acquire their title by the same deed or will at the same time. Each of the joint tenants must own the same interest in the property, and have the same rights to possession and use of the property. In other words, the owners must be exactly equal.

f. Use Imaginative Estate Planning.

- (1) Each of these alternatives involves thought and some imaginative planning between you and the testator.
- (2) Such planning may not be possible or practical in all cases.
- (3) However, you will be benefitting both the testator and devisees to the extent that you can consolidate interests in property through inter vivos transfers and through the will-drafting process.

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

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2. The Indian Reorganization Act (IRA), 25 U.S.C. § 464.

a. Section 464 states: "[S]uch lands or interests [on a reservation of a tribe organized under the IRA] may, with the approval of the Secretary of the Interior, be \* \* \* devised \* \* \* to the Indian tribe in which the lands are located \* \* \*, and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located \* \* \* to any member of such tribe \* \* \* or any heirs or lineal descendants of such member or any other Indian for whom the Secretary of the Interior determines that the United States may hold in trust \* \* \*."

b. Although this section is not clearly written, it requires that a devise of real property on the reservation of a tribe organized under the IRA can only be made to:

- (1) The tribe in which the lands are located;
- (2) A member of that tribe;
- (3) An heir or lineal descendant of the testator; or
- (4) Any other person for whom the United States can hold property in trust status.

(a) See Estate of Mary Ann Snohomish Cladoosby, 15 IBIA 203, 94 I.D. 199 (1987); Estate of Lucinda Shelton Joe, 5 IBIA 20 (1976) (case arising before 1980 amendment).

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

2. The Indian Reorganization Act

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- c. The phrase "tribe in which the lands are located" is very awkward.
- (1) On reservations with only one tribe, the phrase clearly refers to that tribe.
  - (2) On reservations with multiple tribes, it may mean any of those tribes.
    - (a) See Williams v. Clark, 742 F.2d 549 (9th Cir. 1984); cert. denied sub nom. Elvrum v. Williams, 471 U.S. 1015 (1985).
- d. In reality, the IRA provision prohibits devises on IRA reservations only to:
- (1) Non-Indians\* who are not heirs or lineal descendants of the testator; and
  - (2) People of Indian descent who are not persons for whom the United States can hold property in trust or restricted status.
    - (a) See Estate of Mary Ann Snohomish Cladoosby, 15 IBIA 203, 94 I.D. 199 (1987).

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

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3. ~~The Indian Land Consolidation Act (ILCA), 25 U.S.C.  
§ 2206.~~

*Delete per memo  
dated 9/15/97*

a. Section 2206 states: "(a) No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to its owner less than \$100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning \$100 in any one of the five years following the death of the decedent.

"(b) Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land."

b. ILCA was intended to end fractionation by escheating certain small interests to the tribe.

(1) The result is that those interests go to the tribe, rather than to an individual's heirs or devisees.

(2) The United States Supreme Court held the original version of section 2206 unconstitutional.

(a) See Hodel v. Irving, \_\_\_ U.S. \_\_\_,  
107 S.Ct. 2076 (1987).

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

3. The Indian Land Consolidation Act

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(3) The amended version of section 2206 took effect on October 30, 1984. The question of whether or not this version is constitutional had not been resolved when this manual was written.

(a) The 8th Circuit found the amended version unconstitutional.

See Irving v. Clark, 758 F.2d 1260 (8th Cir. 1985).

(b) The Supreme Court stated this holding was dicta.

(c) The Supreme Court declined to comment on the constitutionality of the amended version of section 2206.

c. An individual might not want his/her trust or restricted property to escheat to the tribe.

(1) Your responsibility is to the existing owner, in this case, to the individual, not to the tribe.

(2) Escheat is the avenue of last resort, and attempts may be made to avoid escheat through beneficial use of a will or inter vivos transfers.

(a) One way to avoid escheat is to devise interests covered by ILCA to another person owning an interest in the same property.

(b) See 25 U.S.C. § 2206(b).

(c) Because ILCA does not restrict inter vivos conveyances, a person can transfer small interests to anyone during his/her lifetime.

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II. The Purpose of Writing a Will  
B. Problems in Will Drafting Faced by the Indian Testator

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3A. Tribal Purchase Statutes.

a. Several tribes have special legislation authorizing them, in general, to purchase interests in land on their reservation or within treaty areas that are inherited by or devised to certain classes of people. These tribes are:

(1) Yakima;

(a) See 25 U.S.C. § 607.

(2) Warm Springs;

(a) See 86 Stat. 530.

(3) Nez Perce;

(a) See 86 Stat. 744.

(4) Standing Rock Sioux; and

(a) See 94 Stat. 537.

(5) Devil's Lake Sioux.

(a) See 96 Stat. 2515.

b. The tribes are required to pay the appraised fair market value of the property to the heirs or devisees.

(1) See 43 CFR 4.300 et seq.; Estate of Antoine (Ke Nape) Hill, 8 IBIA 121 (1980); Estate of Joseph Simmons, Sr., 7 IBIA 43 (1978).

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II. The Purpose of Writing a Will  
B. Problems in Will Drafting Faced by the Indian Testator  
4. Tribal Purchase Statutes

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- c. Devises to persons not meeting the statutory requirements are subject to purchase.
- (1) If you are involved with writing wills passing property on these reservations, you need to be familiar with the legislation so you can advise the testator about the possibility of tribal purchase.
  - (2) See Estate of Andrew Jackson, 12 IBIA 39 (1983).
  - (3) If you do not normally write wills passing property on these reservations, pay special attention and seek help if necessary if a will you are asked to write concerns property on one of the reservations.

4  
d. Non-Indian\* Heirs/Devises.

- a. Indians owning trust or restricted property may wish to provide for non-Indian\* relatives or friends.
- (1) Devises to non-Indian\* friends may be severely restricted, and may not be permitted because of statutory prohibitions.
  - (2) Devises to non-Indian\* relatives, such as a surviving spouse, may be allowed, but the property will pass out of trust or restricted status.
- b. Non-Indians\* cannot hold property in trust or restricted status.

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II. The Purpose of Writing a Will

B. Problems in Will Drafting Faced by the Indian Testator

5. Non-Indian\* Heirs/Devisees

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c. Life estates can be used to provide for a non-Indian\* while retaining land in trust or restricted status.

(1) A life estate is given to the non-Indian\*.

(2) The remainder interest is given to an Indian(s).

(a) The land is seen by the law as belonging to the remaindermen.

(b) See Estate of Stella Valandry Williams, 13 IBIA 35 (1984); Section IV.H.3.d (page 60).

C. WILL DRAFTING INVOLVES COUNSELING

1. Your job is more than merely writing down what an Indian testator says to you.

2. Your job is to ensure that the testator's property passes to the beneficiaries in the way the testator intends.

a. In some cases, such as when the IRA or ILCA are involved, this may require you to tell an individual that it is not possible to accomplish his/her intentions through a will, or in the way he/she has suggested.

b. When such a situation arises, you should assist the individual in finding another way, if there is one, to accomplish the objective.

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**GENERAL CONSIDERATIONS IN DRAFTING INDIAN WILLS**

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**III. GENERAL CONSIDERATIONS IN DRAFTING INDIAN WILLS**

**A. YOUR RESPONSIBILITY IS TO THE TESTATOR**

1. When you are preparing a will, your responsibility is to the individual testator, not to the tribe, the beneficiaries, or any other person, including a person the testator is omitting from the will that you may personally believe should be included.
2. The will you are drafting is the testator's, not yours.

**B. CONFIDENTIALITY**

1. The contents of a will are absolutely confidential between you and the testator.
2. The testator can tell anyone he/she chooses anything about the will.
  - a. However, unless the testator personally tells you otherwise, before the testator dies you are absolutely forbidden to discuss the will with anyone other than the testator and persons helping to prepare the will.
  - b. You cannot even admit whether or not a will exists to other people, including close relatives of the testator. Tell any questioner to talk to the testator.

(1) See Estate of Emory Dennis Juneau,  
7 IBIA 164 (1979).

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### III. General Considerations in Drafting Indian Wills

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#### C. INTENT TO CREATE, ALTER, OR REVOKE A WILL

1. Because wills are written documents executed with certain legal formalities, a statement that a person intends to write, alter, or revoke a will does not cause a will to be created, altered, or revoked.
  - a. See Section VII (page 85).
2. The person must actually write, alter, or revoke the will.
  - a. See Estate of Helen Ward Willey, 11 IBIA 43 (1983); Estate of Richard Burke (Thompson), 9 IBIA 75 (1981).

#### D. ADOPTIONS

1. In most cases, an adopted child is treated the same as a natural child for purposes of being an heir of the adoptive parent.
2. Adoptions can, therefore, be used as a testamentary act.
  - a. Adoptions can change a person's heirs.
    - (1) See Estate of James Wemy Pekah, 11 IBIA 237 (1983).
  - b. Adoptions can be used to avoid the IRA.
    - (1) By adopting a person not otherwise eligible to receive a devise of real property on an IRA reservation, a testator can make that person his/her heir and, therefore, eligible for the devise.

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III. General Considerations in Drafting Indian Wills  
D. Adoptions

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3. In order for an adoption to be recognized by the Administrative Law Judge for inheritance purposes, it must have been done in accordance with 25 U.S.C. §372a.

(1) See Estate of John Joseph Kipp, 8 IBIA 67 (1980).

4. If an individual is considering adopting someone as a way to include him/her as an heir/devisee, suggest to the individual that there are many other legal consequences flowing from an adoption, such as a duty to support, that he/she might not wish to undertake.

a. In general, a person need not be adopted in order to participate under a will.

(1) Exceptions arise only when a statutory restriction, such as that in the IRA, exists.

E. RECORD KEEPING

1. The importance of keeping routine records.

a. Many times a will itself is the only document the Bureau keeps relating to the will's execution.

b. The routine creation and retention of certain other documents allows a better picture of the circumstances surrounding the will's execution to be developed, if necessary, during probate.

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III. General Considerations in Drafting Indian Wills  
E. Record Keeping  
1. The Importance of Keeping Routine Records

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(1) In many cases, a will has been approved because the scrivener kept records relating to its execution that either explained unusual circumstances that might otherwise have invalidated the will, or directly countered arguments made during probate concerning undue influence or lack of testamentary capacity.

(a) See Estate of Ella Dautobi, 15 IBIA 111 (1987); Estate of Samuel Tsoodle, 11 IBIA 163 (1983).

c. Although you know all of the circumstances when you write the will, you will forget over time.

2. Statements should be created and maintained in the regular course of your business.

a. Over time, you have a tendency to forget the exact details of the execution of a particular will, especially if you draft a lot of wills.

b. Records can be used at the probate hearing to help you testify.

(1) You can read the records in order to refresh your memory of the events surrounding the execution of the will.

(2) The written record itself may be admissible into evidence at the probate hearing as records prepared in the normal course of business, or as relevant and material evidence.

(a) See Estate of Samuel Tsoodle, 11 IBIA 163 (1983).

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III. General Considerations in Drafting Indian Wills  
E. Record Keeping

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3. Keep all written statements with the will, if the Bureau retains custody of the will.
  - a. If the Bureau does not retain the will, treat the written statements as if the Bureau had kept the will.
4. What information should be included in your records?
  - a. The testator's name;
  - b. The date and location of all meetings to discuss and execute the will;
  - c. The names (and addresses or affiliations) of other persons present, such as people who may have brought the testator to your office, other Bureau personnel assisting with will preparation, witnesses, or an interpreter;
  - d. The initial interview checklist (Appendix A);
  - e. A description of your impressions of the testator and of any unusual circumstances that may have arisen during the discussions or execution of the will;
  - f. If prepared, statements written by the attesting witnesses concerning their impressions of the testator;

(1) See Estate of Philip Malcolm Bayou, 13 IBIA 200 (1985); rev'd on other grounds and remanded, Mallonee v. Hodel, No. A85-549 Civil (D. Alaska May 4, 1987).

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III. General Considerations in Drafting Indian Wills

E. Record Keeping

4. What Information Should be Included in Your Records?

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- g. Especially if the will is prepared while the testator is hospitalized or in a nursing home, or shortly before death, a statement written by the attending physician or nurse concerning:
- (1) Any medication the testator is taking and whether or not the medication has any mind-altering effects; and
  - (2) The testator's general physical and mental condition.
  - (3) Written statements made at the time by a physician are especially important because physicians often do not remain long at Indian Health Service hospitals and the attending physician may not be available to testify when the will is probated.
    - (a) Even if the attending physician is available when the will is probated, it is difficult to remember a particular patient and to reconstruct your memory of that patient from hospital records.
    - (b) See Estate of Stella Red Star/Swift Bird, 14 IBIA 140 (1986).
    - (c) The use of hospital and physician's records by another physician in order to testify about a patient's condition is even more difficult and often very inaccurate.
    - (d) See Estate of Jesse Pawnee, 15 IBIA 64 (1986).

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### III. General Considerations in Drafting Indian Wills

#### E. Record Keeping

##### g. Written Statements by Attending Physicians or Nurses

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(4) Even though some physicians may not be willing to prepare a written statement, always attempt to get one.

(a) If a physician makes an oral statement, but will not write it down, record it and note that the physician would not.

5. Keep records even though they require extra time and effort and encourage written statements by others.

a. People might initially not like making a written statement about the will or the testator because it takes additional time.

b. Any time spent when the events are fresh in people's minds will only be of benefit later.

c. Always keep such records yourself and strongly encourage others involved with the preparation of Indian wills to also make records and to give the written statements to the scrivener for safe keeping.

(1) See Section X.B (page 102).

#### F. WHO CAN PREPARE INDIAN WILLS?

1. A person who prepares a will for another person is called the **will scrivener**.

a. Problems with Indian wills frequently arise when they are prepared by persons unfamiliar with Indian probate.

(1) These people often tend to think there are no differences between Indian wills and wills prepared in accordance with state laws.

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### III. General Considerations in Drafting Indian Wills

#### F. Who Can Prepare Indian Wills?

##### 1. Will Scriveners

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b. Therefore, encourage a testator to have any will prepared, or at least reviewed, by the Department.

(1) See Section XI (page 105).

##### 2. A testator can write his/her own will.

a. Such a will must be prepared in accordance with the requirements for valid execution of an Indian will.

##### b. Holographic Wills.

(1) A holographic will is a will written entirely in the testator's own handwriting.

(2) In some jurisdictions, holographic wills do not need to be witnessed.

(3) Federal law, however, requires all Indian wills to be witnessed.

(a) See Estate of Julia Tieyah, 11 IBIA 211 (1983).

c. If you see a will the testator has prepared for him/herself, ensure, at a minimum, that it is signed, dated, and witnessed by two persons.

(1) If it is not, bring this problem to the testator's attention immediately.

d. Also encourage the testator to have such a will reviewed as to form.

(1) See Section XI (page 105).

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III. General Considerations in Drafting Indian Wills  
F. Who Can Prepare Indian Wills?

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3. Wills may also be prepared by a friend or relative of the testator.
  - a. A minor can prepare a will for an adult.
    - (1) See Estate of Hienstennie (Maggie) Whiz Abbott, 4 IBIA 12, 82 I.D. 169 (1975).
4. Other people who may serve as will scriveners include:
  - a. A private attorney;
  - b. A Bureau employee; or
  - c. An employee of the Department's Office of the Solicitor.

G. TAKE ADEQUATE TIME TO PREPARE AND EXECUTE THE WILL

1. If possible, take more than one day.
  - a. This procedure gives you at least two chances to talk with the testator.
  - b. It also allows you to be thorough in obtaining relevant information from the Bureau's records.
  - c. It allows the testator a chance to consider whether the testamentary scheme is actually what he/she intends.

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III. General Considerations in Drafting Indian Wills  
G. Take Adequate Time to Prepare and Execute the Will

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2. In many cases, however, you will need to prepare and execute the will in one day, especially if the testator:
  - a. Is aged;
  - b. Is in poor health;
  - c. Lives a considerable distance from the agency;
  - d. Infrequently comes to the agency; or
  - e. Is dependent upon others for transportation.
3. To a certain extent, the preparation of any will is an emergency situation. Use your best judgment.
4. It is better to prepare a will in one day than to have the individual die intestate.
5. If you prepare and execute the will in one day, spend as much time as possible with the testator so that you are certain you understand what he/she wants and that you have correctly written down those intentions.
  - a. Written records are even more important under these circumstances.

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**THE INITIAL INTERVIEW**

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**IV. THE INITIAL INTERVIEW**

**A. WHAT IS AN INITIAL INTERVIEW?**

1. An initial interview is the conversation you have with an individual after he/she asks you to prepare a will.
2. During the initial interview, the individual tells you his/her testamentary plan and gives you the information necessary to write the will.
3. Especially when you do not know the person asking for a will, the initial interview is your chance to become acquainted with the testator and with his/her family relationships and trust or restricted property holdings.
4. In addition, this interview is your opportunity to assess the testator's testamentary capacity and determine whether he/she is being unduly influenced in the execution of the will by another person.

**B. WHO SHOULD BE PRESENT DURING THE INITIAL INTERVIEW?**

1. Only the testator, the scrivener, and an interpreter, if necessary, should be present during the initial interview, or during any other discussion of the terms of the will.
2. If anyone else is present, your notes should state who was present and why.

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#### IV. The Initial Interview

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##### C. WHERE SHOULD THE INITIAL INTERVIEW TAKE PLACE?

1. The initial interview, and all other meetings with the testator concerning the preparation and execution of the will, should take place in a room where privacy can be ensured.

##### D. THE INITIAL INTERVIEW WILL TAKE TIME

1. Devote time, attention, effort, and patience to the initial interview.
2. The initial interview may actually involve several different meetings with the testator.
  - a. If it is possible, try to talk with the testator for a few minutes and then schedule a more thorough interview at a later time.

##### E. PREPARING FOR THE INITIAL INTERVIEW

1. When you are asked to prepare a will, depending upon the time available, obtain:
  - a. Relevant Bureau records concerning the testator's family, such as:
    - (1) Individual files for the testator and his/her spouse, children, mother, father, brothers, and sisters;
    - (2) Probate records of any of those relatives of the testator; and
    - (3) Enrollment records to determine enrollment numbers and dates of birth of relatives.

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IV. The Initial Interview

E. Preparing for the Initial Interview

1. Depending upon the Time Available, Obtain:

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b. Relevant Bureau records concerning the property holdings of the testator, such as:

- (1) Inherited interest cards;
- (2) Allotment and estate record cards;
- (3) Title status reports from the Area Land Titles and Records Office;
- (4) Individual/tribal interest report (ITI) and Owner document report (ODR) from the Area Land Titles and Records Office;
- (5) Judgment award records;
- (6) Individual Indian money (IIM) account records;
- (7) Maps to show the location of the testator's land or interests in land; and
- (8) Renter's or lessee's name.

c. A copy of the initial interview checklist (Appendix A); and

d. A copy of the Bureau standard will form, BIA-5407.

2. Determine whether an interpreter is needed.

- a. If the testator cannot speak English or is uncomfortable trying to express him/herself in English, you must obtain the services of an interpreter.

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IV. The Initial Interview

E. Preparing for the Initial Interview

2. Determine Whether an Interpreter is Needed

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- b. Being an interpreter is a serious undertaking and should be approached with that attitude.
- c. An interpreter can be:
- (1) You;
  - (2) Someone who comes in with the testator;
  - (3) A Bureau employee; or
  - (4) Anyone else who is available, qualified, and willing to serve.
- d. Except in emergencies or when no one else is available, an interpreter should not be:
- (1) An attesting witness; or
  - (2) A beneficiary under the will.
- e. An interpreter should be:
- (1) Fluent in both English and the language of the testator;
  - (2) Familiar with any particular dialect the testator is using;
  - (3) Familiar with colloquial or regional expressions and customary usage of terms;
  - (4) Totally impartial;
  - (5) Conscientious in listening and trying to understand what the testator is saying, without jumping to conclusions;

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**IV. The Initial Interview**

**E. Preparing for the Initial Interview**

**e. An Interpreter Should Be:**

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- (6) Willing to spend the time necessary to understand the testator; and
- (7) Capable of correctly taking concepts rooted in one language and culture and transposing them into another language and culture.

**F. WHO SHOULD BE TALKING DURING THE INITIAL INTERVIEW?**

- 1. Ask the testator to tell you about his/her family relationships and property holdings. Do not assume that the information the Bureau has is complete and correct.
  - a. Use the checklist attached as Appendix A, or an equivalent form, as a guide in recording the information given to you.
    - (1) NEVER give the checklist to the testator to fill in.
    - (2) Ask the testator the questions on the checklist and fill in the answers yourself.
  - b. By letting the testator tell you these things, and keeping a record of the information given, you will have a better opportunity to determine whether or not the testator has testamentary capacity, and will be building a record on that issue which can be introduced at the probate hearing, should it become necessary.

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**IV. The Initial Interview**

**F. Who Should be Talking During the Initial Interview?**

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2. Assist the testator, if necessary, by making suggestions on how to accomplish his/her objectives, such as:
  - a. Providing for non-Indian\* relatives;
  - b. Avoiding further fractionation; and
  - c. Making devises consistent with such statutes as the IRA and ILCA.

**G. YOU SHOULD ASK RELEVANT QUESTIONS**

1. When you ask questions remember to be tactful.
  - a. Emphasize that you are not just prying into the person's private affairs.
  - b. Let the person know that you need this information in order to help ensure the will is properly written to reflect his/her true intentions and will withstand possible contests during probate.
2. Do not ignore information the Bureau provides or your personal knowledge if it conflicts with what the testator tells you, or if the testator fails to mention a family member or piece of property.
  - a. A minor failure to mention people or property does not necessarily constitute lack of testamentary capacity.

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IV. The Initial Interview

G. You Should Ask Relevant Questions

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3. Ask any questions necessary to ensure that you fully understand the testator's intentions.
  - a. Repeat what you believe the testator has said and ask if that is correct.
  - b. Make as many notes as are necessary to ensure that you have the testator's intentions correctly recorded.
4. Use the information you learn to update and correct agency information on the testator and his/her family.

H. WHAT YOU SHOULD LEARN DURING THE INITIAL INTERVIEW

1. Beneficiaries.

- a. Learn who are the testator's presumptive heirs (who would probably receive the estate if the testator died today without a will).
- b. Also learn to whom the testator wants to leave his/her property.
- c. There are no "right" beneficiaries under an Indian will.
  - (1) In most cases, an individual chooses to write a will precisely because he/she wants to make a disposition of his/her property that alters the "normal" or "expected" distribution scheme.

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IV. The Initial Interview

H. What you Should Learn During the Initial Interview

1. Beneficiaries

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(2) The right of an individual Indian to dispose of property as he/she sees fit was upheld by the Supreme Court in Tooahnippah v. Hickel, 397 U.S. 598 (1970).

(a) See Estate of Leona Hunts Along Hale, 8 IBIA 8, 87 I.D. 64 (1980).

(3) Therefore, do not suggest that a testator leave property to particular people merely because they are the people about whom you feel the testator should be concerned.

d. No beneficiary should be present when the will provisions are being discussed with the testator.

(1) If a beneficiary has brought the testator in to make a will, require him/her to leave the room while the will is discussed with the testator.

(a) See Estate of Ella Dautobi, 15 IBIA III (1987).

(2) A beneficiary should not act as an interpreter for the testator, unless there is no alternative.

(a) See Estate of Charles Webster Hills, 13 IBIA 188, 92 I.D. 304 (1985).

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

###### 1. Beneficiaries

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e. In designating beneficiaries, use names whenever possible.

(1) Tribal enrollment numbers and dates of birth are helpful in identifying the beneficiary, but are not essential.

(a) Remember different family members may share the same name.

(2) If a beneficiary is of Indian descent, but not a member of a tribe, or the enrollment number is not known, get as much information as possible concerning the beneficiary's Indian background.

(a) This information will be needed in order to determine whether the beneficiary can receive the property in trust or restricted status.

(3) Terms describing the relationship between the testator and the beneficiary are helpful, but not essential.

(a) The use of relational terms alone can cause problems; for example, if a person not the natural child of a testator and not legally adopted by the testator is described as a son or daughter. Although the testator perhaps thinks of the person in these terms, such technical "inaccuracies" can be used during probate to argue lack of testamentary capacity.

(b) See Estate of Ella Dautobi, 15 IBIA 111 (1987); Estate of Aaron (Allen) Ramsey, 11 IBIA 16 (1982).

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

1. Beneficiaries

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f. Class gifts.

- (1) Class gifts are devises or bequeaths left to a group of people, such as "my children," "my grandchildren," or "my heirs."
- (2) The people who will receive a class gift are not determined until the testator's death.
  - (a) In order to take under a class gift, the person must survive the testator.
  - (b) After-born children can be included in a will through a class gift without the testator's having to write a new will or codicil, but if a potential member of the class predeceases the testator, and leaves children, those children might not take the predeceased individual's share.
- (3) Another problem with class gifts in Indian wills is that the class is usually described in relational terms.
  - (a) Frequently, there is a difference between the legal meaning of these terms and the testator's meaning.
  - (b) The testator may intend to include other individuals who do not fall within the technical definition of the class, such as children he/she raised, but did not legally adopt.

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

1. Beneficiaries

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(4) If a testator wants to leave property to his/her "living children," encourage him/her to clarify what is meant by the phrase.

(a) There is an inherent ambiguity in such a statement as to whether the testator intended the children living when the will was executed or when he/she dies.

(5) When using a class designation, clearly explain its implications to the testator and be certain he/she understands and intends the results.

g. Disinherited Family Members.

(1) It is not necessary to account for each member of the testator's immediate family in the will.

(a) See Estate of William Mason Cultee, 9 IRIA 43 (1981).

(2) However, a sentence expressly naming family members and stating that they are intentionally omitted can prevent questions concerning the testator's testamentary capacity or whether the family member was inadvertently omitted.

(a) For example, "I intentionally omit E, F, and G from this will."

(b) Alternatively, such a sentence could be inserted on the affidavit to accompany Indian will.  
See Section VII.G (page 91).

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

###### g. Disinherited Family Members

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- (3) If a family member is intentionally omitted, it is not necessary to say why that person is being disinherited.
  - (a) Such statements may lead to hard feelings or family problems when the contents of the will are disclosed.
- (4) It is not good practice to include a provision that "disinherited" persons each take \$1.00.
- (5) Discourage a testator from saying "all my heirs are mentioned in my will."
  - (a) Such a statement may lead to challenges to testamentary capacity if it is incorrect.
- (6) See also Section VI.C (page 78).

###### h. After-Born Children.

- (1) As previously mentioned, after-born children can be provided for by the use of a class gift.
  - (a) See Section IV.H.1.f (page 48).
- (2) A new will can also be written after the birth of each child.

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview  
h. After-born Children

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(3) You can also write a clause that will include after-born children.

(a) For example: "I devise all my interest, now owned or hereafter acquired, in Allotment 4 to D and E in equal shares. Should I have additional natural or adopted children after the execution of this will, those children are to share my interest in Allotment 4 equally with D and E."

i. Lapsed Devisees and Alternate Beneficiaries.

(1) A devise or bequest lapses if:

(a) The named beneficiary predeceases the testator,  
see Estate of Mary Martin Mataes Andrew Caye, 9 IBIA 196 (1982);

(b) A devisee is not qualified to take a devise,  
see Estates of Edwin (Edward) J. Scarborough and Nora Scarborough Brignone, 11 IBIA 179 (1983).

(c) A specific devise or bequest is disapproved.

(2) Departmental regulations provide alternate beneficiaries under some conditions.

(a) See 43 CFR 4.261; Estate of Alice Mae Sasse, 12 IBIA 281 (1984).

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

###### i. Lapsed Devises and Alternate Beneficiaries

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- (b) These rules may not necessarily give the lapsed devise or bequest to a person the testator would have chosen,  
see Estate of Ethel Edith Wood Ring Janis, 15 IBIA 216 (1987).
- (3) **ALWAYS** encourage the testator to name an alternate beneficiary for each specific bequest or devise.
- (a) By naming an alternate beneficiary, the testator does not have to rewrite the will or add a codicil should a beneficiary predecease him/her.
- (b) The testator can then be the one to determine who will receive a lapsed devise or bequest,  
see Estate of Alice Mae Sasse, 12 IBIA 281 (1984).
- (4) Common accidents.
- (a) Inheritance problems often result when two people die in, or as a result of, a common accident.
- (b) When a beneficiary is a person frequently in the company of the testator, such as a spouse or minor child, it is especially important to include language in the will covering this possibility.

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

###### i. Lapsed Devises and Alternate Beneficiaries

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(5) For example: "I devise all of my interest, now owned or hereafter acquired, in Allotment 1 to A. Should A predecease me or die in, or as a result of, a common accident with me, I devise all of my interest, now owned or hereafter acquired, in Allotment 1 to B."

###### j. Tribes and charitable organizations.

(1) Tribes and charitable organizations may be beneficiaries of trust or restricted property, unless limited by the IRA, ILCA, or other statute.

(2) Devises to charitable organizations will probably result in the property being taken out of trust or restricted status.

(a) See Estate of Louella Bertha Williams Johnk, 15 IBIA 174 (1987).

###### k. Residuary Clauses.

(1) A residuary clause, which is usually the last clause in a will, names a person or persons to receive any part of a testator's estate that may be left after the rest of the will clauses are carried out.

(a) See Wright v. Acting Portland Area Director, 9 IBIA 277 (1982).

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

k. Residuary Clauses

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- (2) Discourage the testator from writing a residuary clause leaving the residue of the estate to his/her heirs or heirs-at-law.
- (a) Encourage the testator to name a specific person or group.
  - (b) Some testators may have as many as 100 heirs-at-law. Even when a testator's heirs-at-law are his spouse and children, claims of heirship may be made by alleged illegitimate children.
  - (c) See also Section IV.H.1.f (page 48).
- (3) Property covered by a residuary clause may include:
- (a) After-acquired property, see Section IV.H.2.c (page 56);
  - (b) Lapsed devises or bequests, see Section IV.H.1.i (page 51);
  - (c) Property the testator forgot to include in the specific devises and bequests;
  - (d) Most or all of the estate, see Estates of Edwin (Edward) J. Scarborough and Nora Scarborough Brignone, 11 IBIA 179 (1983).

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

##### k. Residuary Clauses

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(4) Every will should have a residuary clause, even if you think the entire estate has been passed under the specific devises and bequests.

(a) Without a residuary clause, some or all of the estate may pass by intestacy, see Estate of Mary Martin Mataes Andrew Caye, 9 IBIA 196 (1982).

(b) The only exception is a will with only one dispositive clause, devising all of the testator's property.

#### 2. Property to be Passed.

a. You also need to learn what property the testator owns and which beneficiary or beneficiaries are to receive it.

b. Property passed under an Indian will must be described with sufficient particularity in order for it to be identified.

(1) The allotment number and/or name of the original allottee should be given, whenever possible.

(a) Be sure identification numbers used by the agency and the Land Titles and Records Office are the same.

(2) The best way to describe land is by legal subdivision or reference to a survey plat, if there is one.

(a) It might even be advisable to have the land surveyed and platted if this has not already been done.

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

2. Property to be Passed

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- (3) Next, the land may be described through metes and bounds, if possible.
- (4) If the land cannot be described by legal subdivision, reference to a survey plat, or by metes and bounds, describe the land as fully as possible so that it can be identified definitely and with certainty.
  - (a) If possible, the property should be surveyed and platted and the will revised to show the legal description.
  - (b) See also Section II.B.1.e(2) (page 18) and Section VIII (page 95).
- (5) See Estate of Andrew Jackson, 12 IBIA 39 (1983).

c. After-Acquired Property.

- (1) People often acquire additional property after executing a will.
  - (a) A codicil or new will may be prepared each time the testator acquires or conveys property.
- (2) Wills can be drafted to take these possible changes into consideration.
  - (a) Unless there is a particular reason for doing so, do not describe the interest passed in terms of the percentage interest owned by the testator at the time the will is prepared.

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

##### 2. Property to be Passed

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(b) Use a general term, such as "all of my interest in Allotment A."

(c) You can also specifically pass "all my interest, now owned or hereafter acquired."

d. Property Not in the Estate at Death.

(1) If a testator bequeaths or devises property under a will that is not in the estate at the time of death, the bequest or devise will fail.

(2) A clause dealing with property not in the estate at the time of death will be treated as if it did not exist.

(a) See Estate of Ella Dautobi, 15 IBIA 111 (1987).

e. Houses.

(1) Houses present a special problem.

(a) A house may be built on trust or restricted property with non-trust funds. Although the law generally considers a house to be real property, such a house may actually be non-trust personal property.

(b) A house built on trust or restricted land in which the builder owns only an undivided fractional interest may belong to all of the undivided interest holders—or may remain personal property of the builder.

(c) In some areas, a house may be located on a land assignment.

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview

###### e. Houses

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- (2) When the will is being prepared, you may not be in a position to determine the exact status of a house.
- (3) If a house is among the property to be passed under an Indian will:
  - (a) Get all of the information possible about the house, including where it is located, how old it is, who built it, what was the source of the funds for building it, what is the ownership of the land on which it is located, and who uses it.
  - (b) Write the will passing the house according to the testator's desires.
- (4) The Administrative Law Judge may have to decide the status of the house.
- (5) When devising a house, NEVER say "to G, the lakefront property and house," UNLESS you know there is a house and only one house on the lakefront property. Check any information you may have in the office and, if necessary, visit the property with the testator to be sure the will accurately describes the house and property the testator intends to pass.

### 3. Title to be Devised.

- a. Finally, you need to learn what title the testator wishes to give to the beneficiaries.
- b. You must always account for the full ownership interest.

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

3. Title to be Devised

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c. Trust or restricted interest.

(1) The most common form of ownership interest to be passed under an Indian will is a trust or restricted interest.

(a) This interest may represent sole ownership of the property, or may be a fractionated part of the total ownership of the property.

(2) If the interest is fractionated, it is best not to specify the amount of the testator's interest, but merely to devise all of the interest.

(a) If the testator acquires an additional interest in the property after execution of the will, such as through inheritance, purchase, or gift, this wording will allow all of the interest to pass to the beneficiaries.

(b) For example, if the testator devises only a 1/4 interest, but acquires an additional 1/4 interest before his/her death, only 1/4 will pass under the devise, with the extra 1/4 falling into the residuary clause.

(3) For example:

(a) "I devise all of my interest, now owned or hereafter acquired, in Allotment 12 to M."

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview  
3. Title to be Devised

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- (b) "I devise all of my interest, now owned or hereafter acquired, in Allotment 14 to N and O in equal shares."
- (c) "I devise all my interest, now owned or hereafter acquired, in Allotment 15 as follows: 1/2 to P, 1/4 to R, and 1/4 to S."

d. Life Estate.

- (1) A devise of a life estate gives the use of and income from the property to one or more persons during his/her/their lifetime, with full title to the property going to someone else (called a remainderman) after the life tenant's death. Life estates can be used to:
- (a) Provide for non-Indians\* without title to the property passing out of trust or restricted status, thus retaining that status for any Indian remaindermen,  
see Estate of Stella Valandry Williams, 13 IBIA 35 (1984); Section II.B.5 (page 26);
- (b) Protect property if a testator believes the beneficiary may be inclined to sell or otherwise squander the property;
- (c) Provide for an individual for whom the testator feels a sense of responsibility, but to whom he/she does not want to leave property outright; or

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

d. Life Estate

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- (d) Provide for family members during their lifetime, while permitting property to descend to others whom the testator believes are entitled to it,  
see Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (1982).
- (2) If a testator devises a life estate, ALWAYS be sure the remainder interest is also devised.
- (a) If the remainder is not devised, it will fall into the residuary clause of the will.
- (3) Strongly encourage the testator to specify the extent of the life tenant's right to use and dispose of the property.
- (a) Normally, a life tenant by law has the right to possession of the property and income generated by the property during his/her lifetime.
- (b) In some cases, funds derived from the property that might appear to be "income," are, under the law, derived from a diminishment of the property itself. Such funds include oil and gas royalties, and income from the sale of subsurface minerals, rights-of-way, and timber. In these cases, the funds are generally invested, with the income from the investment going to the life tenant, and the funds themselves eventually going to the remaindermen.

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview  
d. Life Estate

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- (c) A life tenant normally can sell, dispose of, or otherwise encumber only his/her life estate. Unless otherwise specified by the testator, usually a life tenant has no right to sell, dispose of, or otherwise encumber the underlying property.
- (d) See Estate of Verena Gean Kitchell, 12 IBIA 258 (1984).
- (e) At the time this manual was written, the Bureau had proposed regulations dealing with some questions concerning allocation of funds between life tenants and remaindermen. 52 FR 29701 (Aug. 11, 1987) (to be codified at 25 CFR Part 179). It is best, however, to have the testator specify the allocation, rather than relying upon the regulations to fill a gap.
- (4) Indians frequently use life estates to provide for a non-Indian\* spouse, while ensuring that the property will remain in trust or restricted status and return to the testator's Indian children.
- (a) In these circumstances, you should be especially careful to advise the testator of his/her options in allocating use and disposition of the property between the life tenant and the remaindermen.

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#### IV. The Initial Interview

##### H. What You Should Learn During the Initial Interview d. Life Estate

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(5) For example in establishing a life estate:

(a) The preferred language gives title to the remaindermen first, then creates the life estate for the life tenant. This arrangement ensures that the remainder interest is not inadvertently omitted. For example: "I devise all my interest, now owned or hereafter acquired, in Allotments 2 and 3 to C and D, subject to a life estate in E."

(b) Acceptable language: "I devise a life estate in all my interest, now owned or hereafter acquired, in Allotments 2 and 3 to E, with remainder over to C and D."

(6) For example, in specifying allocation of funds between a life tenant and remaindermen:

(a) "E shall have the right to use the property in any beneficial way during her lifetime, without regard to waste, but shall not have the right to sell the property."

(b) "E, my non-Indian wife, shall have the right to all income from the property during her lifetime, but shall not have the right to sell, dispose of, or otherwise encumber the property, which is to be preserved for the remaindermen, my Indian children."

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IV. The Initial Interview

H. What You Should Learn During the Initial Interview

3. Title to be Devised

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e. Fee Simple.

- (1) Fee simple refers to a basically unconditional ownership interest in property.
- (2) If the testator owns a fee simple interest as well as a trust or restricted interest in the same property, his/her entire interest should be accounted for in the will. (It is likely that an Indian owning non-trust/non-restricted property will own that property in fee simple.)

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**DETERMINING WHETHER OR NOT TO PREPARE A PARTICULAR WILL**

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**V. DETERMINING WHETHER OR NOT TO PREPARE A PARTICULAR WILL**

**A. KNOWING WHETHER OR NOT TO PREPARE A WILL**

1. After the initial interview you should be able to determine if you can write the will.
2. In most instances, you can and should prepare the will.
3. There may be circumstances, however, under which you should decline to prepare an Indian will.

**B. WHEN IS A WILL NEEDED?**

**1. Not everyone needs a will.**

- a. If an individual wants to leave his/her property in exactly the way it would pass under the laws of intestate succession, and there are no questions as to the identity of the presumptive heirs, it is not necessary for that person to make a will.

(1) A Departmental probate hearing to approve a will generally takes longer, is more involved, and requires the attendance of more witnesses, than a hearing to determine heirs.

(2) For example: an individual is divorced with three children, owns an interest in one property, and wants to leave the property equally to those three children.

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V. Determining Whether or Not to Prepare a Particular Will  
B. When is a Will Needed?  
1. Not Everyone Needs a Will

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- b. Under these circumstances, you can advise the individual that it is not necessary to make a will, giving the reasons.
- c. If the individual insists on making a will, do it.

2. A will is needed:

a. When an individual does not want property to pass in accordance with the laws of intestate succession.

- (1) For example, an individual owns interests in three properties and wants to leave his/her entire interest in property 1 to A, in property 2 to B, and in property 3 to C.
- (2) An individual wants his/her non-Indian\* spouse to be taken care of during his/her lifetime, but wants the property eventually to come to the Indian children without going out of trust or restricted status.
- (3) An individual does not want to leave property to one of his/her children under a will.
- (4) An individual has no close relatives and does not want collateral relatives to inherit.

b. When there are questions about the identity of the individual's presumptive heirs.

- (1) For example, a man knows that there is strong evidence he is the father of a child whom he does not acknowledge and does not want to inherit any of his property.

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V. Determining Whether or Not to Prepare a Particular Will

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C. PROBLEMS WITH THE TESTATOR

1. Age.

a. In order to make an Indian will, the person must be at least 18 years old.

(1) See 25 U.S.C. § 373, as amended by sec. 2 of the Act of Nov. 5, 1987, 101 Stat. 886, Pub. L. 100-153; 43 CFR 4.260(a).

2. Testamentary Capacity.

a. In order to execute a will, the person must have testamentary capacity.

(1) Testamentary capacity is the amount of mental functioning that is recognized as legally sufficient for a person to make a will.

(2) For Indian wills, the standard is that a testator must have "the ability to remember, at least in a general and approximate way, the nature and extent of his property, to recognize those who are the natural objects of his bounty, and to comprehend the nature of the testamentary act itself."

(a) See Estate of Joseph Red Eagle, 4 IBIA 52, 60, 82 I.D. 256, 259 (1975).

b. Testamentary capacity is determined in accordance with the testator's condition at the time the will is discussed and/or executed.

(1) See Estate of Evelyn Westwolf Mosney Bear Walker Romero, 12 IBIA 215 (1984).

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V. Determining Whether or Not to Prepare a Particular Will  
C. Problems With the Testator  
2. Testamentary Capacity

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- c. You may have a question in your mind as to whether or not a person has testamentary capacity.
- (1) If so, and you decide it is possible the person has testamentary capacity, prepare the will, but be particularly careful to record your reasons for reaching this conclusion.
- d. Some specific problems a testator may have and their relationship to testamentary capacity include:
- (1) Use of Alcohol.
- (a) An intoxicated person lacks testamentary capacity.
- (b) Questions will arise as to whether a person who smells of alcohol may in fact not be intoxicated. You must use your own judgment in these cases. For some people, it might be difficult to find a time when they have not been drinking to some extent. If you decide the person is not intoxicated, keep careful records, clearly specifying that the person had been drinking, but still appeared sober, giving your reasons for that belief.
- (c) The fact that a person has used alcohol extensively does not mean the person lacks testamentary capacity as long as he/she is sober and rational when the will is discussed and executed.

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V. Determining Whether or Not to Prepare a Particular Will  
C. Problems With the Testator  
(1) Alcohol

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(d) In extreme cases of prolonged alcohol abuse, a physician may be able to determine whether or not the individual has incurred actual mental impairment.

(e) See Estate of Thomas Longtail, Jr.,  
13 IBIA 136 (1985).

(2) Use of Drugs or Medications.

(a) A person under the influence of any mind-altering drug and some other drugs lacks testamentary capacity.

(b) If a person is receiving drugs or medications from a physician when the will is executed, get a written statement from the attending physician or nurse as to the effect of the medication on the testator's mental ability.

(c) Use of so-called "recreational drugs" should be judged under the same standards as alcohol abuse.

(d) See Estate of Verena Gean Kitchell,  
12 IBIA 258 (1984).

(3) Guardianships.

(a) The fact that an individual is under guardianship is not proof in itself of lack of testamentary capacity.

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V. Determining Whether or Not to Prepare a Particular Will  
C. Problems With the Testator  
(3) Guardianships

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- (b) Because the amount of mental functioning or ability necessary to have testamentary capacity can be lower than that for some guardianships, it is quite possible that a person under a guardianship will have testamentary capacity.
- (c) The type, circumstances of, and reasons for the guardianship must be examined.
- (d) See Estate of Thomas Longtail, Jr., 13 IBIA 136 (1985); Estate of Fannie Newrobe Choate, 7 IBIA 171 (1979).
- (4) Other recurring problems, which do not in themselves show lack of testamentary capacity, include:
- (a) Advanced age,  
see Estate of Jane Eckiwaudah, a.k.a. Emma Chahsenah, 9 IBIA 112 (1981);
- (b) General confusion/disorientation,  
see Estate of Homer James Medicinebird, 8 IBIA 289 (1981);
- (c) Eccentricity,  
see Estate of Asmakt Yumpquitat (Millie Sampson), 8 IBIA 1 (1980);
- (d) Emotional instability,  
see Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (1982);  
and
- (e) Physical infirmity,  
see Estate of Catalina Clifford, 9 IBIA 165 (1982).

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V. Determining Whether or Not to Prepare a Particular Will  
C. Problems With the Testator  
2. Testamentary Capacity

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e. If the individual has a condition that could be questioned as affecting testamentary capacity, you can suggest that a physician's examination and written statement could be beneficial. The individual should authorize the physician to furnish a copy of the written examination report to the scrivener so it can be included in the BIA records.

3. Undue Influence.

a. Undue influence is persuasion that deprives the person influenced of his/her own free will and causes him/her to act according to the will of the person exerting the influence.

b. Undue influence consists of four elements:

- (1) The testator was susceptible to being dominated by another;
- (2) The person allegedly influencing the testator in the execution of the will was capable of controlling the testator's mind and actions;
- (3) The person allegedly influencing the testator exerted influence upon the testator of a nature calculated to induce or coerce the testator to make a will contrary to his/her own desires; and
- (4) The will is contrary to the testator's own desires.

(a) See Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971).

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V. Determining Whether or Not to Prepare a Particular Will  
C. Problems With the Testator  
3. Undue Influence

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- c. Specifically ask the person if someone threatened him/her or promised something for making the will.
- d. Undue influence must be distinguished from lesser forms of influence or persuasion.
  - (1) Suggesting, or even coaxing, an individual to make a will does not constitute undue influence.
  - (2) Specific provisions may even be suggested.
- e. Influence becomes "undue" when the desires of the testator are overborne by those of another individual so that the resulting will does not reflect the desires of the testator, but rather those of the person influencing and controlling the testator's mind and actions.

4. Confidential Relationships.

- a. A special situation arises when a confidential relationship exists between a testator and a beneficiary under the testator's will.
- b. A confidential relationship is a relationship between two persons such that one person trusts in and acts upon the advice and representations of the other person.
  - (1) Examples of confidential relationships include:
    - (a) Attorney and client;
    - (b) Guardian and ward,  
see Estate of Julius Benter, 1 IBIA 24 (1970);

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V. Determining Whether or Not to Prepare a Particular Will  
C. Problems With the Testator  
(1) Examples of Confidential Relationships

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(c) A person receiving payments on behalf of another person and responsible for paying that person's bills and ensuring he/she has necessary funds, see Estate of Roger Wilkin Rose, 13 IBIA 331 (1985); and

(d) A person holding the testator's power-of-attorney, see Estate of Jesse Pawnee, 15 IBIA 64 (1986).

c. Because of the degree of trust and confidence reposed in the one person by the other under these and similar circumstances, the law requires the utmost degree of good faith in all transactions between these people in order to prevent abuse of that confidence.

d. Under certain conditions, the law requires a person who is in a confidential relationship with a testator and who is a beneficiary under the testator's will, to prove that no undue influence was exerted upon the testator to make him/her write the will in that way. These conditions are:

(1) A confidential relationship exists;

(2) The dominant person is a principal beneficiary under the will;

(3) The dominant person was active in procuring the will;

(a) For example: the dominant person took the testator to the person who prepared the will, or prepared the will him/herself;

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V. Determining Whether or Not to Prepare a Particular Will

C. Problems With the Testator

d. Potential Undue Influence Problems in Confidential Relationships

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- (b) If the will was prepared by an attorney, the attorney normally represented the dominant person in the confidential relationship;
  - (c) The dominant person paid the will scrivener; or
  - (d) The dominant person actively participated in discussions of the testamentary scheme to be established in the will.
- (4) See Estate of Philip Malcolm Bayou, 13 IBIA 200 (1985); rev'd on other grounds and remanded, Mallonee v. Hodel, No. A85-549 Civil (D. Alaska May 4, 1987); Estate of Charles Webster Hills, 13 IBIA 188, 92 I.D. 304 (1985).
- e. Because of this potential problem, take special care when writing a will in which a beneficiary is known to be in a confidential relationship with the testator.
- (1) Do not allow any beneficiary to be present when the will is being discussed with the testator.
    - (a) See Estate of Homer James Medicinebird, 8 IBIA 289 (1981).
  - (2) Make sure that the devise or bequest is actually the testator's intent, and not the beneficiary's.

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V. Determining Whether or Not to Prepare a Particular Will

C. Problems With the Testator

e. Take Special Precautions when a Confidential Relationship Exists

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(3) Make sure that the testator receives independent advice concerning the will from someone who is not interested in the disposition made in the will.

(a) See Estate of Cyril Dewey Bockius,  
3 IBIA 277 (1973).

5. If you have a question about whether a person lacks testamentary capacity or is acting under undue influence, but the answer is not clear, prepare the will, but record your concerns and the reasons for them in the record kept of the will preparation.
- a. The Administrative Law Judge can then consider these factors when the will is probated.
  - b. The Administrative Law Judge will make the final determination as to the will's validity.

D. PROBLEMS WITH THE WILL

1. In some cases it is a proper exercise of your responsibilities to refer the person to a private attorney.
- a. Your goal is to assist the person in preparing a valid will.
  - b. Although you can and should prepare most Indian wills, you should not attempt to prepare a will that is beyond your understanding.

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V. Determining Whether or Not to Prepare a Particular Will  
D. Problems With the Will

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2. Examples of situations in which you should probably refer the person to a private attorney include:
- a. An especially complex or highly technical will;
  - b. A will with unusual provisions; or,
  - c. An estate including non-trust property worth a substantial amount.

(1) See Section VI.F (page 79).

3. If you refer a person to a private attorney, do everything possible to assist the attorney, such as:
- a. Providing accurate descriptions of all trust or restricted property owned by the person;
  - b. After obtaining the person's permission to release such information, providing information available to you about his/her family relationships;
  - c. Telling what Federal restrictions on the disposition of trust or restricted property exist, including citations to any relevant statutory restrictions on the person's right to dispose of his/her trust or restricted property, such as the IRA and/or ILCA;
  - d. Referring the attorney to any applicable tribal ordinances;
  - e. Informing the attorney of the legal formalities required for execution of an Indian will.

(1) See Section VII (page 85).

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THE WRITTEN DOCUMENT

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VI. THE WRITTEN DOCUMENT

A. KEEP IT AS SIMPLE AS POSSIBLE

1. The simpler a will is, the less likely it is that there will be problems in writing or interpreting it.
2. Use simple language.
  - a. NEVER use legal terms you do not understand.
    - (1) Either find out the exact meaning of the term you intend to use, or use a more common word whose meaning is clear.
3. Make the testamentary scheme as simple as possible while still accomplishing the testator's objective.
  - a. Your goal is always to set forth the testator's intent accurately. The will should be as simple or as complex as necessary to reflect that intent.

B. USE OF THE STANDARD BUREAU WILL FORM, BIA-5407

1. The Bureau will form, BIA-5407, is totally sufficient for most Indian wills.
  - a. Use of this form prevents needless repetitious typing of standard language.
2. You are not, however, required to use the will form for every Indian will.
  - a. See Estate of Ella Derand, 12 IBIA 238 (1984).

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VI. The Written Document

B. Use of the Standard Bureau Will Form, BIA-5407

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3. The form provides a useful format guide for preparing more complex wills.

- a. The standard language can easily be copied.
- b. Then insert the additional clauses needed.

C. INSTRUCTIONS PRINTED ON THE BUREAU WILL FORM

1. IGNORE the "Instructions to Field Officers" printed on the April 1982 revision of the will form.

- a. Some of these "instructions" are not based on statute, regulation, or case law and are, therefore, incorrect.
- b. Although some things said in the "instructions" are valid, it is more confusing to attempt to separate the correct from the incorrect statements.
- c. By following this manual you will meet all necessary requirements for an Indian will.

(1) See Estate of Alexander Charette, 15 IBIA 92 (1987); Estate of William Mason Cultee, 9 IBIA 43 (1981).

2. Future revisions of BIA-5407 will not contain "instructions."

D. BLANK SPACES

- 1. NEVER leave blank spaces on a will.
- 2. Draw a diagonal line from the end of the last devise to the bottom of the page, in order to avoid any chance of unauthorized additions.

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VI. The Written Document

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E. EXTRA PAGES ADDED TO THE BUREAU WILL FORM

1. If there is not enough space on the will form to show all of the specific devises, attach as many additional sheets of paper as are needed.
  - a. Each extra sheet of paper should be headed "Continuation Sheet No. \_\_\_ to Will dated \_\_\_\_, of \_\_\_\_."
  - b. At the bottom of each extra sheet of paper, place the sentence: "This Will consists of the regular form and \_\_\_\_ continuation sheets."
    - (1) Use of these descriptive sentences lessens the possibility that pages may be removed or added after the will has been executed.

F. TWO WILLS

1. There is considerable controversy surrounding the question of whether an individual should always have only one will or whether, under some circumstances, you should write a will covering just an individual's trust or restricted property and refer the person to a private attorney to write a second will covering non-trust property.
  - a. In general, it is considered that a person can have only one last will and testament.
  - b. There are circumstances, however, under which multiple wills may be acceptable.

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**VI. The Written Document**

**F. Two Wills**

**b. Circumstances Under Which Two Wills Might be Appropriate**

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(1) The most common circumstance is when a person owns property in more than one jurisdiction and the laws governing wills vary significantly between the jurisdictions.

(a) To some extent, however, this problem has been alleviated in recent years by state adoption of uniform rules governing probate.

(b) In Indian probate, the problem may actually become more acute with the possible adoption of probate codes by the tribes under ILCA.

**c. Problems with two wills.**

(1) The wills may not be written properly so that the last will prepared revokes the prior one and leaves the testator intestate as to part of his/her property; i.e., either the trust or restricted property or the non-trust property.

(2) Recognition of two wills is within the discretion of the judges involved.

(a) Recognition of the will passing trust or restricted property is subject to the trust responsibility attendant upon probate functions and is probably not a problem.

(b) Recognition of the will passing non-trust property is within the discretion of the appropriate state or tribal court.

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VI. The Written Document  
F. Two Wills

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d. Advantages of two wills.

- (1) You can be more assured that the individual will die testate at least as to trust or restricted property.
  - (2) If a person is standing in front of you stating that he/she wants to prepare a will, and you have reason to believe that he/she might not return and/or see a private attorney, you can accommodate his/her desires at least as to the trust or restricted property.
  - (3) If a person owns a substantial amount of non-trust property, and/or intends a complex disposition of non-trust property, writing a will covering only the trust or restricted property while referring the person to a private attorney for the non-trust property can ensure that the trust or restricted property is covered, while allowing the non-trust property to be handled by a person more familiar with state law requirements.
2. One will should be the normal procedure. Two wills should be used only under extraordinary circumstances.
  3. Procedures to be followed when a separate will covering only trust or restricted property is deemed advisable.
    - a. Determine that the preparation of a separate will is to the advantage of the testator and does not just represent a desire to do a little less work.

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VI. The Written Document

F. Two Wills

3. Procedures to be Followed if Two Wills Are Deemed Appropriate

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b. Inform the testator of the advantages and disadvantages of two wills.

(1) Be sure the testator thoroughly understands that the will you are writing does not cover all of his/her property and that he/she must see a private attorney to prepare a will covering non-trust property.

c. Use special revocation and residuary clauses clearly stating the testator's intent.

(1) For example, the revocation clause might read: "This will pertains only to the property owned by me and held in trust for me by the United States Government (or—owned by me with restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior) and does not attempt to dispose of my non-trust (or—non-restricted) property which is dealt with in another will dated \_\_\_\_\_ (or—which will be dealt with in another will which I have not yet executed). I specifically state that I have (or—intend to have) two wills, each disposing of a different class of property, and that the execution of my will which disposes of one class of property does not revoke the other will disposing of the different class of property. I do, however, revoke all other wills affecting my trust (or—restricted) property previously executed by me."

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VI. The Written Document

F. Two Wills

3. Procedures to be Followed if Two Wills Are Deemed Appropriate

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(2) The residuary clause might read: "I give, devise, and bequeath all of the rest and residue of my trust (or—restricted) estate, real, personal, and mixed, to K."

- d. Give a copy of the will to the testator to give to the attorney who prepared or is preparing the will covering non-trust property, and suggest that similar language be used in that will.

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**EXECUTION OF THE WILL**

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**VII. EXECUTION OF THE WILL**

**A. TIME OF EXECUTION**

1. If the will is prepared and executed on different days, make a specific appointment for executing the will.
2. If the testator does not keep the appointment and does not set a new date, NEVER simply assume he/she will come in sometime.
  - a. Attempt to reach the individual and get him/her to come in and either execute the will or write a statement that he/she decided against the will and why.
    - (1) It is possible that pressure was put on the person not to execute the will.
3. NEVER allow an unexecuted will to lie around the office. Take steps to protect the confidentiality of the document as if it were an executed will.

**B. ATTENDANCE AT THE WILL EXECUTION**

1. Who Should be Present?
  - a. The testator;
  - b. The will scrivener;
  - c. Two attesting witnesses; and
  - d. An interpreter, if needed.

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VII. Execution of the Will

B. Attendance at the Will Execution

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2. Who Should NOT be Present?

- a. Any beneficiary under the will.

C. READING OF THE WILL

1. Unless you have already done so, read the will to the testator to be sure it says what he/she intended.
- a. The attesting witnesses need not be present when you read the will.
- b. If an interpreter was used during the initial interview, be sure one is used when you read the will to the testator.

D. ATTESTING WITNESSES

1. Every Indian will must be signed by 2 adult witnesses, who "attest" to the due execution of the will.
- a. See 43 CFR 4.260(a) and Appendices B and C.
2. An attesting witness must be:
- a. At least 18 years old, and
- b. Competent.
3. An attesting witness cannot be:
- a. A beneficiary under the will.

(1) See Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12, 82 I.D. 169 (1975).

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VII. Execution of the Will  
D. Attesting Witnesses

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4. Although not required, there are good reasons why an attesting witness should be:
- a. Acquainted with the testator;
    - (1) If the attesting witnesses know the testator, it is easier for them to:
      - (a) Remember the incident; and
      - (b) Know whether the testator had testamentary capacity and was not acting under undue influence.
  - b. Aware that he/she is witnessing a will;
    - (1) If a particular will is passing both trust and non-trust property, there may be a state or tribal law requirement that the testator publish the will to the attesting witnesses.
      - (a) See Section VII.E (page 88) on publication.
    - (2) Knowledge of the nature of the document being witnessed helps to fix the event in the witnesses' minds.
  - c. Younger than the testator.
    - (1) Under normal circumstances, a younger person would be expected to survive an older person, and would, therefore, be alive to testify at a probate hearing about the execution of the will.
5. If you have a question about whether or not it is wise for a particular person to serve as an attesting witness, you may suggest to the testator that another person might be better, giving the reasons for your concern.

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VII. Execution of the Will  
D. Attesting Witnesses

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6. It is a good idea to have the attesting witnesses talk with the testator about things other than the execution of the will, especially if they are not acquainted with the testator.
  - a. Such conversations give the attesting witnesses a better opportunity to assess the mental functioning of the testator and also serve to re-enforce their memory of the event.
    - (1) See Estate of Aaron (Allen) Ramsey, 11 IBIA 16 (1982).
  
7. Strongly encourage the attesting witnesses to write a short account of the execution of the will.
  - a. Such written statements can later be used to refresh their memories if they are called upon to testify about the will's execution, and might also be admissible into evidence.
    - (1) See Estate of Philip Malcolm Bayou, 13 IBIA 200 (1985); rev'd on other grounds and remanded, Mallonee v. Hodel, No. A85-549 Civil (D. Alaska May 4, 1987).
  - b. If statements are prepared, keep them with the will.

E. PUBLICATION, ETC.

1. There are three formalities of will execution that may apply under state or tribal law, but are not necessary under Federal law for an Indian will to be valid.

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VII. Execution of the Will  
E. Publication, Etc.

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- a. Publication, i.e., a formal oral declaration made by the testator to the attesting witnesses before the will is signed that the document is his/her last will and testament;

(1) See Estate of Fannie Newrobe Choate,  
7 IBIA 171 (1979).

- b. A specific request made by the testator that the witnesses witness his/her signing of the will;

(1) See Estate of William Cecil Robedeaux,  
1 IBIA 106, 78 I.D. 234 (1971).

- c. Signing of the will by the testator and witnesses in the presence of each other.

(1) See Estate of Alexander Charette,  
15 IBIA 92 (1987).

2. Although an Indian will is valid without observing these formalities of execution, if the will passes non-trust property, it will have to meet all state or tribal law execution requirements.

- a. These other laws may require additional formalities that are not essential for the validity of an Indian will to pass trust or restricted property.
- b. A will valid to pass trust or restricted property may be found invalid to pass non-trust property, and vice versa.
- c. Therefore, it is good practice to observe these formalities when executing Indian wills.

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VII. Execution of the Will  
E. Publication, Etc.

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3. A self-proved Indian will must be executed with the three formalities of execution listed above.
  - a. These formalities of execution are part of the statement signed on the affidavit to accompany Indian will.
  - b. See 43 CFR 4.233 and Section VII.G (page 91).

F. SIGNATURES

1. To be valid, an Indian will must be signed by the testator and two attesting witnesses.
  - a. The witnesses should be able to sign their names, in order to avoid problems with verifying a "mark".
  - b. The testator may "sign" a will with his/her signature, thumbprint, or an "X."
    - (1) If the testator has trouble signing the will or his/her signature is illegible because of a physical problem or his/her position while signing (e.g., having arthritis or being propped up in bed), the will may be subject to attack as a forgery or as showing lack of testamentary capacity.
      - (a) Therefore, keep records of any unusual circumstances surrounding the testator's signature.
      - (b) See Estate of Jesse Pawnee, 12 IBIA 277 (1984); Estate of Leona Hunts Along Hale, 8 IBIA 8, 87 I.D. 64 (1980).

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VII. Execution of the Will

F. Signatures

b. The Testator May Sign With an "X" or Thumbprint

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(2) If the testator uses an "X" or thumbprint, his/her name should be clearly printed or written under the "X" or thumbprint.

(a) If you are using the Bureau will form, BIA 5407, the name should appear on the line ending with "(L.S.)" (which means "locus sigille," or "the place of seal").

(b) The words "his/her right/left thumbprint" should appear above the print, or the words "his/her mark" should appear above the "X."

G. SELF-PROVED WILLS AND THE AFFIDAVIT TO ACCOMPANY INDIAN WILL

1. A self-proved will is one in which the attesting witnesses have already testified under oath, i.e., in an affidavit, about due execution of the will.

a. When a will is self-proved, it is often not necessary for the attesting witnesses to appear and testify at the probate hearing, unless the will is contested.

(1) If a will is not self-proved, the attesting witnesses must testify about the execution of the will, either at the hearing or through affidavits, even if the will is not contested.

2. The affidavit to accompany Indian will is intended to make a will self-proved.

a. See 43 CFR 4.233 and Appendix B.

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VII. Execution of the Will

G. Self-Proved Wills and the Affidavit to Accompany Indian Will

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3. In order to be self-proved, the will must be published, (i.e., the testator must say to the witnesses before the will is signed that the document is his/her last will and testament, the testator must ask the witnesses to sign the will as witnesses, and the testator and attesting witnesses must sign in each other's presence.
  - a. These formalities of execution are recited in the affidavit to accompany Indian will.
  - b. The formalities of execution, however, are not required for the will to be valid, but merely for the self-proved aspects to be effective.
    - (1) Thus, even if it can be shown during the probate hearing that, for example, the testator and witnesses did not sign in each other's presence, the will is not thereby rendered invalid, it is just no longer self-proved.
      - (a) See Estate of Ella Dautobi, 15 IBIA 111 (1987).
4. Because of the advantages of a self-proved will, your normal practice should be to prepare an affidavit to accompany Indian will for each will.
  - a. The Bureau affidavit form, BIA Form 5-5408, fully meets the regulatory requirements for an affidavit to accompany Indian will, and should be used whenever possible.
    - (1) However, as with BIA Form 5407, the instructions contained in the footnote on the first page of the affidavit form should be ignored.
5. If it is not possible to prepare an affidavit, your records concerning the will should explain why.

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VII. Execution of the Will

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H. CHANGED PERSONAL CIRCUMSTANCES AND PERIODIC REVIEW OF THE WILL

1. Advise the testator to review the will if his/her personal circumstances change.

a. Changes in personal circumstances include:

- (1) Changes in presumptive heirs, such as those occasioned by marriage, divorce, death of a spouse, or the birth, adoption, or death of children;
- (2) Changes in property owned, such as the acquisition of new property or the conveyance or destruction of property covered by the will; and
- (3) Changes in relationships between the testator and beneficiaries, such as the testator's giving money to one beneficiary during the testator's lifetime with the intent that the money is an advance on the beneficiary's inheritance, the testator's moving in with one of the beneficiaries and wanting to give something extra to that person, or the development of significant problems between the testator and a particular beneficiary.

b. Under the laws of some states, certain changes in personal circumstances automatically revoke a will. This is not true of a will passing trust or restricted property.

- (1) See Section XII.D.4 (page 113).

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VII. Execution of the Will

H. Changed Personal Circumstances and Periodic Review of the Will

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2. Even without such major changes, and especially if the testator does not have a copy of the will, it is advisable for the testator to review the will periodically to ensure that it still accurately reflects his/her intentions.

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CHANGES OCCURRING AFTER EXECUTION OF THE WILL

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VIII. CHANGES OCCURRING AFTER EXECUTION OF THE WILL

A. ADDITIONS, ALTERATIONS, ERASURES, CORRECTIONS

1. Generally, nothing in a will should be changed in any way once the will has been signed and witnessed.

a. If it is necessary to make a minor change, the change must be signed or initialed by the testator and witnesses and dated.

(1) See Estate of Eastman John Kipp,  
13 IBIA 242 (1985).

b. If several changes are necessary, prepare a new will.

(1) Once the will has been signed, **NEVER** prepare a new page and insert it into the will without having it signed or initialed by the testator and attesting witnesses.

(2) If there is not time to prepare a new will:

(a) Be very careful to ensure the testator and witnesses are aware of and sign or initial all the changes.

(b) Make and retain records describing the changes and the emergency situation.

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VIII. Changes Occurring After Execution of the Will  
A. Additions, Alterations, Erasures, Corrections

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2. Generally, if changes are made and are not initialed or signed by the testator and witnesses, they may be ignored by the Administrative Law Judge in construing the will.

a. If the will can be understood without the changes, it may be given effect.

b. If the changes were necessary to understanding, so much of the will as is rendered unintelligible by their absence may lapse.

(1) The entire will might be affected.

(a) See Estate of Grace Dion Antelope Horse Ring, 12 IBIA 232 (1984); Estate of Loretta Pederson, 1 IBIA 14, 77 I.D. 270 (1970).

3. If the necessity for changes to a will arises or is discovered after its execution, a codicil or a new will should be prepared.

B. CODICILS

1. A codicil is a supplementary or additional writing attached to a will.

a. It is used when a testator wants to make minor changes to an existing will.

b. Any part of an existing will that is not specifically addressed in a codicil remains in effect, unless the codicil makes the will unintelligible.

(1) See Estate of Louella Bertha Williams Johnk, 15 IBIA 174 (1987).

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VIII. Changes Occurring After Execution of the Will  
B. Codicils

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2. The codicil must be executed with the same formalities as a will.

a. The validity of a codicil is judged independently from the validity of the underlying will.

(1) Thus, even if a will is approved, a codicil may be disapproved because of lack of testamentary capacity or the existence of undue influence.

(a) A codicil normally cannot stand alone, however, and if the underlying will is disapproved, any codicil will probably fail.

(2) If you suspect a testator may lack testamentary capacity or is acting under undue influence, but insists upon changing a will, you might prepare a codicil rather than a new will, thus perhaps allowing the individual to die testate.

(3) See Estate of Charles Track, a.k.a. Charles Afraid of His Track, 1 IBIA 216, 79 I.D. 83 (1972).

b. See Appendix D.

3. A will may have more than one codicil.

a. Because, however, numerous codicils may make it difficult to ascertain the testator's true intent, it is a better practice to make an entirely new will if an existing one has several codicils.

(1) See Estate of Jessie McGaa Craven, 1 IBIA 157 (1971).

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**EMERGENCY WILLS**

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**IX. EMERGENCY WILLS**

**A. REASONS FOR EMERGENCY WILLS**

1. Because of the frailty of human life, every will is to some extent an emergency will.
2. However, there will be occasions when it is necessary to prepare a will without forms or prior preparation, for example, when the testator:
  - a. Is hospitalized with a life-threatening condition;
  - b. Has been in an accident; or
  - c. Is leaving immediately on a trip.

**B. THE BARE ESSENTIALS**

1. Whatever the circumstances may be that require an emergency will, do not hesitate to write a will in longhand, on any material that is available.
2. Besides the testamentary provisions, remember that the will should:
  - a. Plainly show that it is intended to be a will; e.g., state "This is my last will and testament;"
  - b. Contain the phrase "I revoke all prior wills;"
  - c. Be dated;
  - d. Be signed by the testator; and
  - e. Be signed by two attesting witnesses.

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**IX. Emergency Wills**

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**C. TAKE CARE IN PREPARING AN EMERGENCY WILL**

1. It is possible you will have a chance to prepare another will once the crisis situation has passed.
2. It is equally possible that you will not have that opportunity.
  - a. Therefore, take as much time and care in preparing an emergency will as the situation allows.
  - b. Remember that the document you are preparing may have to serve as the testator's last will and testament.

**D. KEEP RECORDS**

1. It is especially important to keep records of the testator's condition, both physical and mental, when you prepare an emergency will.
  - a. If possible, obtain a physician's, nurse's, or paramedic's written statement when the testator is under medical care.

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RETENTION OF INDIAN WILLS

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X. RETENTION OF INDIAN WILLS

A. WILLS ARE THE PROPERTY OF THE TESTATOR

1. The testator has the right to decide who will hold his/her will.

a. If the testator wants to keep the original document, this is his/her right.

(1) See Estate of Charles Hall, Sr., 8 IBIA 53 (1980).

b. If the testator wants the original document, request permission to retain a conformed copy of the will and enter a notation in the file that the original was given to the testator at his/her request.

(1) This copy may become important if the original will is subsequently lost or inadvertently destroyed, or the will is revoked but there is a question of revival.

(a) See Section XII (page 109).

2. Inform the testator, however, of the advantages of having the Bureau retain the will.

a. It will be readily available to present to the Administrative Law Judge upon the testator's death;

(1) The wills of non-Indians are routinely retained by such institutions as law firms, banks, or county clerks-of-court for presentation to the court upon the testator's death.

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**X. Retention of Indian Wills**

**A. Wills are the Property of the Testator**

**2. Advantages of Retention of the Will by the Bureau**

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- b. There will be less chance of the will being lost or inadvertently destroyed;
  - c. There will be less chance that beneficiaries or persons omitted from the will might discover it; and
  - d. If there has been any pressure exerted on the testator by relatives or friends as to the testamentary scheme, the fact that the Bureau will retain the will in strict confidence can give the person the freedom to dispose of property as he/she really wants.
3. **NEVER** give the will or a copy to a family member of the testator.
- a. If the testator wants a family member to hold the will or a copy, give the will to the testator.
    - (1) Advise the testator that he/she can do whatever he/she wants with the will.

**B: FILING SYSTEM FOR WILLS AND CONFORMED COPIES RETAINED BY THE BUREAU**

- 1. Have a routine system for filing wills and conformed copies of wills retained by the Bureau.
  - a. In most Bureau offices, the will is sealed in an envelope and kept in a locked will drawer or vault.
    - (1) The will can be removed only at the request of the testator or upon his/her death.
      - (a) See Section XII (page 109) for a discussion of revocation and revival of wills.

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X. Retention of Indian Wills

B. Filing System for Wills and Conformed Copies Retained by the Bureau

1. Have a Routine System

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- b. Whatever the particular system, more than one person in the office should be aware of the system and be able to locate wills or copies on a moment's notice.
- c. In addition to the will or conformed copy, the sealed envelope should contain:
  - (1) The affidavit to accompany Indian will or other attestation;
    - (a) See Section VII.G (page 91) and Appendices B and C.
  - (2) Your notes concerning the initial interview and execution of the will; and
  - (3) Any written statements prepared by the attesting witnesses, physicians, or other persons involved with will preparation and execution.

C. RETENTION OF WILLS PREPARED BY PRIVATE ATTORNEYS OR OTHER INDIVIDUALS

- 1. If an individual brings a document to the Bureau, states that the document is a will, and asks to have it retained by the Bureau, accept the document and file it as though it were a will prepared by the Bureau.
  - a. You can suggest that the document be approved as to form by the Office of the Solicitor.
    - (1) See Section XI (page 105).

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**X. Retention of Indian Wills**

**C. Retention of Wills Prepared by Private Attorneys or Other Individuals**

**1. Treat the Document as if it had been Prepared by the Bureau**

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- b. Even if, however, the testator does not want the document reviewed, it is not your responsibility at this point to decide whether or not the document actually qualifies as a will.
- c. Retain the document and present it to the Administrative Law Judge as a will after the testator's death.
  - (1) The Administrative Law Judge will determine whether or not the document is a will.

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**APPROVAL AS TO FORM**

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**XI. APPROVAL AS TO FORM**

**A. PROVISIONS FOR "APPROVAL" OF INDIAN WILLS PRIOR TO DEATH**

1. Statutory and regulatory provisions allow for the "approval" of an Indian will before the testator's death.
  - a. See 25 U.S.C. § 373; 43 CFR 4.260(b).
2. Because a will is not effective until the testator's death, a will cannot be ultimately approved during the testator's lifetime.
  - a. It can, however, be reviewed to determine whether or not there are any problems obvious on the face of the document that would render it subject to attack during probate.
  - b. This review, which is conducted by the Department's Office of the Solicitor, is called "approval as to form."
3. When a will is sent to the Solicitor's Office for approval as to form, retain a conformed copy of the will, protected as you would protect the original, with a dated notation that the original was sent to the Solicitor's Office.

**B. THE MEANING OF APPROVAL AS TO FORM**

1. The results of the Solicitor's review of a will are generally presented as suggestions for changing or correcting the terms of the will.
  - a. If the Solicitor believes the problem is serious, he/she may refuse to grant approval unless the changes are made.

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**XI. Approval as to Form**

**B. The Meaning of Approval as to Form**

**1. The Solicitor May Refuse to Grant Approval as to Form**

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- (1) Refusal to approve a will as to form does not necessarily mean that the Administrative Law Judge will disapprove the will when it is considered in the probate process.
  - (2) It merely means the Solicitor believes there may be a problem with the will.
  - (3) Correction of the problem while the testator is living may prevent additional problems during probate, when the testator will not be available to explain his/her intentions.
2. It is not necessary, however, that an Indian will must be approved as to form before the testator's death.
- a. Approval as to form is a service offered to both Indian testators and will scriveners.
  - b. Approval as to form is not a requirement.
- (1) See Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (1982); Estate of Charles Hall, Sr., 8 IBIA 53 (1980).
3. Approval as to form does not guarantee the ultimate approval of the will.
- a. Approval as to form consists solely of review of the written document.
- (1) Unless the Solicitor specially requests additional information from the Bureau, he/she will not have information available concerning the testator's family and property.

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XI. Approval as to Form

B. The Meaning of Approval as to Form

3. Approval as to Form does not Guarantee Ultimate Approval

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(2) The Solicitor also will not know anything concerning the circumstances of will execution, such as testamentary capacity and undue influence.

b. The Solicitor's approval as to form only means that the document as presented or corrected appears proper.

C. PROBLEMS ADDRESSED THROUGH APPROVAL AS TO FORM

1. Potential problems that may be discovered through the approval as to form process include:

a. Devising a fee simple interest in trust or restricted land. Although it is possible that an individual owns a fee simple interest in trust or restricted land, the Solicitor's Office will normally question such a devise;

(1) See Estate of Eastman John Kipp,  
13 IBIA 242 (1985).

b. Creating a life estate with no remainderman;

c. Devising the same property to more than one beneficiary;

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XI. Approval as to Form  
C. Problems Addressed Through Approval as to Form

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- d. Having a beneficiary witness the will;
  - e. Creating an interest in property that cannot be recognized in Indian trust property; or
  - f. Devising property in a way inconsistent with the provisions of the IRA or ILCA.
2. Some of these problems are particularly apt to occur when Indian wills are prepared by private attorneys or laymen not familiar with restrictions placed on Indian testators.

D. **ULTIMATE APPROVAL OF INDIAN WILLS**

- 1. The Administrative Law Judge, subject to any appeal, will ultimately be responsible for determining whether or not the will is approved.

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REVOCATION AND REVIVAL OF WILLS

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XII. REVOCATION AND REVIVAL OF WILLS

A. WILLS TAKE EFFECT UPON THE TESTATOR'S DEATH

1. A will does not take effect until the testator's death.
  - a. Until that time, it can be changed as often as the testator desires.
  - b. Although most people do not change their wills, sometimes even if there is a drastic change in their personal circumstances, it is their right, and your responsibility, to help them prepare a new will whenever they want and for whatever reason, including no reason.

B. REVOCATION OF A WILL IS A TESTAMENTARY ACTION

1. The revocation of a will is as significant as the execution of a will.
2. Whenever possible, encourage a testator to revoke a will in writing and before witnesses.
  - a. See 43 CFR 4.260(c); Estate of Stella Red Star/Swift Bird, 14 IBIA 140 (1986).

C. INFORMATION A TESTATOR SHOULD BE GIVEN CONCERNING REVOCATION OF A WILL

1. When a testator says he/she wants to revoke a will, he/she should be given certain information first.
2. This information is explained in more detail in this section.

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**XII. Revocation and Revival of Wills**

**C. Information a Testator Should be Given Concerning Revocation of a Will**

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**3. Tell the testator:**

- a. He/she has the right to revoke a will at any time;
- b. There are several ways the will can be revoked, but the best way is to write a new will;
- c. If a will is revoked and he/she dies before executing a new will, his/her property will pass under the laws of intestate succession; and
- d. If there is a problem with the new will significant enough to cause it to be disapproved, it is possible that the will being revoked could be revived.

(1) If the testator would prefer to die intestate rather than have the testamentary scheme of the revoked will implemented and he/she is not preparing a new will, all prior wills should be destroyed.

**D. METHODS OF REVOKING INDIAN WILLS**

1. In general, in order for a revocation to be effective, three things must occur:
  - a. The testator must have testamentary capacity and not be acting under undue influence;
  - b. The testator must intend to revoke the will; and
  - c. The testator must have authorized revocation of the will.

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XII. Revocation and Revival of Wills  
D. Methods of Revoking Indian Wills

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2. Revocation by Subsequent Written Document.

a. The best practice is to revoke a prior will in a written document.

(1) The most common and preferred form of revocation by subsequent document is the preparation of a new will.

(a) Each will should contain the words "I hereby revoke all prior wills I have made," or their equivalent.

(b) These words should appear in every will even if the individual says he/she has not written a prior will.

(2) A will can also be revoked by a written document merely stating that a prior will is revoked.

b. If a testator tells you he/she wants to revoke a prior will, always encourage him/her to revoke the prior will by writing a new one.

(1) See Estate of Alice N. Whiteman Rides Pretty Hayden, 12 IBIA 203 (1984).

(a) The problem with revoking a will without writing a new one is that the person may not have the opportunity to execute a new will, and may die intestate.

c. If the person does not initially want to write a new will, advise him/her about the possibility of dying intestate.

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XII. Revocation and Revival of Wills

D. Methods of Revoking Indian Wills

2. Revocation by Subsequent Written Document

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- (1) If the person still does not want to write a new will, encourage him/her to revoke the prior will in a written document.
- (2) The sample revocation forms attached as Appendix E to this manual may be used for this purpose.

3. Revocation by Physical Act.

a. The least preferred method of revoking a will is by a physical act such as tearing, burning, obliterating, or other form of destruction.

- (1) It is not necessary that the entire document be destroyed as long as the action evidences the testator's intent to revoke the will.
- (2) This method of revocation is not preferred because there is an inherent ambiguity of intent in such action.
  - (a) For example, if a testator crosses out a certain portion of the will, such as one clause, there is a question as to whether he/she intended to revoke the entire will or only that particular clause.
- (3) Also, an act of physical destruction is often impulsive, possibly arising out of anger with a particular beneficiary, and revocation of the entire will may not really be what the testator wants.

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XII. Revocation and Revival of Wills  
D. Methods of Revoking Indian Wills  
3. Revocation by Physical Act

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- (4) Many people intend to follow the physical destruction of a will with the writing of a new will, but do not get around to actually making a new will.
- (a) Circumstances may prevent the writing of a new will, or the individual may simply not get around to doing it.
- (b) See Estate of George Swift Bird, 10 IBIA 63 (1982).
- (c) Because of this, always encourage a testator to revoke an old will by making a new one.

4. Revocation by Operation of Law.

- a. Many states have laws providing for the automatic revocation of a will under certain circumstances.
- (1) These laws are intended for those situations in which a testator does not change a will, but his/her personal circumstances have changed so drastically that it is highly unlikely the testator really intended to retain the particular disposition established in the will.
- (2) Examples of such changes in personal circumstances are marriage, divorce, and the birth of a first child.
- (3) The most common change in personal circumstances recognized today is the termination of a marriage.

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XII. Revocation and Revival of Wills  
D. Methods of Revoking Indian Wills  
4. Revocation by Operation of Law

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b. Departmental regulations explicitly provide that "[n]o will that is subject to the regulations in this subpart shall be deemed to be revoked by operation of the law of any State."

(1) See 43 CFR 4.260(c).

c. No Departmental regulation currently provides for the revocation of an Indian will by operation of law.

(1) Thus, changed personal circumstances may not affect the validity of devises or bequests of trust or restricted property.

(a) See Estate of Helen Ward Willey, 11 IBIA 43 (1983).

(2) Be aware of this fact and, in discussing a will with a testator, inform him/her of the importance of amending the will if there are changes in his/her personal circumstances.

(a) If you are aware of significant changes in the circumstances of a person for whom you have prepared a will, you should privately encourage him/her to consider whether he/she wants a new will.

E. LOST WILLS

1. A problem related to, but not quite the same as, revocation of a will arises when a will that is known to have been prepared and retained by the testator cannot be found.

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XII. Revocation and Revival of Wills  
E. Lost Wills

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2. Several possibilities exist in this situation:
  - a. The will was inadvertently lost or destroyed;
  - b. The will was deliberately destroyed by the testator, or someone acting for him or her, with the intention of revoking it; or
  - c. The will was removed and/or destroyed by someone other than the testator and without the testator's authorization.
3. Under such circumstances, proof of the contents of the lost will and of the testator's intention with regard to the will become questions of fact.
  - a. Under appropriate conditions, a copy of a lost will may be admitted to probate.
    - (1) Therefore, request permission to retain a conformed copy of every will you prepare.
    - (2) Anyone trying to have a lost will probated will have a difficult evidentiary burden to prove that the will was not destroyed by the testator with the intention of revoking it.
      - (a) See Estate of Arthur Wishkeno, 8 IBIA 147 (1980); Estate of Anthony Bitseedy, 5 IBIA 270 (1976).

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## XII. Revocation and Revival of Wills

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### F. REVIVAL OF REVOKED WILLS

#### 1. Revoked wills may be revived under two conditions:

a. A subsequent written document specifically reinstates a will that had been revoked; or

(1) See Estate of Charles Track, a.k.a. Charles Afraid of His Track, 1 IBIA 216, 79 I.D. 83 (1972).

b. A subsequent will fails or is disapproved and the circumstances indicate that the testator would prefer to have the former will revived rather than to die intestate.

(1) There is a presumption that a person who takes the time to write a will does not intend to die intestate.

(a) See Estate of Dorothy Sheldon, 7 IBIA 11, 85 I.D. 31 (1978).

(2) If a subsequent will is disapproved, generally none of its provisions, including the clause revoking prior wills, is given effect, therefore the prior will was never properly revoked.

(a) See Estate of Stella Red Star/Swift Bird, 14 IBIA 140 (1986); Estate of Anthony Bitseedy, 5 IBIA 270 (1976).

2. Additionally, a prior will, under some circumstances, may be used to construe the provisions of a later will.

a. See Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (1976).

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**XII. Revocation and Revival of Wills**  
**F. Revival of Revoked Wills**

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3. Because it is possible that a prior will may be the document ultimately admitted to probate, it is good practice to keep a conformed copy of revoked wills.
  - a. Explain to the testator the reasons for retaining the revoked will or a conformed copy.
  - b. If the testator wants all prior wills destroyed, destroy them and retain a dated statement in the file signed by the testator, setting forth his/her intention to revoke the will without any possibility of revival.
  - c. Otherwise, retain the revoked will or conformed copy in your records.

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CONSTRUCTION OF WILLS DURING PROBATE

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XIII. CONSTRUCTION OF WILLS DURING PROBATE

A. THE ADMINISTRATIVE LAW JUDGE WILL DETERMINE THE MEANING OF A WILL

1. The goal in construing a will is to determine the intent of the testator.
  - a. The Administrative Law Judge first looks to the will itself to determine its meaning.
  - b. If the language of the will is unclear or the facts brought out at the probate hearing raise an ambiguity, the Administrative Law Judge may look to extrinsic evidence to determine the testator's intent.
    - (1) The more evidence that can be presented as to the testator's intent, the easier it is to construe the will.
    - (2) See Estate of Paul Wilford Hail, 13 IBIA 140 (1985); Estate of Dorothy Sheldon, 7 IBIA 11, 85 I.D. 31 (1978); Estate of Herman Coando, 5 IBIA 140; 83 I.D. 229 (1976).
  - c. Determination of intent includes the question of whether a particular document was intended to be a will.
    - (1) See Estate of Daniel J. Pierre, 6 IBIA 17, 84 I.D. 68 (1977).

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XIII. Construction of Wills During Probate

A. The Administrative Law Judge Will Determine the Meaning of the Will

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2. In general, state laws regarding the construction of wills do not apply to Indian wills passing trust or restricted property.
  - a. Thus, state laws regarding such issues as disinheritance of a surviving spouse and pretermitted heirs do not apply.
    - (1) See Estate of Ronald Richard Saubel, 9 IBIA 94, 88 I.D. 993 (1981); Estate of John J. Akers, 1 IBIA 8, 77 I.D. 268 (1970).
3. Therefore, take care to ensure that the wills you draft are clear.
  - a. Use ordinary language.
    - (1) Do not try to use legal words you do not fully understand.
    - (2) Ordinary words are just as effective and are more likely to be understood in the same way by everyone.
  - b. Keep records of unusual provisions, and try to explain what you believe the testator intended.
4. Remember, however, that state, and sometimes tribal, law will apply to non-trust property passed under an Indian will.
  - a. Thus, the same will may be construed differently for passing trust or restricted property than for passing non-trust property.

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XIII. Construction of Wills During Probate

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B. THE WILL CAN BE APPROVED OR DISAPPROVED

1. Most wills are approved.
2. A will can be disapproved in whole or in part.
  - a. If a will is disapproved in whole, the individual's property will pass under the laws of intestate succession.
  - b. If a will is disapproved in part, the property devised or bequeathed under the part that is disapproved generally falls into the residuary clause.

3. Wills can be disapproved if:

- a. The testator lacked testamentary capacity;
- b. The testator was acting under undue influence;
- c. The will does not evidence a rational testamentary scheme;

(1) A rational testamentary scheme is a plan for distribution of a testator's property that shows rationality, even if it is not a plan that anyone else would have come up with.

(a) In the absence of substantive probate regulations published by the Department or a tribal probate code, it is difficult to find that a will does not evidence a rational testamentary scheme.

(b) See Estate of Ronald Richard Saubel, 9 IBIA 94, 88 I.D. 993 (1981).

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XIII. Construction of Wills During Probate

B. The Will can be Approved or Disapproved

c. Lack of a Rational Testamentary Scheme

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(2) A will that evidences a rational testamentary scheme will not be disapproved.

(a) See *Toahnippah v. Hickel*, 397 U.S. 598 (1970); *Estate of Aaron (Allen) Ramsey*, 11 IBIA 16 (1982).

d. The will is contrary to public policy;

(1) See *Estate of Mary Ursula Rock Wellknown*, 1 IBIA 83, 78 I.D. 179 (1971).

e. The "will" is found not to be a testamentary document.

(1) Purported wills have been found to be in fact:

(a) A general power-of-appointment;  
see *Estate of Daniel J. Pierre*, 6 IBIA 17, 84 I.D. 68 (1977).

(b) A power-of-attorney.  
see *Estates of Richard Lip and Riley M. Glenn*, 15 IBIA 97 (1987).

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**GLOSSARY OF TERMS COMMONLY ENCOUNTERED IN INDIAN PROBATE**

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**ADULT:** A person must be 18 years of age to execute a will passing trust or restricted property or to serve as an attesting witness to such a will.

See Section V.C.1 (page 67).

**AFFIDAVIT TO ACCOMPANY INDIAN WILL:** An affidavit, or notarized statement, signed by the testator and attesting witnesses, intended to make the will self-proved.

See Section VII.G (page 91) and Appendix B.

**AFTER-BORN CHILDREN:** Children born to a testator after the execution of a will.

See Section IV.H.1.h (page 50).

**APPROVAL AS TO FORM:** A procedure under which an Indian will is submitted to the Office of the Solicitor of the Department of the Interior for review prior to the testator's death.

See Section XI (page 105).

**ATTESTING WITNESS:** A person who signs a will with the purpose of proving and identifying the will, and who is qualified to testify about the will.

See Section VII.D (page 86).

**BENEFICIARY:** A person who receives a benefit or advantage from another person's will; a person named in a will as a recipient of property from the testator.

See Section IV.H.1 (page 45).

**BEQUEATH:** To give a gift of personal property by will.

**BEQUEST:** A gift of personal property given by will. A bequest is the same thing as a legacy.

**CLASS GIFT:** A devise of property to a class or group of individuals, the membership of which will be determined at the time of the testator's death.

See Section IV.H.1.f (page 48).

**CODICIL:** A supplement or an addition to a will.

See Section VIII.B (page 96) and Appendix D.

**CONFIDENTIAL RELATIONSHIP:** A relationship between two persons such that one person trusts in and acts upon the advice and representations of the other person.

See Section V.C.4 (page 72).

**CONFORMED COPY:** An exact duplicate of the original; e.g., a photocopy.

**CONTINGENT REMAINDERMAN:** A person whose right to receive the remainder estate is not certain, but is based upon the happening of a future event, such as surviving the life tenant.

See also REMAINDERMAN and VESTED REMAINDERMAN.

**DECEDENT:** A person who has died.

**DEVISE:** A gift of real property by will. Also, to give a gift of real property by will.

**DEVISEE:** A person who receives real property under a will.

**DISINTERESTED WITNESS:** A person who will not gain or lose anything as a result of the execution of a will or codicil.

**ESTATE:** As used for probate purposes, that property which a person owns at the time of his/her death.

**EXECUTION OF A WILL:** The formal process by which a will is signed and witnessed.

See Section VII (page 85).

**EXTRINSIC EVIDENCE:** Evidence used in construing a document that is obtained from a source outside the document itself.

**FEDERALLY RECOGNIZED INDIAN TRIBE:** A group of Indians that has been acknowledged by the Department of the Interior or United States Congress as having a special relationship with the United States and that is listed in the Federal Register as being an entity recognized and eligible to receive services from the Bureau of Indian Affairs.

**FEE PROPERTY:** A shorthand expression for "fee simple" property, meaning unconditional ownership. When an individual Indian owns restricted fee property or when the United States holds property in trust for an individual Indian, the individual does not have fee simple title to that property.

**FORUM:** A court or quasi-judicial body empowered to determine legal rights.

**FOUR UNITIES:** When creating a joint tenancy, the "four unities" must be present. All joint tenants must acquire their title by the same deed or will at the same time. Each of the joint tenants' fractional interest in the property must be the same, and each must have the same rights to possession and use of the property.

**FRACTIONATION:** The continued division of ownership of property into smaller and smaller undivided interests resulting when property descends to multiple heirs or devisees.

See Section II.B.1 (page 14).

**HEIR:** Properly, a person who receives property under the laws of intestate succession, i.e., who receives property from a person dying without a will. The word is often used to mean a person receiving property either through intestate succession or under a will.

See also PRESUMPTIVE HEIR and PRETERMITTED HEIR.

**HEIR-AT-LAW:** A person succeeding to property under the laws of intestate succession.

**HEIR-OF-THE-BODY:** A lineal descendant. The term excludes a surviving spouse, adopted children, and collateral relatives.

**HOLOGRAPHIC WILL:** A will written entirely in the testator's own handwriting.

See Section III.F.2.b (page 36).

**INDIAN:** A member of a Federally recognized Indian tribe and, in some cases, a person with Indian blood derived from a Federally recognized Indian tribe, even though not a member of that tribe and without regard to the amount of Indian blood.

**INDIAN WILL:** A will passing an interest in Indian trust or restricted property.

See Sections I.A and B (pages 1 and 2).

**INDIVIDUAL INDIAN MONEY (IIM) ACCOUNT:** A cash account maintained by the Bureau of Indian Affairs for an Indian.

**INTER VIVOS:** During life. An inter vivos conveyance is one made during the lifetime of the person making the conveyance.

**INTERPRETER:** A person who speaks the language and dialect of a testator, and who enables the testator to communicate with the scrivener in English, so that the testator's will can be written in English.

See Section IV.E.2 (page 41).

**INTESTATE:** The condition of dying without having made a will. Also, a person who dies without having made a will.

**INTESTATE SUCCESSION:** The laws by which property of a person dying without having made a will is passed on.

**JOINT TENANCY:** An interest in property in which two or more persons derive the same interest, title, and right of possession from the same instrument.

See FOUR UNITIES.

**LAPSE:** The situation resulting when a devise or bequest is made to an individual who predeceases the testator, or who, for some other reason, is not entitled to receive the devise or bequest.

See Section IV.H.1.i (page 51).

**LEGACY:** A gift of personal property by will. A legacy is the same thing as a bequest.

**LEGATEE:** A person who receives personal property under a will.

**LIFE ESTATE:** An interest in property limited, usually, by the life of the person or persons having the interest. Infrequently, a life estate is limited by the life of another person.

See Sections II.B.5 and IV.H.3.d (pages 26 and 60).

**LIFE TENANT:** A person holding a life estate in property.

**NON-INDIAN:** For purposes of Indian probate, a person who is not of Indian blood or whose Indian blood is derived from an Indian tribe that is not Federally recognized.

**NON-TRUST PROPERTY:** Any property that is not trust or restricted property.

See Sections I.D, E, and F (pages 4, 6, and 7).

**PER CAPITA:** A term used to indicate that a class or group of individuals take a devise or bequest according to the number of individuals, share and share alike.

**PER STIRPES:** By representation. A term used to indicate that a class or group of individuals take a devise or bequest as the representatives of a deceased ancestor.

**PERSONAL PROPERTY:** In general, all property that is not real property.

**PRESUMPTIVE HEIR:** The person or persons who, if an individual died today, would probably be that individual's heirs.

**PRETERMITTED HEIR:** A child or other potential heir of a testator who was omitted from the will.

**PROBATE:** The legal process by which wills are approved and heirs are determined.

See Section I.C (page 3).

**PUBLICATION:** A formal oral declaration made by a testator to the attesting witnesses, when a will is signed, that the document being signed is in fact his/her last will and testament.

See Sections VII.E and G.3 (pages 88 and 92).

**REAL PROPERTY:** Land, and generally, whatever is built on, affixed to, or growing in land, but not including annual crops.

**REMAINDER:** The estate in property taking effect after an earlier interest in the property has expired. Probably the most common remainder interest is that associated with the expiration of a life estate.

See Section IV.H.3.d (page 60).

**REMAINDERMAN:** The person entitled to receive possession of the property when an earlier interest in the property expires.

See also CONTINGENT REMAINDERMAN and VESTED REMAINDERMAN.

**RESIDUE:** That part of a testator's estate that is left after all debts and bequeaths and devises have been discharged.

**RESIDUARY CLAUSE:** A clause in a will, usually the last clause, which names a person or persons to receive any part of a testator's estate that is left after the rest of the will clauses have been carried out.

See Section IV.H.1.k (page 53).

**RESTRICTED PROPERTY:** Property held by an individual Indian subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior.

**SCRIVENER:** A person who prepares a will or other document for another person.

See Section III.F (page 35).

**SELF-PROVED WILL:** In Indian probate, a will executed with additional formalities and accompanied by affidavits from the testator and attesting witnesses concerning due execution of the will.

See Section VII.G (page 91) and Appendix B.

**SOUND MIND:** Having testamentary capacity.

**SPECIFIC BEQUEST OR DEVISE:** A bequest or devise that specifically identifies the property being passed.

**SURVIVING SPOUSE:** The living husband or wife of a decedent.

**TESTAMENTARY CAPACITY:** The amount of mental functioning that is recognized as legally sufficient for a person to make a will.

See Section V.C.2 (page 67).

**TESTAMENTARY SCHEME:** The plan for disposition of property made in a will.

See Section XIII.B.3.c (page 121).

**TESTATE:** The condition of a person dying and having made a will.

**TESTATOR/TESTATRIX:** A person who makes a will. Properly, a man is a testator and a woman is a testatrix. This manual uses the term "testator" to mean both a man and a woman.

**TRUST PROPERTY:** Property held by the United States in trust for an individual Indian.

**UNATTESTED CHANGES:** Changes made to a will or codicil after execution that are not signed by the testator and attesting witnesses.

See Section VIII.A (page 95).

**UNDUE INFLUENCE:** Persuasion that deprives the person influenced of his/her own free will and causes him/her to act according to the will of another person.

See Section V.C.3 (page 71).

**VESTED REMAINDERMAN:** A person whose right to receive the remainder estate is already fixed and cannot be defeated by anything happening in the future.

See also CONTINGENT REMAINDERMAN and REMAINDERMAN.

**WASTE:** A use of property which diminishes its value by destruction of or harm to the property or by removing a non-renewable resource, such as oil or minerals, and, in some cases, a slowly renewing resource, such as timber.

**WILL:** A legal document executed with required formalities and intended to pass the writer's property upon his/her death.

See Section I.A (page 1).

APPENDIX A

INITIAL INTERVIEW CHECKLIST

\_\_\_\_\_  
\_\_\_\_\_  
This document was prepared on \_\_\_\_\_, 19\_\_\_\_, by  
\_\_\_\_\_, at \_\_\_\_\_,  
City of \_\_\_\_\_, State of \_\_\_\_\_,  
and consists of information received from \_\_\_\_\_  
(testator/testatrix) to assist in the preparation of (his/her) will.  
\_\_\_\_\_

1. Full name of testator/testatrix: \_\_\_\_\_
2. Other names used: \_\_\_\_\_
3. Tribe and enrollment number: \_\_\_\_\_
4. Present address: \_\_\_\_\_
5. Other addresses: \_\_\_\_\_
6. Telephone number or other means of reaching testator/testatrix:  
\_\_\_\_\_
7. Birth date and place: \_\_\_\_\_
8. Names of parents; their birthdates; dates of death, if deceased:  
Mother: \_\_\_\_\_  
Father: \_\_\_\_\_
9. Social Security number: \_\_\_\_\_
10. Present marital status: \_\_\_\_\_
11. If presently married, name, tribe, and enrollment number of spouse; date  
and type of marriage: \_\_\_\_\_  
\_\_\_\_\_

12. Previous marriages, if any, giving name, tribe, and enrollment number of spouse; date and type of marriage; date and way in which marriage ended:

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13. Names of natural children (including illegitimate children); dates of birth; name of other parent; tribe; enrollment number; date of death, if deceased; names of natural or adopted children of deceased children:

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14. Names of natural children (including illegitimate children) adopted out; dates of birth; name of other parent; names of adoptive parents; tribe; enrollment number; date and method of adoption; date of death, if deceased; names of natural or adopted children of deceased children adopted out:

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15. Names of adopted children; dates of birth; tribe; enrollment number; date and method of adoption; date of death, if deceased; names of natural or adopted children of deceased adopted children:

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20. Non-trust or non-restricted property owned (property on which you pay tax), indicating to whom you wish to leave the property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. Name and address of executor for non-trust or non-restricted property passing under this will: \_\_\_\_\_  
\_\_\_\_\_

22. Name and address of guardian for minor children: \_\_\_\_\_  
\_\_\_\_\_

23. Continuation and Other Comments: \_\_\_\_\_  
\_\_\_\_\_  
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APPENDIX B

AFFIDAVIT TO ACCOMPANY INDIAN WILL

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

I, \_\_\_\_\_, being first duly sworn, on oath, depose and say: That I am an \_\_\_\_\_ (enrolled unenrolled) member of the \_\_\_\_\_ Tribe of Indians in the State of \_\_\_\_\_; and that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I requested \_\_\_\_\_ to prepare a will for me; that the attached will was prepared and I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said instrument in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

\_\_\_\_\_  
(Testator/Testatrix) (L.S.)

We, \_\_\_\_\_ and \_\_\_\_\_, each being first duly sworn, on oath, depose and state: That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ a member of the \_\_\_\_\_ Tribe of Indians of the State of \_\_\_\_\_, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, testator/testatrix, and by \_\_\_\_\_ and \_\_\_\_\_, attesting witnesses.

\_\_\_\_\_  
\_\_\_\_\_  
Title

**APPENDIX C**

**ATTESTATION CLAUSE**

An attestation clause may be used when there is some question about whether or not the testator/testatrix has testamentary capacity or is acting under undue influence in executing the will. Such a clause recites the fact of witnessing the signature of the testator/testatrix, but does not mention the individual's legal capacity to execute the will. If an attestation clause is used in place of an affidavit to accompany Indian will, the records of the will execution should always explain why.

---

\_\_\_\_\_, the testator/testatrix named in the foregoing instrument, consisting of \_\_\_\_\_ pages, including this page, signed the same in our presence at \_\_\_\_\_ (city), \_\_\_\_\_ (state), the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and exhibited the same to us, and declared the same to be his/her last will and testament, and requested us to sign our names as witnesses thereto. We then and there at his/her request and in his/her presence, and in the presence of each other, signed our names as witnesses thereto, the day and year last above written.

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Witness

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Address

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Witness

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Address

APPENDIX D  
SAMPLE CODICIL

KNOW ALL MEN BY THESE PRESENTS: That I, \_\_\_\_\_,  
a member of the \_\_\_\_\_ Tribe of Indians of  
the State of \_\_\_\_\_, being of sound mind and disposing  
memory, realizing the uncertainty of human life and desiring to make certain  
changes and alterations in the distribution of my estate as directed by my  
Last Will and Testament, dated \_\_\_\_\_, do hereby  
make and declare this to be a codicil to my said Last Will and Testament,  
that is to say:

[In the body of the codicil, any paragraph which  
is being amended should be referred to by number,  
as:

"This is to amend paragraph \_\_\_\_\_ of my will  
mentioned above, as follows:"]

[If the codicil disposes of property included in  
the residue of the old will or property newly  
acquired, it should state:

"This is a new specific devise."]

IN WITNESS WHEREOF, I, \_\_\_\_\_, on this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, have hereunto set my hand, sealed,  
published and declared this to be a codicil to my Last Will and Testament  
hereinabove described.

\_\_\_\_\_  
(L.S.)

Witnesses:

\_\_\_\_\_

Residing at \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Residing at \_\_\_\_\_

\_\_\_\_\_

APPENDIX E

SAMPLE REVOCATION CLAUSES

It is advisable that all revocations of a will be in writing. The best procedure is to revoke an existing will through the execution of a new will. If that is not possible, the will can be revoked through execution of a revocation clause such as the first one set forth here. If the testator/testatrix takes any other action intended to demonstrate his/her revocation of the will, the revocation clause should include a reference to that action, as is shown in the second revocation clause.

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Sample Revocation Clause 1

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I, \_\_\_\_\_, have hereunto set my hand, sealed, published and declared this to be a revocation of my Last Will and Testament, dated \_\_\_\_\_.

\_\_\_\_\_ (L.S.)

Witnesses:

Residing at \_\_\_\_\_  
\_\_\_\_\_

Residing at \_\_\_\_\_  
\_\_\_\_\_

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Sample Revocation Clause 2

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I, \_\_\_\_\_, have hereunto set my hand, sealed, published and declared this to be a revocation of my Last Will and Testament, dated \_\_\_\_\_, and I have this day [destroyed the original by (tearing) (burning) (writing the word REVOKED over my signature on the face of the original)] in the presence of witnesses as evidence of my intent.

\_\_\_\_\_ (L.S.)

Witnesses:

Residing at \_\_\_\_\_  
\_\_\_\_\_

Residing at \_\_\_\_\_  
\_\_\_\_\_

**INDIAN WILL UNDER THE ACT OF JUNE 25, 1910 (36 STAT. 855-856)  
AS AMENDED BY THE ACT OF FEBRUARY 14, 1913 (37 STAT. 678)**

**LAST WILL AND TESTAMENT**

**OF**

\_\_\_\_\_ I.D. No. \_\_\_\_\_ Age \_\_\_\_\_

I, \_\_\_\_\_ of the \_\_\_\_\_

Tribe, of the State of \_\_\_\_\_ being of sound and disposing mind, realizing the uncertainty of human life, do make this my Last Will and Testament hereby revoking all former wills by me made, in manner and form following, that is to say:

**FIRST.-I desire that all my legal debts be paid, including the expenses of my last illness, funeral, and burial.**

**SECOND.-I give, devise, and bequeath to-**

**If additional space is required, attach sheet marked "Page 1A"**

**A Diagonal Line Shall Be Drawn From the Last Devise to the Bottom of This Page**

I give, devise, and bequeath all of the rest and residue of my estate, real, personal, and mixed to:

In witness whereof, I, \_\_\_\_\_, have hereunto set my hand, sealed, published, and declared this to be my Last Will and Testament, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand nine hundred and \_\_\_\_\_.

\_\_\_\_\_  
(L. S.)

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name of Witness

\_\_\_\_\_  
Print or Type Name of Witness

\_\_\_\_\_  
Residing at

\_\_\_\_\_  
Residing at

The foregoing instrument of writing was here and now signed by \_\_\_\_\_ in our presence, and at his (her) request and in the presence of each other we have signed as witnesses and he (she) has published and declared this to be his (her) Last Will and Testament.

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name of Witness

\_\_\_\_\_  
Print or Type Name of Witness

\_\_\_\_\_  
Residing at

\_\_\_\_\_  
Residing at

**MEMORANDUM TRANSMITTING WILL OR CODICIL  
FOR REVIEW AS TO ADEQUACY OF FORM**

(This two-way memorandum should be affixed to the will or codicil and transmitted in a sealed blue envelope marked CONFIDENTIAL. See 54 BIAM Supplement 8, Section 2.1B(3).)

**Memorandum**

**To:** (Field or Regional Solicitor)  
**From:** (Name of Agency employee directly responsible for preparation of the will/codicil)  
**Subject:** Indian (Will)(Codicil) of (name and ID Number of Indian), dated (date will/codicil was executed)

The attached (will)(codicil) is transmitted for review as to adequacy of form, pursuant to 43 CFR 4.260. It (does)(does not) include property currently held in fee simple status.

(If any of the devisees/legatees might be ineligible to receive the trust/restricted property under the terms of the will/codicil, advise the Solicitor's Office of their names and the reasons for the uncertainty. Also advise whether named devisees/legatees are adopted children or adopted parents, and whether family relationships are otherwise correctly stated.)

(Additional comments.)

\_\_\_\_\_  
(Signature)

**Attachment**

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**To:** (Name of Agency employee transmitting will/codicil)  
**From:** (Name of Solicitor's Office employee reviewing will or codicil as to adequacy of form)

The attached (will)(codicil) (is)(is not) adequate as to form.

(If the will/codicil is not adequate as to form, or if for any other reason is returned for clarification, an explanation should follow.)

\_\_\_\_\_  
(Signature)

**INSTRUCTIONS FOR PREPARING FORM OHA-7  
DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

Complete Form OHA-7 as fully as possible and submit to the Administrative Law Judge in triplicate. A complete family history of any decedent can be an excellent source for obtaining all the information on collateral heirs, in later as well as in instant cases, tracing back to the common ancestors and determining the degree of relationship. The following items are especially important:

- All names by which decedent was known.
- Date of birth.
- Date of death, place of death and copy of death certificate, or other evidence, e.g., burial permit, church report, coroner's report, newspaper report.
- Last place of residence.
- Social security number (for purposes of the record).

The importance of obtaining all the necessary vital statistics for any probate case cannot be overemphasized. Use all available sources at your command including the following:

1. All agency files involving decedent.
  - a. Agency census records as far back in time as the particular case requires.
  - b. Annuity rolls.
  - c. Birth records.
  - d. Death records.
  - e. Marriage records.
  - f. Divorce records.
  - g. Adoption book.
2. All files of prior decedents from whom property was inherited.
3. County Clerks' and Recorders' offices (birth and death certificates).
4. Agency and Indian Tribal Court records for adoptions, marriages, divorces, and pertinent information regarding illegitimate children.
5. County Clerks and District Courts (adoptions, marriages, divorces, etc.)
6. State Bureaus of Vital Statistics.
7. State tax offices.
8. Internal Revenue Service.

9. Selective Service offices.
10. State Unemployment Compensation Commission.
11. Welfare Department (state and county).
12. Social Security Administration.
13. Military Records.
14. Correctional institutions.
15. In the case of criminal records or missing persons, contact the National Crime Information Center of the Federal Bureau of Investigation through BIA Central Office, Area, or Agency Law Enforcement Officer.
16. Contact relatives whenever possible; verify the data given.

Tribe and Allotment/Identification Number or Non-Indian:

In the column entitled "Tribe & Al./Id. #, or Non-Indian," enter either the name of the federally-recognized Indian entity from which each probable heir is descended, and his/her ID number, or the fact that he/she is a non-Indian, or is not descended from a federally-recognized Indian entity, or is not a citizen of the United States. Check the list of Indian entities which are recognized and eligible to receive services from the Bureau of Indian Affairs, as published annually in the FEDERAL REGISTER.

Marriages:

Names of all spouses, and the manner in which marriage took place, i.e., Indian Custom, legal ceremony, etc.; and the manner in which all marriages were terminated, i.e., divorce, Indian Custom, death, etc. Names of all spouses, and other listed family members, should always be written the same way throughout the Data For Heirship Finding and Family History.

Children:

Names (in order of age), sex, dates of birth, name of other parent, date of death. Indicate "WOI" if child dies leaving no children. The letters "WOI" mean "without issue". In those areas or agencies which require it, the child's degree of blood quantum should be furnished.

Children of Deceased Children:

List names, dates of birth, and names of parents of any children of deceased children (grandchildren), also indicating

"WOI" or names of surviving children. (List these grandchildren in the same order as their parents were listed in the "Children" section. When naming both parents, list the parent related by blood first.) Use the same process for subsequent generations, when necessary.

Parents:

Provide all information on parents as required by the form. If certain information is not available from agency records or relatives of the deceased, such as where one parent is non-Indian, then merely state "unavailable."

Where the decedent died single, without surviving issue, it is absolutely essential that the information requested for both parents be furnished. If decedent is an illegitimate child and his/her father is unknown, then state "Unknown." If the decedent's parents were never married but the man is well-known by those in the community to be the father, then type "Putative" above the printed word "Father".

If the decedent's parents were never married but the father has openly, either orally or in writing, acknowledged himself to be the father, then type "Acknowledged" above the printed word "Father," and furnish copy of any such writing signed by him.

Brothers and Sisters and Children of Deceased Brothers and Sisters:

Names, etc. of brothers and sisters are not necessary if the decedent was survived by a spouse and/or children or parent. It is necessary to furnish complete information on brothers and sisters and children of deceased brothers and sisters (1) if the marriage of the decedent is of doubtful validity, (2) if there are only illegitimate children, or (3) if there was no surviving spouse, children, children of deceased children (etc.), and parents. Other available information may be listed for future reference.

Grandparents:

Complete this section only when the decedent died without spouse, issue, parents or brothers or sisters, or issue of deceased brothers or sisters. When the above situation occurs, it is necessary to determine collateral relatives. This is done by showing all marriages of each of the four grandparents together with all of their children and grandchildren. Since the space provided on the form is insufficient to provide all of the essential information, it is recommended the information be furnished in a manner similar to that shown by Illustration 6, Samples of Collateral Family Histories (Paternal + Maternal).

Additional Information:

This section will be completed by the Administrative Law Judge.

Parties to the Will:

It is necessary to furnish the names and mailing addresses of witnesses to wills and the name and mailing address of the scrivener. If possible, give names, mailing addresses, etc., of all beneficiaries under the will, in addition to the information requested on the form.

Personal Property:

Personal property will usually consist only of trust proceeds in the IIM account. These shall not include voluntary non-trust deposits. Show (1) the balance in the decedent's trust proceeds in the account as of the date of death, plus interest on that amount up to the date of submission to the Administrative Law Judge, and (2) the total balance of the trust proceeds in the estate account as of the date of submission to the Administrative Law Judge.

Real Property:

See Illustration 8, Sample Inventory and Appraisalment of Indian Trust/Restricted Lands. The Inventory and Appraisalment of Indian Trust/Restricted Lands shall, by reference, be made a part of Form OHA-7 and shall contain the legal descriptions and both the total estimated value of the real property and the estimated value of the decedent's interests therein. If the decedent died possessed of interests qualifying for escheat under Section 207 of the Indian Land Consolidation Act, 25 U.S.C. 2206, such interests and relevant data shall appear on a sheet which is separate from the balance of the inventory.

Adoptions:

Include any information with reference to adoptions, either by Indian custom, Superintendent, tribal court or state court. When available, submit copies of any court orders, including tribal court orders, or agency records involving adoptions. When adoption decrees are not readily available, submit the date of the adoption and designate the court which entered the decree.

In those states which do not bar an adopted child from inheriting from or through a natural parent and a copy of the adoption decree is not available, it is most helpful to the Administrative Law Judge that as much information be furnished regarding said child as can reasonably be obtained, e.g., date and place of birth, where and when placed for adoption, name

and address of placement agency, county and state where adoption is believed to have occurred, and when known, the names and addresses of the adoptive parents or their attorney. Indicate whether the adopted person knows if they are adopted or not.

Illegitimate Children:

In the case of children who are possibly illegitimate, furnish copies of any documents such as birth certificates, baptismal certificates, acknowledgments of paternity, etc. This is extremely important in helping to determine paternity for inheritance purposes. The Indian Agency Social Services Branch, County Welfare and like agencies may be helpful in providing this data.

Page 5 of Form OHA-7:

Set out names and mailing addresses of probable heirs, will witnesses and creditors. When listing as Ms. or Mrs., be sure to list first names and, if married, the husband's first name. If minors are residing other than with parent, provide relationship of person who has custody, as well as that person's mailing address. If a legal guardian has been appointed, so advise, and furnish copy of the order appointing guardian.

Additional Information:

Cite the full name and current address for the Bureau of Indian Affairs will scrivener.

### DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

NAME OF DECEDENT (Give all names by which decedent was known) \_\_\_\_\_  
Tribe and allotment \_\_\_\_\_ Deg. of Blood: \_\_\_\_\_  
Sex \_\_\_\_\_ or Identification No. \_\_\_\_\_

Date of birth \_\_\_\_\_ Certificate attached: \_\_\_\_\_

Death: Date \_\_\_\_\_ Place \_\_\_\_\_ Certificate Attached \_\_\_\_\_

Last Place of Residence \_\_\_\_\_

Death determined to be: \_\_\_\_\_ Natural \_\_\_\_\_ Accidental \_\_\_\_\_ By Violence \_\_\_\_\_

#### MARRIAGES

Names	Married Date How	Date of Birth	Date of Death	Divorced Date How	Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood

#### CHILDREN (Show facts regarding illegitimacy and adoption under "Additional Information")

Names	Sex	Date of Birth	Name of Other Parent	Date of Death	Tribe & Al. or Ind. #	Deg. of Blood

#### CHILDREN OF DECEASED CHILDREN

Names	Sex	Date of Birth	Names of Both Parents	Date of Death	Tribe & Al. or Id. #	Deg. of Blood

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

**PARENTS**

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Father,								
Mother,								

**BROTHERS AND SISTERS**

Names	Sex	Date of Birth	If Not of Whole Blood Name of Common Parent	Date of Death	Tribe & Al. or Id. #	Deg. of Blood

**CHILDREN OF DECEASED BROTHERS AND SISTERS**

Names	Sex	Date of Birth	Names of Both Parents	Date of Death	Tribe & Al. or Id. #	Deg. of Blood

**GRANDPARENTS**

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Paternal gf,								
Paternal gm,								
Maternal gf,								
Maternal gm,								

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 1974

Page 3

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

**COLATERAL RELATIVES.** (Give line of descent from common ancestor of decedent; give names and designate parents and grand parents of heir, in line from common ancestor by letters f, m, gf, gm, ggf, qgm, etc. Complete only if they are heirs at law.)

Names of Nearest Relatives Who Survived Decedent	Date of Birth	If Dead, Give Date; and Use Extra Sheets for Surviving Family	How Related — Degree	Ancestry	Tribe & Al. or Id. #	Deg. of Blood

**ADDITIONAL INFORMATION**

(To be completed by Administrative Law Judge)

Date will was executed \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Give date and forward all copies to Administrative Law Judge. If no will, indicate "None." Please list all wills executed by decedent in inverse order of execution.)

Witnesses to latest will and addresses:

**Beneficiaries:** Give names, dates of birth, tribe and allotment or identification numbers, relation to decedent, degree of Indian blood, of all beneficiaries, and of lineal descendants of any beneficiary who is related to testator and who predeceased him. If more space is needed, attach a separate sheet of plain white paper.)

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

**PERSONAL PROPERTY**

Amount	Description and Source	Where Deposited

**REAL PROPERTY.** (List attached sheet numbers. If none, indicate "None.")

(To be furnished by Area Title Office or appropriate entity.)

**ADOPTIONS.** Give names, dates of adoptions, whether tribal court or state court, names of natural parents and adoptive parents with blood quantum of both. If there is a volume number and page of adoption record, so indicate.)

**ILLEGITIMATE CHILDREN.** (Give names, whether or not acknowledged by father, date of such acknowledgment, and name, tribe, and allotment or identification number, and blood quantum of father. If non-Indian, so indicate.)

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MAY 1971  
Page 5

### DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

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Give names and addresses of all heirs at law, and, if a will was executed, names and addresses of all beneficiaries, witnesses to will, and creditors. If any are minors, give name and address of legal guardian or custodian.

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I hereby certify that at this date the information contained herein is a full, true, and complete summary of the records of this Agency as to the matters set forth. Date: \_\_\_\_\_ signed: \_\_\_\_\_  
\_\_\_\_\_, AGENCY. Superintendent

Modified and conformed to the evidence after hearing:  
Dated: \_\_\_\_\_ signed: \_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

NAME OF DECEDENT (Give all names by which decedent was known): Arthur P. Fre

Tribe and allotment

Sex M or Identification No. Sisseton-Wahpeton Sioux U-1806 Deg. of Blood:

Date of birth April 11, 1932 Certificate attached: Yes

Death: Date May 16, 1949 Place Browns Valley, Minnesota Certificate Attached Obituary notice

Last Place of Residence Sisseton, South Dakota

Death determined to be: Natural  Accidental  By Violence

MARRIAGES

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Never married.								

CHILDREN (Show facts regarding illegitimacy and adoption under "Additional Information")

Names	Sex	Date of Birth	Name of Other Parent	Date of Death	Tribe & Al. or Ind. #	Deg. of Blood

CHILDREN OF DECEASED CHILDREN

Names	Sex	Date of Birth	Names of Both Parents	Date of Death	Tribe & Al. or Id. #	Deg. of Blood

DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

PARENTS

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Adoptive Father, Maurice Fre (Fro: D-33-4)	unknown	unkn	7-11-05	4-11-47	no	divorce	Ft. Peck (Mt.)	
Father, Bernard Fren	6-15-29	I.C.	unknown	6-29-32	no	divorce	Non-Indian	
Mother, Verna Na Fren	"	"	8-19-03	7-11-33	no	divorce	SWU-15	
Adopt. mother, Bertha C. Fre	unkn	unkn	5-18-11	6-15-67	no	divorce	SWU-18	

BROTHERS AND SISTERS

Names	Sex	Date of Birth	If Not of Whole Blood Name of Common Parent	Date of Death	Tribe & Al. or Id. #	Deg. of Blood
Martha Fren. (Adopted)*	F	10-15-29	" (adoptive parents)	living	Ft. Peck	
Laura E (illegit)**	F	12-12-18	Verna E (Father unkn)	living	SWU-15	
Robert Fren	M	9-18-20	Verna E & Bernard Fren	8-15-59	SW-NE	

\* See under ADOPTIONS  
 \*\* See under ILLEGITIMATE CHILDREN

CHILDREN OF DECEASED BROTHERS AND SISTERS

Names	Sex	Date of Birth	Names of Both Parents	Date of Death	Tribe & Al. or Id. #	Deg. of Blood
Robert Fren Jr.***	M	7-11-49	Robert Fre & Inez Dun, Non-Indian	living	NE	
Alice J (Fren )	F	8-15-53	Robert Fren & Dolly J, YSU-150	living	YSU-151	
Jennifer Fren	F	9-16-55	Robert Fren & Rita S, LBU-12	living	LBU-121	

\*\*\* See under ADOPTIONS

GRANDPARENTS

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Paternal gf,								
Paternal gm,								
Maternal gf,								
Maternal gm,								

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

Page 3

**COLLATERAL RELATIVES.** (Give line of descent from common ancestor of decedent; give names and designate parents and grand parents of heir, in line from common ancestor by letters f, m, gf, gm, ggf, ggm, etc. Complete only if they are heirs at law.)

Names of Nearest Relatives Who Survived Decedent	Date of Birth	If Dead, Give Date; and Use Extra Sheets for Surviving Family	How Related — Degree	Ancestry	Tribe & Al. or Id. #	Deg. of Blood

**ADDITIONAL INFORMATION**

(To be completed by Administrative Law Judge)

Date will was executed No will on file  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Give date and forward all copies to Administrative Law Judge. If no will, indicate "None." Please list all wills executed by decedent in inverse order of execution.)

Witnesses to latest will and addresses:

**Beneficiaries:** Give names, dates of birth, tribe and allotment or identification numbers, relation to decedent, degree of Indian blood, of all beneficiaries, and of lineal descendants of any beneficiary who is related to testator and who predeceased him. If more space is needed, attach a separate sheet of plain white paper.)

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

**PERSONAL PROPERTY**

Amount	Description and Source	Where Deposited
\$1352.00 (at time of death)		
\$1555.00 (as of 05-01-79)	IIM Acct. No. _____	Sisseton Agency

**REAL PROPERTY.** (List attached sheet numbers. If none, indicate "None.")

(To be furnished by Area Title Office or appropriate entity.)

See 2 page inventory from Sisseton Agency, certified on \_\_\_\_\_ Date

Also has property at Crow Creek, Lower Brule and Fort Peck, and inventories were requested on 4-30-79.

**ADOPTIONS.** Give names, dates of adoptions, whether tribal court or state court, names of natural parents and adoptive parents with blood quantum of both. If there is a volume number and page of adoption record, so indicate.)

- \* Martha Fren , b. 10-15-29 was adopted by Maurice Fre & Bertha C in Tribal Court in Fort Peck, Montana on 9-15-31 (copy of adoption requested from Fort Peck Tribes and will be forwarded).
- \*\*\* Robert Fren Jr. is believed to have been adopted by Non-Indian parents at birth, their names and whereabouts are unknown.

**ILLEGITIMATE CHILDREN.** (Give names, whether or not acknowledged by father, date of such acknowledgment, and name, tribe, and allotment or identification number, and blood quantum of father. If non-Indian, so indicate.)

Laura E , b. 12-12-18, to Vera E , decedent's natural mother.

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### DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

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Give names and addresses of all heirs at law, and, if a will was executed, names and addresses of all beneficiaries, witnesses to will, and creditors. If any are minors, give name and address of legal guardian or custodian.

---

Evelyn Fren (Mrs. William) W , Sisseton, SD 56212  
Martha Fren , Sisseton, SD 56212  
Laura E , Sisseton, SD 56212  
Robert Fren , Jr. - whereabouts unknown  
Alice J. (Fren ), c/o Dolly J , Rosebud, SD 57570  
Jennifer Fren , c/o Rita S , Ft. Thompson, SD 57339  
Summit State Bank, Waubay, SD 56212 (claimant)

I hereby certify that at this date the information contained herein is a full, true, and complete summary of the records of this Agency as to the matters set forth. Date: \_\_\_\_\_ signed: \_\_\_\_\_  
\_\_\_\_\_, Agency. Superintendent

Modified and conformed to the evidence after hearing:

Dated: \_\_\_\_\_ signed: \_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

OMA-7  
 1974

UNITED STATES DEPARTMENT OF THE INTERIOR  
 OFFICE OF HEARINGS AND APPEALS  
 HEARINGS DIVISION

Page 1

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

**NAME OF DECEDENT** (Give all names by which decedent was known) Elizabeth Mo Johns N  
 Tribe and allotment \_\_\_\_\_  
 Sex F at Identification No. Bad River Chippewa All. RE-10 Dec. of Blood: \_\_\_\_\_  
 Date of birth February 9, 1912 Certificate attached: No  
 Death: Date April 1, 1977 Place Madison, Wisconsin Certificate Attached Verification  
 Last Place of Residence Odanah, Wisconsin  
 Death determined to be:  Natural  Accidental  Violence

**MARRIAGES**

Names	Married Date	How	Date of Birth	Date of Death	Divorced Date	How	Tribe & All. or Non-Indian	Deg. of Blood
Frank Johns (Pro. IP TC 17 77)	3/12/32	JP	5/29/11	3/9/76	11/8/39	Legal	RC Chip.	Unal.
Bernard N	11/1/47	Church	6/2/90	living	No divorce		Non-Indian	

**CHILDREN** (Show facts regarding illegitimacy and adoption under "Additional Information")

Names	Sex	Date of Birth	Name of Other Parent	Date of Death	Tribe & All. or Ind. #	Deg. of Blood
Margaret Mo *	F	2/11/29	Father unknown	living	NE	
Henry Johns (Pro. A-2 058)	M	3/12/32	Frank Johns	5/15/56	BR Chip.	
Lucy Johns - no issue (Pro. 11131-50)	F	4/15/33	" "	5/11/49	BR Chip.	
Caroline Johns S	F	7/8/35	" "	living	BR Chip.	
George Johns (A-55-71)	M	9/7/37	" "	8/9/70	BR Chip.	
Beatrice N (A-57-63)	F	10/8/41	Bernard N	10/11/62	BR Chip.	
Benjamin N **	M	5/11/50	" "	living	BR Chip.	

\*\*See under "ADOPTIONS" on page 4 hereof  
 \* See under "ILLEGITIMATE CHILDREN" on page 4 hereof

**CHILDREN OF DECEASED CHILDREN**

Names	Sex	Date of Birth	Names of Both Parents	Date of Death	Tribe & All. or Ind. #	Deg. of Blood
Calvin N ***	M	1/11/59	Beatrice N -father unknown	living	NE	
Patricia N ****	F	2/15/61	"	living	NE	
Marlene Johns N	F	5/11/53	Henry Johns & Myrna C (Non-Indian)	living	BR Chip.	
Murtis Johns *****	M	9/8/55	" "	living	BR Chip.	

For further information regarding grandchildren, above, see under adoptions and illegitimate children on page 4 hereof.

DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

**PARENTS**

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Father, Peter Mo (Pro: 156 -33)	1910	I.C.	2-11-1890	2-15-32	no divorce		LCO Chip Unal.	
Mother, Mary T Mo	"	"	3-2-1891	5-15-43	" "		BR RE-20	

**BROTHERS AND SISTERS**

Names	Sex	Date of Birth	If Not of Whole Blood Name of Common Parent	Date of Death	Tribe & Al. or Id. #	Deg. of Blood

**CHILDREN OF DECEASED BROTHERS AND SISTERS**

Names	Sex	Date of Birth	Names of Both Parents	Date of Death	Tribe & Al. or Id. #	Deg. of Blood

**GRANDPARENTS**

Names	Married		Date of Birth	Date of Death	Divorced		Tribe & Al./ Id. #, or Non-Indian	Deg. of Blood
	Date	How			Date	How		
Paternal gf,								
Paternal gm,								
Maternal gf,								
Maternal gm,								

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 1974

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

Page 3

**COLATERAL RELATIVES.** (Give line of descent from common ancestor of decedent; give names and designate parents and grand parents of heir, in line from common ancestor by letters f, m, gf, gm, ggf, ggm, etc. Complete only if they are heirs at law.)

Names of Nearest Relatives Who Survived Decedent	Date of Birth	If Dead, Give Date; and Use Extra Sheets for Surviving Family	How Related — Degree	Ancestry	Tribe & All. or Id. #	Deg. of Blood

**ADDITIONAL INFORMATION**

(To be completed by Administrative Law Judge)

Date will was executed 5/18/69  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Give date and forward all copies to Administrative Law Judge. If no will, indicate "None." Please list all wills executed by decedent in inverse order of execution.)

Witnesses to latest will and addresses:

Arthur Jen , deceased 1/17/71

Joan Car , 81 NE Orange St., Bemidji, MN 56601

Beneficiaries: Give names, dates of birth, tribe and allotment or identification numbers, relation to decedent, degree of Indian blood, of all beneficiaries, and of lineal descendants of any beneficiary who is related to testator and who predeceased him. If more space is needed, attach a separate sheet of plain white paper.)

George Johns , son, deceased 8/9/70

Bernard N , husband 50 W. 5th, Ashland, WI 54806

**DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY**

**PERSONAL PROPERTY**

Amount	Description and Source	Where Deposited
\$50.49 (at time of death)	IIM Acct. No. _____	Great Lakes Agency
\$350.49 (as of 03-01-79)		

**REAL PROPERTY.** (List attached sheet numbers. If none, indicate "None.")

(To be furnished by Area Title Office or appropriate entity.)

See 2 page inventory from Great Lakes Indian Agency, certified on \_\_\_\_\_  
 Date

**ADOPTIONS.** Give names, dates of adoptions, whether tribal court or state court, names of natural parents and adoptive parents with blood quantum of both. If there is a volume number and page of adoption record, so indicate.)

- \*\* Benjamin N , b. 5-11-50, adopted by decedent and Bernard N in Brown Co. Court, Greenbay, Wis. 6-11-51. Natural mother was decedent's full sister, Louise Mo , who was unmarried, and died in childbirth 5-11-50. Natural father's name not known.
- \*\*\* Patricia N , b. 2-15-61 to Beatrice N , was placed for adoption with Non-Indian parents at birth. Names of adoptive parents unknown. Adoption believed to be through Lutheran Social Services, Madison, Wis.
- \*\*\*\*\* Curtis Johns , b. 9-8-55, adopted by Henry Johns and Myrna C , adoption approved by Superintendent, Great Lakes Agency 10-1-56. Copy of approval attached.

**ILLEGITIMATE CHILDREN.** (Give names, whether or not acknowledged by father, date of such acknowledgment, and name, tribe, and allotment or identification number, and blood quantum of father. If non-Indian, so indicate.)

- \* Margaret Mo , b. 2-11-29 (out of wedlock)
- \*\*\* Calvin N , b. 1-11-59 (out of wedlock)

## DATA FOR HEIRSHIP FINDING AND FAMILY HISTORY

Give names and addresses of all heirs at law, and, if a will was executed, names and addresses of all beneficiaries, witnesses to will, and creditors. If any are minors, give name and address of legal guardian or custodian.

Bernard N , 50 W 5th, Ashland, WI 54806

Margaret Mo , 150 W. 6th St., Ashland, WI 54806

Caroline John (Mrs. E ) S , 320 Magnolia St., Milwaukee, WI 53208

Benjamin N , c/o Bernard N , supra

Calvin N - whereabouts unknown since 1969, last known to be in Seattle, Wash.  
in Service

Patricia N , c/o Lutheran Social Services, Madison, WI 54706

Curtis Johns , c/o Myrna C Johns, Ashland, WI 54806

Marlene Johns (Mrs. S ) E , 80 W. Oregon, Knox City, Texas 79529

Joan Car , 819 NE Orange St., Bemidji, MN 56601 (witness to will)

Carls Funderal Home, Ashland, WI 54806 (claimant)

I hereby certify that at this date the information contained herein is a full, true, and complete summary of the records of this Agency as to the matters set forth. Date: \_\_\_\_\_ signed: \_\_\_\_\_  
\_\_\_\_\_, Agency. Superintendent

Modified and conformed to the evidence after hearing:

Dated: \_\_\_\_\_ signed: \_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

SAMPLE OF COLLATERAL FAMILY HISTORY

SUGGESTED FORMAT TO BE USED WHEN COLLATERAL HEIRS  
EXCEED AVAILABLE SPACE ON FORM OHA-7 (PATERNAL SIDE)

FAMILY HISTORY OUTLINE - ESTATE OF VERNON S  
MOLE LAKE CHIPPEVA

Dates of Death, if deceased

<u>Paternal Grandparents of decedent</u>	
<u>Children of Paternal Grandparents (Pat. aunts and uncles of decedent)</u>	
<u>Spouses of deceased children of paternal grandparents</u>	
<u>Children of Dec. children of Paternal Grandparents (Cousins of Dec.)</u>	
<u>Additional information</u>	
3-3-43	John S , Sr. or D , Mole Lake Chippewa, married ab.
7-16-61	1886, I.C., 84 at death (Pro. A-1 -56).
	S , Mole Lake Chippewa, married ab. 1886, I.C., age 104 at
	death (Pro. A-36-63).
Living	Mary S , b. 4-30-1888, Crandon, Wis. 54320.
Living	John K. S , b. 5-16-1889, Crandon, Wis. 54320.
3-6-67	Peter L. S , b. 9-18-1900 (Pro. A-1 -70).
2-18-40	Flo P , Mole Lake Chippewa, marr. I.C. 1918 div. 1932 I.C.
Living	Evan S , b. 4-24-24, Box 1 , Fox Lake, Wis. 53933.
6-21-47	Donald S , b. 12-31-27, single, no issue.
Living	Eli J. S , b. 9-11-29, Box 45, Eagle River, Wis. 54521.
Living	Vera S , b. 10-15-31, Rt. 1, Box 1 , Eland, Wis. 544-
11-21-59	Grace , Petavatoni, Date of marriage unknown.
Living	Carol L S , b. 7-20-44, Harrietta, Mich. 49638
Living	Rose S , b. 11-11-46,
Living	Victor S , b. 7-31-49, Laona, Wis. 54521.
7-2-69	Jess P L S , married, 10-27-62, Mole Lake Chippewa.
	Pro. IF TC . 71, DECEDENT'S MOTHER
1-26-59	No issue by Pets S
	Andrew S , Mole Lake Chippewa (Pro. A- -65), b. 4-15-03 DECEDENT'S FATHER
7-2-69	Jess P L S , DECEDENT'S MOTHER, marr. ab. 1923 I.C.
	Although it appears they were div. by I.C. ab. 1934, she
	was found to be Andrew S 's surviving spouse, taking a
	1/3 share in his estate.
3-3-71	VERNON S , DECEDENT, b. 8-10-26, single, intestate, no issue.
4-6-59	Don S , Mole Lake Chippewa (Pro. A- -65), b. 10-30-06.
	Mary E. W S , Kan. Pat., marr. 1927 cere., div. I.C. ab. 19-
Living	Eugene S , b. 2-2-31, Crandon, Wis. 54320
Living	Yvonne S , Granaldo, b. 11-17-34, Crandon, Wis. 54320
	Stella S , Mole Lake, married 1938, I.C., no divorce.
Living	Paul S , b. 9-14-49, Crandon, Wis. 54320.
1900	Susan S , age 15, no issue.

Prepared By \_\_\_\_\_  
Office \_\_\_\_\_  
Date \_\_\_\_\_

SUGGESTED FORMAT TO BE USED WHEN COLLATERAL HEIRS  
EXCEED AVAILABLE SPACE ON FORM OHA-7 (MATERNAL SIDE)

FAMILY HISTORY OUTLINE - ESTATE OF VERNON E  
MOLE LAKE CHIPPEWA

Dates of Death, if deceased

<u>Maternal grandparents of decedent</u>	
<u>Other Spouses of Maternal grandparents</u>	
<u>Children of Maternal grandparents (mat. aunts and uncles of decedent)</u>	
<u>Spouses of deceased children of maternal grandparents</u>	
<u>Children of dec. children of mat. gr-parents (cousins of dec't)</u>	
<u>Spouses of dec. cousins of decedent</u>	
<u>Children of deceased cousins of decedent</u>	
<u>Additional information</u>	
cb.1910	Barney P . . , Sr., Mole Lake Chippewa, (3rd hus. of Mrs. Cup I ), date of
	marriage not known.
7-18-26	Mrs. Cup P or Mary Cup I , Mole Lake Chippewa, date of marriage unknown.
2-16-40	Flossie P S Mole Lake Chippewa.
3-6-67	Petar L. F , Mole Lake Chippewa, marr. I.C. 1918, div. I.C.
	1932 (Pro. A-152-70).
Living	Evan D b. 4-24-24, Box 147, Fox Lake, Wis. 53933.
6-21-47	Donald S b. 12-31-27, single, no issue.
Living	Eli J. E b. 5-11-29, Box 45, Eagle River, Wis. 54521.
Living	Vernadine S L b. 10-15-31, Rt. 1, Box 101A, Eland, Wis.
11-6-23	Barney P , Jr., age unknown.
3-16-42	Dorothy Anita McG date of marriage unknown. 91601
Living	Harry F b. 2-22-22, 1400 E. Valley Blvd., Alhambra, Calif.
cb.1917-18	Peter F age unknown, single, no issue.
7-2-69	Jessie Polar Link S Mole Lake Chippewa, b. ab. 1907 (Pro. 1P TC
	27R 71) - DECEDENT'S MOTHER.
1-26-59	Andrew S , Mole Lake Chippewa, marr. ab. 1923, I.C. (Pro.A-37-65)
	DECEDENT'S FATHER.
5-5-71	Vernon E , DECEDENT, b. 8-10-26, single, no issue.
11-13-61	James B. L LDF-Pot., marr. 6-29-57, no div. (Pro. A-77-62).
	No issue.
3-6-67	Peter L. E (full brother to Andrew E ), Mole Lake Chippewa,
	marr. 10-27-62, no div. (Pro. A-152-70).
	No issue.
	Pat I. , (2nd hus. of Mrs. Cup F ), date of marriage unknown.
11-13-35	Lester M b. 1893, Mole Lake Chippewa.
10-14-63	Alice Buckskin L or Bi ni si or Alice M or Alice
	Sh Lac du Flambeau Chippewa, married
	1927 by ceremony, no divorce (Pro. A-27-67).
Living	Marceline M B b. 5-18-32, 816 W. 22nd St.,
	Milwaukee, Wis. 53233.
	Charles V Sr., non-Indian, date of marriage unknown (1st husband
	of Mrs. Cup I
10-13-62	Charles V , Jr., b. 1884.
Living	Mary Smith V b. 4-30-1888, Mole Lake Chippewa, Crandon, Wis.
Living	Henry V b. 10-12-12, Rt. 1, Box 331, Crandon, Wis.
Living	Joseph V b. 6-4-19, Crandon, Wis.
Living	Naomi V b. 3-17-24, Crandon, Wis., Rt. 1.
Living	Robert A V b. 4-18-28, Rt. 1, Box 321, Crandon, Wis.
Living	Floyd V b. 11-17-30, Rt. 1, Box 321, Crandon, Wis.
12-30-49	Grace V b. 3-21-22.
3-14-60	Leon L non-Indian, date of marriage not known.
Living	Mary Louise E b. 6-26-44, 11841 W. Layton Ave.,
	Greenfield, Wis. 53720

*Delete all illustrations 9 per memo dated 9/15/97*

**INSTRUCTIONS FOR OBTAINING COPY OF DEATH CERTIFICATE**

**Use of Federal Funds:**

- I. Use Form 5-4314, Requisition, to obtain cash to cover the cost of the death certificate and the money order fee. See attached sample. Complete Blocks 1 through 5 as follows:

Block 1: Area/Agency is a finance code which identifies the Area/Agency and should be available from the Finance or Administrative Officer.

Block 2: Location code should be available from the Finance or Administrative Officer.

Block 3: Appropriation is the code for the fiscal year in which the funds are being used.

Block 4: Activity is the financial activity code for the program funds being used.

Block 5: Cost Account is the element and component (two digits for each) of the program funds being used.

Check with the Administrative Officer to determine the local procedure for assigning the requisition number that appears in the upper right corner. The requisition number is usually assigned after the requisition form has been completed.

Money orders may be obtained at post offices, banks, 7-Eleven stores, etc.

- II. Purchase orders authorizing advance payments may be used to obtain a check to be sent to the Bureau of Indian Affairs which is then forwarded to the vendor with a written request for the death certificate. See attached sample. Check with the Administrative Officer to determine the local procedure and to obtain assistance in completing the proper form.

**Use of the Estate Account:**

- III. Upon authorization from the Administrative Law Judge, under certain circumstances the cost of the death certificate might be paid from the estate account. See Estate of Madeline Bone Wells, 15 IBIA 165.



**CUSTOMER'S RECEIPT** DO NOT SEND THIS RECEIPT FOR PAYMENT  
KEEP IT FOR YOUR RECORDS

3748666433

YEAR MONTH DAY POST OFFICE U.S. DOLLARS AND CENTS

FROM Bureau of Indian Affairs  
STREET 15 South 5th St.  
CITY Mpls. STATE MN ZIP 55402

SERIAL NUMBER

PAY TO Ms. Marlene Martinson  
County Boarders Office  
Detroit Lakes, MN 56501

CUSTOMER RECEIPT

This receipt is your guarantee of 100% refund if your money order is lost or stolen, provided you fill in the Pay To and From information on the money order in the space provided. No claim for improper payment permitted 2 years after payment.

If your money order is lost or stolen, present this receipt and file a claim for a refund at your Post Office.

SAMPLE INVENTORY AND APPRAISEMENT OF INDIAN TRUST/RESTRICTED LANDS

REPORT-ID: BIAINV  
 REQUESTOR: DBA

BUREAU OF INDIAN AFFAIRS  
 INVENTORY OF DECEDENTS REPORT  
 TRUST/RESTRICTED TITLE HOLDINGS  
 PART I

DATE: 02/15/90 PAGE: 1

OWNER		HOME RESERVATION	BIRTHDATE/ ESTATE STATUS	NAMES OR ALIASES	
RES NUMBER				LAST NAME	FIRST NAME
345	U9849	ROSEBUD		BEAR BEAR GREY EAGLE BULL BEAR	PRAIRIE BULL PRAIRIE S BULL PRAIRIE PRAIRIE

TRACT ID		TITLE				RESERVATION NAME	RESOURCES	DATE OF LAST		LAND DESCRIPTION NOTES	
RES PFX NUMBER	SFX	PLANT	STATE	MERIDIAN	EXAMINATION / VERIFICATION						
345	1363	ABERDEEN	SD	6	ROSEBUD	BOTH		03/10/83			
		SEC TOWNSHIP	RANGE	COUNTY	NE QTR N N S S E W W E	NW QTR N N S S E W W E	SW QTR N N S S E W W E	SE QTR N N S S E W W E	SECTION COUNTY ACRES	CUM. SECTION ACRES	LAND DESCRIPTION NOTES
		03 038 N	031 W	TODD	. . . .	3 4 X X	X X X X	. . . .	320.880	320.880	
		04 040 N	026 W	MELLETT	. . . .	. . . .	X X X X	. . . .	160.000	480.880	
		10 038 N	031 W	TODD	. . . .	X X X X	. . . .	. . . .	160.000	640.880	
TOTAL TRACT ACRES:									640.880	640.880	

OWNER		DOCUMENT		NAME IN WHICH ACQUIRED		FRACTION OF TRACT		TOTAL ESTIMATE	
TYP	OT INT	TYP	MOD NUMBER	(SURNAME/FIRST NAME)		(+/-) AS ACQUIRED		VALUE	
I	T A	11	DE015E972	BULL BEAR PRAIRIE SOPHIA		1 + 27		\$ -----	
OWNER-ID				OF DECEDENT (PERSON THEY INHERITED FROM)					
I	T A	12	23936938	GREY EAGLE PRAIRIE SOPHIA		4 + 81		\$ -----	
OWNER-ID				OF DECEDENT (PERSON THEY INHERITED FROM)					
						INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL	
						\$ -----	7	81 .0864197530	

TRACT ID		TITLE				RESERVATION NAME	RESOURCES	DATE OF LAST		LAND DESCRIPTION NOTES	
RES PFX NUMBER	SFX	PLANT	STATE	MERIDIAN	EXAMINATION / VERIFICATION						
345 M	1367	ABERDEEN	SD	6	ROSEBUD	MINERAL		08/24/82			
		SEC TOWNSHIP	RANGE	COUNTY	NE QTR N N S S E W W E	NW QTR N N S S E W W E	SW QTR N N S S E W W E	SE QTR N N S S E W W E	SECTION COUNTY ACRES	CUM. SECTION ACRES	LAND DESCRIPTION NOTES
		33 039 N	031 W	TODD	. . . .	. . . .	. . . .	X X X X	160.000	160.000	1 ALL OIL, GAS & OTHER MIN
TOTAL TRACT ACRES:									160.000	160.000	

OWNER		DOCUMENT		NAME IN WHICH ACQUIRED		FRACTION OF TRACT		TOTAL ESTIMATE	
TYP	OT INT	TYP	MOD NUMBER	(SURNAME/FIRST NAME)		(+/-) AS ACQUIRED		VALUE	
I	T A	12	23936938	GRAY EAGLE TAIL PRAIRIE SOPHIA		11 + 162		\$ -----	
OWNER-ID				OF DECEDENT (PERSON THEY INHERITED FROM)					
I	T A	11	DE015E972	BULL TAIL PRAIRIE SOPHIA		11 + 216		\$ -----	
OWNER-ID				OF DECEDENT (PERSON THEY INHERITED FROM)					

DATE: 2/15/90 Page 2

INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
\$ .....	77 648	.1188271604

TRACT ID RES PFX NUMBER SFX	TITLE PLANT STATE MERIDIAN	RESERVATION NAME	RESOURCES	DATE OF LAST EXAMINATION / VERIFICATION
345 M 1874	ABERDEEN SD 6	ROSEBUD	MINERAL	08/02/82
	SEC TOWNSHIP RANGE COUNTY	NE QTR NW QTR SW QTR SE QTR N N S S N N S S N N S S N N S S E W W E E W W E E W W E E W W E	SECTION COUNTY ACRES	CUM. SECTION ACRES
	36 038 N 033 W TODD	. . . . X X X X . . . . .	160.000	160.000
				LAND DESCRIPTION NOTES 1 ALL OIL, GAS AND OTHER 2 MINERALS
TOTAL TRACT ACRES:			160.000	160.000

OWNER TYP OT INT	DOCUMENT TYP MOD NUMBER	NAME IN WHICH ACQUIRED (SURNAME/FIRST NAME)	FRACTION OF TRACT (+/-) AS ACQUIRED	TOTAL ESTIMATE VALUE
I T A 12	DE015E972	BULL BEAR PRAIRIE SOPHIA	2 + 54	\$ .....
OWNER-ID		OF DECEDENT (PERSON THEY INHERITED FROM)		

INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGR DEL
\$ .....	2 54	.0370370370

TRACT ID RES PFX NUMBER SFX	TITLE PLANT STATE MERIDIAN	RESERVATION NAME	RESOURCES	DATE OF LAST EXAMINATION / VERIFICATION
345 M 7202	ABERDEEN SD 6	ROSEBUD	MINERAL	04/16/82
	SEC TOWNSHIP RANGE COUNTY	NE QTR NW QTR SW QTR SE QTR N N S S N N S S N N S S N N S S E W W E E W W E E W W E E W W E	SECTION COUNTY ACRES	CUM. SECTION ACRES
	21 039 N 027 W TODD	X X X X . . . . .	160.000	160.000
				LAND DESCRIPTION NOTES REMARK OR EXPLANATION
TOTAL TRACT ACRES:			160.000	160.000

OWNER TYP OT INT	DOCUMENT TYP MOD NUMBER	NAME IN WHICH ACQUIRED (SURNAME/FIRST NAME)	FRACTION OF TRACT (+/-) AS ACQUIRED	TOTAL ESTIMATE VALUE
I T A 11	23936938	GRAY EAGLE TAIL PRAIRIE SOPHIA	2 + 9	\$ .....
OWNER-ID		OF DECEDENT (PERSON THEY INHERITED FROM)		

INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
\$ .....	2 9	.222222

REPORT CONTINUED

REPORT-ID: BIAINV  
REQUESTOR: DBA

BUREAU OF INDIAN AFFAIRS  
INVENTORY OF DECEDENTS REPORT  
TRUST/RESTRICTED TITLE HOLDINGS  
PART 1

DATE: 02/15/90 PAGE: 3

TOTAL ESTIMATED VALUE: SURFACE \$ ..... MINERAL \$ ..... BOTH \$ .....

LEASES (ADDITIONAL LEASES ON SEPARATE PAGE):		
LEASE NUMBER	EXPIRATION DATE	ANNUAL SHARE(\$)
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

TOTAL ESTIMATED VALUE: \$ .....

CERTIFICATION

IT IS HEREBY CERTIFIED THAT THE FOREGOING IS AN ACCURATE INVENTORY ACCORDING TO THE RECORDS OF THE LAND TITLES AND RECORDS OFFICES OF THE BUREAU OF INDIAN AFFAIRS OF THE TRUST OR RESTRICTED INTERESTS OWNED BY THE ABOVE-NAMED DECEDENT AT THE TIME OF HIS/HER DATE OF DEATH.

.....  
DATE

.....  
LTRO MANAGER

THE VALUE STATED IN THIS INVENTORY IS AN ESTIMATE AND DOES NOT NECESSARILY REPRESENT THE PRESENT FAIR MARKET VALUE OF THE PROPERTY. FURTHER INVESTIGATION OF THE VALUE MUST BE MADE BEFORE ENTERING INTO ANY NEGOTIATIONS OR CONTRACTS INVOLVING THESE PROPERTIES.

.....  
DATE

.....  
CERTIFYING OFFICER

REPORT-ID: BIAINV  
 REQUESTOR: DBA

BUREAU OF INDIAN AFFAIRS  
 INVENTORY OF DECEDENTS REPORT  
 TRUST/RESTRICTED TITLE HOLDINGS  
 ESCHEATABLE - PART 11

DATE: 02/15/90 PAGE: 1

OWNER			BIRTHDATE/ ESTATE STATUS	NAMES OR ALIASES	
RES	NUMBER	HOME RESERVATION	LAST NAME	FIRST NAME	
345	U9849	ROSEBLD	BEAR BEAR BULL BEAR	PRAIRIE BULL PRAIRIE S BULL PRAIRIE S	

TRACT ID		TITLE			RESERVATION NAME	RESOURCES	DATE OF LAST EXAMINATION / VERIFICATION	
RES	PFX NUMBER	SFX	PLANT	STATE	MERIDIAN			
345	2360		ABERDEEN	SD	5	ROSEBLD	BOTH 05/24/85	
		SEC TOWNSHIP RANGE COUNTY			NE QTR NW QTR SW QTR SE QTR	SECTION COUNTY ACRES	CUM. SECTION ACRES	LAND DESCRIPTION NOTES
		35 103 N 078 W TRIPP			M N S S N M S S M N S S N M S S E W W E E W W E E W W E E W W E	160.000	160.000	NUM REMARK OR EXPLANATION
						TOTAL TRACT ACRES:	160.000	160.000

YEAR	INCOME
-----	\$ -----
-----	\$ -----
-----	\$ -----
-----	\$ -----
-----	\$ -----
-----	\$ -----
-----	\$ -----
TOTAL	-----

OWNER TYP OT INT TYP MOD	DOCUMENT NUMBER	NAME IN WHICH ACQUIRED (SURNAME/FIRST NAME)	FRACTION OF TRACT (+/-) AS ACQUIRED	TOTAL ESTIMATE VALUE
I T A 11	DED15E972	BULL BEAR PRAIRIE SOPHIA	17 + 3888	\$ -----
OWNER-ID _____ OF DECEDENT (PERSON THEY INHERITED FROM)				

WILL TO CO-OWNER Y/N	INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
	\$ -----	17 3888	.0043724279

\*\*\* ESCHEATABLE \*\*\*

REPORT CONTINUED

REPORT-ID: BIATNV  
 REQUESTOR: DBA

BUREAU OF INDIAN AFFAIRS  
 INVENTORY OF DECEDENTS REPORT  
 TRUST/RESTRICTED TITLE HOLDINGS  
 ESCHEATABLE - PART II

DATE: 02/15/90 PAGE: 2

TRACT ID		TITLE				RESERVATION NAME	RESOURCES	DATE OF LAST					
RES	PFX NUMBER	SFX	PLANT	STATE	MERIDIAN			EXAMINATION / VERIFICATION					
345	3299		ABERDEEN	SD	5	ROSELUD	BOTH	12/13/88					
SEC TOWNSHIP		RANGE		COUNTY		NE QTR	NW QTR	SW QTR	SE QTR	SECTION	CUM.	LAND DESCRIPTION NOTES	
						N N S S	N N S S	N N S S	N N S S	COUNTY	SECTION	LINE	REMARK OR EXPLANATION
						E W W E	E W W E	E W W E	E W W E	ACRES	ACRES	NUM	
11 101 N		077 W		TRIPP		X X X X	.	.	.	160.000	160.000		
TOTAL TRACT ACRES:										160.000	160.000		

YEAR	INCOME
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
TOTAL	.....

OWNER		DOCUMENT		NAME IN WHICH ACQUIRED		FRACTION OF TRACT	TOTAL ESTIMATE	
TYP	OT	INT	TYP	MOD	NUMBER	(SURNAME/FIRST NAME)	(+/-) AS ACQUIRED	VALUE
I	T	A	11		DED15E972	BULL BEAR PRAIRIE SOPHIA	85 + 13608	\$ .....
OWNER-ID						OF DECEDENT (PERSON THEY INHERITED FROM)		
WILL TO CO-OWNER Y/N								
						INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
						\$ .....	85 13608	.0062463256
*** ESCHEATABLE ***								
A	T	A	01		25919---	LITTLE DOG		
*** ORIGINAL ALLOTTEE ***						EMMA		

TRACT ID		TITLE				RESERVATION NAME	RESOURCES	DATE OF LAST					
RES	PFX NUMBER	SFX	PLANT	STATE	MERIDIAN			EXAMINATION / VERIFICATION					
345	M	1850	ABERDEEN	SD	6	ROSELUD	MINERAL	07/21/82					
SEC TOWNSHIP		RANGE		COUNTY		NE QTR	NW QTR	SW QTR	SE QTR	SECTION	CUM.	LAND DESCRIPTION NOTES	
						N N S S	N N S S	N N S S	N N S S	COUNTY	SECTION	LINE	REMARK OR EXPLANATION
						E W W E	E W W E	E W W E	E W W E	ACRES	ACRES	NUM	
24 038 N		032 W		TODD		X X X X	.	.	.	160.000	160.000	1	ALL OIL, GAS, AND OTHER 2 MINERALS
TOTAL TRACT ACRES:										160.000	160.000		

YEAR	INCOME
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....

REPORT-ID: BIAINV  
 REQUESTOR: DBA

BUREAU OF INDIAN AFFAIRS  
 INVENTORY OF DECEDENTS REPORT  
 TRUST/RESTRICTED TITLE HOLDINGS  
 ESCHEATABLE - PART II

DATE: 02/15/90 PAGE: 5

----- \$ -----  
 \$ -----  
 TOTAL -----

OWNER		DOCUMENT		NAME IN WHICH ACQUIRED		FRACTION OF TRACT (+/-) AS ACQUIRED	TOTAL ESTIMATE VALUE	INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
TYP	OT INT	TYP	MOD	NUMBER	(SURNAME/FIRST NAME)					
I	T	A	12	DE015E972	BULL BEAR PRAIRIE SOPHIA	1 + 135	\$ -----			
OWNER-ID _____ OF DECEDENT (PERSON THEY INHERITED FROM)										
WILL TO CO-OWNER Y/N _____										
*** ESCHEATABLE ***								\$ -----	1 135	.0074074074

REPORT CONTINUED

REPORT-ID: BIAINV  
REQUESTOR: DBA

BUREAU OF INDIAN AFFAIRS  
INVENTORY OF DECEDENTS REPORT  
TRUST/RESTRICTED TITLE HOLDINGS  
ESCHEATABLE - PART II

DATE: 02/15/90 PAGE: 4

TOTAL ESTIMATED VALUE: SURFACE \$ ..... MINERAL \$ ..... BOTH \$ .....

LEASES (ADDITIONAL LEASES ON SEPARATE PAGE):		
LEASE NUMBER	EXPIRATION DATE	ANNUAL SHARE(\$)
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

TOTAL ESTIMATED VALUE: \$ .....

CERTIFICATION

IT IS HEREBY CERTIFIED THAT THE FOREGOING IS AN ACCURATE INVENTORY ACCORDING TO THE RECORDS OF THE LAND TITLES AND RECORDS OFFICES OF THE BUREAU OF INDIAN AFFAIRS OF THE TRUST OR RESTRICTED INTERESTS OWNED BY THE ABOVE-NAMED DECEDENT AT THE TIME OF HIS/HER DATE OF DEATH.

.....  
DATE

.....  
LTRO MANAGER

THE VALUE STATED IN THIS INVENTORY IS AN ESTIMATE AND DOES NOT NECESSARILY REPRESENT THE PRESENT FAIR MARKET VALUE OF THE PROPERTY. FURTHER INVESTIGATION OF THE VALUE MUST BE MADE BEFORE ENTERING INTO ANY NEGOTIATIONS OR CONTRACTS INVOLVING THESE PROPERTIES.

.....  
DATE

.....  
CERTIFYING OFFICER

INVENTORY AND APPRAISEMENT OF INDIAN TRUST LANDS OF CLARA  
 DECEASED MISSISSIPPI BAND OF CHIPPEWAS, NO. 408.

According to the records of the \_\_\_\_\_ Agency, \_\_\_\_\_ North Dakota, CLARA  
 408- \_\_\_\_\_, at the time of her death, was possessed of the following trust or restricted proper-  
 ty on the \_\_\_\_\_ Reservation; except as otherwise indicated:

INHERITED INTERESTS:

<u>Allotment</u>	<u>Description and Appraisal</u>	<u>Fractional Share</u>	<u>Decimal Share</u>	<u>Dollar Value</u>
649 Crows Ghost 3-30-26 Probate 44814-26	<u>MINERALS ONLY</u> SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 15, T.147N., R.88W., 5th P.M., North Dakota, EXCEPTING THEREFROM the parcel de- scribed as follows: Beginning at a point at the SW corner of Sec. 15, Thence N on the section line between Secs. 15 & 16, 20 chains; thence E 5 chains; thence N 3 chains; thence E 3 chains; thence S 3 chains; thence W 3 chains to the point of beginning, containing nine-tenths of an acre; containing 79.10 acres, estimated value \$1.00.			
Thru: Morgan	, 301-631, Probate 23039-32. . .	1/6	.1666666666	\$ 1.00
652 Mable Crows Ghost 7-09 Probate 123418-14	<u>MINERALS ONLY</u> SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 9, T.147N., R.88W., 5th P.M., North Dakota, containing 40.00 acres, estimated value \$1.00.			
Thru: Morgan	, Supra. . . . .	1/6	.1666666666	\$ 1.00
653 Yellow Buffalo Woman 7-05 Probate 123417-14	<u>MINERALS ONLY</u> NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 9, T.147N., R.88W., 5th P.M., North Dakota, containing 40.00 acres, estimated value \$1.00.			
Thru: Morgan	, Supra . . . . .	1/6	.1666666666	\$ 1.00
654 Big Grass Woman 1906 Probate 123416-14	<u>MINERALS ONLY</u> SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 10, T.147N., R.88W., 5th P.M., North Dakota, containing 40.00 acres, estimated value \$1.00.			
Thru: Morgan	, Supra. . . . .	1/6	.1666666666	\$ 1.00
655 Big Horn Woman 10-20-02 Probate 68487-25	<u>MINERALS ONLY</u> NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 10, T.147N., R.88W., 5th P.M., North Dakota, containing 80.00 acres, estimated value \$1.00.			
Thru: Morgan	, Supra. . . . .	1/6	.1666666666	\$ 1.00
1207 Mable Crows Ghost 7-09 Probate 123418-14	<u>MINERALS ONLY</u> Lot 3 & 4, Sec. 3, T.148N., R.88W., 5th P.M., North Dakota, containing 48.64 acres, estimated value \$1.00.			
Thru: Morgan	, Supra. . . . .	1/6	.1666666666	\$ 1.00

<u>Allotment</u>	<u>Description and Appraisal</u>	<u>Fract. 1 Share</u>	<u>Decimal Share</u>	<u>Dollar Value</u>
1273 Anna Beauchamp 6-6-16 Probate 80031-16 Thru: Morgan	<u>MINERALS ONLY</u> NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 10, T.148N., R.88W., 5th P.M., North Dakota, containing 40.00 acres, estimated value \$1.00. , Supra. . . . .	1/9	.1111111111	\$ 1.00
1384 Clara Fox 5-20-18 Probate 49739-21 Thru: Morgan Evangine Corrine	<u>SURFACE ONLY</u> E $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 9, T.148N., R.90W., 5th P.M., North Dakota, containing 80.00 acres, estimated value \$28,925.00. , Supra. . . . . , Trust Deed . . . . . , Trust Deed . . . . . Aggregating . . . . .	1/3 2/9 2/9 7/9	.7777777777	\$22,497.22
1384 Clara Fox 5-20-18 Probate 49739-21 Thru: Morgan	<u>MINERALS ONLY</u> E $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 9, T.148N., R.90W., 5th P.M., North Dakota, containing 80.00 acres, estimated value \$1.00. , Supra. . . . .	1/3	.3333333333	\$ 1.00
462A Clara Fox 5-20-18 Probate 49739-21 Thru: Morgan Evangine Corrine	<u>SURFACE ONLY</u> W $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 9, T.148N., R.90W., 5th P.M., North Dakota, containing 320.00 acres, estimated value \$79,325.00. , Supra. . . . . , Trust Deed . . . . . , Trust Deed . . . . . Aggregating . . . . .	1/3 2/9 2/9 7/9	.7777777777	\$61,697.22
462A Clara Fox 5-20-21 Probate 49739-21 Thru: Morgan	<u>MINERALS ONLY</u> W $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 9, T.148N., R.90W., 5th P.M., North Dakota, containing 320.00 acres, estimated value \$1.00. , Supra. . . . .	1/3	.3333333333	\$ 1.00
589A Anna Beauchamp 6-6-16 Probate 80031-16 Thru: Morgan	<u>MINERALS ONLY</u> Lot 7 & 8, S $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 12, T.152N., R.94W., 5th P.M., North Dakota, con- taining 148.20 acres, estimated value \$1.00. , Supra. . . . .	1/9	.1111111111	\$ 1.00
589A-A Anna Beauchamp 6-6-16 Probate 80031-16 Thru: Morgan	<u>MINERALS ONLY</u> N 13.98 acres of Lot 8, E 5 acres of the S 20 acres of Lot 8, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 11, T.152N., R.94W.; N 14 acres and W 10 acres of the S 20 acres of Lot 5, Lot 6, S $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 12, T.152N., R.94W., 5th P.M., North Dakota, con- taining 162.02 acres, estimated value \$1.00. , Supra. . . . .	1/9	.1111111111	\$ 1.00

<u>Allotment</u>	<u>Description and Appraisal</u>	<u>Fract . . . l Share</u>	<u>Decimal Share</u>	<u>Dollar Value</u>
589A-B Anna Beauchamp 6-6-16 Probate 80031-16	<u>MINERALS ONLY</u> W 15 acres of the S 20 acres of Lot 8, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 11, T.152N., R. 94W., 5th P.M., North Dakota, containing 50.00 acres, estimated value \$1.00.	1/9	.1111111111	\$ 1.00
Thru: Morgan	, Supra. . . . .			
589A-C Anna Beauchamp 6-6-16 Probate 80031-16	<u>MINERALS ONLY</u> E 10 acres of the S 20 acres of Lot 5, Sec. 12, T.152N., R.94W., 5th P.M., North Dakota, containing 10 acres, estimated value \$1.00.	1/9	.1111111111	\$ 1.00
Thru: Morgan	, Supra. . . . .			
1032A-A Crows Ghost 3-30-26 Probate 44814-26	<u>MINERALS ONLY</u> W $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 29, T.147N., R.89W., 5th P.M., North Dakota, containing 160.00 acres, estimated value \$1.00.	1/6	.1666666666	\$ 1.00
Thru: Morgan	, Supra. . . . .			
1032A-B Crows Ghost 3-30-26 Probate 44814-26	<u>MINERALS ONLY</u> E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 30, T.147N., R.89W., 5th P.M., North Dakota, containing 160.00 acres, estimated value \$1.00.	1/6	.1666666666	\$ 1.00
Thru: Morgan	, Supra. . . . .			
Total estimated value of real property estate . . . . .				\$84,209.44

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate inventory according to the records of the Agency of the trust or restricted property or interest therein owned by CLARA , 408- , at the time of her death on . The value shown in this inventory is an estimate. It is made for the purpose of allowing claims against the estate and it may not necessarily represent the present market value of the property. Further investigation of the value should be made before entering into any negotiations involving this property.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Realty Officer

INVENTORY AND APPRAISEMENT OF INDIAN TRUST LANDS OF CLARA  
 , DECEASED MISSISSIPPI BAND OF CHIPPEWAS, NO. 408

According to the records of the \_\_\_\_\_ Agency, \_\_\_\_\_, North Dakota, CLARA  
 \_\_\_\_\_, 408 \_\_\_\_\_, at the time of her death,  
 was possessed of the following trust or restricted property on the \_\_\_\_\_ Reservation.

INHERITED INTERESTS CONTAINING TWO PERCENT (0.0200000) OR LESS

The decedent's interests in the property described below is subject to provisions  
 of Public Law 97-459, Title II, Sec. 207 a/k/a The Indian Land Consolidation Act  
 of January 12, 1983, (25 U.S.C. Sec. 2206), as amended by Public Law 98-608,  
 Sec. 1(4), October 30, 1984, 98 Stat. 3172

<u>Allotment</u>	<u>Description and Appraisal</u>	<u>Fractional Share</u>	<u>Decimal Share</u>	<u>Dollar Value</u>	<u>5 Year Income</u>
19 Bears Necklace 03-08-09 85659-13	SW $\frac{1}{4}$ , L. 3 & 4, Sec.5, T.149N., R.91W., 5th P.M., North Dakota, containing 160.21 acres, esti- mated value \$19,225.20				1982: \$ 3.46 1983: 3.99 1984: -0- 1985: 2.89 1986: 1.98
Thru: August 301-	, Probate 425B-85 . . .	11/2160	.0050925925	\$ 97.91	Total \$12.32
1586 Sarah Hunts Along 10-30-18 00556-20	E $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec.2, T.151N., R.94W., 5th P.M., North Dakota, con- taining 80.00 acres, estimated value \$9,600.00				1982: \$ .28 1983: .34 1984: -0- 1985: 3.92 1986: .91
Thru: August Supra . . . . .		1/640	.0015625000	\$ 15.00	Total \$ 5.45
1588 Mark Hunts Along 07-11-12 39768-13	L. 3, Sec.2, T.151N., R.94W., 5th P.M., North Dakota, con- taining 39.46 acres, estimated value \$4,735.20				1982: \$ .07 1983: .09 1984: -0- 1985: 1.00 1986: .23
Thru: August Supra . . . . .		1/1280	.0007812500	\$ 3.70	Total \$ 1.39
1589 Harry Hunts Along 02-28-18 35703-21	SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec.2, T.151N., R.94W., 5th P.M., North Dakota, con- taining 40.00 acres, estimated value \$4,800.00				1982: \$ .07 1983: .13 1984: -0- 1985: 1.00 1986: .24
Thru: August Supra . . . . .		1/1280	.0007812500	\$ 3.75	Total \$ 1.44
183A Lincoln Newman 03-31-54 9794-54 C-120-54	<u>SURFACE ONLY</u> SW $\frac{1}{4}$ , Sec.13, T.148N., R.89W., 5th P.M., North Dakota, con- taining 160.00 acres, estimated value \$44,100.00				1982: \$-0- 1983: -0- 1984: 8.91 1985: 10.70 1986: 10.43
Thru: August Supra . . . . .		1/240	.0041666667	\$183.75	Total \$30.04

		<u>MINERALS ONLY</u>			
538A					
Hairy Coat	S4NW4, Sec.16, T.152N., R.93W.,			1982:	\$-0-
10-29-18	5th P.M., North Dakota, con-			1983:	-0-
32293-21	taining 80.00 acres, estima-			1984:	-0-
	ted value \$1.00			1985:	-0-
	Thru: August			1986:	-0-
	Supra . . . . .	1/640	.0015625000	\$ 1.00	Total \$-0-
542A	L.9, 10, 11 & 12, Sec.1,			1982:	\$ .28
Mark Hunts Along	T.151N., R.94W., 5th P.M.,			1983:	.34
07-11-12	North Dakota, containing 160.32			1984:	-0-
39768-13	acres, estimated value			1985:	.32
	\$19,238.40			1986:	.28
	Thru: August				
	Supra . . . . .	1/1280	.0007812500	\$ 15.03	Total \$ 1.22
543A	L. 4, 5 & 6, Sec.1, T.151N.,			1982:	.21
Harry Hunts	R.94W., 5th P.M., North Dakota,			1983:	.26
Along	containing 120.16 acres, esti-			1984:	-0-
02-28-18	mated value \$14,419.20			1985:	.24
35703-21				1986:	.22
	Thru: August				
	Supra . . . . .	1/1280	.0007812500	\$ 11.27	Total \$ .93

C E R T I F I C A T E                      T O T A L    \$331.41

I hereby certify that the foregoing is an accurate inventory according to the records of the Agency of the trust or restricted property or interest therein owned by Clara , 408 , at the time of her death on November 11, 1985. The value shown in this inventory is an estimate. It is made for the purpose of allowing claims against the estate and it may not necessarily represent the present market value of the property. Further investigation of the value should be made before entering into any negotiations involving this property.

I certify that all the property described on this inventory is either located within the boundaries of the . Reservation and/or is otherwise subject to the jurisdiction of the . I also certify that the income earned by the decedent's interest in each tract in the five (5) years immediately preceding her death is accurately reflected in the last (far right) column on the inventory as taken from agency records. (Pursuant to 25 U.S.C.A. §2206(a))

Dated this \_\_\_\_\_ at \_\_\_\_\_, North Dakota.

\_\_\_\_\_  
 Realty Officer

**CERTIFICATION OF CO-OWNERSHIP  
(OPTIONAL FORMAT)**

This is to certify that the devisee named in the estate of  
(name and ID number of decedent) , namely: (name and  
ID number of devisee)  
(did)(did not), at the time of the decedent's death, own interest  
in the following trust/restricted property listed on the inventory  
of the decedent's estate:

Date: \_\_\_\_\_

\_\_\_\_\_  
Superintendent  
(Name of Agency)  
(Address)



**INSTRUCTIONS AND OPTIONAL FORMAT ON  
INDIAN STATUS AND NATIONALITY**

**Definitions:**

"Heir" includes devisee/legatee or probable heir.

"Indian" includes Indian, Aleut or Eskimo.

**Questionnaire:**

- 1. Does the heir have at least one Indian ancestor? YES                      NO

If the answer is YES, go to Item 2.

If the answer is NO, the heir is a non-Indian.

- 2. Is the heir a member of, or can his/her ancestry be traced to, a Federally-recognized tribal or native entity appearing on the current Federal Register list (see 25 CFR 83.6) or other official Federal listing (not including judgment or settlement rolls)? YES                      NO

If the answer is YES, name such tribal or native entity \_\_\_\_\_, and the ancestor who is/was a member thereof, \_\_\_\_\_, cite the listing \_\_\_\_\_, and go to Item 4.

If the answer is NO, go to Item 3.

- 3. Is the heir's Indian blood quantum derived solely from an ancestor whose tribe, band, community, etc., is currently terminated by Act of Congress? YES                      NO

If the answer is YES, name the tribe \_\_\_\_\_, and go no further.

If the answer is NO, provide lineage and outline as to how Indian blood quantum was derived, and attach evidence:

Go to Item 4.

4. Have any facts and/or information been introduced which would cause you to believe that the heir may not be a citizen of the United States? (For instance, was the heir born in, or does the heir now live in, a foreign country?)
- YES                      NO

If the answer is NO, go no further.

If the answer is YES, (1) furnish the facts and/or information in the space provided; (2) provide copies of documentation supporting such facts, i.e. birth records, enlistment records, employment records, etc.; and (3) answer as many of the following questions as possible concerning the heir:

1. PERSONAL DATA

- a. Has the Department of the Interior ever determined the heir as not a citizen or national of the United States, i.e. through prior probates, enrollment determinations etc.?
- YES                      NO

If the answer is YES, transmit full copies of such determinations, including transcripts of hearings, to the ALJ.

- b. Does the heir currently consider himself/herself to be a U.S. citizen or a national of the United States (a person who owes permanent allegiance to the United States - 8 U.S.C. 1101(a)(22))?
- YES                      NO
- c. Date of birth?
- d. Place of birth?
- e. Name of spouse?
- f. Date of marriage?
- g. Place of marriage?
- h. Apparent nationality
- i. Date of divorce
- j. Place of divorce

## II. PARENTAL DATA

- a. Name of father?
- b. Date of father's birth?
- c. Place of father's birth?
- d. Father's apparent nationality at time of heir's birth?
- e. List tribal affiliation of father;  
From Federal Register list: \_\_\_\_\_  
From other official Federal list: \_\_\_\_\_  
Other U.S. tribe: \_\_\_\_\_  
Foreign tribe and location: \_\_\_\_\_
- f. Father married heir's mother when?
- g. Father married heir's mother where?
- h. Name of mother?
- i. Date of mother's birth?
- j. Place of mother's birth?
- k. Mother's apparent nationality at time of heir's birth?
- l. List tribal affiliation of mother:  
From Federal Register list: \_\_\_\_\_  
From other official Federal list: \_\_\_\_\_  
Other U.S. tribe: \_\_\_\_\_  
Foreign tribe and location: \_\_\_\_\_

## III. RESIDENCE

- a. Physical residence of heir (give dates if possible):  
Between birth and age 19:  
  
From age 19 to age 26:

From age 26 to present:

- b. Actual physical residence of mother beginning at date of heir's birth:

<u>Place</u>	<u>Dates</u>
--------------	--------------

- c. Actual physical residence of father beginning at date of heir's birth:

<u>Place</u>	<u>Dates</u>
--------------	--------------

#### IV. FOREIGN MILITARY SERVICE

- |  |     |    |
|--|-----|----|
| a. Has the heir entered or served in the armed forces of a foreign nation? 8 U.S.C. 1481(a)(3).  | YES | NO |
| b. If the answer is YES, (a) did the heir serve as a commissioned or non-commissioned officer, or (b) was the foreign nation engaged in hostilities against the United States at the time? | YES | NO |

If the answer is YES, give details regarding (a) or (b), including name of nation and dates:

#### V. FOREIGN EMPLOYMENT

Has the heir accepted, served in, or performed the duties of any office, post, or employment under the government of a foreign nation or political subdivision thereof, after attaining the age of 18? 8 U.S.C. 1481(a)(4).	YES	NO
---	-----	----

If the answer is YES, give details including name of nation and dates:

VI. OTHER CITIZENSHIP/NATIONALITY IMPLICATIONS

- a. Has the heir ever taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof after attaining the age of 18? 8 U.S.C. 1481(a)(2). YES NO

If the answer is YES, give details including name of nation and dates:

- b. Has the heir ever made a formal renunciation of U.S. nationality? 8 U.S.C. 1481(a)(5) and (6). YES NO

If the answer is YES, when and where? Give details.

- c. Has the heir ever obtained naturalization in a foreign nation upon his/her own application or upon an application filed by a duly authorized agent, after having attained the age of 18 years? 8 U.S.C. 1481(a)(1). YES NO

If the answer is YES, when and where? Give details.





**RENUNCIATION/DISCLAIMER  
(OPTIONAL FORMAT)**

IN THE MATTER OF THE ESTATE OF \_\_\_\_\_ )  
(name and ID number of decedent) ) Probate No. \_\_\_\_\_  
DECEASED INDIAN OF THE (name of )  
federally recognized tribal entity) )

WHEREAS, the above-named decedent died (intestate)(testate) on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, owning certain interests in restricted or trust Indian land under the jurisdiction of the United States, and

WHEREAS, the undersigned is the surviving (cite relationship) of the decedent and is not of Indian descent; and is entitled to all or a portion of the decedent's Indian land, and

WHEREAS, the decedent left surviving (him)(her) other relatives of Indian descent, and

WHEREAS, the undersigned desires that the decedent's Indian land interests should pass to and become vested in (his)(her) relatives of Indian blood as part of their Indian heritage.

NOW, THEREFORE, the undersigned does hereby renounce and disclaim all right, title and interest in and to any and all trust/restricted Indian property owned by the decedent on the date of (his)(her) death pursuant to (cite applicable Federal regulation).

I (reserve)(do not reserve) a life estate in such share of the decedent's estate to which I am entitled which includes the right to receive all or a portion of the income from said Indian lands.

Signed and sealed at (City) , (State) , this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Signature

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

My Commission Expires: \_\_\_\_\_

**RENUNCIATION/DISCLAIMER  
(OPTIONAL FORMAT)**

IN THE MATTER OF THE ESTATE OF )  
(name and ID number of decedent) ) Probate No. \_\_\_\_\_  
DECEASED INDIAN OF THE (name of )  
federally-recognized tribal entity) )

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the above decedent died (intestate)(testate) owning certain interests in restricted or trust Indian land under the jurisdiction of the United States, and

WHEREAS, the undersigned is the surviving (cite relationship) of the decedent and is not of Indian descent; and is entitled to all or a portion of the decedent's Indian land, and

WHEREAS, the decedent left surviving (him)(her) other relatives of Indian descent, and

WHEREAS, the undersigned desires that the decedent's Indian land interests should pass to and become vested in (his)(her) relatives of Indian blood as part of their Indian heritage.

NOW, THEREFORE, the undersigned does hereby renounce and disclaim all right, title and interest in and to any and all trust/restricted Indian property owned by the decedent on the date of (his)(her) death pursuant to (cite applicable Federal regulation).

HOWEVER, I expressly reserve a life estate of my share of the decedent's estate which includes the right to receive all or a portion of the income from said Indian lands. (The initials of the undersigned here \_\_\_\_\_ indicate the desire to strike this last paragraph and not reserve a life estate.)

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Administrative Law Judge

Form BIA-5469  
Rev. June, 1992

**CLAIM SETTLEMENT AUTHORIZATION**  
**BUREAU OF INDIAN AFFAIRS**  
\_\_\_\_\_ Agency

\_\_\_\_\_  
(city, state, zip)

Superintendent

\_\_\_\_\_ Agency

Attention: IIM Section

Sir:

You are hereby notified that on \_\_\_\_\_, 19\_\_\_\_, the final order was entered in the estate of \_\_\_\_\_ (name of decedent) of the \_\_\_\_\_ (name of federally recognized tribal entity) ID No. \_\_\_\_\_ IIM Acct. # \_\_\_\_\_. The following claims were allowed in order of priority indicated and are recommended for payment. All claims in one priority category are to be paid before pro-rating payment in the next priority category. The final date for making payment on general creditor claims expires as of close of business \_\_\_\_\_.

Date Recommended: \_\_\_\_\_ 19\_\_\_\_  
Real Estate Employee

Date Approved: \_\_\_\_\_ 19\_\_\_\_  
Realty Officer

**RECORD OF PAYMENT**

Name & Address of Claimant	Priority No.	Amount of claim	Amount Paid	Check No.	Balance Due

Final Distribution of Estate Account was made on Journal Voucher No. \_\_\_\_\_ dated \_\_\_\_\_

**NOTICE OF HEARING FOR SUMMARY DISTRIBUTION  
(OPTIONAL FORMAT)**

To: (Names of probable heirs according to the laws governing  
the inheritance of personal property)

AND ALL OTHER INTERESTED PERSONS

NOTICE IS HEREBY GIVEN THAT ON (date, time and place), I WILL TAKE  
TESTIMONY AND RECEIVE EVIDENCE, FOR THE PURPOSE OF DISTRIBUTING THE  
TRUST PERSONAL PROPERTY ESTATE OF (name of decedent) OF THE (name  
of federally-recognized tribal entity).

ALL PERSONS HAVING AN INTEREST IN THIS ESTATE AND ALL CREDITORS  
HAVING CLAIMS AGAINST SAID ESTATE ARE HEREBY NOTIFIED TO BE PRESENT  
AT THE HEARING. THIS HEARING IS HELD PURSUANT TO 43 CFR 4.271.

FOR FURTHER INFORMATION CONTACT THE OFFICE LISTED BELOW.

\_\_\_\_\_  
SUPERINTENDENT  
(Name of Agency)  
BUREAU OF INDIAN AFFAIRS  
(Address)  
(Phone Number)

DATE: \_\_\_\_\_

(NOTE: The notice should be mailed to the probable heirs at law  
and known creditors, and copies should be posted on the bulletin  
boards in the Agency and tribal offices.)

**MEMORANDUM OF HEARING AND SUMMARY DISTRIBUTION OF ESTATE  
(OPTIONAL FORMAT)**

IN THE MATTER OF THE ESTATE OF : MEMORANDUM OF HEARING AND  
(name of decedent) OF THE : SUMMARY DISTRIBUTION OF  
(name of federally-recognized : ESTATE  
tribal entity)

Persons notified of hearing: (Names of creditors and probable heirs to whom a notice was sent)

Persons present at hearing: (Names)

Name of decedent:

Date of birth:

Date of death:

An informal hearing was held on (date) , for the purpose of determining the decedent's heirs at law and inquiring into the correctness of claims filed by (name(s) of creditors).

In response to oral interrogatories, (list information on family history and creditor's claims presented by witnesses at the hearing).

The decedent's trust estate consisted of (amount) in cash in his/her IIM estate account at the time of death and now consists of (amount) in his/her IIM estate account.

(List all claims and the disposition thereof.)

After the claim(s) of (names of creditors) have been paid, the balance of the estate now consisting of (amount) shall be distributed pursuant to the statutes of descent of the State of \_\_\_\_\_, as follows:

(Name of Heir), (Tribal Affiliation), (Relationship), (Fractional Share)

Done at (City, State), this \_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Signature of Superintendent)  
Superintendent  
(Name of Agency)  
Bureau of Indian Affairs

Original to: Agency file  
Copies to: IIM Section  
(List parties of interest in the estate)



3. Name of deceased child -----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

14. Name of deceased child -----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

15. Name of deceased child -----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

	Name of parents of decedent named on Line 2	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.
16.	Father					
17.	Mother					

18. Name all brothers and sisters of the decedent named on Line 2, whether enrolled or not, including half brothers and sisters, whether living or dead, and give the information called for in the blank forms. If half brother or sister, STATE WHETHER MATERNAL OR PATERNAL.

	Names of Brother or Sister	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

State below IF ANY DECEASED BROTHERS OR SISTERS HAD SPOUSE AND/OR CHILDREN. Name each one, whether living or dead, and give the information called for in the blank form. (If additional space is required, use separate sheet of paper.)

19. Name of deceased brother or sister-----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

20. Name of deceased brother or sister-----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

21. Name of deceased brother or sister-----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

22. Name of deceased brother or sister-----

Name of husband or wife	Name of husband or wife and children	Age	Degree Indian Blood	Roll No.	If dead, date of death	If living, present address If deceased, address at date of death.

23. Did the decedent named on Line 2 leave a will that was probated in court, or was there a court action to probate the estate or determine heirs? -----  
(Yes or No)

24. If yes, please furnish certified copy of the Will and of final decree entered in the court action.  
 25. ----- of lawful age, being first duly sworn according to law, says; that he has read the above and foregoing Proof of Death and Heirship and knows the contents thereof; that it is a true, correct and complete statement of the family history of said decedent, and shows who are the sole and only heirs at law or legatees.

26. ----- day of -----, 19-----

27. Subscribed and sworn to before me this ----- day of -----, 19-----  
 28. ----- Notary Public

29. My commission expires ----- P. O. -----



**INSTRUCTIONS FOR COMPLETING "PROOF OF DEATH AND HEIRSHIP" FORMS**

(For Deceased Enrollees and Deceased Heirs)

**ALL BLANK SPACES MUST BE COMPLETED ON THE PROOF BEFORE PAYMENT CAN BE MADE**

Only one complete Proof of Death and Heirship form is necessary for each deceased enrollee. Show dates of death of deceased heirs and complete mailing addresses of living heirs. The instructions outlined correspond with the Line Numbers on the form. If answer on any Line Number is not required, write "NONE".

This per capita payment is distributed under the laws of descent and distribution and testacy of the state of residence of the decedent in effect at the time of death.  
**CORRECT DATES OF DEATH MUST BE GIVEN.**

- Line 1. The heir filing the claim must give his full name and mailing address on the first line of the front of the proof.
- Line 2. Give the enrolled name of the deceased enrollee.
- Line 3. Give the Tribe and Roll Number of the deceased enrollee.
- Line 4. Give Town, County, and State in which the enrollee died and his/her age at time of death.
- Line 5. Give date of death of enrollee.
- Line 6. Answer with "yes" or "no".
- Line 7. Give the names of the husbands/wives of the person named on Line 2 in the order in which they were married, their dates of death, if deceased, and dates of divorce, if divorced. If divorced from last spouse, attach a certified copy of Decree of Divorce.
- Line 8. Show the mailing address of the surviving spouse of the enrollee named on Line 2 if now living.
- Line 9a. Answer with "Yes" or "No".
- Line 9b. Show residence of surviving spouse at time of death.
- Line 9c. Answer with "Yes" or "No".
- Line 9d. Answer with "Yes" or "No". If the answer is "Yes", be sure to answer the next two questions.
- Line 10. Answer "Yes" or "No" and give total number.
- Line 11. Give all information asked for by this line in the block below the line.
- Line 12-15. It is necessary that these spaces be completed for each deceased child. If the deceased child was married more than once, show each wife/husband in order and indicate the children by each marriage. If deceased child died unmarried and without children, write "Never Married" and "No Children".
- Line 16-17. Give names of parents of decedent named on Line 2 and other information if known. **THIS IS NECESSARY FOR IDENTIFICATION.**
- Line 18-22. Complete these blanks only if enrollee died without leaving children.
- Line 23-29. **LINES 23 TO 29 MUST BE COMPLETED ON ALL PROOFS OF DEATH AND HEIRSHIP. SIGNATURE AND NOTARY SEAL ARE NECESSARY BEFORE CLAIM CAN BE ACCEPTED.** Where court cases to probate Wills or estates, or to determine heirs have been filed, submit a Certified Copy of the Decree of Distribution or Decree Determining Heirs. Payment will be delayed until this is received.

**HAVE YOU COMPLETED ALL BLANK SPACES ON THE PROOF OF DEATH AND HEIRSHIP FORM?  
IF NOT, PAYMENT WILL BE DELAYED.**



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
MUSKOGEE AREA OFFICE  
MUSKOGEE, OKLAHOMA 74401

IN REPLY REFER TO:  
Tribal Operations

CERTIFICATE OF DEGREE OF INDIAN BLOOD  
Five Civilized Tribes (Optional Format)

This is to certify that pursuant to the final rolls of the Five Civilized Tribes closed March 4, 1907, by the Act of April 26, 1906 (34 Stat. 137), \_\_\_\_\_

is of \_\_\_\_\_ degree \_\_\_\_\_ born \_\_\_\_\_  
Indian blood. The lineal ancestors of the above named are as follows:

NAME	ROLL NO.	DEGREE	TRIBE
------	----------	--------	-------

Father:

Mother:

Pat. Grandfather:

Pat. Grandmother:

Pat. Gr. Grandfather:

Pat. Gr. Grandmother:

Pat. Gr. Grandfather:

Pat. Gr. Grandmother:

Pat. Gr. Gr. Grandfather:

Pat. Gr. Gr. Grandmother:

VERIFICATION:

\_\_\_\_\_  
CERTIFYING OFFICER

ANY ALTERATION IN THE ABOVE CERTIFICATE AUTOMATICALLY RENDERS IT NULL AND VOID

Pat. Gr. Gr. Gr. Grandfather:  
Pat. Gr. Gr. Gr. Grandmother:

Pat. Gr. Gr. Gr. Grandfather:  
Pat. Gr. Gr. Gr. Grandmother:

Pat. Gr. Gr. Gr. Grandfather:  
Pat. Gr. Gr. Gr. Grandmother:

Pat. Gr. Gr. Gr. Grandfather:  
Pat. Gr. Gr. Gr. Grandmother:

Pat. Gr. Gr. Gr. Gr. Grandfather:

Mat. Grandfather:  
Mat. Grandmother:

Mat. Gr. Grandfather:  
Mat. Gr. Grandmother:

Mat. Gr. Gr. Grandfather:  
Mat. Gr. Gr. Grandmother:

Mat. Gr. Gr. Grandfather:  
Mat. Gr. Gr. Grandmother:

**UNOFFICIAL DEATH REPORT: FIVE CIVILIZED TRIBES  
(OPTIONAL FORMAT)**

MUSKOGEE AREA OFFICE  
MUSKOGEE, OKLAHOMA

MEMORANDUM TO: REALTY (Acquisition & Disposal  
(Tenure & Management - Producing  
(Tenure & Management - Non-Producing

PER CAPITA  
FIELD SOLICITOR  
CREDIT  
SOCIAL SERVICES

RETURN TO IIM

The Individual Indian Money Section has received an unofficial report that (name, tribe, Roll No., and last address of decedent) , died on (date of death) .

No formal death report has been received from the Superintendent.

The source of our information was:

Cash and Bonds on deposit as of this date:

Date: \_\_\_\_\_

\_\_\_\_\_  
Supv. Cash Assistant

(Unofficial Death Report)

**AGENCY RECORD OF PROBATE STATUS  
(OPTIONAL FORMAT)**

Name of Decedent: \_\_\_\_\_ DOB: \_\_\_\_\_ DOD: \_\_\_\_\_

Name of federally-recognized tribal entity: \_\_\_\_\_

Allotment No.: \_\_\_\_\_ ID No.: \_\_\_\_\_

Inherited interest(s): (YES) (NO) Land Assignment: (YES)(NO)

REMARKS: \_\_\_\_\_

Death reported to LTRO: \_\_\_\_\_ To ALJ: \_\_\_\_\_  
(Date) (Date)

Inventory requested from LTRO: \_\_\_\_\_ Received: \_\_\_\_\_  
(Date) (Date)

Information requested from other Agency: \_\_\_\_\_ Rec'd: \_\_\_\_\_  
(Date) (Date)

Draft of estate data, including Form OHA-7 and inventory, prepared and routed to supervisor for review: \_\_\_\_\_  
Date: \_\_\_\_\_

Estate data, including Form OHA-7 and inventory, prepared in final form and mailed to ALJ: \_\_\_\_\_  
Date: \_\_\_\_\_

Will(s) to ALJ: \_\_\_\_\_ Date: \_\_\_\_\_

Death certificate to ALJ: \_\_\_\_\_ Date: \_\_\_\_\_

Claims to ALJ: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Amount: \_\_\_\_\_

\_\_\_\_\_ Amount: \_\_\_\_\_

\_\_\_\_\_ Amount: \_\_\_\_\_

Hearing scheduled: \_\_\_\_\_ Notice of hearing posted: \_\_\_\_\_  
(Date) (Date)

Hearing held: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_  
(Date)

Final Order issued: \_\_\_\_\_ Decision final: \_\_\_\_\_  
(Date of mailing) (Date)

Rehearings/Reopenings: Date filed with Superintendent: \_\_\_\_\_

Date forwarded to ALJ: \_\_\_\_\_

Date of rehearing: \_\_\_\_\_

Date Final Order issued: \_\_\_\_\_

Date decision became final: \_\_\_\_\_

Estate account closed: \_\_\_\_\_  
(date)

Estate posted to the following:

Integrated Records Management System (IRMS): \_\_\_\_\_

All other Agency records: \_\_\_\_\_

REVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

COMMENTS:

Returned all documents to files: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

# INDIAN PROBATE - ACTION PLAN

A. Indian owning trust or restricted property, or an interest therein, dies. (Property includes real estate, improvements, personal property, cash, etc.) Or, presumption of death arise by reason of unexplained absence for required period (43 CFR 4.204).

B. Agency Superintendent learns of property owner's death or presumption of death. Sources of this information include: newspaper; PHS staff, tribal officials; other tribal members; members of family; fellow employees; any existing information system; etc.

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON 1	PROGRESS NOTES
First 7 days of each month	<p style="text-align: center;"><u>START ACTION PLAN</u></p> <p>1./ Report deaths of all Indians who have died, and whose deaths have not been previously reported, to Administrative Law Judge (ALJ) [43 CFR 4.210(a)].</p>	Agency Realty Officer or alternate (ARO)	
When death is discovered	<p>2./ a. Assume custody or control of all trust personal property of deceased Indian (43 CFR 4.270).</p> <p>b. Issue notice to IIM Clerk to hold all funds in deceased's IIM account pending probate.</p> <p>c. Send copies of death notice to Land Titles and Records Office, other Agency branches, other appropriate BIA Agencies, tribal officials, etc.</p>	<p>ARO at discretion of Superintendent</p> <p>ARO</p> <p>ARO</p>	

1 In most cases, the official shown as the responsible person is the individual who performs the staff work; however, the product of the staff work will usually be executed by the line officer to whom he reports.

Key:     / Action which will always be taken.  
 -----/ Alternative Procedures.  
 ...../ Actions which can or will be required in some cases, but which need not be required in all cases.

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>When death is discovered (cont.)</p> <p>Within 90 days after learning of death of Indian who owned trust property</p>	<p><b>3.1</b></p> <p>c. Flag appropriate IIM record.</p> <p>d. Note death in all files of leases in which deceased had interest.</p> <p>e. If deceased had interest in any direct pay leases, notify lessee in writing that rent must be paid to agency.</p> <p>f. Note allottee file, Allotment or Estate Record Card, Form BIA-5457, Index and Heirship Card, Form BIA-5455; and Agency copy of Owner Status Report, that individual has died. Commence probate by submitting the following to cognizant ALJ [43 CFR 4.210(b)]:</p> <ul style="list-style-type: none"> <li>a. Copy of death certificate or equivalent;</li> <li>b. Data for Heirship Finding and Family History on Form OHA-7 which will include:             <ul style="list-style-type: none"> <li>(1) Facts about deceased's marriages, separations, and divorces, with copies of necessary supporting documents;</li> <li>(2) Names and last known addresses of probable heirs and other known parties in interest, including known creditors;</li> </ul> </li> </ul>	<p>IIM Clerk</p> <p>ARO</p> <p>ARO</p> <p>ARO</p> <p>ARO</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>Within 90 days after learning of death of Indian who owned trust property (cont.)</p>	<p>(3) Information about whether the relationship of the probable heirs arose by marriage, blood, or adoption;</p> <p>(4) Names, relationships to deceased, and last known addresses of beneficiaries and attesting witnesses when a will is involved;</p> <p>(5) Information about tribal affiliation, if any, of beneficiaries under a will who are not probable heirs of deceased.</p> <p>(6) Any other pertinent data.</p> <p>c. Inventory of the trust real and personal property wherever situated in which the deceased had any right, title or interest at the time of death (including all moneys and credits in a trust status whether in the form of bonds, undistributed judgment funds, or any other form and the source of each fund in the account), showing both the total estimated value of the real property and the estimated value of the deceased's interest therein, and the names and addresses of parties having an approved encumbrance of the estate or a portion thereof;</p> <p>d. The original and copies of all wills in the custody of agency officials; the original and copies of codicils, to and revocations of wills, if any; and any paper, instrument, or document that purports to be a will;</p>	<p>ARO</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>Within 90 days after learning of death of Indian who owned trust property (cont.)</p>	<p>e. All creditor's and other claims which have been filed;</p> <p>f. If the tribe has a statutory option to purchase interests of decedent, information about each heir and devisee showing their enrollment status, and the appraised value of each interest; and; where required by statute, blood quantum in tribe concerned (43 CFR 4.300-4,308)</p>	<p>ARO</p>	
<p>Concurrently with submission to ALJ</p>	<p>4./ Submit copy of inventory to Land Title and Records Office (LTRO) for verification.</p>	<p>LTRO</p>	
<p>Promptly after receipt</p>	<p>5./ Verify inventory and send notice of verification to ALJ and agency.</p>	<p>Creditors</p>	
<p>Prior to conclusion of first hearing</p>	<p>6./ File claims against estate with Superintendent or ALJ [43 CFR 4.250(a)].</p>	<p>Claimant</p>	
	<p>a. <u>Claims of non-Indians</u></p> <p>(1) Filed in triplicate [43 CFR 4.250(b)];</p> <p>(2) Itemized in detail showing dates and amounts of charges and payments on account;</p> <p>(3) Must show names and address of all persons in addition to decedent from whom payment may be sought;</p> <p>(4) Must be supplemented by affidavit, in triplicate, that the amount is justly due, and that all payments have been credited on the account and that there are no offsets.</p>		

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Prior to conclusion of first hearing (cont.)	<p>b. <u>Claims of Individual Indians [43 CFR 4.250(c)]</u>:</p> <p>(1) Filed as those of non-Indians; or</p> <p>(2) Filed by oral evidence under oath at the hearing.</p>	ARO	
As received	<p>7./ Forward all additional creditors' or other claims to ALJ.</p>		
Within reasonable time	<p>8./ <u>Summary Distribution (43 CFR 4.271)</u>:</p> <p>(If an Indian dies testate, owns trust or restricted interests in land, or has trust personal property or cash of a value of \$1,000 or more, proceed to Step 9.).</p> <p>a. If an Indian dies intestate, leaving only cash and/or trust personal property having a total value of less than \$1,000, assemble apparent heirs and hold informal hearing to determine proper distribution;</p> <p>b. Dispose of creditors' claims as provided in 43 CFR 4.251 [If decedent is survived by a spouse or by one or more minor children, no claims of general creditors shall be allowed; 4.251(c)];</p> <p>c. Prepare memoranda of informal hearing showing date of death, date of hearing, persons notified and attending, amount of estate on hand and disposition thereof;</p>	Superintendent	
After informal hearing		ARO	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
When available	d. Furnish copy of memoranda to IIM Clerk at agency;	ARO	
Within reasonable time after receipt of memorandum	e. Credit balance of estate, if any, to the legal heirs.	Agency IIM Clerk	
Varies at discretion of ALJ	<u>9./</u> Schedule Probate Hearing (for all estates not subject to Summary Distribution under Step 8.).	ALJ	
At least 20 days prior to hearing date	<u>10./</u> Give Notice (43 CFR 4.211):	ALJ or ARO on request	
At least 20 days prior to hearing date	a. Post notices of hearing in 5 or more conspicuous places in the vicinity of the designated hearing site;	ALJ or ARO on request	
In sufficient time to enable the person served to attend hearing	b. Post notices of hearing in such other places and reservations as ALJ deems appropriate;	ALJ or ARO on request	
When accomplished	c. Serve, or cause to be served, notice on each party in interest reported to ALJ and on each attesting witness, if will exists:  (1) By personal service, or (2) By mail to last known address.	ALJ or designee	
	<u>11./</u> Prepare certificates giving details of notice posting, date and manner of personal service or service by mailing [43 CFR 4.211(b)(2)].	Person(s) who performed act	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>In sufficient time to enable Tribe to exercise its option</p>	<p>12./ Notify any tribe that has a statutory option to purchase interests of a decedent that proceedings are pending.</p>	<p>ALJ</p>	
<p>When mailed</p>	<p>13./ Prepare certificate concerning the mailing of notice of probate hearing to tribe having statutory purchase option.</p>	<p>ALJ</p>	
<p>At any stage prior to conclusion of hearing</p>	<p>14./ <u>Production of Documents</u> (43 CFR 4.220):</p> <p>a. Make written demand upon any other party or upon custodian of records on Indians or their trust property to produce for inspection and copying any documents, papers, records, letters, photographs, or other tangible things not privileged but relevant to the issues.</p>	<p>Any party in interest</p>	
<p>Concurrently with making of demand</p>	<p>b. File copy of demand with ALJ.</p>	<p>Party making demand</p>	
<p>Promptly</p>	<p>c. Produce records pursuant to demand or refuse to produce.</p>	<p>Requested party</p>	
<p>Upon refusal to produce</p>	<p>d. If records not promptly produced, file petition with ALJ requesting order for production.</p>	<p>Party desiring record</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>When requested or at any time prior to closing of record</p> <p>Promptly</p>	<p>e. Issue order for production of records in response to petition or on own motion, or refuse to issue order in response to petition.</p> <p>f. Produce records in response to order of ALJ under rules governing custody and control of records.</p>	<p>ALJ</p> <p>Custodian of records</p>	
<p>In sufficient time prior to proceedings to permit the following time requirements to be met:</p>	<p>15./ <u>Depositions</u> [43 CFR 4.221 and 4.230 (f)]:</p> <p>a. File written application with ALJ for taking of deposition. (Depositions may also be taken upon stipulation of parties.) The application shall set forth:</p> <ol style="list-style-type: none"> <li>(1) Name and address of proposed deponent;</li> <li>(2) Name and address of qualified person before whom deposition is to be taken;</li> <li>(3) Proposed time and place of examination;</li> <li>(4) Reasons for taking deposition.</li> </ol>	<p>Any party in interest</p>	
<p>At least 20 days after filing of application</p>	<p>b. Issue order for taking of deposition (discretionary).</p>	<p>ALJ</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>Any time before conclusion of proceedings but at least 15 days before date set for taking</p>	<p>c. Serve notice of order on all parties in interest, which shall state:</p> <ol style="list-style-type: none"> <li>(1) Name of deponent;</li> <li>(2) Time and place of examination;</li> <li>(3) Name and address of officer before whom examination is to be taken. (Need not be same as set out in application.)</li> </ol>	<p>ALJ</p>	
<p>At least 15 days after order issued unless stipulated otherwise</p>	<p>d. Take deposition. (Deposition shall be taken before ALJ or other officer authorized to administer oaths under laws of U.S. or before an officer authorized by the laws of the place of examination to administer oaths. Other interested parties may participate for the purpose of cross-examination).</p> <p>e. Transcribe testimony.</p>	<p>Requesting party</p>	
	<p>f. Submit transcript to deponent for review (unless waived by deponent and all other parties in interest).</p> <p>g. Examine deposition, make changes considered appropriate, and sign it. (Giving reasons for any changes.)</p>	<p>Hearing reporter</p> <p>Officer before whom taken</p> <p>Deponent</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
At least 15 days after order issued (cont.)	<p>h. Certify deposition (also sign it if deponent is unable or unwilling to do so and give reasons why it was not signed by deponent. ALJ may reject deposition in whole or in part).</p> <p>1. Seal and send deposition by registered or certified mail or personally deliver to ALJ.</p>	Officer before whom taken	
In sufficient time to permit answers to be filed before hearing	<p>16./ <u>Interrogatories</u> (43 CFR 4.222):</p> <p>....</p> <p>a. File with ALJ written interrogatories and requests for admission of facts and documents.</p>	Any party in interest	
Promptly after filing	<p>b. Transmit copies of written interrogatories and requests for admission of facts and documents to party in interest for whom they are intended.</p>	ALJ	
Within 15 days from date of service (or such other period agreed upon by parties or prescribed by ALJ)	<p>c. Serve answers on ALJ.</p>	Party in interest	
When received by ALJ	<p>d. Transmit copy of answers to party propounding interrogatories.</p>	ALJ	
Within 10 days after written interrogatories are served on party in interest	<p>e. Serve on ALJ cross-interrogatories for witness to be interrogated.</p>	Party in interest who has been served with written interrogatories	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>Within 10 days (cont.)</p> <p>Before final probate decision</p>	<p>f. Follow same procedures set out in Steps 16.b., c., and d. for interrogatories.</p> <p>17. In case of failure of party to comply with orders or requests issued in Steps 14., 15., or 16., ALJ may:</p> <p>a. Decide fact or issue relating to the material requested or subject matter of probable testimony in accordance with claims of other party in interest or in accordance with other evidence available; or,</p> <p>b. Make any other ruling deemed just and proper (43 CFR 4.224).</p>	<p>ALJ</p>	
<p>Sufficiently prior to hearing to permit scheduling and notice to parties</p> <p>Prior to hearing</p>	<p>18. <u>Prehearing Conference</u> (43 CFR 2.225):</p> <p>a. Request prehearing conference.</p> <p>b. Schedule prehearing conference pursuant to request or on own motion. A prehearing conference may be requested or held to:</p> <p>(1) Simplify or clarify the issues;</p> <p>(2) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;</p>	<p>Any party in interest</p> <p>ALJ</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Prior to hearing (cont.)	<p>(3) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;</p> <p>(4) Effect possible agreement disposing of all or any of the issues in dispute; and</p> <p>(5) Resolve such other matters as may simplify and shorten the hearing.</p> <p>c. Notify all parties in interest of time and place for prehearing conference.</p>	ALJ	
Reasonable time prior to scheduled time	d. Hold prehearing conference.	ALJ and interested parties	
As scheduled prior to hearing	e. Prepare memoranda of matters resolved during prehearing conference.	ALJ or any party or parties in interest as requested by ALJ	
Promptly after conference	f. Submit memoranda to all parties in interest who participated in conference.	ALJ	
As soon as possible after conference	g. Endorse memoranda and return to ALJ or submit to ALJ in writing any objections to content of memoranda.	Parties in interest	
Prior to hearing	19./ Make own arrangements for appearance of witnesses or interpreter (43 CFR 4.234).	Party in interest so desiring	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Prior to hearing	20./ File motion with ALJ requesting issuance of a subpoena requiring any person whose testimony is believed to be material to appear and testify at a hearing [43 CFR 4.230(b)].	Any party in interest	
Prior to hearing	21./ Issue and cause to be served subpoenas under the provisions of 25 USC 374 (on own initiative, or) on motion of any party in interest, or refuse to issue a requested subpoena [43 CFR 4.230(b)].	ALJ	
Prior to or during hearing	22./ Call witnesses and interpreters (43 CFR 4.234):	ALJ	
When witness or interpreter is called	a. Order payment of per diem, mileage and subsistence for witnesses and interpreter called by ALJ and, in hardship cases, for indispensable witnesses and interpreters called by the parties.	ALJ	
When order is issued	b. Specify in Order for Payment whether such costs shall be allocated and charged against interest of party calling witness or against estate generally.	ALJ	
After order is issued	c. Transmit Order for Payment to Superintendent.	ALJ	
Immediately upon receipt of order, or when sufficient funds accrue to account	d. Pay amounts specified in order from estate account.	IIM Clerk	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
During hearing	<p><u>23.-/</u> Hold hearing pursuant to notice or notices at Step 10.</p>	ALJ and interested parties	
During hearing	<p>a. Administer oaths and affirmations when appropriate [43 CFR 4.230(a)].</p>	ALJ	
During hearing	<p>b. Appear and give testimony pursuant to subpoena issued at Step 21 [43 CFR 4.230(b)].</p>	Party upon whom subpoena was served	
In Court's discretion	<p>(1) Immediately upon failure to appear or refusal to testify, file a petition in U.S. District Court for the issuance of an order requiring the appearance and testimony of a party who has not appeared or has refused to testify pursuant to a subpoena issued at Step 21.</p>	ALJ	
During hearing	<p>(2) Issue order requiring appearance and testimony of witnesses pursuant to petition [43 CFR 4.230(b)].</p>	U.S. District Judge	
During hearing	<p>c. Take or cause depositions to be taken and determine their scope [43 CFR 4.230(f)].</p>	ALJ or designee	
During hearing	<p>d. Permit cross-examination of witnesses [43 CFR 4.230(c)].</p>	ALJ	
During hearing	<p>e. Appoint guardian ad litem as necessary to represent the interests of any minor or incompetent parties not represented by legally appointed guardians (43 CFR 4.282).</p>	ALJ	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
During hearing	<p>f. Offer relevant evidence deemed appropriate under the generally accepted rules of evidence of the State [43 CFR 4.232(a)].</p>	Any interested party	
During hearing	<p>g. Rule upon offers of proof and receive evidence [43 CFR 4.230(d)]; admit letters, affidavits or other evidence not ordinarily admissible [43 CFR 4.232(b)]; accept stipulations of fact or stipulations concerning testimony which would be given if an absent party were to appear and testify [43 CFR 4.232(c)]; and require evidence in addition to that offered by parties in interest [43 CFR 4.232(d)].</p>	ALJ	
During hearing	<p>h. Otherwise regulate the course of the hearing and conduct of witnesses, parties in interest, and attorneys appearing at hearing [43 CFR 4.230(g)].</p>	ALJ	
During and immediately following the hearing	<p>i. Record proceedings of hearings verbatim and prepare transcript. It shall include the names of all parties in interest and attorneys who attended the hearing [43 CFR 4.231(b) and (c)].</p>	Reporter designated by ALJ	
After the matter has been submitted, but prior to issuance of a decision	<p>24. / <u>Supplemental Hearing</u> (43 CFR 4.235):</p> <p>a. Request supplemental hearing.</p>	ALJ or any party in interest	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
After matter has been submitted (cont.)	<p>b. Schedule supplemental hearing (on own motion, or) pursuant to request, if deemed necessary.</p> <p>c. Issue notices of rehearing (see Step 10.) or announce time and place for supplemental hearing during hearing (43 CFR 4.235).</p> <p>d. Hold supplemental hearing [(see Step 23.); (43 CFR 4.235)].</p>	<p>ALJ</p> <p>ALJ</p> <p>ALJ</p>	
Prior to close of last hearing	<p>25. / <u>Attorney Fees</u> (43 CFR 4.281):</p> <p>a. File petition for attorneys fees.</p>	<p>Attorney representing an Indian in a Probate proceeding</p> <p>ALJ</p>	
When issued	<p>b. Consider and allow or disallow attorney's fees. [May be chargeable against interest of party represented or may be taxed as a cost of estate administration in discretion of ALJ; (43 CFR 4.281)].</p> <p>c. Include decision in final order.</p>	<p>ALJ</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>At any time during probate process</p> <p>When requested by ALJ</p>	<p>26. / <u>Compromise Settlement (43 CFR 4.207)</u>:</p> <p>a. Issue between contending parties is substantial and can be settled by agreement of parties to their advantage and to advantage of U. S.</p> <p>b. Parties reach agreement, preferably in writing.</p> <p>c. Take evidence as to values of specific items of property if deemed necessary.</p> <p>d. Supply information about liability or lien for irrigation construction and operation and maintenance costs [43 CFR 4.207(b)].</p> <p>e. Approve agreement upon finding that:</p> <p>(1) All parties are fully advised of material facts;</p> <p>(2) All parties understand the effect of the compromise on their rights; and</p> <p>(3) It is in the best interests of parties to settle rather than litigate.</p> <p>f. Issue final order of distribution in settlement of estate necessary to accomplish settlement.</p>	<p>Contending parties</p> <p>ALJ</p> <p>ARO and/or irrigation project engineer</p> <p>ALJ</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
When requested by ALJ (cont.)	<p>g. Approve all deeds or conveyances necessary to accomplish settlement [43 CFR 4.206(d)].</p> <p>h. Take further actions indicated in Steps 27. and following.</p>	<p>ALJ</p> <p>ALJ and others as indicated</p>	
Following hearing	<p><u>27.i.</u> Render a decision (43 CFR 2.40):</p> <p>a. Decide all issues of law and fact involved in the proceedings [43 CFR 4.240(a)].</p> <p>b. Incorporate in all decisions the names, birth dates, relationship to decedent, and shares of heirs, with citations to applicable law of descent and distribution; or, if appropriate, the fact that the decedent left no legal heirs [43 CFR 4.240(a)(1)].</p> <p>If decedent died intestate without heirs:</p> <p>(1) For trust real property other than public domain, order escheat in accordance with 25 USC 373a. [43 CFR 4.205(a)].</p> <p>(2) For trust real property on the public domain, submit records and recommendations to Board of Indian Appeals for disposition under 25 USC 373b [43 CFR 4.205(b)].</p> <p>c. In testate cases, approve or disapprove will and interpret its provisions; set out the names and relationship to the testator of each beneficiary and a description of the property each is to receive [43 CFR 4.240(a) (2)].</p>	<p>ALJ</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Following hearing (cont.)	<p>d. Allow or disallow claims.</p> <p>(1) Claims for care not allowable except when clearly and convincingly shown that compensation for care was promised and expected [43 CFR 4.250(d)].</p> <p>(2) Claims which would be barred under State statutes of limitations on date of decedent's death not allowable [43 CFR 4.250(e)].</p> <p>(3) Tort claims not reduced to judgment and other unliquidated claims not properly within the jurisdiction of a probate court may be barred by the interim order of ALJ [43 CFR 4.250(f)].</p> <p>(4) Claims of States based on social security or old age assistance payments are not allowable [43 CFR 4.250(g)].</p> <p>(5) If decedent is survived by spouse or one or more minor children and estate value is \$2,500 or less, no general creditors' claims allowed [43 CFR 4.251(c)].</p> <p>(6) Aggregate of claims allowed cannot exceed value of estate [43 CFR 4.251(c)].</p> <p>General creditors claims may be pro-rated or disqualified; and preferred claims may be pro-rated [43 CFR 4.251(c)].</p>	ALJ	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Following hearing (cont.)	<p>(7) General creditors claims enforceable against sufficient estate income for only 3 years after allowance [43 CFR 4.251(d)].</p> <p>(8) Preferred creditors claims (except those of U.S.A.) enforceable against sufficient estate income for only 7 years after allowance [43 CFR 4.251(d)].</p> <p>(9) If part of estate goes out of trust, ALJ may pro-rate all claims and reduce allowance in ratio of value of estate going to fee to value of total estate. [43 CFR 4.251(d)].</p> <p>(10) Priority of Claims [43 CFR 4.251(a) and (b)]:</p> <ul style="list-style-type: none"><li>(i) Cost of administering estate [witness fees, interpreter fees; attorneys fees (see 43 CFR 4.281)]</li><li>(ii) Expenses of last illness up to \$500 and funeral expenses up to \$500.</li><li>(iii) Unsecured indebtedness to U.S.A.</li><li>(iv) Unsecured indebtedness to tribe or tribal organization.</li><li>(v) Claims of general creditors, including expenses of last illness and funeral expenses not covered by (ii), above.</li></ul>		

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Following hearing (cont.)	<p>e. If such is the case, declare that heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to federal supervision [43 CFR 4.240(a)(4)].</p> <p>f. Set forth determination of any rights of dower, curtesy or homestead which constitute a burden upon the interest of heirs or devisees [43 CFR 4.240(a)(5)].</p>	ALJ	
When rendered	<p><u>28./</u> Issue notice of decision to all parties who have or claim an interest in the estate and mail a copy of said notice with a copy of the decision to the Superintendent and to each party in interest simultaneously [43 CFR 4.240(b)].</p>	ALJ	
After completion of the hearing	<p><u>29./</u> Prepare official Record of Hearing (43 CFR 4.236) which shall contain:</p> <ul style="list-style-type: none"> <li>a. Copy of posted public notice, with certifications;</li> <li>b. Copy of each notice served, with proof of mailing;</li> <li>c. Record of evidence and transcript of testimony [see Step 23.(1.)];</li> <li>d. Claims filed;</li> <li>e. Will and codicils, if any;</li> <li>f. Inventories and appraisals of estate;</li> <li>g. Pleadings and briefs filed;</li> </ul>	ALJ	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>After completion of hearing (c. it.)</p>	<p>h. Special or interim orders;            i. Data for Heirship Finding and Family History (Form OHA-7);            j. Decision and notices thereof;            k. Any other material or document deemed material [43 CFR 4.236(a)(1) - (11)].</p>		
<p>When completed</p>	<p><u>30./</u> Distribute Record [43 CFR 4.236(b)]:            a. Forward the original record to the appropriate LTRO in accordance with 25 CFR 150.6(b).            b. Forward a duplicate copy to Agency which initiated the proceedings [43 CFR 4.236(b)].            c. Furnish partial record to other agencies affected [43 CFR 4.236(b)].</p>	<p>ALJ</p>	
<p>Within 60 days of date when notice of decision is mailed to parties</p>	<p><u>31./</u> Rehearing [43 CFR 4.241]:            a. File a written petition for rehearing with the Superintendent [43 CFR 4.241(a)].            (1) Must be under oath;            (2) Must state specifically and concisely the grounds on which based;</p>	<p>Any person aggrieved by the ALJ's decision</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>Within 60 days of notice (cont.)</p>	<p>(3) If based on newly discovered evidence, must be accompanied by affidavits of witnesses stating what new testimony will be; must also state justifiable reasons for failure to discover and present evidence at hearing.</p>		
<p>Promptly.</p>	<p>b. Forward petition to ALJ.</p>	<p>ARO or Superintendent</p>	
<p>While petition is pending</p>	<p>c. Withhold payment of claims and distribution of estate pending order of ALJ.</p>	<p>ARO and IIM Clerk</p>	
	<p>d. Issue order denying petition if proper grounds are not shown or if petition is not timely, and furnish copies to Superintendent, petitioner, and parties in interest [43 CFR 4.241(b)].</p>	<p>ALJ</p>	
<p>When determination is made</p>	<p>e. If petition appears to show merit:</p>		
	<p>(1) Cause copies to be served on persons whose interests might be adversely affected;</p>	<p>ALJ</p>	
	<p>(2) Allow parties reasonable specified time to file answer or legal briefs in opposition;</p>	<p>ALJ</p>	
	<p>(3) Reconsider issues raised in petition;</p>	<p>ALJ</p>	
	<p>(4) Schedule and hold hearing if deemed necessary;</p>	<p>ALJ</p>	
	<p>(5) Confirm, modify, or vacate former decision or make any other order warranted [43 CFR 4.241(c)].</p>	<p>ALJ</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
When entered	<p>f. Transmit final order to LTRO (see Step 30.) and furnish copies to Superintendent and to parties in interest [43 CFR 4.241(d)].</p>	ALJ	
When discovered	<p>Issue orders nunc pro tunc to correct clerical errors in decision, and transmit such orders to LTRO and Superintendent [43 CFR 4.241(e)].</p> <p><u>Reopening (43 CFR 4.242):</u></p> <p>a. To prevent manifest error, reopen probate case after due notice on own motion, or on petition of BIA officer [43 CFR 4.242(d)]. A probate case may also be reopened without regard to the three year limit where a question subsequently arises about the nationality, citizenship, or the Indian or non-Indian status of an heir or devisee (43 CFR 4.206), or in cases involving duplicate allotments or allotments to non-existent persons [43 CFR 4.203(a) and 4.242(a)].</p> <p>b. File a petition for reopening of probate with ALJ.</p> <p>Petition must fully set forth all grounds for reopening. All allegations of errors of fact must be under oath supported by affidavits [43 CFR 2.242(a)].</p>	ALJ	Any person claiming interest in estate who had no actual notice of original proceedings and who was not on, or in the vicinity of, reservation at time notices of hearing were posted [43 CFR 4.242(a)]
Within 3 years from date of final decision			
Within 3 years from date of final decision or at any later time under certain circumstances [43 CFR 4.242(h), 4.203 and 4.206]			

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
When petition filed	c. Furnish copy of petition to Superintendent.	Person filing petition	
At time of reopening	d. Issue order to Superintendent suspending distribution of estate during pendency of reopening proceedings when deemed appropriate [43 CFR 4.242(e)].	ALJ	
When order received	e. Suspend further distribution until decision is issued and becomes final.	ARO	
After review of petition	f. If proper grounds for reopening are not shown, issue order denying petition and setting forth reasons for denial [43 CFR 4.242(b)].	ALJ	
When decision is issued	g. Mail copies of such decision to petitioner, Superintendent and those who share in estate.	ALJ	
When determination made	h. If petition shows merit, serve copies of petition and all other papers filed with it on those whose interests might be adversely affected by granting petition [43 CFR 4.242(c)].	ALJ	
Within reasonable time specified by ALJ	i. Resist petition by filing answers, cross petitions, or briefs [43 CFR 4.242(c)].	Potentially affected persons desiring to do so	
As appropriate	j. Reconsider, with or without hearings, prior actions in case and: (1) Adhere to, (2) Modify, or (3) Vacate original decision.	ALJ	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
When made	k. Mail copies of decision to all who received copies of petition and to Superintendent [43 CFR 4.242(c)].	ALJ	
When completed	1. File record made in disposition of reopening with LTRO [43 CFR 4.242(f)].	ALJ	
When completed	m. Furnish copy of record to Superintendent [43 CFR 4.242(f)].	ALJ	
Within 60 days after receipt of decision on petition for reopening or regarding tribal interests in a trust estate	<p>34./ <u>Appeals</u> (43 CFR 4.320):</p> <p>a. File Notice of Appeal with Board of Indian Appeals (Board).</p> <p>(1) Signed by appellant or attorney or qualified representative;</p> <p>(2) Must contain statement of errors of fact or law upon which based (unless contained in a brief filed);</p> <p>(3) Must identify parties served [43 CFR 4.320(a)].</p>	Any party in interest	
When notice is filed	b. Serve copy of notice on ALJ whose decision is appealed and on all interested parties [43 CFR 4.320(b)].	Appellant	
Upon receiving notice of appeal	c. Notify Superintendent to forward the duplicate record (previously furnished to Superintendent) to LTRO (see Steps 30b., 31.d. and f., and/or 33.g. and m.) [43 CFR 4.320(c)].	ALJ	
Promptly	d. Forward duplicate record to LTRO.	ARO	
When received	e. Conform duplicate record to original record and retain for inspection.	LTRO	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
As soon as duplicate conformed	f. Forward original record to Board (43 CFR 4.321).	LTRO	
Upon receipt of original record	g. Docket appeal (43 CFR 4.322).	Board	
When docketing occurs	h. Notify all interested parties of docketing. Notice will show: (1) Time within which briefs may be filed; (2) Procedural regulations governing appeal.	Board	
Within 15 days of docketing	i. File any objection to the record as constituted (43 CFR 4.321).	Any interested party	
In due course	j. Conduct appeal under specified procedures.	Board	
After appeal proceedings completed	k. Render decision.	Board	
When decision made	l. Forward original record and all documents added during appeal proceedings, including decision, to LTRO (43 CFR 4.323).	Board	
When record received	m. Conform retained duplicate record to record forwarded by Board.	LTRO	
When conformation completed	n. Forward conformed duplicate record to Superintendent.	LTRO	

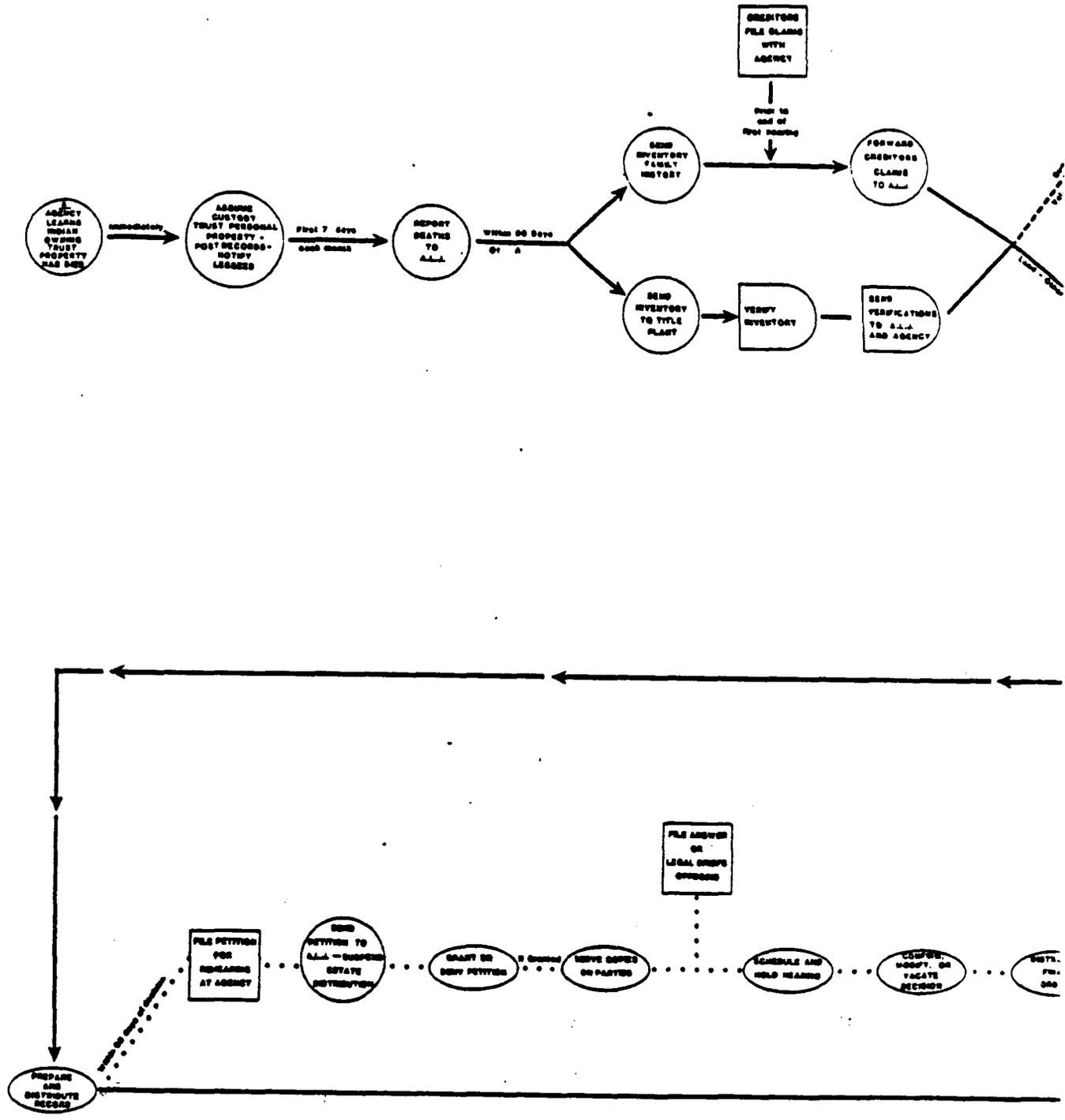
WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>60 days after the mailing of notice of decision (Step 28.) - unless - petition for re-hearing has been filed (Step 31.c.); probate has been reopened (Step 33.e.); or an appeal has been filed (Step 34.). In any of these cases partial or total distribution will be made only on further order of ALJ</p>	<p><u>35./ Distribution of Estates [43 CFR 4.274 and 4.241(g)]:</u></p> <p>a. <u>Pay Claims</u></p> <p>(1) Prepare Claim Settlement Authorization (CSA) (triplicate) based on data in final order.</p> <p>(2) Approve CSA and transmit to IIM clerk (in duplicate).</p> <p>(3) Pay claims as funds accrue and record payments on CSA.</p>	<p>Probate Clerk</p> <p>ARO</p> <p>IIM Clerk</p>	
<p>After all claims are paid or time limit for payment of claims expires</p>	<p>b. <u>Distribute funds to heirs or legatees:</u></p> <p>(1) Prepare journal voucher distributing remaining funds to heirs or legatees or prepare memorandum to document non-existence of such funds.</p> <p>(2) Transmit documented CSA and journal voucher or memorandum to Agency Realty Branch.</p>	<p>IIM Clerk</p> <p>IIM Clerk</p>	
<p>When previous step completed</p>		<p>IIM Clerk</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
<p>After probate becomes final</p>	<p><b>c.</b> <u>Post Agency Records:</u>            Make appropriate notations in following agency records based on data in final order:            (1) Form BIA-5455, Index and Heirship Card;            (2) Form BIA-5456, Inherited Interests in Estates card;            (3) Form BIA-5457 and BIA-5458, Allotment or Estate Record;            (4) Allotment File;            (5) Lease File, including rent payment schedules. (Note, however, that lease income must continue to be paid to agency for satisfaction of unpaid claims until all claims are paid or time limit on payment of claims expires).            (6) Other files and records, as appropriate.</p>	<p>Probate Clerk</p>	
<p>After posting completed</p>	<p><b>d.</b> Place Final Order and related documents in agency file.</p>	<p>Probate Clerk</p>	
<p>After probate decision has become final</p>	<p><b>36./</b> <u>Request issuance of Fee Patent:</u>            a. If any interest has been inherited by a non-Indian or an alien Indian for whom the U.S. does not hold property in trust, transmit a request to the Bureau of Land Management through the Area Office for the issuance of a fee patent covering such interest (25 CFR 152.6).</p>	<p>ARO</p>	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
Upon request	b. Issue fee patent and transmit to Area.	Bureau of Land Management	
When received	c. When received, record in LTR0 and send to Agency.	ARO	
After recording	d. Record fee patent in agency and LTR0 records and post appropriate agency records.	ARO	
After recording	e. Transmit Fee Patent to landowner.	ARO	
Any time after Issuance of probate decision	f. Notify any lessee(s) of issuance of fee patent to lessor.  37. / Modifications: ... a. Omitted Property [43 CFR 4,272 and 25 CFR 150.7(b)(1)].  It is discovered that trust property of a decedent was not included in the inventory.	Any person having knowledge of fact	
When discovered	(1) Notify LTR0 of omission.  (2)	LTR0	
In due course	(1) If property is in same State and takes same line of descent as shown in original probate decision:  (aa) Issue administrative modification (unless it is on reservation covered by special inheritance act).  (bb) Send copies of modification to ALJ, appropriate agency, and to all persons sharing in estate.  (cc) Post appropriate records.	LTR0	
After issuance		Probate Clerk	
Promptly			

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
When discovered	(11) If property is in different State or takes different line of descent than that shown in original probate:	LTRO	
Promptly	(aa) Notify Superintendent that modification is required.	ARO	
As indicated	(bb) Submit request for modification with supporting documents to ALJ.	ALJ and others indicated in various steps	
As indicated	(cc) Proceed with Steps 9., and following, as appropriate.	ALJ and others indicated in various steps	
Any time after issuance of probate decision	b. Improperly Included Property [43 CFR 4.273 and 25 CFR 150.7(b)(2)]: It is discovered that property was improperly included in estate inventory.	Any person having knowledge of fact	
When discovered	(1) Notify Superintendent of improperly included property.	same	
Promptly	(2) Prepare and file petition for modification with ALJ.	ARO or any party in interest	
In due course	(3) Review record and either: (1) Schedule and hold hearing as detailed at Step 23. and following; or,	ALJ	

WHEN ACTION IS TO BE TAKEN	SPECIFIC STEPS	RESPONSIBLE PERSON	PROGRESS NOTES
In due course (cont.)	(11) Enter decision without hearing, notify all parties whose rights are adversely affected, and allow 60 days to show cause why decision should not become final.	ALJ	
Following hearing, or 60 days after show cause notice	(11) Enter a final decision after which the steps after Step 28. are followed, as appropriate.	ALJ and others as indicated in various steps	
When discovered	<p>c. <u>Clerical Errors</u> [25 CFR 150.7(b)(3)]:</p> <p>(1) Issue administrative correction of probate errors which are clerical in nature and do not affect vested property rights or involve questions of due process.</p> <p>(2) Furnish copy of correction to ALJ and to agency.</p>	LTRO	
When issued	<p><u>END ACTION PLAN</u></p>	LTRO	



**BASIC PROBATE PROCEDURES**

