

With the claim, you must submit an affidavit stating the amount is due from the decedent and that all payments made on the account have been credited against the debt. You must submit an original and two copies of the claim and affidavit.

Claims for the care of the decedent will be allowed only if the care was given based on a promise that the caregiver would receive compensation and that compensation was expected.

You should contact your local BIA Probate Office for help in filing your claim before the hearing.

How are claims paid?

The judge may give priority to certain claims as follows:

1. Funeral expenses, including the headstone
2. Medical expenses for the last illness
3. Nursing home or other care facility expense
4. Claims of an Indian tribe; and
5. Claims reduced to judgment by a court.

After these priority claims are paid and if there are funds still available in the IIM account, the judge may authorize payment of remaining claims, known as general claims. The amount of the claim can be reduced or disallowed completely, if it is invalid, unproven, or unreasonable.

If I disagree with the decision, how do I appeal it?

You must file a petition for rehearing within 60 days of the date the decision is mailed. It must be filed with the judge and must be in writing. The petition must be notarized and state the reasons why you are requesting a hearing. If the petition is based on newly-discovered evidence, you must submit affidavits or declaration of witnesses stating the new testimony. You must also state the reasons why the evidence was not presented at the first hearing.

The judge will determine, with or without a hearing, if the petition should be approved or denied. The trust property will be distributed during this process.

If it is more than 60 days after the decision, can I still file an appeal?

A probate case may be reopened within 3 years from the date of the judge's decision, if you have an interest in the estate and did not have actual notice of the hearing and you were not on the reservation or near it where the notices of the hearing were posted. A petition for reopening of the case must be filed with the judge and a copy to the BIA Superintendent.

The judge can allow the case to be reopened to prevent "manifest error." An example of "manifest error" would be an oversight that caused an heir to be excluded from inheriting.

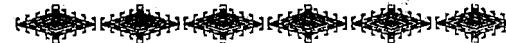
Are there other ways to appeal if a petition for reopening or rehearing is denied?

You have a right to appeal to the Interior Board of Indian Appeals from an order of a judge on a petition for rehearing or reopening. The appeal must be filed within 60 days from the date of denial of the petition for rehearing or reopening. It must be in writing and filed with the Department of the Interior, Board of Indian Appeals, Office of Hearings and Appeals, 801 N. Quincy, Arlington, VA 22203.

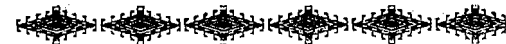
Copies of the appeal must be sent to the judge who issued the order you are appealing from and to all other persons having an interest in the estate.

How long does it take for the agency to pay the estate out?

If no appeals are received, the estate is closed 60 days after the date of the final notice of decision. The BIA has an additional 15 days to close out the estate in their books, for a total of 75 days. The local BIA Probate Office will then process the paperwork to pay out and distribute the estate. This paperwork will be forwarded to the local Office of Trust Funds Management (OTFM), which will then forward the entire package to Albuquerque OTFM for encoding and payment.



The foregoing is not legal advice. Please see the OHA Probate Regulations in 43 C.F.R. Part 4.



DEPARTMENT OF THE INTERIOR

INDIAN PROBATE



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
PROBATE DIVISION
517 SOUTH LINCOLN STREET
ABERDEEN, SOUTH DAKOTA
TELEPHONE: 605/226-1799
FAX: 605/226-1811

FREQUENTLY ASKED QUESTIONS

What is "probate"?

When someone dies, there has to be a way of passing his/her trust property to his/her heirs or to whoever is named in a Will. The formal process is called "probate." Our Office handles the probate of only trust property. We look at federal law, tribal law, and state law to determine the heirs or the beneficiaries, approve or disapprove wills, pay claims, and transfer any funds or property held in trust by the federal government.

What is "trust Property"?

"Trust Property" is real or personal property, which the federal government holds in trust for the benefit of an individual Indian or Tribe. It includes, for example, land, individual Indian Money (IIM) account funds from leases, or per capita funds, judgment funds, etc., that are owned by the deceased at the time of death.

What is a "Will"?

"Non-Trust" property is everything else, other than trust property, like houses, cars, or furniture, etc. Non-trust property is probated in either tribal courts or in a state court.

A "Will" or "Last Will and Testament" is a written document signed by the deceased and witnessed by two disinterested people. The document states who will receive the decedent's trust or restricted property upon his/her death. You must be over 18 years of age and of sound mind to execute a will.

What does "intestate" mean?

"Intestate" means that the individual died without a valid written Will.

What does "beneficiary" or "heir" mean?

A "beneficiary" is any individual who receives trust or restricted property or money according to the will of a deceased person. An "heir" is any individual who receives trust or restricted property or money where the

individual died without writing a will. Heirs are determined in the probate process according to the law of the state in which the property is located.

What is the process for probate?

Our office is responsible for the probate of trust property owned by deceased Native Americans. After the BIA is notified of a death, it is responsible for compiling a "probate package" which consists of information including family history, marriage, divorce, death certificate(s), adoptions in or out of the family, will(s) and any other information necessary to determine who are the decedent's heirs or beneficiaries. You are always welcome to contact our office to furnish any additional information that you think will help in determining the family history, heirs, and beneficiaries.

What is a "Notice of Hearing"?

If you are a "party in interest," such as an heir, beneficiary, or claimant, a "Notice of Hearing" will be mailed to you at least 20 days before the hearing. The "Notice of Hearing" gives the time, date, and place of the probate hearing. The notice contains a list of all known heirs of the decedent. If a will has been offered for probate, it also lists the names of the beneficiaries under the will. It also informs anyone who has interest in the estate, including persons having claims against the estate, to be present at the hearing or risk losing their rights by default.

Where are hearings held?

The hearing is held at a location where the majority of the heirs or beneficiaries live. In addition to our office in Aberdeen, The Department of the Interior, Office of Hearings and Appeals has offices located in Anchorage, AK and Phoenix, AZ. We can transfer you case for hearing to any one of these offices to accommodate the heirs, beneficiaries and witnesses upon written request.

Do you need an attorney to represent you at the hearing?

Not necessarily. You may have an attorney represent you at your own expense. You can bring anyone you feel can help you at the hearing. If English is not your primary language and you need an interpreter to help you at the hearing, the BIA will generally provide one.

What happens at the hearing?

The judge takes testimony at the hearing on all relevant questions and issues to determine the nature and location of the decedent's trust property and who are the heirs and beneficiaries of the decedent. If the decedent wrote a will, the judge will either approve or disapprove the will. If any claims are filed against the estate, the judge will determine their validity and amounts to be paid.

Do I have to attend the hearing?

If no one is challenging the will or any of the information provided, you don't have to attend the hearing. The judge will determine the heirs or beneficiaries, approve or disapprove any will and claim(s) presented, and then divide the estate among the heirs or beneficiaries based on the information submitted at the hearing and testimony, witnesses, and documentation to support your position if:

- You disagree with any of the information contained in the affidavit or family history or any of the other information provided with the Notice of Hearing, or
- There is a possibility that others may challenge your rights and interests.

How do I file a claim against the estate?

Claims against the estate must be filed with the BIA within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death. A claim must be in writing and contain the following information:

- The dates and amount itemized in detail of charges for purchases or services, and
- Dates and amounts of all payments made on the account.