

#### § 4.204

(c) If an OHA deciding official determines under paragraph (a) of this section that a person did not exist or that more than one allotment was issued to the same person, the OHA deciding official must issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

#### § 4.204 Presumption of death.

(a) An OHA deciding official will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an OHA deciding official determines that an Indian person possessed of trust property is to be presumed dead, the OHA deciding official must proceed as provided in § 4.202.

#### § 4.205 Escheat.

An OHA deciding official will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a.

(b) With respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

#### § 4.206 Determinations of nationality or citizenship and status affecting character of land titles.

In cases where the right and duty of the Government to hold property in trust depends thereon, an OHA deciding official will determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated in current probate proceedings or in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

#### § 4.207 Compromise settlement.

(a) If during the course of the probate of an estate it develops that an issue

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between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the OHA deciding official upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the OHA deciding official may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers must supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the OHA deciding official will issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order will be construed as any other order of distribution establishing title in heirs and devisees and will not be construed as a partition or sale transaction within the provisions of 25 CFR part 152. If land titles are to be transferred, the necessary deeds must be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the OHA deciding official will settle the issues and enter an order as if no agreement had been attempted.

(d) OHA deciding officials are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

#### § 4.208 Renunciation of interest.

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust