

§ 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all tangible trust personal property of a deceased Indian, and the Superintendent may take such action, including sale thereof, as in his or her judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in 25 CFR 15.311 or in §§4.240, 4.241, or 4.312. All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from those funds of the deceased that are under the Department's control, or from the proceeds of a sale of the property or a part thereof. If an OHA deciding official or BIA deciding official has been assigned to adjudicate the estate, his or her approval is required prior to such payment.

§ 4.271 Omitted property.

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified to include such omitted property for distribution pursuant to the original decision. Such modification may be made either administratively by the Commissioner or by a modification order prepared by him or her for the approval and signature of the OHA deciding official. Copies of such modifications must be furnished to the Superintendent and to all those persons 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 Commissioner must notify the OHA deciding official who will proceed to hold a hearing if necessary and will issue a decision under § 4.240. The record of any such proceeding must be lodged with the title plant designated under § 4.236(b).

§ 4.272 Improperly included property.

(a) When, subsequent to a decision under § 4.240 or § 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate

such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The OHA deciding official will review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the OHA deciding official must give notice of his or her action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the OHA deciding official may conduct a hearing at any stage of the modification proceeding. Any such hearing must be scheduled and conducted in accordance with the rules of this subpart. The OHA deciding official will enter a final decision based on his or her findings, modifying or refusing to modify the property inventory, and his or her decision will become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision must be given in accordance with § 4.240(b).

(d) A party aggrieved by the OHA deciding official's decision may appeal to the Board pursuant to the procedures in §§ 4.310 through 4.323.

(e) The record of all proceedings must be lodged with the title plant designated under § 4.236(b).

§ 4.273 Distribution of estates.

(a) Seventy-five days after a final order has been issued, unless the Superintendent has received a copy of a petition for rehearing filed pursuant to the requirements of § 4.241(a) or a copy of a notice of appeal filed pursuant to the requirements of § 4.320(b), he or she must initiate payment of allowed claims, distribution of the estate, and all other actions required by the OHA deciding official's final order.

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under § 4.241 or § 4.242, unless the OHA deciding official orders otherwise in writing. The Board may, at any time, authorize the OHA