

§ 30.123 Will the judge determine matters of status and nationality?

(a) The judge in a probate proceeding will determine:

(1) The status of eligible heirs or devisees as Indians;

(2) If relevant, the nationality or citizenship of eligible heirs or devisees; and

(3) Whether any of the Indian heirs or devisees with U.S. citizenship are individuals for whom the supervision and trusteeship of the United States has been terminated.

(b) A judge may make determinations under this section in a current probate proceeding or in a completed probate case after a reopening without regard to a time limit.

§ 30.124 When may a judge make a finding of death?

(a) A judge may make a finding that an heir, devisee, or person for whom a probate case has been opened is deceased, by reason of extended unexplained absence or other pertinent circumstances. The judge must include the date of death in the finding. The judge will make a finding of death only on:

(1) A determination from a court of competent jurisdiction; or

(2) Clear and convincing evidence.

(b) In any proceeding to determine whether a person is deceased, the following rebuttable presumptions apply:

(1) The absent person is presumed to be alive if credible evidence establishes that the absent person has had contact with any person or entity during the 6-year period preceding the hearing; and

(2) The absent person is presumed to be deceased if clear and convincing evidence establishes that no person or entity with whom the absent person previously had regular contact has had any contact with the absent person during the 6 years preceding the hearing.

§ 30.125 May a judge reopen a probate case to correct errors and omissions?

(a) On the written request of an interested party, or on the basis of the judge's own order, at any time, a judge has the authority to reopen a probate case to:

(1) Determine the correct identity of the original allottee, or any heir or devisee;

(2) Determine whether different persons received the same allotment;

(3) Decide whether trust patents covering allotments of land were issued incorrectly or to a non-existent person; or

(4) Determine whether more than one allotment of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The judge will notify interested parties if a probate case is reopened and will conduct appropriate proceedings under this part.

§ 30.126 What happens if property was omitted from the inventory of the estate?

This section applies when, after issuance of a decision and order, it is found that trust or restricted property or an interest therein belonging to a decedent was not included in the inventory.

(a) A judge can issue an order modifying the inventory to include the omitted property for distribution under the original decision. The judge must furnish copies of any modification order to the agency and to all interested parties who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

(c) The judge's modification order or decision will become final at the end of the 30 days after the date on which it was mailed, unless a timely notice of appeal is filed with the Board within that period.

(d) Any interested party who is adversely affected by the judge's modification order or decision may appeal it to the Board within 30 days after the date on which it was mailed.

(e) The judge's modification order or decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30

§ 30.127

days after the decision is mailed, and giving the Board's address. The judge's modification order or decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

§ 30.127 What happens if property was improperly included in the inventory?

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. A petition for modification may be filed by the superintendent of the agency where the property is located, or by any interested party. The petitioner must serve the petition on all parties whose interests may be affected by the requested modification.

(b) A judge will review the merits of the petition and the record of the title from the LTRO on which the modification is to be based, enter an appropriate decision, and give notice of the decision as follows:

(1) If the decision is entered without a formal hearing, the judge must give notice of the decision to all interested parties whose rights are affected.

(2) If a formal hearing is held, the judge must:

(i) Enter a final decision based on his or her findings, modifying or refusing to modify the property inventory; and

(ii) Give notice of the decision to all interested parties whose rights are affected.

(c) Where appropriate, the judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted under this part.

(d) The judge's decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address. The judge's decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

(e) The judge must forward the record of all proceedings under this section to the designated LTRO.

43 CFR Subtitle A (10-1-10 Edition)

§ 30.128 What happens if an error in BIA's estate inventory is alleged?

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following:

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

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

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

(4) Trust property interests included in the inventory are improperly described, although an erroneous recitation of acreage alone is not considered an improper description.

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution under 25 CFR parts 150, 151, or 152 and the appeal procedures at 25 CFR part 2.

(1) If BIA makes a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the probate decision will reflect the inventory determination.

(2) If BIA does not make a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the final probate decision will:

(i) Include a reference to the pending inventory challenge; and

(ii) Note that the probate decision is subject to administrative modification once the inventory dispute has been resolved.