

Skullnah Legal Services

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Indian Estate Planning

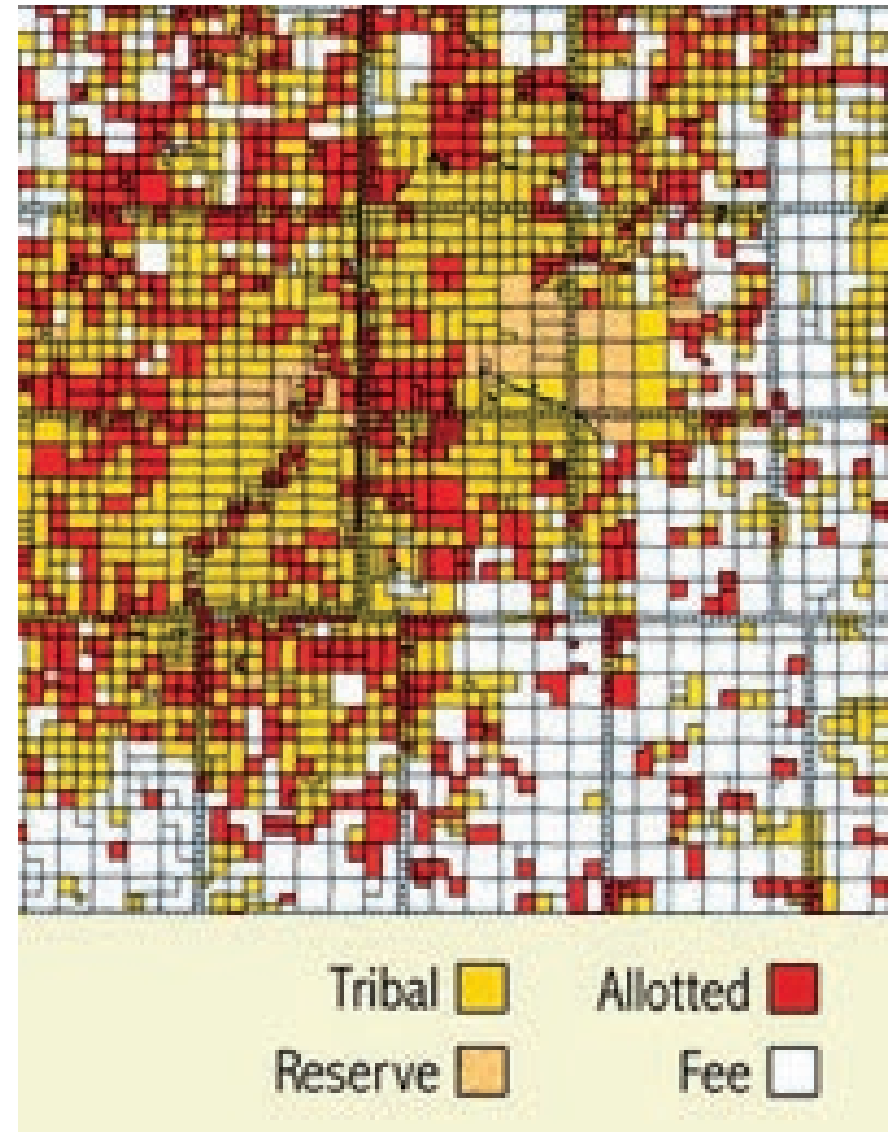
Advising Individuals on Fractionation

Scope

- The focus of today is entirely on the issue of fractionation as it pertains to individual estate planning
- If you are completely new to Indian Estate Planning, I have included additional resources
- Where to start:
 - Indian Land Tenure Foundation (ILTF) - "[Estate Planning](#)"
 - ILTF Town Hall [Video](#)

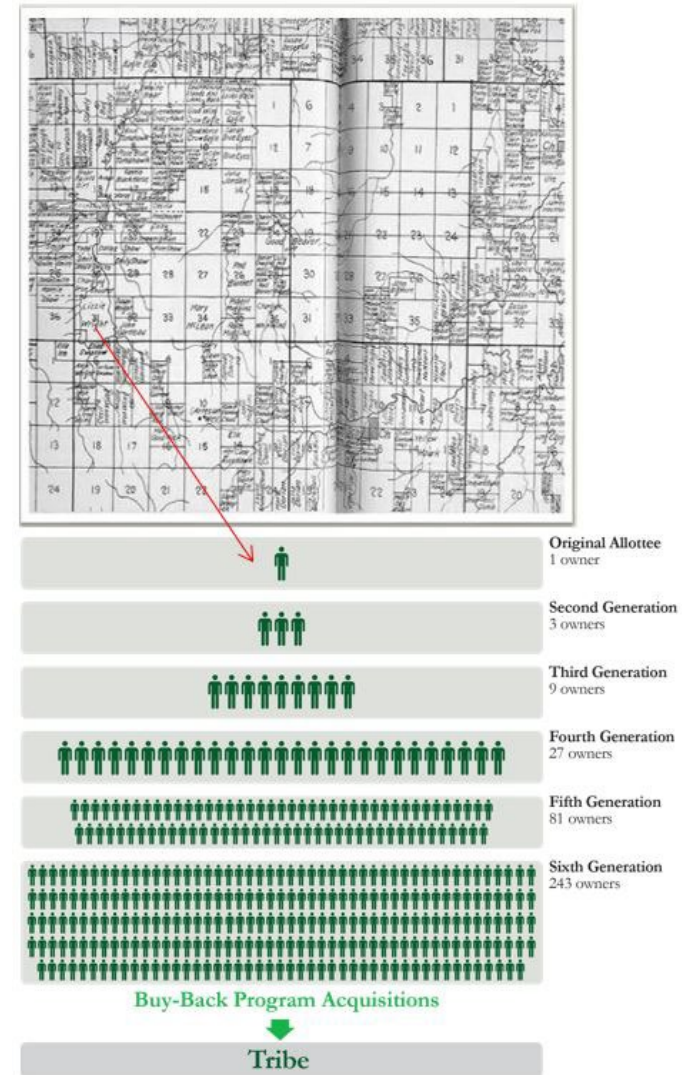
History – Reservation Era and Allotment

- Federal Policy prioritized policies of assimilation
- Dual goal of opening lands for white settlement and “killing the Indian to save the man”



Natural consequence of
intestate succession

Fractionation



For illustrative purposes only; not an actual ownership representation

American Indian Probate Reform Act

Public Law 108–374
108th Congress

An Act

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

Oct. 27, 2004

[S. 1721]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

American Indian
Probate Reform
Act of 2004.
15 USC 2201
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Indian Probate Reform Act of 2004”.

SEC. 2. FINDINGS.

15 USC 2201
note.

Congress finds that—

(1) the Act of February 8, 1887 (commonly known as the “Indian General Allotment Act”) (25 U.S.C. 331 et seq.), which authorized the allotment of Indian reservations, did not permit Indian allotment owners to provide for the testamentary disposition of the land that was allotted to them;

(2) that Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment;

(3) the reliance of the Federal Government on the State law of intestate succession with respect to the descent of allotments has resulted in numerous problems affecting Indian tribes, members of Indian tribes, and the Federal Government, including—

(A) the increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

(B) the application of different rules of intestate succession to each interest of a decedent in or to trust or restricted land if that land is located within the boundaries of more than 1 State, which application—

(i) makes probate planning unnecessarily difficult;

and

(ii) impedes efforts to provide probate planning assistance or advice;

(C) the absence of a uniform general probate code for trust and restricted land, which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which—

(i) is unfair to the owners of trust and restricted land (and heirs and devisees of owners); and

Cobell Litigation and Settlement



Idaho Rules of Professional Responsibility 2.1 - Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.



Considerations in Advising Individuals

- Closely review trust inventory report to identify all tribal jurisdictions in which your client owns a trust interest
- Familiarize yourself with the probate codes of each tribal jurisdiction. Start your search at the [Tribal Law Gateway](#) of the National Indian Law Library
- Gather important details about the heirs
 - Where is the heir enrolled or eligible for enrollment?
 - Where could the heir be enrolled in the future?
 - Do any of the heirs currently live on the properties or do they plan to in the future?

Pragmatic Benefits of Small Interests

Factor in determining who
is an "Indian"

Establishes eligibility for
Direct Care and Purchased
and Referred Care through
Indian Health Services

Questions?

Email me at: Christine@skullnahllegal.com



Historically, Native nations had specific methods of inheritance that were developed over centuries by individual tribes according to their traditions.

Passing our most treasured asset to future generations

Prior to the colonization of this continent by Europeans, the native nations that thrived throughout the hemisphere had their own specific methods of transferring the assets of a tribal member who had passed on. These methods of inheritance varied among the tribes depending on their culture.

In matriarchal societies assets were often inherited along the female lines of the family with the oldest or youngest daughter receiving the vast majority of the parent's possessions.

Similarly, in patriarchal societies the males would receive the assets. In other tribes there were unique methods, including those that had give-away traditions. In some cases, the family of the deceased would give all of the person's belongings to others in the community who were close to the person or were in need.

These traditions had been developed and practiced for centuries and provided the means for the orderly inter-generational transfer of assets or possessions. The traditions would significantly change with the arrival of Europeans and the methods of inheritance they introduced to the original inhabitants of the Continent.

In order to understand the transition from the

traditional practices of tribal inheritance to European traditions, one needs to understand the basic changes in land ownership that occurred as this was the asset that Europeans were most interested in.

For time immemorial, tribes would occupy a traditional area that they were able to defend from, or in agreement with neighboring tribes. In relatively few instances did an individual member or family of the tribe actually "own" the land they occupied. Rather, the tribe would allow an individual or family to occupy the area with the understanding that should they cease to need the area, or in some fashion disrespect the land, the tribe would assign it to others for their use.

As the colonists pushed westward, and agreements and treaties were made with the tribes on land ownership in trade for peaceful coexistence, the tribes retained communal ownership title to smaller areas of land. Fast forward nearly a century to the end of the treaty making period of American history and reservations had been established for the exclusive use and occupation of the tribes. However, the demand for more land for homesteaders, the discovery of gold and other resources, and other enticements led the federal

government to explore new means for taking land from Indian people.

Passage of the General Allotment Act of 1887, also known as the Dawes Act, provided that reservation lands would be surveyed and parcels allotted to individual tribal members. Lands not allotted would be declared "surplus to Indian needs," and land not retained for tribal or federal purposes was opened to settlement by non-Indians or sold to businesses. Some reservations were allotted pursuant to specific acts of Congress and Treaties.

This egregious Act was important for several reasons. First, lands retained in tribal and individual Indian ownership were held in trust by the United States, which means that the United States held legal title while the tribe or individual Indian retained beneficial title or the right to use those lands.

Secondly, it resulted in the alienation from Indian ownership of some 90 million acres between 1887 and 1934. Finally, it required that all allotments be held in trust for a period of 25 years after which Indian people were expected to be competent to manage their affairs and hold title to their allotments in fee simple.

Continued on page 2



Having a will gives Indian landowners an opportunity to consolidate interests in trust land or minimize further fractionation.

Continued from page 1

Without a will, the Act provided that upon death of the allottee the land would not be physically divided but rather the beneficial ownership title would be divided among heirs of the deceased according to the state laws of intestate succession. This was largely the end of the longstanding cultural practices of the tribes for transferring assets from one generation to the next.

The subsequent problems of fractionated land ownership, and the many attempts to stop the further dividing of reservation land ownership, have been well-documented. The first edition of the *Message Runner* outlined many of these.

The passage of the American Indian Probate Reform Act of 2004 (AIPRA) has changed the landscape related to the inheritance of trust lands. The primary thrust of this law, which

began as a set of amendments to the Indian Land Consolidation Act of 1983, is to curtail continued fractionation of trust land ownership.

Given the lack of success that earlier consolidation legislation had in stemming the growth of the number of owners in the average allotment, this Act contains several rather aggressive provisions. This edition of the *Message Runner* broadly outlines the provisions of the Act and highlights those that need the immediate attention of Indian landowners.

It is important for owners of trust or restricted property to have wills if they do not wish those assets to pass according to the intestate provisions of AIPRA which could subject some interests to sale without the consent of the heirs. In addition, having a will gives Indian landowners an opportunity to consolidate interests in trust land or minimize further fractionation, thereby increasing values for future generations.

The importance of these steps in preparing for passing assets to the next generation cannot be understated. This is a fundamental right and responsibility of Indian landowners.

Additionally, AIPRA defines specific conditions for the development and approval of tribal probate codes. This is an opportunity for tribes to define their own inheritance process while reducing the complex problems associated with fractionated land ownership. The development of tribal probate codes is a positive exercise of self-determination and governance.

The Indian Land Tenure Foundation views estate planning by tribal code development as being in complete alignment with the Foundation’s mission – to reestablish Indian ownership and control of all lands within the original boundaries of every reservation.

The passing of our most treasured asset – Indian land – is something that we, as Indian people, should not allow the courts and federal government to control.



Cris Stainbrook
Cris Stainbrook , ILTF President





The American Indian Probate Reform Act (AIPRA) changed the way Indian people pass their land to future generations.

Traditional beliefs on land stewardship

An Anishinabe legend tells how Gitche Manido (The Great Spirit) made the crane and sent it down to the earth. The crane circled and chose a resting place, then called to the bear, catfish, loon, moose, and martin clans to build a community together. Every tribe has a similar creation story of the earth being entrusted to its inhabitants by a Creator who hopes they will recognize and preserve its mystery and beauty.

When thinking of the old ways of giving and receiving, what it meant to be a Keeper of something, and how this was handed down from one generation to the next, it needs to be framed in the complexities of current societies in Indian Country.

Whether it is the jingle dress a younger niece will inherit from her aunt, or 10 acres of shoreline where they grew up believing the stones could speak, what is handed from generation to generation matters. Indian peoples' relationship with one another and the land itself has been taught throughout the years. When it comes to the land, Indian people need to understand, manage, and control all aspects of land ownership, including mortgages, leases, titles and resources.

As the writer Louise Erdrich so eloquently reminds us, "Every feature of the land around us spoke its name to an ancestor. Perhaps, in the end, that is all that we are. . ."

These words ring true for many Indian people. There is a need to find ways to protect individual Indian rights with modern land ownership without forgetting timeless values the ancestors understood and shared.

By the late 1800s, federal Indian policies began to focus on devastating ways of ending Native culture and practices. Native communities had limited access to ancestral lands. However, the customs of sharing the best harvesting and hunting grounds, the safest places to live, or the most sacred sites for burial and renewal, were passed from generation to generation.

It was by practice, and with appropriate behavior, that one person or community was associated with a place. A family might maintain or lose the right to harvest an area when they no longer understood the crop. Another then earned that right. Boundaries were clearly understood between bands and tribes, but these complex negotiations of stewardship were overlooked when the U.S. government first allowed settlers to grab acreage.

While land rights varied from tribe to tribe, all communities had ways of recognizing those rights to certain areas. Although they were not outlined on paper, the boundaries had been maintained and defended for years. The relationship with the land was visible and tangible to each tribe.

If Indian landowners take steps to protect their lands they will, as a result, protect their alternate view of its stewardship, their communities' sovereignty, and the stories of how the relationship between the land and its original people came to be.

The passage of the American Indian Probate Reform Act (AIPRA) changed the way Indian people pass their land to future generations. AIPRA provides an opportunity for tribal

governments and individual landowners to more fully engage the traditional, cultural, and economic value of the land. Without action by the tribes and/or individual landowners, AIPRA may also have negative results for Indian land.

Each tribe needs to consider adapting its own probate code and legal systems to reflect long-standing traditions. Being a steward and donor of the land for future generations is important to all tribal members.

As tribes interpret these new laws, the older notions of stewardship, earned rights and responsibilities, and shared or gifted land, should be considered. There is a way to satisfy both the binding legal requirements needed to protect individual Indian rights and the careful consideration of land use for future generations.

There is much work to be done to encourage estate planning by Indian people that includes a current written will and consolidation of land or gifting of fractional interests. Lands will eventually move through the probate process to once again be guarded by a new heir as part of a continuing relationship with a strong community.

As with all forms of knowledge and health, part of the responsibility lies in the hands and hearts of those willing to learn and pursue a better future. Preserving sovereignty includes protecting the place as well as the memories shared by Indian people.

These stories and customs still speak to us and we must pass them to future generations.

Writing a will is more important than ever

With the passing of the American Indian Probate Reform Act of 2004 (AIPRA), having a will is more critical than ever. In 1983 the Indian Land Consolidation Act [ILCA] was enacted by Congress to deal with the rapidly growing problem of fractionated title of individual allotments. Amendments in 2000 created a provision for majority consent regarding use of inherited trust land. The passage of AIPRA amended ILCA, established a federal probate process and encouraged tribes to enact tribal probate codes.

The pre-AIPRA probate process

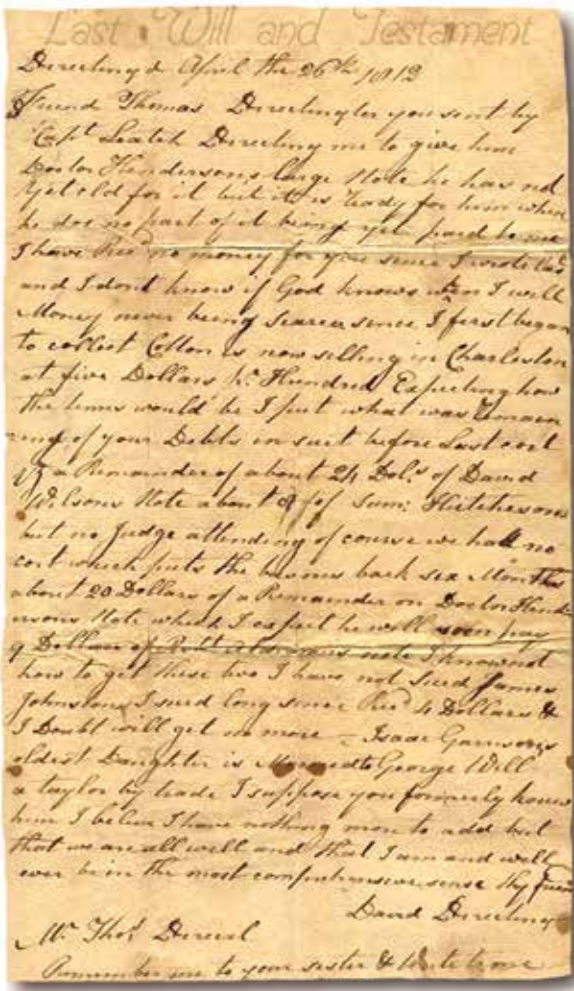
The General Allotment Act (GAA) of 1887 gave the Secretary of the Interior the ability to divide the original treaty reserved lands into individual allotments and give those allotments to individual tribal members or households with some lands reserved for the tribe. Reservation lands not allotted or reserved for tribal or other use were considered surplus to Indian needs and opened to purchase and settlement by non-Indians. The Act and later amendments and actions reduced the original treaty reserved lands by more than two thirds. Over 90 million acres was lost to Indian ownership by 1934.

The Secretary allotted the lands in “trust” meaning the U. S. government holds legal title and the allottee holds beneficial title. This remains true today. The allottee cannot transfer, encumber, lease or manage their allotted lands without approval from the Secretary of Interior through the Bureau of Indian Affairs. Under the General Allotment Act, when an allottee passed on, their ownership of interests in trust allotments passed according to state laws of intestate succession.

Prior to 1910, most tribal members could not lawfully make wills, and within a few generations the allotted lands were held by many heirs as undivided interest holders. This created highly fractionated lands which can have dozens, hundreds, even thousands of interest holders.

In 1983, Congress passed the Indian Land Consolidation Act (ILCA) in an attempt to slow the rapidly growing fractionation of trust lands. ILCA authorized tribes to draft their own land consolidation plans and probate codes which could limit inheritance by non-Indians and non-tribal members. The provision in ILCA that required small fractional interests to revert to the tribe was declared unconstitutional. Amendments to ILCA passed in 2,000 but were never fully implemented.

AIPRA became law in 2006, replacing portions of ILCA and creating a federal probate code that defines who will receive an individual’s trust property when they don’t have a will. AIPRA removes any state laws from determining who will receive the trust property.



AIPRA probate process for trust property

Trust lands and Individual Indian Money Accounts are probated by the U.S. Department of Interior, Office of Hearings and Appeals (OHA). Tribal and State courts cannot probate trust property.

Since 1983, Tribes have had the authority to create their own federally approved tribal probate codes. When probating trust property, OHA must follow the tribe’s code. Without a tribal code, AIPRA’s federal probate code will determine how trust property is distributed, both with and without a will. State intestate succession laws are no longer a part of OHA’s probate process.

AIPRA seeks to:

- ▶ Preserve the trust status of Indian lands by restricting non-Indian inheritance.
- ▶ Limit further fractionation by cutting off collateral heir inheritance and limiting fractionation without a will.
- ▶ Reduce fractionation by earmarking federal funds for consolidation, and authorizing tribal purchase and sale of ownership interests.

If an Indian trust landowner dies without a will (Intestate)

One of the key provisions of AIPRA is the establishment of a uniform federal probate code that replaces state law in probating Indian trust land and assets. This code applies where no valid will or applicable tribal probate code exists. A probate judge divides an individual’s trust property estate into two categories.

- ▶ Interests greater than 5% without a will
- ▶ Interests are given to the surviving spouse in a life estate, allowing the spouse to receive all income from the land, and continue to live on or use the land, until the spouse dies.
- ▶ When a non-Indian spouse dies, all interests greater than 5% go equally to the

surviving eligible children in undivided interest. If there are no children, then interests go to grandchildren or others. (See chart on page 10)

- ▶ Interests less than 5% without a will
- ▶ The probate court will give the spouse a life estate in only the trust property that was being lived on at the landowner’s time of death. All other interests less than 5% will go to a “single heir,” the oldest surviving child or grandchild. If there are no surviving children or grandchildren, interests go to the tribe with jurisdiction or to any co-owners in that allotment if there is no tribe. (See chart on page 10)

Under this uniform probate code, without a will trust land can go to a decedent’s spouse or immediate family only if they are eligible heirs as defined by AIPRA. Houses on that trust land (permanent improvements) are no longer considered part of the trust asset (See Glossary on page 12 for definitions). If a decedent’s spouse or immediate family members are not eligible heirs, they would receive a life estate. The remainder would go to an immediate family member who is an eligible heir or, if there are none, to the tribe.

If an Indian trust landowner dies with a will

A decedent with a properly drafted will can pass his/her interest in trust or restricted lands to any of the following people, in trust:

- ▶ Any lineal descendent of the testator
- ▶ Any person who owns a pre-existing undivided trust or restricted interest in the same parcel of land
- ▶ The tribe with jurisdiction
- ▶ Any Indian

If an heir is not in one of the four categories listed above, that person may receive individual trust land as a “life estate” similar to that described previously for a non-Indian spouse in an intestate process. This means the land stays in trust status and the non-eligible heir retains rights to the land as long as they live. The remainder goes to an immediate family member or to the tribe upon death.

There are important provisions for an omitted spouse or children. If an individual does not want to leave property to their spouse or child, that must be clearly stated in the will or the will can be invalidated if certain conditions are not met.

Alternatively, by using a valid will the decedent can leave their individual trust land in fee simple title in most cases if the will clearly states the intent to do so. The land is then taken out of trust status and is subject to state taxation and regulation. Unless the allotment is part of a family farm, the tribe has a right to prevent the removal of this allotment from trust status by purchasing the landowner’s interest.

Estate planning, will writing and the provisions of AIPRA provide Indian people with an opportunity to exert control over their trust property. For future generations, the most important opportunities are those that allow for consolidation of interests and minimize fractionation. It is more important than ever for each person to talk with their parents, grandparents, siblings and children and write a will.

"Tribes can create their own probate code"

The importance of estate planning

Today Indian families and tribes continue to see valuable land resources diminish as fractionation spreads. A will, properly done, is one of several ways that fractionation can be reduced and consolidation of land ownership interests achieved.

A 1910 act of Congress (Act of June 25, 1910, 36 Stat. 855-856) allowed original allottees to write wills passing their ownership interest. Few Indian people wrote wills to distribute the land according to their wishes, which left that land to be distributed according to state laws of intestate succession as required under the General Allotment Act.

Today Indian people recognize the importance of writing a will to disburse their trust land and other assets. Without a will, personal property, trust land and asset distributions are made according to laws of intestate succession which may be tribal, state, or federal.

Because wills must meet certain legal standards and can be complex, it is recommended that individuals consult with a legal services program or an attorney who understands probate laws pertaining specifically to trust land and American Indian Probate Reform Act (AIPRA).

For a current record of your Individual Indian Money (IIM) Account.

Call (800)678-6836

- Why write a will?**
- A will allows individuals to:
- ▶ Choose who they want to receive their trust property and personal property. (Beneficiaries)
 - ▶ Choose what property should go to specific people. (Distribution)
 - ▶ Choose a trusted person to oversee the administration and distribution of non-trust property after death. (Executor)
 - ▶ Select the person they want to care for their minor children. (Guardian)
 - ▶ Reconsolidate trust property.
 - ▶ Prevent forced purchase sales of trust lands at probate.

- What do I need to know?**
- In order to make a will, a person must be 18 years of age or older and of sound mind. A will must comply with the requirements of the law of the jurisdiction where the will is made. It can be written or typed, dated and must be signed and witnessed by two people.
- A will typically contains:
- ▶ Name and address
 - ▶ List of specific assets and beneficiaries
 - ▶ Charitable donations
 - ▶ Guardian for minor children
 - ▶ Executor to oversee estate distribution
- A person must sign their will in front of two witnesses, and the witnesses must sign the will.

- They should be disinterested – meaning they are not receiving anything from the will. The witnesses can also sign an affidavit, that says the person appeared before them, was of sound mind and that no force or undue influence was used against the person in writing or signing the will. Although not required, an affidavit makes the will “self-proving” in probate court and can help reduce contests or disputes during the probate process.
- When Individuals write a will, it is important to know what trust land interests they have or may have inherited. They should contact the local Bureau of Indian Affairs (BIA) office and request a copy of the Individual Trust Inventory Record (ITI or ITR). This report lists all land interests, including any held outside the individual’s tribe. Individuals should also contact the Office of Special Trustee for American Indians Trust Beneficiary Call Center for a current record of their Individual Indian Money account (IIM). (Telephone: 1-888-678-6836 ext. 0)
- How do I get started?**
- Historically all wills were processed by the local BIA office, forwarded to the field solicitor for approval, then returned to the local BIA office for storage. The BIA no longer provides assistance in drafting or storing wills.
- The local BIA office is a good place to start gathering information and inquiring about estate planning for trust land and assets. BIA staff can make referrals to other organizations and attorneys who can draft a will. Some tribes have employees who can assist in writing wills for tribal members.
- What do I need to know?**
- ▶ Is there trust land?
 - ▶ Is there an IIM account?
 - ▶ Does the tribe have a tribal probate code?
 - ▶ Who is the Bureau of Indian Affairs (BIA) probate clerk?
- It is important to note that the BIA has jurisdiction over trust land, but not fee land. Therefore, fee land and other non-trust assets would be probated through tribal or state probate systems.
- Where do I get this information?**
- ▶ The BIA probate clerk has all information related to trust assets.
 - ▶ Fee land information is obtained from the County Register of Deeds. Information on other assets and liabilities will need to be collected through other means.

Not having a will hinders the probate process

Imagine that your father passed away. You and your extended family are grieving. During the wake and funeral you start discussing your father’s land holdings and how he obtained them. The family soon discovers that dad did not write a will. This complicates matters and raises a series of questions:

- ▶ How will his estate be settled?
- ▶ Who gets what assets?
- ▶ How long will the process take?
- ▶ Who will be involved?

In American society, approximately half of the adults have a will that designates an executor of the estate. That individual is responsible for administering the estate – collecting and managing assets, filing tax returns, and settling taxes and debts, as well as distributing assets or bequests as the deceased directed in the will. This responsibility is often left to the eldest surviving child or an executor assigned by the courts.

For Indian people, the deceased’s estate often includes fractional interest in a parcel of land. The land, depending on whether it is trust or fee land and if a will was written or not, adds another layer of complexity to the settlement of the estate.

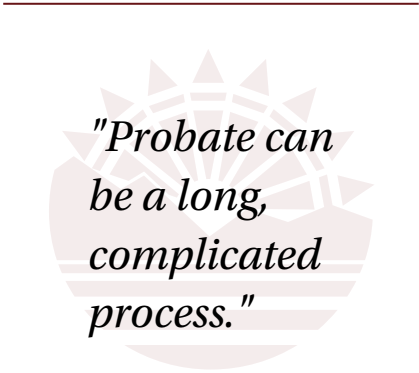
In the example above, the father’s “undivided interest” in the parcel of land has been passed on to all surviving heirs. This could include a wife, children, grandchildren, brothers, sisters, common-law wife and so forth.

Probate is the legal process of distributing the assets of the deceased’s estate to heirs and can be a long, complicated process. This is especially true when individual trust or restricted land is involved. Indian people have the right to use their trust land, but ownership remains in the hands of the federal government which determines how it is probated, particularly if there is not a valid will.

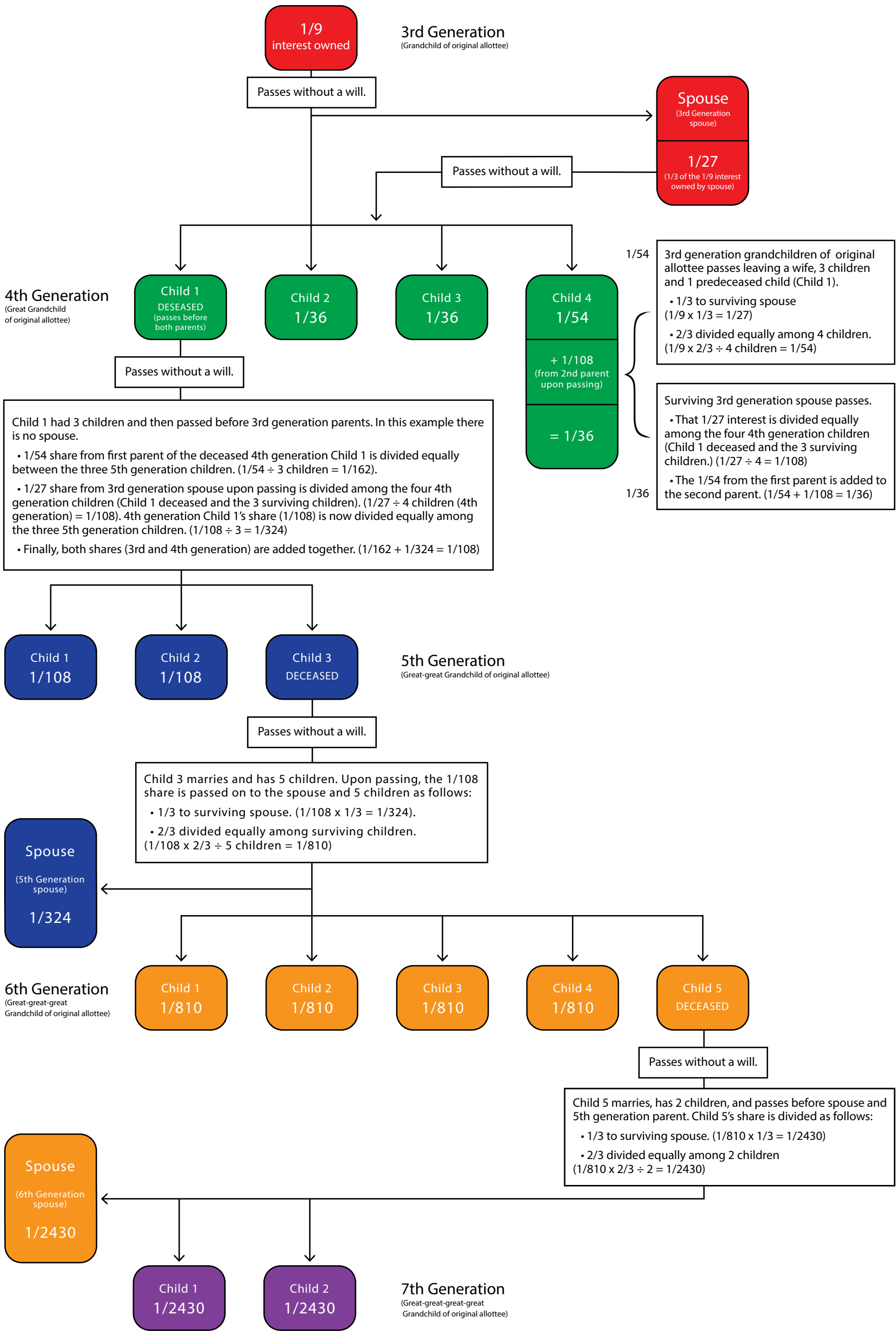
The major problem with probating estates without wills that include individual trust land is finding heirs and dealing with paternity issues. There are also claims by creditors that need to be settled. Funds from the deceased’s Individual Indian Money (IIM) accounts can be used to pay creditors.

Legislation created in 1887 – The General Allotment Act – complicated probate for both heirs and tribes by creating fractional interests of individual allotments. The Act provided that land would not be divided among heirs, but rather ownership interest in the land title would be divided.

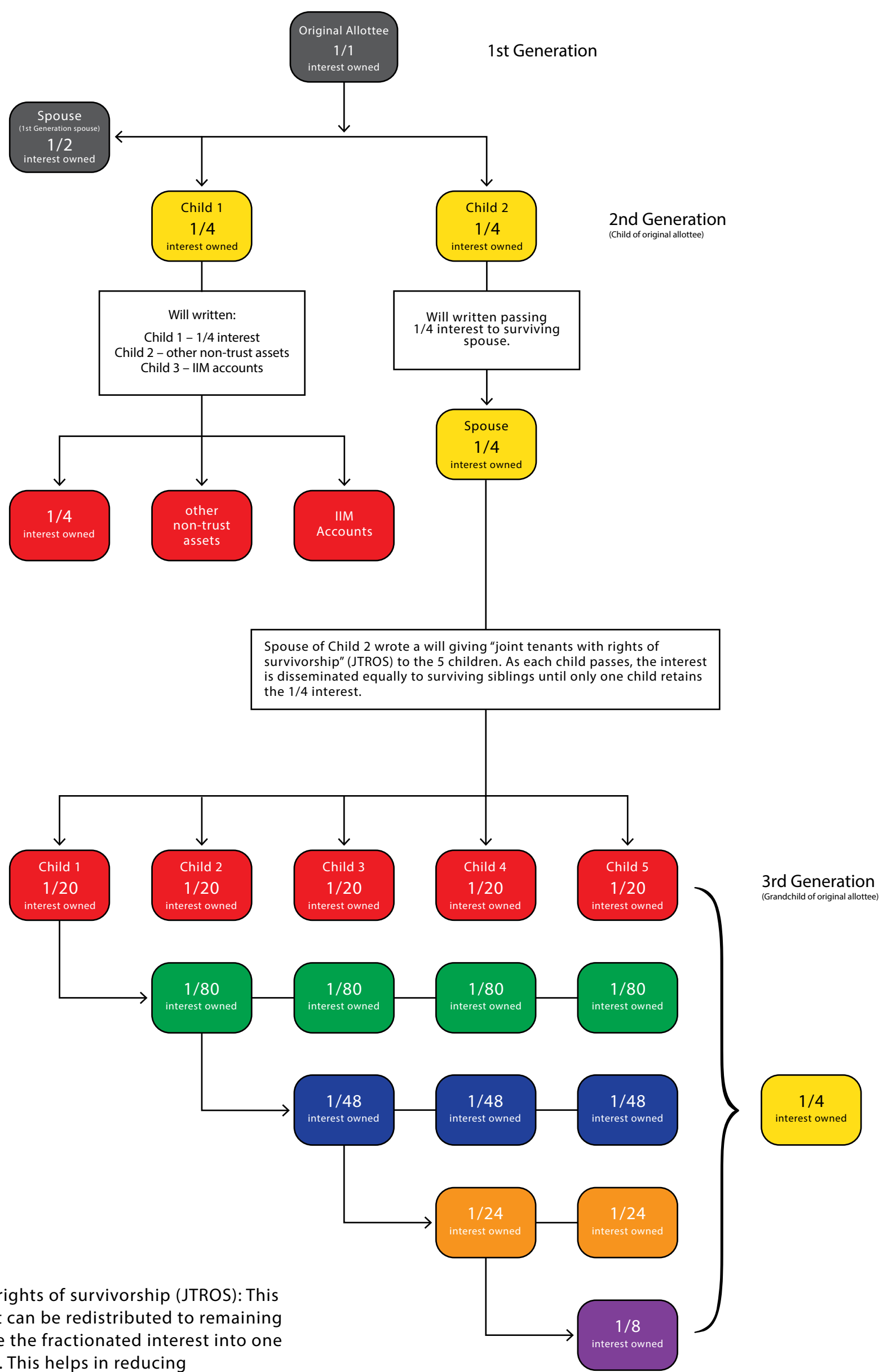
This means that 40 acres left to four heirs gives each a one-fourth ownership interest in the whole of the allotment rather than each receiving 10 acres. Over just a few generations, this process resulted in parcels of land with hundreds, even thousands of owners – some individuals with interests equivalent to less than a square foot of land. In order to use this land, majority consensus must be reached by all fractional interest landowners of the allotment.



Inheritance without estate planning resulting in fractionation of the allotment



Inheritance through estate planning eliminating fractionation of an allotment



Joint tenants with rights of survivorship (JTROS): This shows how interest can be redistributed to remaining heirs to accumulate the fractionated interest into one remaining heirship. This helps in reducing fractionation and is the default under AIPRA if your will leaves trust land to more than one person without specifically making them tenants in common.



Writing a will ensures that an Indian landowner’s interest in trust land will be distributed to family members according to his or her wishes.

Control your land through estate planning

It is estimated that millions of acres of fractionated trust land stands idle, or is leased at less-than-favorable rates, on Indian reservations. The landowners themselves are unable to use the land for planting or development because of severe fractionation.

It is important that Indian people explore the options estate planning provides them as a means to protect future generations from the effects of fractionated interests in trust and restricted land.

Fractionation resulting from the General Allotment Act of 1887 (also known as the Dawes Act) was acknowledged as far back as 1910 when Congress passed legislation authorizing Indian people to write wills aimed at stopping and reducing further fractionation of their trust lands. Since very few original allottees wrote wills at the time, and relatively few have written wills today, the ownership interests in the original allotments have continued to fractionate for more than 130 years, resulting in thousands of Indian interest holders.

Interests in trust land owned by an Indian person who died without a valid will prior to June 20, 2006 – the effective date of the American Indian Probate Reform Act (AIPRA) – would pass according to state laws of intestate succession. For deaths after that date, those interests pass according to the intestate succession provisions of AIPRA or those contained in a federally-approved tribal probate code. Laws of intestate succession specify which heirs receive the property of the decedent in the absence of a will.

For example, it is common for state laws to specify that a surviving spouse receive half of the estate with the balance divided equally among the deceased’s surviving children. Applying this law to a person with a 40-acre parcel of trust land and a spouse with four children, the spouse

receives half and the other half is shared equally by the four children (a 1/8th interest each). The spouse and children’s interest are undivided in the whole, meaning no one receives a specific portion of the 40 acres but all hold their interests in common. As generations go on, this piece of land may be shared among many more heirs who may not leave wills which creates tiny, undivided interests owned by hundreds of people.

Indian Land Consolidation Act – Amendments of 2000

There is a provision for majority consent regarding use of inherited trust land using a sliding scale based on number of fractional interest owners. Consent requirements are:

- ▶ 1 to 5 owners – 100%
- ▶ 6 to 10 owners – 80% majority
- ▶ 11 to 19 owners – 60% majority
- ▶ 20 or more owners – 51% majority

Land owned by one to five owners can quickly have double-digit owners if the original owners have many heirs and die without a will, which is a common occurrence.

In 2003, arguing for an improved probate process and to eliminate probate backlog, a Bureau of Indian Affairs (BIA) employee told the Committee on Indian Affairs at a U.S. Senate hearing that there are four million owner interests in 10 million acres of individually owned trust lands. The employee noted that these “four million interests could expand to 11 million by the year 2030” and that “there are single pieces of property with ownership interest of less than .000002 percent of the whole interest.”

Small amounts of undivided interests like those mentioned above can leave a tract of land with many owners unable to come to a consensus on use of the land. Without agreement, the BIA administers land usage for the owners. If an individual landowner wants to build a home, start a business or farm the land, there must be majority approval. It can be difficult just to contact all the heirs let alone get agreement on how to use the land.

The Indian Land Consolidation Act-Amendments of 2000, has a provision for majority consent regarding use of inherited trust land with a sliding scale based on number of fractional interest owners.

Estate planning, including will writing, can ensure that interest in land will be distributed according to the wishes of the deceased which can be done in a way that stops or reduces fractionation. With a will, a person may leave their property to anyone they choose and pass interest in trust or restricted land to those categories of people defined in AIPRA as being authorized to receive interests in trust.

Land can be willed to the tribe of the reservation where the land sits. Individuals inheriting trust lands can sell it back to the tribe. This consolidates small pieces of land into larger pieces that can be put to better economic use by the tribe.

Probate proceedings may be complex. Estate planning is a relatively straightforward process that can reduce the complexities of the probate process, prevent land title fractionation issues for heirs, and in some instances, eliminate the need for probate altogether. At probate hearings, heirs can be advised of other options available to them.

Now is the time to take control of your land through estate planning and prevent further land fractionation. Write a will!

The probate primer

Adapted from "What Do I Need To Know About Probate When My Indian Loved One Passes Away?"
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The probate process

Probate is a legal process that takes place after a person dies. It usually includes:

- ▶ Proving in court the person is deceased.
- ▶ Proving in court a person’s will is valid.
- ▶ If no will, determining who will inherit the property.
- ▶ Identifying and listing the property.
- ▶ Appraising the property (determining value).
- ▶ Paying outstanding debts and taxes.

Distributing the property by court order, saying who now owns interests in any land.

There are two kinds of probate proceedings for Indian people:

- ▶ State probate
- ▶ BIA/Office of Hearings and Appeals probate

A probate could include State and BIA probate:

- ▶ Only the BIA can probate Indian trust assets (e.g., a share in trust allotment) but not other property. If the estate includes both Indian trust assets and other property, it may need to go through both state and BIA probate.
- ▶ It is common to go through both processes if an Indian person has both trust property that is managed by the BIA and fee lands. Fee land is “real property” owned by the Indian person (not land held in trust).

Applicable tribal probate code takes precedence over the BIA process.

State probate

Applies to all off-reservation non-trust property and any non-trust on-reservation property unless tribal probate code exists.

The state probate process is a legal proceeding that takes place in state court:

- ▶ States probate laws vary, and it is important to know the process in your state.
- ▶ State probate deals with property that is not managed by the BIA.
- ▶ State court determines what property and debts the decedent has.
- ▶ State court decides how the property will be distributed.
- ▶ Usually involves paperwork and court appearances by lawyers.
- ▶ Lawyers and court fees are usually paid from the estate’s assets.
- ▶ Lawyer’s fees are usually a set percentage of the estate’s value.

Assets in state probate include:

- ▶ Money in checking, savings, and other bank accounts
- ▶ Real estate or land that is not managed by the BIA
- ▶ Vehicles
- ▶ Securities and other investments
- ▶ Personal property and household items

Debts include:

- ▶ Final bills, such as utility or credit card bills
- ▶ Personal loans
- ▶ Court Judgments
- ▶ Taxes
- ▶ Healthcare costs
- ▶ Death and funeral costs

The process usually takes about a year. It may take longer if there are a lot of assets or if the assets are complex.

NOTE: State probate cases are public records. Anyone can get copies filed in the case by contacting the court.

BIA probate

Assets managed by the BIA must go through federal probate, which involves only trust assets such as:

- ▶ Land held in trust
- ▶ Restricted property
- ▶ Individual Indian Money (IIM) accounts
- ▶ If a person has trust property the BIA determines who will receive that property.

How the BIA process begins:

- ▶ When someone informs the BIA about the person’s death
- ▶ After the BIA has received a copy of the death certificate
- ▶ If the death certificate cannot be found, an obituary notice from a local newspaper can be used. You can also use an affidavit of death prepared by a representative from the decedent’s tribe.
- ▶ The probate is assigned to a probate specialist or probate clerk.
- ▶ If the will names an executor, the BIA will often work with them to get the information needed. However, it is the BIA’s duty to manage trust assets so the executor will not be actively involved in the BIA probate process.

Lawyers are usually involved in the BIA process only if:

- ▶ Family members oppose the will
- ▶ Lawyers are needed to provide assistance

The probate specialist/clerk gathers information and documents about the decedent, including their:

- ▶ Tribal enrollment identification
- ▶ Social security number
- ▶ Birth certificate
- ▶ Record of death
- ▶ Marriage/divorce records
- ▶ Known creditors
- ▶ Names of potential heirs
- ▶ Adoption or guardianship records
- ▶ Will and codicils

The probate specialist/clerk completes a probate package that includes:

- ▶ Evidence of death
- ▶ A completed OHA-7 Form: a family tree showing the relatives and indicating which are Indian.
- ▶ Certified inventory of trust real property
- ▶ List of income sources
- ▶ All wills, codicils, or repeal of wills
- ▶ Debts owed
- ▶ Probate specialist/clerk’s affidavit that all efforts were made to locate beneficiaries

The probate specialist/clerk reviews the completed package and gives it to the BIA deciding official who will probate the estate. (Deciding officials are BIA employees who have the power to make decisions in probate court: they can be a judge or may be a BIA staff member.)

After the probate package is referred to the BIA deciding official, the BIA sends notice to the heirs informing them:

- ▶ About their right to request a formal hearing before an Administrative Law Judge
- ▶ Who the heirs are, and which heirs are listed in the will
- ▶ All known claims against the estate
- ▶ The address of the office where the probate package has been sent
- ▶ Who the BIA deciding official is

The BIA deciding official then holds a formal hearing with heirs:

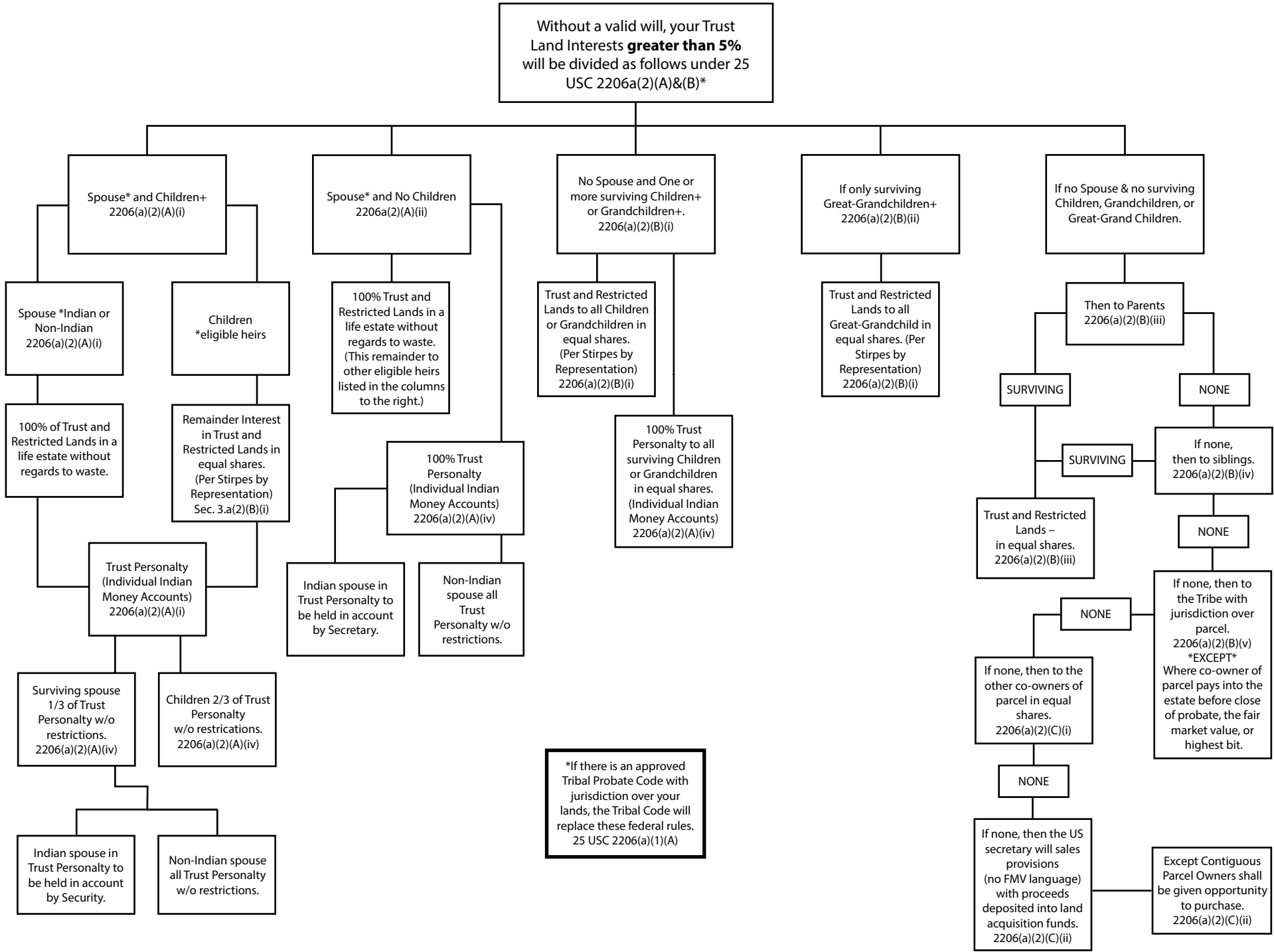
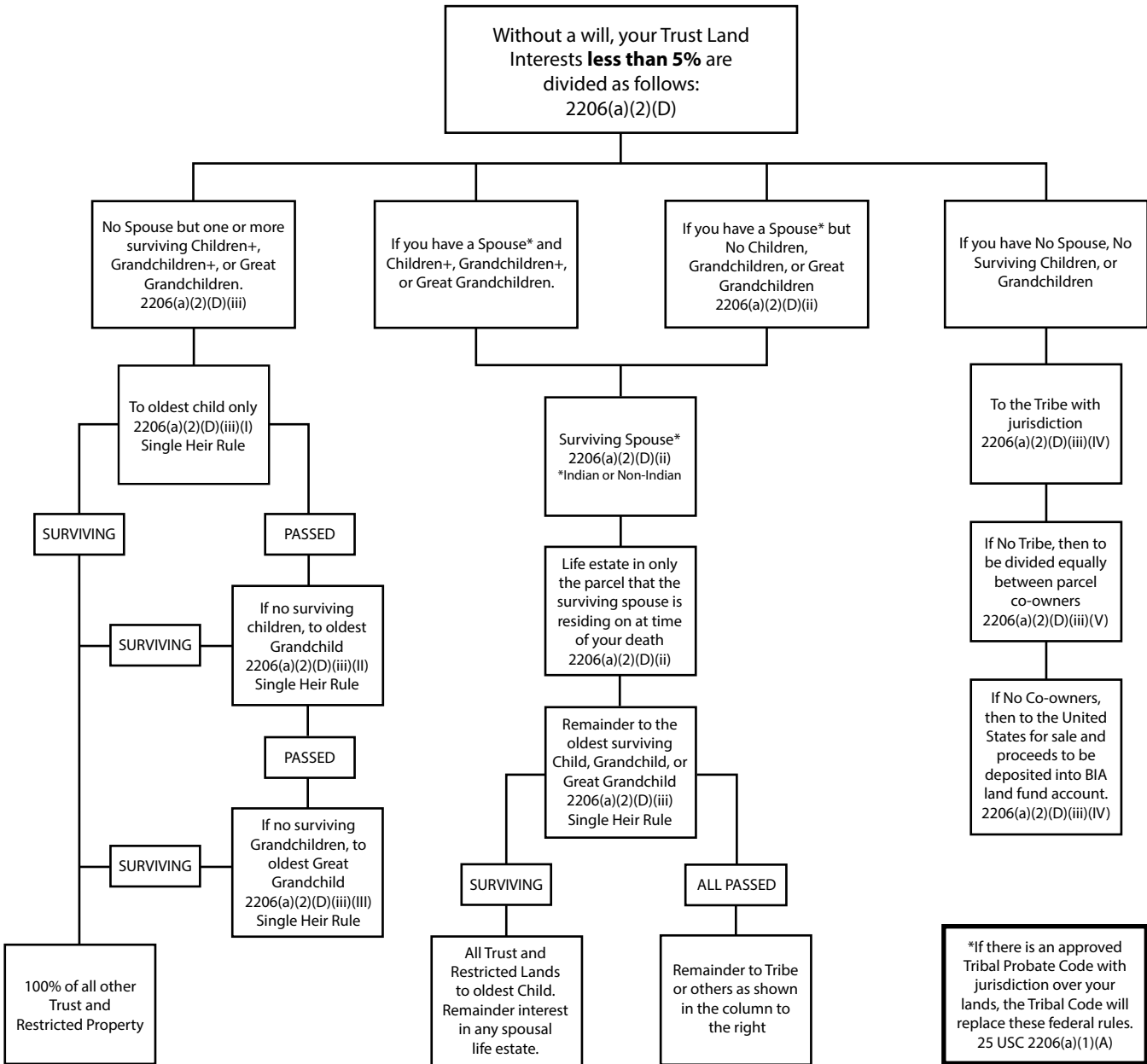
- ▶ If no special issues arise during the hearing, the BIA deciding official issues a written decision or order and sends it to all interested parties.

The deciding official may order the estate to pay, in the following order:

- ▶ Funeral expenses
- ▶ Medical expenses for the last illness
- ▶ Nursing home and care facility expenses
- ▶ Tribal claims
- ▶ Judgements against the estate
- ▶ All other general claims

BIA probate generally takes longer than state probate. It usually ranges from 1-4 years.

American Indian Probate Reform Act of 2004



The BIA probate backlog problem

The Bureau of Indian Affairs (BIA) has a significant backlog of unprobated Indian “trust estate accounts.” In the Cobell v. Norton case the Office of Trust Reform Management (OTFM) reported to the court, “The Trust Funds Accounting System... contains 25,404 open estate accounts. Of these, 13,481 are classified as official deaths, where OTFM has confirmed the death, but the case has not been recorded as sent to probate. Another 7,617 of these accounts are classified as unofficial deaths, where OTFM has received some indication of death which has not yet been confirmed.”

Backlog BIA probates, especially those involving trust land and assets of Indians who died more than 60 years ago, can involve extensive research, including the need to prove lineage and show how people are related.

The Department of Interior’s administrative law judges are required to make probate determinations based on a properly documented paper trail – birth certificate, marriage license, death certificate, and other official records. Certified documentation for Indians was not readily available well into the 1940s. Some of the earlier records are tainted by allotment fraud which proliferated in the late 1800s and early 1900s.

In some cases tribal membership and ‘blood quantum’ rest on the sometimes-fraudulent genealogies and heirship determinations of the distant past. Attempts to probate trust land and assets of a long-gone great-great-uncle can be difficult to say the least. Compiling and verifying official documentation of numerous heirs can be time consuming. It can take a year or more of research by the BIA before the probate case is ready to send to the administrative law judge.

Finding missing heirs continues to be a problem for the BIA. Under the provisions of AIPRA an heir may be considered as having predeceased the decedent if they have not had any contact with other heirs or the Department of the Interior relating to trust or restricted land for the 6-year period preceding the hearing to determine heirs.



Writing a will can reduce the amount of time it takes to go through the lengthy BIA probate process.

The paper trail can also be obscured by the BIA’s use of multiple names for the same person. English names, “Indian names,” variable phonetic spellings of Indian names, and turn-of-the-century Indian Agents’ common use of ‘generic’ names in official records – for example, the Anishinabe words, “Ah-ke-wain-zee” [old man], “Que-we-zaince” [boy], and “Equay” [woman] – compounds the problem.

Locating the collateral heirs of someone who died without surviving children a half-century ago is made more complicated by the BIA’s policies of relocation and off-reservation adoption. These policies led to the loss of lineage and community connections.

Probates are still being reopened as a result of the 1996 U.S. Supreme Court decision in the Babbitt v. Youpee, Sr. case requiring the return of fractionated interest taken from heirs without payment. This complicates the process and causes further probate backlog as cases are reopened to determine rightful heirs for redistribution of fractional interests.

A standard BIA probate may take up to two years to complete and distribute trust assets. Here are four things an individual can do to accelerate the probate process.

- ▶ Provide direct notice of a person’s death to the BIA. Heirs should not assume that the Bureau will know or take necessary steps to determine an Indian’s death. The family should obtain a certified copy of the Death Certificate and deliver it to BIA Probate.
- ▶ Provide copies of all documentation requested by BIA Probate in a timely manner.
- ▶ Work with the tribe’s enrollment department and develop a good rapport with their staff. They may have the most accurate records to help determine/ demonstrate family relationships for heirship eligibility.
- ▶ Be honest in your dealings with BIA in preparing the probate package and with the deciding official during the probate hearing. Honesty and cooperation will reduce or eliminate the need to resolve conflicts with or challenges to the process.

To see if you are among the BIA’s “Whereabouts Unknown” go to:

www.ost.doi.gov/LocatingIIM/whereabouts.html

The Message Runner



ILTF first published the *Message Runner* in 2002 to provide Indian people and others with much-needed information about Indian land tenure issues. Previous volumes include:

- Vol. 1** — “Restoring Indian Lands.” Major issues surrounding Indian land tenure along with solutions and strategies.
- Vol. 2** — A primer on Indian estate planning and probate, including the 2004 American Indian Probate Reform Act (AIPRA). The issue you are reading is a 2019 update of Vol. 2.
- Vol. 3** — “Rights-of-Way.” History of rights-of-way in Indian Country, including a helpful how-to section for landowners and tribes.
- Vol. 4** — “From Removal to Recovery: Land Ownership in Indian Country,” an historical account of Indian land ownership from pre-contact to today.

- Vol. 5** — “Cutting through the Red Tape: An Indian Landowner’s Guide to Reading and Processing Federal Forms.”
- Vol. 6** — “Native Land Law: Can Native American People Find Justice in the U.S. Legal System?”
- Vol. 7** — “Now hiring! Exploring career opportunities in tribal land.”
- Vol. 8** — “Appraisals are at the heart of federal trust responsibility.”
- Vol. 9** — “Managing Indian land in a highly fractionated future.”

To learn more about the *Message Runner*, visit www.iltf.org/resources/publications. To order copies, email info@iltf.org or call (651)766-8999.

Glossary

Administration

The process of managing the probate of an estate. It includes finding and inventorying property, identifying and paying valid debts and taxes owed, and distributing remaining property to heirs and beneficiaries.

Affidavit

A written statement signed by a person who swears that the information on the form is true and correct to the best of his or her knowledge. Usually an affidavit is notarized (signed in front of a notary).

American Indian Probate Reform Act (AIPRA)

Amendments to the Indian Land Consolidation Act of 1983 (25 U.S.C. §§ 2201 – 2221) intended to curtail continued fractionation of trust land ownership and encourage tribes to enact tribal probate codes. AIPRA does not apply to the Five Civilized Tribes or the Osage Nations trust or restricted lands. Separate rules may apply to Alaska and California tribes.

Assets

The property the person owned prior to death that has monetary value. In non-federal probate, assets include fee land, taxable land, money from checking and savings accounts, vehicles, personal property, etc. In BIA probate, assets include trust lands and monies held in Individual Indian Money (IIM) accounts by the BIA.

Beneficiaries

People who inherit property from an estate regardless of whether by will or intestate succession. (Beneficiaries are different from heirs.)

Codicil

A written document that changes a will. It must be written and signed (or executed) with the legal formality of a will. Terms of the will that are not changed by the codicil remain in effect.

Collateral Heir

One who is neither a direct descendent nor an ancestor of the decedent, but whose kinship is through a collateral line, such as a brother, sister, uncle, aunt, nephew, niece or cousin.

Decedent

The person who has died.

Eligible heir as defined by AIPRA

The decedent’s children, grandchildren, great grandchildren, full siblings, half siblings by blood and parents who are (a) Indian; or (b) lineal descendants within 2 degrees of consanguinity of an Indian; or (c) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 2206, another trust or restricted interest in such parcel from the descendent.

Estate

In the context of probates, an estate is the real and personal property that a person possesses at the time of death and that passes to the heirs or testamentary beneficiaries.

Executor

The person responsible for settling a deceased person’s estate. Duties include inventorying, appraising and distributing assets, paying taxes, and settling debts owed by the deceased. The legal obligation is to act in the interests of the deceased, following the wishes expressed in his or her will.

Fractionated Land Title

A term commonly used to describe trust land that has multiple undivided interests held by many individuals as a result of ownership or original allotments passing to beneficiaries through division of the title for many generations.

Fee Land

Land held in fee simple; the broadest property interest allowed by law

General Allotment Act

The General Allotment Act (also known as the Dawes Act) was passed by Congress in 1887. The Act allocated parcels of reservation land to tribal members in an effort to direct them towards agrarian pursuits. Typically lands not allotted or reserved for tribal or federal use were declared “surplus” and opened to settlement by non-Indians. The allotment policy was ended with the Indian Reorganization Act of 1934, but only after 90 million acres had been lost to tribal ownership.

Heir

A person who is eligible to receive property from an individual who dies without a will (Intestate).

Indian as defined by AIPRA

For estates of people who died after June 20, 2006, a person who: (a) is a member of a federally recognized Indian Tribe; (b) is eligible to become a member of a federally recognized Indian tribe; (c) was an owner of trust or restricted land on Oct. 27, 2004; (d) meets the definition of “Indian” under the Indian Reorganization Act; or (e) in California it also includes a person who owns trust or restricted land in California.

A “California Indian” is a person of any degree of Indian ancestry who owns trust or restricted land in California. A California Indian may inherit additional land in the state in trust.

Interested Parties

People who believe they may inherit assets from the decedent’s estate.

Intestate

When a person dies without leaving a valid will.

Land Tenure

The method or mode by which land is held or owned.

Liabilities

Debts and other claims at the time of death that reduce the value of an estate, including mortgages, liens (records of debt), taxes and easements.

Life Estate

An estate in real property with a term that is defined by the life of the grantor or of another.

Permanent Improvements

Covered permanent improvements are buildings, other structures and associated infrastructure attached to a parcel of trust property. These are not considered trust assets and are therefore subject to the state probate process.

Personal Property

A person’s belongings, except for real estate and buildings. Personal property includes one’s car, furniture, jewelry, etc.

Predecent/Predeceased

In the context of wills, a person who dies before the person whose estate is being probated.

Probate

Probate is the process of identifying and distributing the decedent’s estate.

Probate Code

A body of laws that governs the probate process. Indian tribes may have their own tribal probate codes as do states and now, under AIPRA, so does the federal government.

Indian Trust Assets

Assets to which the United States owns legal title. Examples: trust land, restricted land, and Individual Indian Money accounts.

Undivided Interest

Common interests in the title of the whole parcel owned by two or more people. Owners of undivided interests do not own a specific physical piece of a parcel of land but rather a percentage interest in the title of the whole.

Will

Document in which the person making the will describes how they wish to have their property distributed after their death. Wills must be formally executed in the manner required by law applicable in the jurisdiction where the will is made.



The Indian Land Tenure Foundation (ILTF) is a national, community-based organization focused on American Indian land recovery and management. ILTF’s primary aim is to ensure that all reservation and important off-reservation lands are owned and managed by Indian people and Indian nations.

As a community foundation, ILTF relies on funding from private foundations and donations from Indian nations, corporations and individuals to support its programming in Indian Country. Please consider making a donation to the Indian Land Tenure Foundation today.

To learn more about our work and programs, and to make a donation, visit our website at: www.iltf.org.

Indian Land Tenure Foundation

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AMERICAN INDIAN PROBATE REFORM ACT

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**EASY READ FORMAT OF
TITLE 25—INDIANS
CHAPTER 24--INDIAN LAND CONSOLIDATION**

Sec. 2201. Definitions

For the purpose of this chapter--

- (1) "Indian tribe" or "tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;
- (2) "Indian" means--
 - (A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of the date of enactment of the American Indian Probate Reform Act of 2004) of a trust or restricted interest in land;
 - (B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and
 - (C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 2206, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.
- (3) "Secretary" means the Secretary of the Interior;
- (4) (i) "trust or restricted lands" means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and
(ii) "trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means and interest in land, the title to which interest is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.
(5) "heirs of the first or second degree" means parents, children, grandchildren, grandparents, brothers and sisters of a decedent.
(6) "parcel of highly fractionated Indian land" means a parcel of land that the Secretary, pursuant to authority under a provision of this Act, determines to have, as evidenced by the Secretary's records at the time of the determination--
 - (A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or
 - (B) 100 or more co-owners of undivided trust or restricted interests;(7) the term "land"
(A) means any real property; and
(B) only for purposes of intestate succession under section 207(a), includes the interest, if any, owned by the decedent in improvements permanently affixed to a parcel of trust or restricted lands (subject to any valid mortgage or other interest in such an improvement) if the parcel was owned, in whole or part, by the decedent immediately prior to death of the decedent.
(8) "person" or "individual" means a natural person;
(9) "eligible heirs" means, for purposes of section 2206, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are--
 - (A) Indian; or (B) lineal descendants within 2 degrees of consanguinity of an Indian; or
 - (C) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 2206, another trust or restricted interest in such parcel from the decedent; and
(10) "without regard to waste" means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

Deleted: "trust or restricted interest in land" or

Deleted: an interest in land, title to which

Deleted: (7) "land" means any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property;

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Sec. 2202. Other applicable provisions

The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

Sec. 2203. Adoption of land consolidation plan with approval of Secretary

(a) Statement of purpose; sales or exchanges: terms and conditions

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating

undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings:

Provided, That--

(1) except as provided by subsection (c) of this section, the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

(c) Below market value conveyance of Cherokee Nation of Oklahoma homesites

The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.

Sec. 2204. Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions

(a) Purchase of Land.--

(1) IN GENERAL.--Subject to subsection (b), any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in-

-

(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or

(B) land that is otherwise subject to the jurisdiction of the tribe.

(2) REQUIRED CONSENT.—

(A) IN GENERAL.--The Indian tribe may purchase all interests in a tract described in paragraph (1) with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

(B) INTEREST OWNED BY TRIBE.--Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under subparagraph (A) has been met.

(b) Conditions applicable to purchase

Subsection (a) of this section applies on the condition that--

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary; and

(3) the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.

(c) Partition of highly fractionated Indian lands

(1) Applicability.

This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B), to be parcels of highly fractionated Indian land.

(2) Requirements.

Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

(A) Application.

Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by--

Sec. 2204(c)(2)(A)

- (i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or
- (ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(B) Costs of serving notice and publication.

The costs of serving and publishing notice under subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) otherwise required by this subparagraph, upon making a determination that such waiver will further the policies of this Act.

(C) Determination.

Upon receipt of an application pursuant to subparagraph (A), the Secretary shall determine whether the subject parcel meets the requirements set forth in section 2201(6) to be classified as a parcel of highly fractionated Indian land.

(D) Consent requirements.

(i) In general.

A parcel of land may be partitioned under this subsection only if the applicant obtains the written consent of--

- (I) the Indian tribe with jurisdiction over the subject land if such Indian tribe owns an undivided interest in the parcel;
- (II) any owner who, for the 3-year period immediately preceding the date on which the Secretary receives the application, has
 - (aa) continuously maintained a bona fide residence on the parcel;
 - or
 - (bb) operated a bona fide farm, ranch, or other business on the parcel; and
- (III) the owners (including parents of minor owners and legal guardians of incompetent owners) of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner's total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of \$1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by Secretary [*sic – presumably should be “the Secretary”*] unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

Sec. 2204(c)(2)(D)

(ii) Consent by the secretary on behalf of certain individuals.

For the purposes of clause (i)(III), the Secretary may consent on behalf of--

- (I) undetermined heirs of trust or restricted interests and owners of such interests who are minors and legal incompetents having no parents or legal guardian; and
- (II) missing owners or owners of trust or restricted interests whose whereabouts are unknown, but only after a search for such owners has been completed in accordance with the provisions of this subsection.

(E) Appraisal.

After the Secretary has determined that the subject parcel is a parcel of highly fractionated Indian land pursuant to subparagraph (C), the Secretary shall cause to be made, in accordance with the provisions of this Act for establishing fair market value, an appraisal of the fair market value of the subject parcel.

(F) Notice to owners on completion of appraisal.

Upon completion of the appraisal, the Secretary shall give notice of the requested partition and appraisal to all owners of undivided interests in the parcel, in accordance with principles of due process. Such notice shall include the following requirements:

(i) Written notice.

The Secretary shall attempt to give each owner written notice of the partition action stating the following:

- (I) That a proceeding to partition the parcel of land by sale has been commenced.
- (II) The legal description of the subject parcel.
- (III) The owner's ownership interest in the subject parcel as evidenced by the Secretary's records as of the date that owners are determined in accordance with clause (ii).
- (IV) The results of the appraisal.
- (V) The owner's right to receive a copy of the appraisal upon written request.
- (VI) The owner's right to comment on or object to the proposed partition and the appraisal.
- (VII) That the owner must timely comment on or object in writing to the proposed partition or the appraisal, in order to receive notice of approval of the appraisal and right to appeal.
- (VIII) The date by which the owner's written comments or objections must be received, which shall not be less than 90 days after the date that the notice is mailed under this clause or last published under clause (ii)(II).
- (IX) The address for requesting copies of the appraisal and for submitting written comments or objections.
- (X) The name and telephone number of the official to be contacted for purposes of obtaining information regarding the proceeding, including the time and date of the auction of the land or the date for submitting sealed bids.
- (XI) Any other information the Secretary deems to be appropriate.

(ii) Manner of service.

(I) Service by certified mail.

The Secretary shall use due diligence to provide all owners of interests in the subject parcel, as evidenced by the Secretary's records at the time of

Sec. 2204(c)(2)(F)(ii)(I)

the determination under subparagraph (C), with actual notice of the partition proceedings by mailing a copy of the written notice described in clause (i) by certified mail, restricted delivery, to each such owner at the owner's last known address. For purposes of this subsection, owners shall be determined from the Secretary's land title records as of the date of the determination under subparagraph (C) or a date that is not more than 90 days prior to the date of mailing under this clause, whichever is later. In the event the written notice to an owner is returned undelivered, the Secretary shall attempt to obtain a current address for such owner by conducting a reasonable search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if

different from that tribe, the Indian tribe of which the owner is a member, and, if successful in locating any such owner, send written notice by certified mail in accordance with this subclause.

(II) Notice by publication.

The Secretary shall give notice by publication of the partition proceedings to all owners that the Secretary was unable to serve pursuant to subclause (I), and to unknown heirs and assigns by--

(aa) publishing the notice described in clause (i) at least 2 times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, 1 time in such newspaper of general circulation and 1 time in such tribal newspaper or newsletter;

(bb) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Secretary to be most appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

(cc) in addition to the foregoing, in the Secretary's discretion, publishing notice in any other place or means that the Secretary determines to be appropriate.

(G) Review of comments on appraisal.

(i) In general.

After reviewing and considering comments or information timely submitted by any owner of an interest in the parcel in response to the notice required under subparagraph (F), the Secretary may, consistent with the provisions of this Act for establishing fair market value--

(I) order a new appraisal; or

(II) approve the appraisal;

provided that if the Secretary orders a new appraisal under subclause (I), notice of the new appraisal shall be given as specified in clause (ii).

Sec. 2204(c)(2)(G)

(ii) Notice.

Notice shall be given--

- (I) in accordance with subparagraph (H), where the new appraisal results a value of the land that is equal to or greater than that of the earlier appraisal; or
- (II) in accordance with subparagraph (F)(ii), where the new appraisal results in a lower valuation of the land.

(H) Notice to owners of approval of appraisal and right to appeal.

Upon making the determination under subparagraph (G), the Secretary shall provide to the Indian tribe with jurisdiction over the subject land and to all persons who submitted written comments on or objections to the proposed partition or appraisal, a written notice to be served on such tribe and persons by certified mail. Such notice shall state--

- (i) the results of the appraisal;
- (ii) that the owner has the right to review a copy of the appraisal upon request;
- (iii) that the land will be sold for not less than the appraised value, subject to the consent requirements under paragraph (2)(D);
- (iv) the time of the sale or for submitting bids under subparagraph (I);
- (v) that the owner has the right, under the Secretary's regulations governing administrative appeals, to pursue an administrative appeal from--
 - (I) the determination that the land may be partitioned by sale under the provisions of this section; and
 - (II) the Secretary's order approving the appraisal;
- (vi) the date by which an administrative appeal must be taken, a citation to the provisions of the Secretary's regulations that will govern the owner's appeal, and any other information required by such regulations to be given to parties affected by adverse decisions of the Secretary;
- (vii) in cases where the Secretary determines that any person's undivided trust or restricted interest in the parcel exceeds \$1,500 pursuant to paragraph (2)(D)(iii), that the Secretary has authority to consent to the partition on behalf of undetermined heirs of trust or restricted interests in the parcel and owners of such interests whose whereabouts are unknown; and
- (viii) any other information the Secretary deems to be appropriate.

(I) Sale to eligible purchaser.

(i) In general.

Subject to clauses (ii) and (iii) and the consent requirements of paragraph (2)(D), the Secretary shall, after providing notice to owners under subparagraph (H), including the time and place of sale or for receiving sealed bids, at public auction or by sealed bid (whichever of such methods of sale the Secretary determines to be more appropriate under the circumstances) sell the parcel of land by competitive bid for not less than the final appraised fair market value to the highest bidder from among the following eligible bidders:

- (I) The Indian tribe, if any, with jurisdiction over the trust or restricted interests in the parcel being sold.
- (II) Any person who is a member, or is eligible to be a member, of the Indian tribe described in subclause (I).
- (III) Any person who is a member, or is eligible to be a member, of an Indian tribe but not of the tribe described in subclause (I), but only if such person already owns an undivided interest in the parcel at the time of sale.

Sec. 2204(c)(2)(I)(i)

(IV) Any lineal descendent of the original allottee of the parcel who is a member or is eligible to be a member of an Indian tribe or, with respect to a parcel located in the State of California that is not within an Indian tribe's reservation or not otherwise subject to the jurisdiction of an Indian tribe, who is a member, or eligible to be a member, of an Indian tribe or owns a trust or restricted interest in the parcel.

(ii) Right to match highest bid.

If the highest bidder is a person who is only eligible to bid under clause (i)(III), the Indian tribe that has jurisdiction over the parcel, if any, shall have the right to match the highest bid and acquire the parcel, but only if--

(I) prior to the date of the sale, the governing body of such tribe has adopted a tribal law or resolution reserving its right to match the bids of such nonmember bidders in partition sales under this subsection if any and delivered a copy of such law or resolution to the Secretary; and

(II) the parcel is not acquired under clause (iii).

(iii) Right to purchase.

Any person who is a member, or eligible to be a member, of the Indian tribe with jurisdiction over the trust or restricted interests in the parcel being sold and is, as of the time of sale under this subparagraph, the owner of the largest undivided interest in the parcel shall have a right to purchase the parcel by tendering to the Secretary an amount equal to the highest sufficient bid submitted at the sale, less that amount of the bid attributable to such owner's share, but only if--

(I) the owner submitted a sufficient bid at the sale;

(II) the owner's total undivided interest in the parcel immediately prior to the sale was--

(aa) greater than the undivided interest held by any other co-owners, except where there are 2 or more co-owners whose interests are of equal size but larger than the interests of all other co-owners and such owners of the largest interests have agreed in writing that 1 of them may exercise the right of purchase under this clause; and

(bb) equal to or greater than 20 percent of the entire undivided ownership of the parcel;

(III) within 3 days following the date of the auction or for receiving sealed bids, and in accordance with the regulations adopted to implement this section, the owner delivers to the Secretary a written notice of intent to exercise the owner's rights under this clause; and

(IV) such owner tenders the amount of the purchase price required under this clause--

(aa) not more than 30 days after the date of the auction or time for receiving sealed bids; and

(bb) in accordance with any requirements of the regulations promulgated under paragraph (5).

(iv) Interest acquired.

A purchaser of a parcel of land under this subparagraph may acquire title to the parcel in trust or restricted status, free and clear of any and all claims of title or ownership of all persons or entities (not including the United States) owning or claiming to own an interest in such parcel prior to the time of sale.

Sec. 2204(c)(2)

(J) Proceeds of sale.

(i) Subject to clauses (ii) and (iii), the Secretary shall distribute the proceeds of sale of a parcel of land under the provisions of this section to the owners of interests in such parcel in proportion to their respective ownership interests.

(ii) Proceeds attributable to the sale of trust or restricted interests shall be maintained in accounts as trust personalty.

(iii) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown, of undetermined heirs, and of other persons whose ownership interests have not been recorded shall be held by the Secretary until such owners, heirs, or other persons have been determined, at which time such proceeds shall be distributed in accordance with clauses (i) and (ii).

(K) Lack of bids or consent.

(i) Lack of bids.

If no bidder described in subparagraph (I) presents a bid that equals or exceeds the final appraised value, the Secretary may either--

(I) purchase the parcel of land for its appraised fair market value on behalf of the Indian tribe with jurisdiction over the land, subject to the lien and procedures provided under section 2213(b); or

(II) terminate the partition process.

(ii) Lack of consent.

If an applicant fails to obtain any applicable consent required under the provisions of subparagraph (D) by the date established by the Secretary prior to the proposed sale, the Secretary may either extend the time for obtaining any such consent or deny the request for partition.

(3) Enforcement.

(A) In general.

If a partition is approved under this subsection and an owner of an interest in the parcel of land refuses to surrender possession in accordance with the partition decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may--

(i) commence a civil action in the United States district court for the district in which the parcel of land is located; and

(ii) request that the court issue an order for ejectment or any other appropriate remedy necessary for the partition of the land by sale.

(B) Federal role.

With respect to any civil action brought under subparagraph (A)--

(i) the United States--

(I) shall receive notice of the civil action; and

(II) may be a party to the civil action; and

(ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is a necessary and indispensable party.

(4) Grants and loans.

The Secretary may provide grants and low interest loans to successful bidders at sales authorized by this subsection, provided that--

(A) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and

(B) the grant or loan funds provided shall only be applied toward the purchase price of the parcel of land sold.

Sec. 2204(c)

(5) Regulations.

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection. Such regulations shall include provisions for giving notice of sales to prospective purchasers eligible to submit bids at sales conducted under paragraph (2)(I).

Sec. 2205. Tribal probate codes; acquisitions of fractional interests by tribes

(a) Tribal probate codes

(1) In general

Notwithstanding any other provision of law, any Indian tribe may adopt a tribal probate code to govern descent and distribution of trust or restricted lands that are--

- (A) located within that Indian tribe's reservation; or
- (B) otherwise subject to the jurisdiction of that Indian tribe.

(2) Possible inclusions

A tribal probate code referred to in paragraph (1) may include--

- (A) rules of intestate succession; and
- (B) other tribal probate code provisions that are consistent with Federal law and that promote the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

(3) Tribal probate codes.

Except as provided in any applicable Federal law, the Secretary shall not approve a tribal probate code, or an amendment to such a code, that prohibits the devise of an interest in trust or restricted land to--

- (A) an Indian lineal descendant of the original allottee; or
- (B) an Indian who is not a member of the Indian tribe with jurisdiction over such an interest; unless the code provides for--
 - (i) the renouncing of interests to eligible devisees in accordance with the code;
 - (ii) the opportunity for a devisee who is the spouse or lineal descendant of a testator to reserve a life estate without regard to waste; and
 - (iii) payment of fair market value in the manner prescribed under subsection (c)(2).

(b) Secretarial approval

(1) In general

Any tribal probate code enacted under subsection (a) of this section, and any amendment to such a tribal probate code, shall be subject to the approval of the Secretary.

(2) Review and approval

(A) In general

Each Indian tribe that adopts a tribal probate code under subsection (a) of this section shall submit that code to the Secretary for review. Not later than 180 days after a tribal probate code is submitted to the Secretary under this paragraph, the Secretary shall review and approve or disapprove that tribal probate code.

(B) Consequence of failures to approve or disapprove a tribal probate code

If the Secretary fails to approve or disapprove a tribal probate code submitted for review under subparagraph (A) by the date specified in that subparagraph, the tribal probate code shall be deemed to have been approved by the Secretary, but only to the extent that the tribal probate code is consistent with Federal law and promotes the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

Sec. 2205(b)(2)

(C) Consistency of tribal probate code with chapter

The Secretary may not approve a tribal probate code, or any amendment to such a code, under this paragraph unless the Secretary determines that the tribal probate code promotes the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

(D) Explanation

If the Secretary disapproves a tribal probate code, or an amendment to such a code, under this paragraph, the Secretary shall include in the notice of disapproval to the Indian tribe a written explanation of the reasons for the disapproval.

(E) Amendments

(i) In general

Each Indian tribe that amends a tribal probate code under this paragraph shall submit the amendment to the Secretary for review and approval. Not later than 60 days after receiving an amendment under this subparagraph, the Secretary shall review and approve or disapprove the amendment.

(ii) Consequence of failure to approve or disapprove an amendment

If the Secretary fails to approve or disapprove an amendment submitted under clause (i), the amendment shall be deemed to have been approved by the Secretary, but only to the extent that the amendment is consistent with Federal law and promotes the policies set forth in section 102 of the Indian Land Consolidation Act [Amendments] of 2000.

(3) Effective dates

A tribal probate code approved under paragraph (2) shall become effective on the later of--

(A) the date that is 1 year after the date on which the Secretary makes the certification required under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2001 note; Public Law 108-374); or

(B) 180 days after the date of approval.

(4) Limitations

(A) Tribal probate codes

Each tribal probate code enacted under subsection (a) of this section shall apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

(B) Amendments to tribal probate codes

With respect to an amendment to a tribal probate code referred to in subparagraph (A), that amendment shall apply only to the estate of a decedent who dies on or after the effective date of the amendment.

(5) Repeals

The repeal of a tribal probate code shall--

(A) not become effective earlier than the date that is 180 days after the Secretary receives notice of the repeal; and

(B) apply only to the estate of a decedent who dies on or after the effective date of the repeal.

(c) Authority available to Indian tribes

(1) Authority.

(A) In general .

If the owner of an interest in trust or restricted land devises an interest in such land to a non-Indian under section 207(b)(2)(A)(ii), the Indian tribe that exercises jurisdiction over the parcel of land involved may acquire such interest by paying to the Secretary the fair market value of such interest, as determined by the Secretary on the date of the decedent's death.

Sec. 2205(c)(1)

(B) Transfer.

The Secretary shall transfer payments received under subparagraph (A) to any person or persons who would have received an interest in land if the interest had not been acquired by the Indian tribe in accordance with this paragraph.

(2) Limitation

(A) Inapplicability to certain interests.

(i) In general.

Paragraph (1) shall not apply to an interest in trust or restricted land if--

(I) while the decedent's estate is pending before the Secretary, the non-Indian devisee renounces the interest in favor of an Indian person; or

(II) (aa) the interest is part of a family farm that is devised to a member of the family of the decedent; and
(bb) the devisee agrees in writing that the Indian tribe with jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to a person or entity that is not a member of the family of the owner of the land.

(ii) Recording of interest.

On request by the Indian tribe described in clause (i)(II)(bb), a restriction relating to the acquisition by the Indian tribe of an interest in a family farm involved shall be recorded as part of the deed relating to the interest involved.

(iii) Mortgage and foreclosure.

Nothing in clause (i)(II) limits--

(I) the ability of an owner of land to which that clause applies to mortgage the land; or

(II) the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement in accordance with applicable law.

(iv) Definition of "member of the family".

In this paragraph, the term "member of the family", with respect to a decedent or landowner, means--

(I) a lineal descendant of a decedent or landowner;

(II) a lineal descendant of the grandparent of a decedent or landowner;

(III) the spouse of a descendant or landowner described in subclause (I) or (II); and

(IV) the spouse of a decedent or landowner.

(B) Reservation of life estate

A non-Indian devisee described in paragraph (1), may retain a life estate in the interest involved, including a life estate to the revenue produced from the interest. The amount of any payment required under paragraph (1) shall be reduced to reflect the value of any life estate reserved by a non-Indian devisee under this subparagraph.

(3) Payments

With respect to payments by an Indian tribe under paragraph (1), the Secretary shall--

(A) upon the request of the tribe, allow a reasonable period of time, not to exceed 2 years, for the tribe to make payments of amounts due pursuant to paragraph (1); or

(B) recognize alternative agreed upon exchanges of consideration or extended payment terms between the non-Indian devisee described in paragraph (1) and the tribe in satisfaction of the payment under paragraph (1).

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(d) Use of proposed findings by tribal justice systems

(1) Tribal justice system defined

In this subsection, the term "tribal justice system" has the meaning given that term in section 3602 of this title.

(2) Regulations

The Secretary by regulation may provide for the use of findings of fact and conclusions of law, as rendered by a tribal justice system, as proposed findings of fact and conclusions of law in the adjudication of probate proceedings by the Department of the Interior.

Sec. 2206. Descent and distribution

(a) Nontestamentary disposition.

(1) Rules of descent.

Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any trust or restricted interest in land or interest in trust personalty that is not disposed of by a valid will--

(A) shall descend according to an applicable tribal probate code approved in accordance with section 2205; or

(B) in the case of a trust or restricted interest in land or interest in trust personalty to which a tribal probate code does not apply, shall descend in accordance with--

(i) paragraphs (2) through (5); and

(ii) other applicable Federal law.

(2) Rules governing descent of estate.

(A) Surviving spouse.

If there is a surviving spouse of the decedent, such spouse shall receive trust and restricted land and trust personalty in the estate as follows:

(i) If the decedent is survived by 1 or more eligible heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive 1/3 of the trust personalty of the decedent and a life estate without regard to waste in the interests in trust or restricted lands of the decedent.

(ii) If there are no eligible heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive all of the trust personalty of the decedent and a life estate without regard to waste in the trust or restricted lands of the decedent.

(iii) The remainder shall pass as set forth in subparagraph (B).

(iv) Trust personalty passing to a surviving spouse under the provisions of this subparagraph shall be maintained by the Secretary in an account as trust personalty, but only if such spouse is Indian.

(B) Individual and tribal heirs.

Where there is no surviving spouse of the decedent, or there is a remainder interest pursuant to subparagraph (A), the trust or restricted estate or such remainder shall, subject to subparagraphs (A) and (D), pass as follows:

(i) To those of the decedent's children who are eligible heirs (or if 1 or more of such children do not survive the decedent, the children of any such deceased child who are eligible heirs, by right of representation, but only if such children of the deceased child survive the decedent) in equal shares.

(ii) If the property does not pass under clause (i), to those of the decedent's surviving great-grandchildren who are eligible heirs, in equal shares.

(iii) If the property does not pass under clause (i) or (ii), to the decedent's surviving parent who is an eligible heir, and if both parents survive the decedent

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and are both eligible heirs, to both parents in equal shares.

(iv) If the property does not pass under clause (i), (ii), or (iii), to those of the decedent's surviving siblings who are eligible heirs, in equal shares.

(v) If the property does not pass under clause (i), (ii), (iii), or (iv), to the Indian tribe with jurisdiction over the interests in trust or restricted lands; except that notwithstanding clause (v), an Indian co-owner (including the Indian tribe referred to in clause (v)) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under that clause by paying into the estate of the decedent, before the close of the probate of the estate, the fair market value of the interest in the land; if more than 1 Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

(C) No Indian tribe.

(i) In general.

If there is no Indian tribe with jurisdiction over the interests in trust or restricted lands that would otherwise descend under subparagraph (B)(v), then such interests shall be divided equally among co-owners of trust or restricted interests in the parcel; if there are no such co-owners, then to the United States, provided that any such interests in land passing to the United States under this subparagraph shall be sold by the Secretary and the proceeds from such sale deposited into the land acquisition fund established under section 2215 and used for the purposes described in subsection (b) of that section.

(ii) Contiguous parcel.

If the interests passing to the United States under this subparagraph are in a parcel of land that is contiguous to another parcel of trust or restricted land, the Secretary shall give the owner or owners of the trust or restricted interest in the contiguous parcel the first opportunity to purchase the interest at not less than fair market value determined in accordance with this Act. If more than 1 such owner in the contiguous parcel request to purchase the parcel, the Secretary shall sell the parcel by public auction or sealed bid (as determined by the Secretary) at not less than fair market value to the owner of a trust or restricted interest in the contiguous parcel submitting the highest bid.

(D) Intestate descent of small fractional interests in land.

(i) General rule.

Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with ~~clauses (ii) through (v)~~

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(ii) Surviving spouse.

If there is a surviving spouse, and such spouse was residing on a parcel of land described in clause (i) at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with clause (iii).

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(iii) Single heir rule.

Where there is no life estate created under clause (ii) or there is a remainder interest under that clause, the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to--

(I) the decedent's surviving child, but only if such child is an eligible heir; and if 2 or more surviving children are eligible heirs, then to the oldest of such children;

(II) if the interest does not pass under subclause (I), the decedent's surviving grandchild, but only if such grandchild is an eligible heir; and if 2 or more surviving grandchildren are eligible heirs, then to the oldest of such grandchildren;

(III) if the interest does not pass under subclause (I) or (II), the decedent's surviving great grandchild, but only if such great grandchild is an eligible heir; and if 2 or more surviving great grandchildren are eligible heirs, then to the oldest of such great grandchildren;

(IV) if the interest does not pass under subclause (I), (II), or (III), the Indian tribe with jurisdiction over the interest; or

(V) if the interest does not pass under subclause (I), (II), or (III), and there is no such Indian tribe to inherit the property under subclause (IV), the interest shall be divided equally among co-owners of trust or restricted interests in the parcel; and if there are no such co-owners, then to the United States, to be sold, and the proceeds from sale used, in the same manner provided in subparagraph (C).

The determination of which person is the oldest eligible heir for inheritance purposes under this clause shall be made by the Secretary in the decedent's probate proceeding and shall be consistent with the provisions of this Act.

(iv) Exceptions.

Notwithstanding clause (iii)--

(I)(aa) the heir of an interest under this subparagraph, unless the heir is a minor or incompetent person, may agree in writing entered into the record of the decedent's probate proceeding to renounce such interest, in trust or restricted status, in favor of--

(AA) any other eligible heir or Indian person related to the heir by blood, but in any case never in favor of more than 1 such heir or person;

(BB) not more than 1 co-owner of another trust or restricted interest in such parcel of land; or

(CC) the Indian tribe with jurisdiction over the interest, if any; and

(bb) the Secretary shall give effect to such agreement in the distribution of the interest in the probate proceeding; and

(II) the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of decedent [*sic – presumably should be "order of descent"*] set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if--

(aa) a copy of the tribal rule is delivered to the official designated by the Secretary to receive copies of tribal rules for the purposes of this clause;

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- (bb) the tribal rule provides for the intestate inheritance of such interest by no more than 1 heir, so that the interest does not further fractionate;
- (cc) the tribal rule does not apply to any interest disposed of by a valid will;
- (dd) the decedent died on or after the date described in subsection (b) of section 8 of the American Indian Probate Act of 2004, or on or after the date on which a copy of the tribal rule was delivered to the Secretary pursuant to item (aa), whichever is later; and
- (ee) the Secretary does not make a determination within 90 days after a copy of the tribal rule is delivered pursuant to item (aa) that the rule would be unreasonably difficult to administer or does not conform with the requirements in item (bb) or (cc).

(v) Effect of Subparagraph

Nothing in this subparagraph limits the right of any person to devise any trust or restricted interest pursuant to a valid will in accordance with subsection (b).

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This subparagraph shall not be construed to limit a person's right to devise any trust or restricted interest by way of a valid will in accordance with subsection (b).

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(3) Right of representation.

If, under this subsection, all or any part of the estate of a decedent is to pass to children of a deceased child by right of representation, that part is to be divided into as many equal shares as there are living children of the decedent and pre-deceased children who left issue who survive the decedent. Each living child of the decedent, if any, shall receive 1 share, and the share of each pre-deceased child shall be divided equally among the pre-deceased child's children.

(4) Special rule relating to survival.

In the case of intestate succession under this subsection, if an individual fails to survive the decedent by at least 120 hours, as established by clear and convincing evidence--

- (A) the individual shall be deemed to have predeceased the decedent for the purpose of intestate succession; and
- (B) the heirs of the decedent shall be determined in accordance with this section.

(5) Status of inherited interests.

Except as provided in paragraphs (2) (A) and (D) regarding the life estate of a surviving spouse, a trust or restricted interest in land or trust personalty that descends under the provisions of this subsection shall vest in the heir in the same trust or restricted status as such interest was held immediately prior to the decedent's death.

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(b) Testamentary disposition.

(1) General devise of an interest in trust or restricted land.

(A) In general.

Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, or a tribal probate code approved by the Secretary in accordance with section 2205, the owner of a trust or restricted interest in land may devise such interest to--

- (i) any lineal descendant of the testator;
- (ii) any person who owns a preexisting undivided trust or restricted interest in the same parcel of land;
- (iii) the Indian tribe with jurisdiction over the interest in land; or
- (iv) any Indian;

in trust or restricted status.

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(B) Rules of interpretation.

Any devise of a trust or restricted interest in land pursuant to subparagraph (A) to an Indian or the Indian tribe with jurisdiction over the interest shall be deemed to be a devise of the interest in trust or restricted status. Any devise of a trust or restricted interest in land to a person who is only eligible to be a devisee under clause (i) or (ii) of subparagraph (A) shall be presumed to be a devise of the interest in trust or restricted status unless language in such devise clearly evidences an intent on the part of the testator that the interest is to pass as a life estate or fee interest in accordance with paragraph (2)(A).

(2) Devise of trust or restricted land as a life estate or in fee.

(A) In general.

Except as provided under any applicable Federal law, any trust or restricted interest in land that is not devised in accordance with paragraph (1)(A) may be devised only--

- (i) as a life estate to any person, with the remainder being devised only in accordance with subparagraph (B) or paragraph (1); or
- (ii) except as provided in subparagraph (B), as a fee interest without Federal restrictions against alienation to any person who is not eligible to be a devisee under clause (iv) of paragraph (1)(A).

(B) Indian reorganization act lands.

(i) In General – Subject to clauses (ii) and (iii), any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464), may be devised only in accordance with--

- (I) that section;
- (II) subparagraph (A)(i); or
- (III) paragraph (1)(A).

(ii) Exception –

(I) In General – Notwithstanding clause (i), in any case in which a resolution, law, or other enactment of the Indian tribe with jurisdiction over the land of which an interest described in clause (i) is a part requests the Secretary to apply subparagraph (A)(ii) to devises of trust or restricted land under the jurisdiction of the Indian tribe, the interest may be devised in fee in accordance with subparagraph (A)(ii).

(II) Effect – Subclause (I) shall apply with respect to a devise of a trust or restricted interest in land by any decedent who dies on or after the date on which the applicable Indian tribe adopts the resolution, law, or other enactment described in subclause (I), regardless of the date on which the devise is made.

(iii) Except as provided in clause (ii), nothing in this section or in section 4 of the Act of June 18, 1934 (25 U.S.C. 464), shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 4 of that Act to any person as a fee interest under subparagraph (A)(ii).

(3) General devise of an interest in trust personalty.

(A) Trust personalty defined.

The term “trust personalty” as used in this section includes all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.

(B) In general.

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Subject to any applicable Federal law relating to the devise or descent of such trust personalty, or a tribal probate code approved by the Secretary in accordance with section 2205, the owner of an interest in trust personalty may devise such an interest to any person or entity.

(C) Maintenance as trust personalty.

In the case of a devise of an interest in trust personalty to a person or Indian tribe eligible to be a devisee under paragraph (1)(A), the Secretary shall maintain and continue to manage such interests as trust personalty.

(D) Direct disbursement and distribution.

In the case of a devise of an interest in trust personalty to a person or Indian tribe not eligible to be a devisee under paragraph (1)(A), the Secretary shall directly disburse and distribute such personalty to the devisee.

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(4) Invalid devises and wills.

(A) Land.

Any trust or restricted interest in land that is not devised in accordance with paragraph (1) or (2) or that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a).

(B) Personalty.

Any trust personalty that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a).

(c) Joint tenancy; right of survivorship.

(1) Presumption of joint tenancy.

If a testator devises trust or restricted interests in the same parcel of land to more than 1 person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

(2) Exception.

Paragraph (1) shall not apply to any devise of an interest in trust or restricted land where the will in which such devise is made was executed prior to September 1, 2008.

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(d) Descent of off-reservation lands

(1) Indian reservation defined

For purposes of this subsection, the term "Indian reservation" includes lands located within--

(A)(i) Oklahoma; and

(ii) the boundaries of an Indian tribe's former reservation (as defined and determined by the Secretary);

(B) the boundaries of any Indian tribe's current or former reservation; or

(C) any area where the Secretary is required to provide special assistance or consideration of a tribe's acquisition of land or interests in land.

(2) Descent

Except in the State of California, upon the death of an individual holding an interest in trust or restricted lands that are located outside the boundaries of an Indian reservation and that are not subject to the jurisdiction of any Indian tribe, that interest shall descend either--

(A) by testate or intestate succession in trust to an Indian; or

(B) in fee status to any other devisees or heirs.

(e) Approval of agreements

The official authorized to adjudicate the probate of trust or restricted lands shall have the authority to approve agreements between a decedent's heirs and devisees to consolidate interests in trust or restricted lands. The agreements referred to in the preceding sentence may include trust or restricted lands that are not a part of the decedent's estate that is the subject of the probate. The Secretary may promulgate regulations for the implementation of this subsection.

(f) Estate planning assistance

(1) In general.

(A) The activities conducted under this subsection shall be conducted in accordance with any applicable--

(i) tribal probate code; or

(ii) tribal land consolidation plan.

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(B) The Secretary shall provide estate planning assistance in accordance with this subsection, to the extent amounts are appropriated for such purpose.

(2) Requirements

The estate planning assistance provided under paragraph (1) shall be designed to--

- (A) inform, advise, and assist Indian landowners with respect to estate planning in order to facilitate the transfer of trust or restricted lands to a devisee or devisees selected by the landowners;
- (B) dramatically increase the use of wills and other methods of devise among Indian landowners;
- (C) substantially reduce the quantity and complexity of Indian estates that pass intestate through the probate process, while protecting the rights and interests of Indian landowners; and
- (D) assist Indian landowners in accessing information pursuant to section 2216(e) of this title.

(3) Probate code development and legal assistance grants.

In carrying out this section, the Secretary may award grants, including noncompetitive grants, to--

- (A) Indian tribes, for purposes of tribal probate code development and estate planning services to tribal members;
- (B) organizations that provide legal assistance services for Indian tribes, Indian organizations, and individual owners of interests in trust or restricted lands that are qualified as nonprofit organizations under section 501(c)(3) of the Internal Revenue Code of 1986 and provide such services pursuant to Federal poverty guidelines, for purposes of providing civil legal assistance to such Indian tribes, individual owners, and Indian organizations for the development of tribal probate codes, for estate planning services or for other purposes consistent with the services they provide to Indians and Indian tribes; and
- (C) in specific areas and reservations where qualified nonprofit organizations referred to in subparagraph (B) do not provide such legal assistance to Indian tribes, Indian organizations, or individual owners of trust or restricted land, to other providers of such legal assistance; that submit an application to the Secretary, in such form and manner as the Secretary may prescribe.

(4) Authorization for appropriations.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of paragraph (3).

(g) Applicable federal law.

(1) In general.

Any references in subsections (a) and (b) to applicable Federal law include--

- (A) Public Law 91-627 (84 Stat. 1874);
- (B) the allotted land (or any interest relating to such land) of 1 or more specific Indian tribes expressly identified in Federal law, including any of the Federal laws governing the probate or determination of heirs associated with, or otherwise relating to, the land, interest in land, or other interests or assets that are owned by individuals in—
 - (i) Five Civilized Tribes restricted fee status; or
 - (ii) Osage Tribe restricted fee status.
- (C) Public Law 92-443 (86 Stat. 744);

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(D) Public Law 96-274 (94 Stat. 537); and

(E) Public Law 98-513 (98 Stat. 2411).

(2) No effect on laws.

Nothing in this Act amends or otherwise affects the application of any law specified in paragraph (1), or any other Federal law that pertains specifically to--

(A) trust or restricted land located on 1 or more specific Indian reservations that are expressly identified in such law; or

(B) the allotted lands of 1 or more specific Indian tribes that are expressly identified in such law.

(3) LIMITATION ON EFFECT OF PARAGRAPH.--Except to the extent that this Act would amend or otherwise affect the application of a Federal law specified or described in paragraph (1) or (2), nothing in paragraph (2) limits the application of this Act to trust or restricted land, interests in such land, or any other trust or restricted interests or assets.

(h) Rules of interpretation.

In the absence of a contrary intent, and except as otherwise provided under this Act, applicable Federal law, or a tribal probate code approved by the Secretary pursuant to section 2205, wills shall be construed as to trust and restricted land and trust personalty in accordance with the following rules:

(1) Construction that will passes all property.

A will shall be construed to apply to all trust and restricted land and trust personalty which the testator owned at his death, including any such land or personalty acquired after the execution of his will.

(2) Class gifts.

(A) No differentiation between relationship by blood and relationship by affinity.

Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(B) Meaning of "heirs" and "next of kin", etc.; time of ascertaining class.

A devise of trust or restricted interest in land or an interest in trust personalty to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family" shall mean those persons, including the spouse, who would be entitled to take under the provisions of this Act for nontestamentary disposition. The class is to be ascertained as of the date of the testator's death.

(C) Time for ascertaining class.

In construing a devise to a class other than a class described in subparagraph (B), the class shall be ascertained as of the time the devise is to take effect in enjoyment. The surviving issue of any member of the class who is then dead shall take by right of representation the share which their deceased ancestor would have taken.

(3) Meaning of "die without issue" and similar phrases.

In any devise under this chapter, the words "die without issue", "die without leaving issue", "have no issue", or words of a similar import shall be construed to mean that an individual had no lineal descendants in his lifetime or at his death, and not that there will be no lineal descendants at some future time.

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(4) Persons born out of wedlock.

In construing provisions of this chapter relating to lapsed and void devises, and in construing a devise to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father.

(5) Lapsed devises.

Subject to the provisions of subsection (b), where the testator devises or bequeaths a trust or restricted interest in land or trust personalty to the testator's grandparents or to the lineal descendent of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the interest so devised or bequeathed per stirpes.

(6) Void devises.

Except as provided in paragraph (5), and if the disposition shall not be otherwise expressly provided for by a tribal probate code approved under section 2205, if a devise other than a residuary devise of a trust or restricted interest in land or trust personalty fails for any reason, such interest shall become part of the residue and pass, subject to the provisions of subsection (b), to the other residuary devisees, if any, in proportion to their respective shares or interests in the residue.

(7) Family cemetery plot.

If a family cemetery plot owned by the testator at his decease is not mentioned in the decedent's will, the ownership of the plot shall descend to his heirs as if he had died intestate.

(i) Heirship by killing.

(1) Heir by killing defined.

As used in this subsection, "heir by killing" means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

(2) No acquisition of property by killing.

Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, no heir by killing shall in any way acquire any trust or restricted interests in land or interests in trust personalty as the result of the death of the decedent, but such property shall pass in accordance with this subsection.

(3) Descent, distribution, and right of survivorship.

The heir by killing shall be deemed to have predeceased the decedent as to decedent's trust or restricted interests in land or trust personalty which would have passed from the decedent or his estate to such heir--

- (A) under intestate succession under this section;
- (B) under a tribal probate code, unless otherwise provided for;
- (C) as the surviving spouse;
- (D) by devise;
- (E) as a reversion or a vested remainder;
- (F) as a survivorship interest; and
- (G) as a contingent remainder or executory or other future interest.

(4) Joint tenants, joint owners, and joint obligees.

- (A) Any trust or restricted land or trust personalty held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.
- (B) As to trust or restricted land or trust personalty held jointly by 3 or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the death of the decedent shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any

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surviving joint tenants.

(C) Notwithstanding any other provision of this subsection, the decedent's trust or restricted interest land [*sic – presumably should be “interest in land”*] or trust personalty that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

(5) Life estate for the life of another.

If the estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

(6) Preadjudication rule.

(A) In general.

If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any State, with voluntary manslaughter or homicide in connection with a decedent's death, then any and all trust or restricted land or trust personalty that would otherwise pass to that person from the decedent's estate shall not pass or be distributed by the Secretary until the charges have been resolved in accordance with the provisions of this paragraph.

(B) Dismissal or withdrawal.

Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such land and personalty shall pass as if no charge had been filed or made.

(C) Conviction.

Upon conviction of such person, and the exhaustion of all appeals, if any, the trust and restricted land and trust personalty in the estate shall pass in accordance with this subsection.

(7) Broad construction; policy of subsection.

This subsection shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his own wrong, wherever committed.

(j) General rules governing probate.

(1) Scope.

Except as provided under applicable Federal law or a tribal probate code approved under section 2205, the provisions of this subsection shall govern the probate of estates containing trust and restricted interests in land or trust personalty.

(2) Pretermitted spouses and children.

(A) Spouses.

(i) In general.

Except as provided in clause (ii), if the surviving spouse of a testator married the testator after the testator executed the will of the testator, the surviving spouse shall receive the intestate share in the decedent's trust or restricted land and trust personalty that the spouse would have received if the testator had died intestate.

(ii) Exception.

Clause (i) shall not apply to a trust or restricted interest land [*sic – presumably should be “interest in land”*] where--

(I) the will of a testator is executed before the date that is 1 year after the date on which the Secretary publishes a notice of certification under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374);

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- (II)(aa) the spouse of a testator is a non-Indian; and
- (bb) the testator devised the interests in trust or restricted land of the testator to 1 or more Indians;
- (III) it appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;
- (IV) the will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or
- (V)(aa) the testator provided for the spouse by a transfer of funds or property outside the will; and
- (bb) an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

(iii) Spouses married at the time of the will.

Should the surviving spouse of the testator be omitted from the will of the testator, the surviving spouse shall be treated, for purposes of trust or restricted land or trust personalty in the testator's estate, in accordance with the provisions of subsection (a)(2)(A) of this section, as though there was no will but only if --

- (I) the testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;
- (II) the testator and surviving spouse have a surviving child who is the child of the testator;
- (III) the surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust or restricted land in such estate; or
- (IV) the surviving spouse is under a binding obligation to continue making loan payments for the trust or restricted land for a substantial period of time;

except that, if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of funds or property outside of the will, this clause shall not apply.

(B) Children.

(i) In general.

If a testator executed the will of the testator before the birth or adoption of 1 or more children of the testator, and the omission of the children from the will is a product of inadvertence rather than an intentional omission, the children shall share in the trust or restricted interests in land and trust personalty as if the decedent had died intestate.

(ii) Adopted heirs.

Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (25 U.S.C. 372a), shall be treated as the child of a decedent under this subsection.

(iii) Adopted-out children.

(I) In general.

For purposes of this Act, an adopted person shall not be considered the child or issue of his natural parents, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have

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married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

(II) Eligible heir pursuant to other federal law or tribal law.

Notwithstanding the provisions of subparagraph (B)(iii)(I), other Federal laws and laws of the Indian tribe with jurisdiction over the trust or restricted interest in land may otherwise define the inheritance rights of adopted-out children.

(3) Divorce.

(A) Surviving spouse.

(i) In general.

An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death of the decedent.

(ii) Separation.

A decree of separation that does not dissolve a marriage, and terminate the status of husband and wife, shall not be considered a divorce for the purpose of this subsection.

(iii) No effect on adjudications.

Nothing in clause (i) shall prevent the Secretary from giving effect to a property right settlement relating to a trust or restricted interest in land or an interest in trust personalty if 1 of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

(B) Effect of subsequent divorce on a will or devise.

(i) In general.

If, after executing a will, a testator is divorced or the marriage of the testator is annulled, as of the effective date of the divorce or annulment, any disposition of trust or restricted interests in land or of trust personalty made by the will to the former spouse of the testator shall be considered to be revoked unless the will expressly provides otherwise.

(ii) Property.

Property that is prevented from passing to a former spouse of a decedent under clause (i) shall pass as if the former spouse failed to survive the decedent.

(iii) Provisions of wills.

Any provision of a will that is considered to be revoked solely by operation of this subparagraph shall be revived by the remarriage of a testator to the former spouse of the testator.

(4) After-born heirs.

A child in gestation at the time of decedent's death will be treated as having survived the decedent if the child lives at least 120 hours after its birth.

(5) Advancements of trust personalty during lifetime; effect on distribution of estate.

(A) The trust personalty of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent's lifetime to a person eligible to be an heir of the decedent under subsection (b)(2)(B), shall be treated as an advancement against the heir's inheritance, but only if the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift is an advancement or is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(B) For the purposes of this section, trust personalty advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the

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property or as of the time of the decedent's death, whichever occurs first.

(C) If the recipient of the trust personalty predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's intestate estate unless the decedent's contemporaneous writing provides otherwise.

(6) Heirs related to decedent through 2 lines; single share.

A person who is related to the decedent through 2 lines of relationship is entitled to only a single share of the trust or restricted land or trust personalty in the decedent's estate based on the relationship that would entitle such person to the larger share.

(7) Notice.

(A) In general.

To the maximum extent practicable, the Secretary shall notify each owner of trust and restricted land of the provisions of this Act.

(B) Combined notices.

The notice under subparagraph (A) may, at the discretion of the Secretary, be provided with the notice required under subsection (a) of section 8 of the American Indian Probate Reform Act of 2004.

(8) Renunciation or disclaimer of interests.

(A) In general.

Any person 18 years of age or older may renounce or disclaim an inheritance of a trust or restricted interest in land or in trust personalty through intestate succession or devise, either in full or subject to the reservation of a life estate (where the interest is an interest in land), in accordance with subparagraph (B), by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir or devisee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

(B) Eligible recipients of renounced or disclaimed interests; notice to recipients.

(i) Interests in land.

A trust or restricted interest in land may be renounced or disclaimed only in favor of--

(I) an eligible heir;

(II) any person who would have been eligible to be a devisee of the interest in question pursuant to subsection (b)(1)(A) (but only in cases where the renouncing person is a devisee of the interest under a valid will); or

(III) the Indian tribe with jurisdiction over the interest in question;

and the interest so renounced shall pass to its recipient in trust or restricted status.

(ii) Trust personalty.

An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a devisee of such an interest under subsection (b)(3) and shall pass to the recipient in accordance with the provisions of that subsection.

(iii) Unauthorized renunciations and disclaimers.

Unless renounced or disclaimed in favor of a person or Indian tribe eligible to receive the interest in accordance with the provisions of this subparagraph, a renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.

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(C) Acceptance of interest.

A renunciation or disclaimer of an interest filed in accordance with this paragraph shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest. All disclaimers and renunciations filed and implemented in probate orders made effective prior to the date of enactment of the American Indian Probate Reform Act of 2004 are hereby ratified.

(D) Rule of construction.

Nothing in this paragraph shall be construed to allow the renunciation of an interest that is subject to the provisions of subsection (a)(2)(D) in favor of more than 1 person.

(9) Consolidation agreements.

(A) In general.

During the pendency of probate, the decisionmaker is authorized to approve written consolidation agreements effecting exchanges or gifts voluntarily entered into between the decedent's eligible heirs or devisees, to consolidate interests in any tract of land included in the decedent's trust inventory. Such agreements may provide for the conveyance of interests already owned by such heirs or devisees in such tracts, without having to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed of trust or restricted interests in land.

(B) Effective.

An agreement approved under subparagraph (A) shall be considered final when implemented in an order by a decisionmaker. The final probate order shall direct any changes necessary to the Secretary's land records, to reflect and implement the terms of the approved agreement.

(C) Effect on purchase option at probate.

Any interest in trust or restricted land that is subject to a consolidation agreement under this paragraph or section 2206(e) shall not be available for purchase under section 2206~~(e)~~^(o) unless the decisionmaker determines that the agreement should not be approved.

(k) Notification to landowners.

After receiving written request [*sic – presumably should be "a written request"*] by any owner of a trust or restricted interest in land, the Secretary shall provide to such landowner the following information with respect to each tract of trust or restricted land in which the landowner has an interest:

- (1) The location of the tract of land involved.
- (2) The identity of each other co-owner of interests in the parcel of land.
- (3) The percentage of ownership of each owner of an interest in the tract.

(l) Pilot project for the management of trust assets of Indian families and relatives.

(1) Development pilot project.

The Secretary shall consult with tribes, individual landowner organizations, Indian advocacy organizations, and other interested parties to--

- (A) develop a pilot project for the creation of legal entities such as private or family trusts, partnerships corporations, [*sic – presumably should be "partnerships, corporations,"*] or other organizations to improve, facilitate, and assist in the efficient management of interests in trust or restricted lands or funds owned by Indian family members and relatives; and

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(B) develop proposed rules, regulations, and guidelines to implement the pilot project, including--

- (i) the criteria for establishing such legal entities;
- (ii) reporting and other requirements that the Secretary determines to be appropriate for administering such entities; and
- (iii) provisions for suspending or revoking the authority of an entity to engage in activities relating to the management of trust or restricted assets under the pilot project in order to protect the interests of the beneficial owners of such assets.

(2) Primary purposes; limitation; approval of transactions; payments by secretary.

(A) Purposes.

The primary purpose of any entity organized under the pilot project shall be to improve, facilitate, and assist in the management of interests in trust or restricted land, held by 1 or more persons, in furtherance of the purposes of this Act.

(B) Limitation.

The organization or activities of any entity under the pilot project shall not be construed to impair, impede, replace, abrogate, or modify in any respect the trust duties or responsibilities of the Secretary, nor shall anything in this subsection or in any rules, regulations, or guidelines developed under this subsection enable any private or family trustee of trust or restricted interests in land to exercise any powers over such interests greater than that held by the Secretary with respect to such interests.

(C) Secretarial approval of transactions.

Any transaction involving the lease, use, mortgage or other disposition of trust or restricted land or other trust assets administered by or through an entity under the pilot project shall be subject to approval by the Secretary in accordance with applicable Federal law.

(D) Payments.

The Secretary shall have the authority to make payments of income and revenues derived from trust or restricted land or other trust assets administered by or through an entity participating in the pilot project directly to the entity, in accordance with requirements of the regulations adopted pursuant to this subsection.

(3) Limitations on pilot project.

(A) Number of organizations.

The number of entities established under the pilot project authorized by this subsection shall not exceed 30.

(B) Regulations required.

No entity shall commence activities under the pilot project authorized by this subsection until the Secretary has adopted final rules and regulations under paragraph (1)(B).

(4) Report to congress.

Prior to the expiration of the pilot project provided for under this subsection, the Secretary shall submit a report to Congress stating--

(A) a description of the Secretary's consultation with Indian tribes, individual landowner associations, Indian advocacy organizations, and other parties consulted with regarding the development of rules and regulations for the creation and management of interests in trust and restricted lands under the pilot project;

(B) the feasibility of accurately monitoring the performance of legal entities such as those involved in the pilot project, and the effectiveness of such entities as mechanisms to manage and protect trust assets;

(C) the impact that the use of entities such as those in the pilot project may have with respect to the accomplishment of the goals of the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.); and

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(D) any recommendations that the Secretary may have regarding whether to adopt a permanent program as a management and consolidation measure for interests in trust or restricted lands.

(m) Notice to heirs.

Prior to holding a hearing to determine the heirs to trust or restricted property, or making a decision determining such heirs, the Secretary shall seek to provide actual written notice of the proceedings to all heirs. Such efforts shall include--

- (1) a search of publicly available records and Federal records, including telephone and address directories and including electronic search services or directories;
- (2) an inquiry with family members and co-heirs of the property;
- (3) an inquiry with the tribal government of which the owner is a member, and the tribal government with jurisdiction over the property, if any; and
- (4) if the property is of a value greater than \$2,000, engaging the services of an independent firm to conduct a missing persons search.

(n) Missing heirs.

- (1) For purposes of this subsection and subsection (m) [*sic – presumably should be “subsection (n)”*], an heir may be presumed missing if--
 - (A) such heir’s whereabouts remain unknown 60 days after completion of notice efforts under subsection (m) [*sic – presumably should be “subsection (n)”*]; and
 - (B) in the proceeding to determine a decedent’s heirs, the Secretary finds that the heir has had no contact with other heirs of the decedent, if any, or with the Department relating to trust or restricted land or other trust assets at any time during the 6-year period preceding the hearing to determine heirs.
- (2) Before the date for declaring an heir missing, any person may request an extension of time to locate such heir. The Secretary shall grant a reasonable extension of time for good cause.
- (3) An heir shall be declared missing only after a review of the efforts made in the heirship proceeding and a finding has been made that this subsection has been complied with.
- (4) An heir determined to be missing pursuant to this subsection shall be deemed to have predeceased the decedent for purposes of descent and devise of trust or restricted land and trust personalty within that decedent’s estate.

(o) Purchase option at probate.

(1) In general.

The trust or restricted interests in a parcel of land in the decedent’s estate may be purchased at probate in accordance with the provisions of this subsection.

(2) Sale of interest at fair market value.

Subject to paragraph (3), the Secretary is authorized to sell trust or restricted interests in land subject to this subsection, including the interest that a surviving spouse would otherwise receive under subparagraph (A) or (D) of subsection (a)(2), at no less than fair market value, as determined in accordance with the provisions of this Act, to any of the following eligible purchasers:

- (A) Any other eligible heir taking an interest in the same parcel of land by intestate succession or the decedent’s other devisees of interests in the same parcel who are eligible to receive a devise under section subsection (b)(1)(A).
- (B) All persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding.
- (C) The Indian tribe with jurisdiction over the interest, or the Secretary on behalf of such Indian tribe.

(3) Request to Purchase; Consent Requirements; Multiple Requests to Purchase --

(A) In General -- No sale of an interest in probate shall occur under this subsection unless--

- (i)** an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and
- (ii)** except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate under section 2206(a)(2) (A) or (D) subparagraph (A) or (D) of subsection (a)(2) consent to the sale.

(B) Multiple Requests to Purchase -- Except for interests purchased pursuant to paragraph (5), if the Secretary receives a request with respect to an interest from more than 1 eligible purchaser under paragraph (2), the Secretary shall sell the interest to the eligible purchaser that is selected by the applicable heir, devisee, or surviving spouse.

(4) Appraisal and notice.

Prior to the sale of an interest pursuant to this subsection, the Secretary shall--

- (A) appraise the interest at its fair market value in accordance with this Act; **and**
- (B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection.

(5) Small undivided interests in Indian lands.--

(A) In general.

Subject to **subparagraph (C), the consent of a person who is an heir or surviving spouse** otherwise required under paragraph (3)(B) shall not be required for **the auction and** sale of an interest at probate under this subsection if--

- (i) the interest is passing by intestate succession;
- (ii) prior to the **sale** the Secretary determines in the probate proceeding that **at the time of death of the applicable decedent, the interest of the decedent in the land represented** less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary's records as of the time the determination is made; and
- (iii) **the decedent died on or after September 1, 2008; and**
- (iv)(I) **the Secretary is purchasing the interest as part of the program authorized under section 213(a)(1); or**
- (II) **after receiving notice under paragraph (4)(B), the Indian tribe with jurisdiction over the interest is proposing to purchase the interest from an heir or surviving spouse who is not residing on the property in accordance with clause (i) and who is not a member, and is not eligible to become a member, of that Indian tribe.**

(B) Authority to Extend Date --

The Secretary may extend the date referred to in subparagraph (A)(iii) by not more than 1 year if, by not later than August 1, 2008, the Secretary publishes in the Federal Register a notice of the extension.

(C) Exception.

- (i) **Exception.** - Notwithstanding subparagraph (A), the consent of such **heir or surviving spouse** shall be required for the sale at probate of the **interest of the heir or surviving spouse** if, at the time of the decedent's death, the **heir or surviving spouse** was residing on the parcel of land of which the interest to be sold was a

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(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; and ¶
(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing. ¶

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Sec. 2206(o)

(6) Distribution of proceeds.

(A) IN GENERAL.--Proceeds from the sale of interests under this subsection shall be distributed to the heirs, devisees, or spouse whose interest was sold in accordance with the values of their respective interests.

(B) HOLDING IN TRUST.--Proceeds described in subparagraph (A) shall be deposited and held in an account as trust personalty if the interest sold would otherwise pass to--

"(i) the heir, by intestate succession under subsection (a); or

"(ii) the devisee in trust or restricted status under subsection (b)(1).

Sec. 2207. Full faith and credit to tribal actions under tribal ordinances limiting descent and distribution of trust or restricted or controlled lands

The Secretary in carrying out his responsibility to regulate the descent and distribution of trust lands under section 372 of this title, and other laws, shall give full faith and credit to any tribal actions taken pursuant to subsections (a) and (b) of section 2205 of this title, which provision shall apply only to estates of decedent's whose deaths occur on or after the effective date of tribal ordinances adopted pursuant to this chapter.

Sec. 2208. Conveyancing authority upon sale or exchange of tribal lands; removal of trust status of individually owned lands

The Secretary shall have the authority to issue deeds, patents, or such other instruments of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to the terms of this chapter and to remove, at the request of an Indian owner, the trust status of individually held lands or interests therein, where authorized by law.

Sec. 2209. Trusteeship title of United States for any Indian or Indian tribe

Title to any land acquired under this chapter by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe.

Sec. 2210. Tax exemption

All lands or interests in land acquired by the United States for an Indian or Indian tribe under authority of this chapter shall be exempt from Federal, State and local taxation.

Sec. 2211. Governing body of tribe; construction of chapter as not vesting with authority not authorized by tribal constitution or by-laws

Nothing in this chapter shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe.

Sec. 2212. Fractional interest acquisition program

(a) Acquisition by Secretary

(1) In general

The Secretary may acquire, at the discretion of the Secretary and with the consent of the owner or from an heir during probate in accordance with ~~section 207(o)~~, and at fair market value, any fractional interest in trust or restricted lands.

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(2) Authority of Secretary

The Secretary shall submit the report required under section 2217 of this title concerning how the fractional interest acquisition program should be enhanced to increase the resources made available to Indian tribes and individual Indian landowners.

(3) Interests held in trust

Subject to section 2213 of this title, the Secretary shall immediately hold interests acquired under this chapter in trust for the recognized tribal government that exercises jurisdiction over the land involved.

(b) Requirements

In implementing subsection (a) of this section, the Secretary--

(1) shall promote the policies provided for in section 102 of the Indian Land Consolidation Act Amendments of 2000;

(2) may give priority to the acquisition of fractional interests representing 2 percent or less of a parcel of trust or restricted land, especially those interests that would have escheated to a tribe but for the Supreme Court's decision in *Babbitt v. Youpee* (117 S.Ct. 727 (1997));

(3) to the extent practicable--

(A) shall consult with the tribal government that exercises jurisdiction over the land involved in determining which tracts to acquire on a reservation;

(B) shall coordinate the acquisition activities with the acquisition program of the tribal government that exercises jurisdiction over the land involved, including a tribal land consolidation plan approved pursuant to section 2203 of this title; and

(C) may enter into agreements (such agreements will not be subject to the provisions of the Indian Self-Determination and Education Assistance Act of 1974 [25 U.S.C. 450 et seq.]) with the tribal government that exercises jurisdiction over the land involved or a subordinate entity of the tribal government to carry out some or all of the Secretary's land acquisition program; and

(4) shall minimize the administrative costs associated with the land acquisition program through the use of policies and procedures designed to accommodate the voluntary sale of interests under this section, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation, through the elimination of duplicate--

(A) conveyance documents;

(B) administrative proceedings; and

(C) transactions.

(c) Sale of interest to Indian landowners

(1) Conveyance at request

(A) In general

At the request of any Indian who owns an undivided interest in a parcel of trust or restricted land, the Secretary shall convey an interest in such parcel acquired under this section to the Indian landowner--

(i) on payment by the Indian landowner of the amount paid for the interest by the Secretary; or

(ii) if--

Sec. 2212(c)(1)(ii)

- (I) the Indian referred to in this subparagraph provides assurances that the purchase price will be paid by pledging revenue from any source, including trust resources; and
- (II) the Secretary determines that the purchase price will be paid in a timely and efficient manner.

(B) Limitation

With respect to a conveyance under this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest unless the interest is subject to a foreclosure of a mortgage in accordance with the Act of March 29, 1956 (25 U.S.C. 483a).

(2) Multiple owners

If more than one Indian owner requests an interest under paragraph (1), the Secretary shall convey the interest to the Indian owner who owns the largest percentage of the undivided interest in the parcel of trust or restricted land involved.

(3) Limitation

If an Indian tribe that has jurisdiction over a parcel of trust or restricted land owns an undivided interest in a parcel of such land, such interest may only be acquired under paragraph (1) with the consent of such Indian tribe.

(d) Authorization of appropriations.

There is authorized to be appropriated to carry out this section \$75,000,000 for fiscal year 2005, \$95,000,000 for fiscal year 2006, and \$145,000,000 for each of fiscal years 2007 through 2010.

Sec. 2213. Administration of acquired fractional interests; disposition of proceeds

(a) In general

Subject to the conditions described in subsection (b)(1) of this section, an Indian tribe receiving a fractional interest under section 2212 of this title may, as a tenant in common with the other owners of the trust or restricted lands, lease the interest, sell the resources, consent to the granting of rights-of-way, or engage in any other transaction affecting the trust or restricted land authorized by law.

(b) Application of revenue from acquired interests to land consolidation program.

(1) In general.

The Secretary shall have a lien on any revenue accruing to an interest described in subsection (a) until the Secretary provides for the removal of the lien under paragraph (3), (4), or (5).

(2) Requirements.

(A) In general.

Until the Secretary removes a lien from an interest in land under paragraph (1)--

- (i) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary; and
- (ii) any revenue derived from any interest acquired by the Secretary in accordance with section 2212 shall be deposited in the fund created under section 2215.

(B) Approval of transactions.

Notwithstanding section 16 of the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (25 U.S.C. 476), or any other provision of law, until the Secretary removes a lien from an interest in land under paragraph (1), the Secretary may approve a transaction covered under this section on behalf of an Indian tribe.

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(3) Removal of liens after findings.

The Secretary may remove a lien referred to in paragraph (1) if the Secretary makes a finding that--

- (A) the costs of administering the interest from which revenue accrues under the lien will equal or exceed the projected revenues for the parcel of land involved;
- (B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or
- (C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

(4) Removal of liens upon payment into the acquisition fund.

The Secretary shall remove a lien referred to in paragraph (1) upon payment of an amount equal to the purchase price of that interest in land into the Acquisition Fund created under section 2215 of this title, except where the tribe with jurisdiction over such interest in land authorizes the Secretary to continue the lien in order to generate additional acquisition funds.

(5) Other removal of liens.

The Secretary may, in consultation with tribal governments and other entities described in section 2212(b)(3), periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.

(c) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity

(1) In general

Paragraph (2) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(2) Application of lease

The lease or agreement described in paragraph (1) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

Sec. 2214. Establishing fair market value

For purposes of this chapter, the Secretary may develop a system for establishing the fair market value of various types of lands and improvements. Such a system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such system may govern the amounts offered for the purchase of interests in trust or restricted lands under this Act.

Sec. 2215. Acquisition Fund

(a) In general

The Secretary shall establish an Acquisition Fund to--

- (1) disburse appropriations authorized to accomplish the purposes of section 2212 of this title; and
- (2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 2212 or paid by Indian landowners under section 2212.

Sec. 2215

(b) Deposits; use

(1) In general

All proceeds from leases, permits, or resource sales derived from an interest in trust or restricted lands described in subsection (a)(2) of this section shall--

(A) be deposited in the Acquisition Fund;

(B) as specified in advance in appropriations Acts, be available for the purpose of acquiring additional fractional interests in trust or restricted lands; and

(C) be used to acquire undivided interests on the reservation from which the income was derived.

(2) Use of funds.

The Secretary may use the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land in accordance with section 2204.

Sec. 2216. Trust and restricted land transactions

(a) Policy

It is the policy of the United States to encourage and assist the consolidation of land ownership through transactions--

(1) involving individual Indians;

(2) between Indians and the tribal government that exercises jurisdiction over the land; or

(3) between individuals who own an interest in trust and restricted land who wish to convey that interest to an Indian or the tribal government that exercises jurisdiction over the parcel of land involved;

in a manner consistent with the policy of maintaining the trust status of allotted lands. Nothing in this section shall be construed to apply to or to authorize the sale of trust or restricted lands to a person who is not an Indian.

(b) Sales, exchanges and gift deeds between Indians and between Indians and Indian tribes

(1) In general

(A) Estimate of value

Notwithstanding any other provision of law and only after the Indian selling, exchanging, or conveying by gift deed for no or nominal consideration an interest in land, has been provided with an estimate of the value of the interest of the Indian pursuant to this section--

(i) the sale or exchange or conveyance of an interest in trust or restricted land may be made for an amount that is less than the fair market value of that interest; and

(ii) the approval of a transaction that is in compliance with this section shall not constitute a breach of trust by the Secretary.

(B) Waiver of requirement.

The requirement for an estimate of value under subparagraph (A) may be waived in writing by an owner of a trust or restricted interest in land either selling, exchanging, or conveying by gift deed for no or nominal consideration such interest--

(i) to an Indian person who is the owner's spouse, brother, sister, lineal ancestor, lineal descendant, or collateral heir; or

(ii) to an Indian co-owner or to the tribe with jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents 5 percent or less of the parcel.

Sec. 2216(b)

(2) Limitation

For a period of 5 years after the Secretary approves a conveyance pursuant to this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

(c) Acquisition of interest by Secretary

An Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000, and located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.

(d) Status of lands

The sale, exchange, or conveyance by gift deed for no or nominal consideration of an interest in trust or restricted land under this section shall not affect the status of that land as trust or restricted land.

(e) Land ownership information

Notwithstanding any other provision of law, the names and mailing addresses of the owners of any interest in trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual shall, upon written request, be made available to--

- (1) other owners of interests in trust or restricted lands within the same reservation;
- (2) the tribe that exercises jurisdiction over the land where the parcel is located or any person who is eligible for membership in that tribe; and
- (3) any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate such trust or restricted land or the interest in trust or restricted lands.

(f) Purchase of land by Indian tribe.

(1) In general.

Except as provided in paragraph (2), before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of, or interest in, trust or restricted land, the Indian tribe with jurisdiction over the parcel shall have the opportunity--

- (A) to match any offer contained in the application; or
- (B) in a case in which there is no purchase price offered, to acquire the interest in the parcel by paying the fair market value of the interest.

(2) Exception for family farms.

(A) In general.

Paragraph (1) shall not apply to a parcel of, or interest in, trust or restricted land that is part of a family farm that is conveyed to a member of the family of a landowner (as defined in section 2205(c)(2)(A)(iv)) if the conveyance requires that in the event that the parcel or interest is offered for sale to an entity or person that is not a member of the family of the landowner, the Indian tribe with jurisdiction over the land shall be afforded the opportunity to purchase the interest pursuant to paragraph (1).

(B) Applicability of other provision.

Section 2205(c)(2)(A) shall apply with respect to the recording and mortgaging of any trust or restricted land referred to in subparagraph (A).

Sec. 2217. Reports to Congress

(a) In general

Prior to expiration of the authority provided for in section 2212(a)(2)(A) of this title, the Secretary, after consultation with Indian tribes and other interested parties, shall submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that indicates, for the period covered by the report--

- (1) the number of fractional interests in trust or restricted lands acquired; and
- (2) the impact of the resulting reduction in the number of such fractional interests on the financial and realty recordkeeping systems of the Bureau of Indian Affairs.

(b) Report

The reports described in subsection (a) of this section and section 2212(a) of this title shall contain findings as to whether the program under this chapter to acquire fractional interests in trust or restricted lands should be extended and whether such program should be altered to make resources available to Indian tribes and individual Indian landowners.

Sec. 2218. Approval of leases, rights-of-way, and sales of natural resources

(a) Approval by the Secretary

(1) In general

Notwithstanding any other provision of law, the Secretary may approve any lease or agreement that affects individually owned allotted land or any other land held in trust or restricted status by the Secretary on behalf of an Indian, if--

- (A) the owners of not less than the applicable percentage (determined under subsection (b) of this section) of the undivided interest in the allotted land that is covered by the lease or agreement consent in writing to the lease or agreement; and
- (B) the Secretary determines that approving the lease or agreement is in the best interest of the owners of the undivided interest in the allotted land.

(2) Rule of construction

Nothing in this section shall be construed to apply to leases involving coal or uranium.

(3) Definition

In this section, the term "allotted land" includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians.

(b) Applicable percentage

(1) Percentage interest

The applicable percentage referred to in subsection (a)(1) of this section shall be determined as follows:

- (A) If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent.
- (B) If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent.
- (C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent.
- (D) If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land.

(2) Determination of owners

(A) In general

For purposes of this subsection, in determining the number of owners of, and their interests in, the undivided interest in the allotted land with respect to a lease or

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agreement, the Secretary shall make such determination based on the records of the Department of the Interior that identify the owners of such lands and their interests and the number of owners of such land on the date on which the lease or agreement involved is submitted to the Secretary under this section.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to authorize the Secretary to treat an Indian tribe as the owner of an interest in allotted land that did not escheat to the tribe pursuant to section 2206 of this title as a result of the Supreme Court's decision in *Babbitt v. Youpee* (117 S.Ct. 727 (1997)).

(c) Authority of Secretary to sign lease or agreement on behalf of certain owners

The Secretary may give written consent to a lease or agreement under subsection (a) of this section--

- (1) on behalf of the individual Indian owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or
- (2) on behalf of any heir or devisee referred to in paragraph (1) if the heir or devisee has been determined but cannot be located[.]

(d) Effect of approval

(1) Application to all parties

(A) In general

Subject to paragraph (2), a lease or agreement approved by the Secretary under subsection (a) of this section shall be binding on the parties described in subparagraph (B), to the same extent as if all of the owners of the undivided interest in allotted land covered under the lease or agreement consented to the lease or agreement.

(B) Description of parties

The parties referred to in subparagraph (A) are--

- (i) the owners of the undivided interest in the allotted land covered under the lease or agreement referred to in such subparagraph; and
- (ii) all other parties to the lease or agreement.

(2) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity

(A) In general

Subparagraph (B) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(B) Application of lease

The lease or agreement described in subparagraph (A) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

(e) Distribution of proceeds

(1) In general

The proceeds derived from a lease or agreement that is approved by the Secretary under subsection (a) of this section shall be distributed to all owners of undivided interest in the allotted land covered under the lease or agreement.

(2) Determination of amounts distributed

The amount of the proceeds under paragraph (1) that are distributed to each owner under that paragraph shall be determined in accordance with the portion of the undivided interest in the allotted land covered under the lease or agreement that is owned by that owner.

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(f) Rule of construction

Nothing in this section shall be construed to amend or modify the provisions of Public Law 105-188 (25 U.S.C. 396 note), the American Indian Agricultural Resources Management Act (25 U.S.C. 3701 et seq.), title II of the Indian Land Consolidation Act Amendments of 2000, or any other Act that provides specific standards for the percentage of ownership interest that must approve a lease or agreement on a specified reservation.

(g) Other laws.

Nothing in this Act shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land.

Sec. 2219. Application to Alaska

(a) Findings

Congress finds that--

- (1) numerous academic and governmental organizations have studied the nature and extent of fractionated ownership of Indian land outside of Alaska and have proposed solutions to this problem; and
- (2) despite these studies, there has not been a comparable effort to analyze the problem, if any, of fractionated ownership in Alaska.

(b) Application of chapter to Alaska

Except as provided in this section, this chapter shall not apply to land located within Alaska.

(c) Rule of construction

Nothing in this section shall be construed to constitute a ratification of any determination by any agency, instrumentality, or court of the United States that may support the assertion of tribal jurisdiction over allotment lands or interests in such land in Alaska.

Sec. 2220. Owner-managed interests.

(a) Purpose.

The purpose of this section is to provide a means for the co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

(b) Mineral interests.

Nothing in this section shall be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land.

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(c) Owner management.

(1) In general.

Notwithstanding any provision of Federal law requiring the Secretary to approve individual Indian leases of individual Indian trust or restricted land, where the owners of all of the undivided trust or restricted interests in a parcel of land have submitted applications to the Secretary pursuant to subsection (a), and the Secretary has approved such applications under subsection (d), such owners may, without further approval by the Secretary, enter into a lease of the parcel for agricultural purposes for a term not to exceed 10 years.

(2) Rule of construction.

No such lease shall be effective until it has been executed by the owners of all undivided trust or restricted interests in the parcel.

(d) Approval of applications for owner management.

(1) In general.

Subject to the provisions of paragraph (2), the Secretary shall approve an application for owner management submitted by a qualified applicant pursuant to this section unless the Secretary has reason to believe that the applicant is submitting the application as the result of fraud or undue influence. No such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(2) Commencement of owner-managed status.

Notwithstanding the approval of 1 or more applications pursuant to paragraph (1), no trust or restricted interest in a parcel of land shall acquire owner-managed status until applications for all of the trust or restricted interests in such parcel of land have been submitted to and approved by the Secretary pursuant to this section.

(e) Validity of leases.

No lease of trust or restricted interests in a parcel of land that is owner-managed under this section shall be valid or enforceable against the owners of such interests, or against the land, the interest or the United States, unless such lease--

(1) is consistent with, and entered into in accordance with, the requirements of this section; or

(2) has been approved by the Secretary in accordance with other Federal laws applicable to the leasing of trust or restricted land.

(f) Lease revenues.

The Secretary shall not be responsible for the collection of, or accounting for, any lease revenues accruing to any interests under a lease authorized by subsection (e), so long as such interest is in owner-managed status under the provisions of this section.

(g) Jurisdiction.

(1) Jurisdiction unaffected by status.

The Indian tribe with jurisdiction over an interest in trust or restricted land that becomes owner-managed pursuant to this section shall continue to have jurisdiction over the interest to the same extent and in all respects that such tribe had prior to the interest acquiring owner-managed status.

(2) Persons using land.

Any person holding, leasing, or otherwise using such interest in land shall be considered to consent to the jurisdiction of the Indian tribe referred to in paragraph (1), including such tribe's laws and regulations, if any, relating to the use, and any effects associated with the use, of the interest.

Sec. 2220**(h) Continuation of owner-managed status; revocation.****(1) In general.**

Subject to the provisions of paragraph (2), after the applications of the owners of all of the trust or restricted interests in a parcel of land have been approved by the Secretary pursuant to subsection (d), each such interest shall continue in owner-managed status under this section notwithstanding any subsequent conveyance of the interest in trust or restricted status to another person or the subsequent descent of the interest in trust or restricted status by testate or intestate succession to 1 or more heirs.

(2) Revocation.

Owner-managed status of an interest may be revoked upon written request of the owners (including the parents or legal guardians of minors or incompetent owners) of all trust or restricted interests in the parcel, submitted to the Secretary in accordance with regulations adopted under subsection (1). The revocation shall become effective as of the date on which the last of all such requests has been delivered to the Secretary.

(3) Effect of revocation.

Revocation of owner-managed status under paragraph (2) shall not affect the validity of any lease made in accordance with the provisions of this section prior to the effective date of the revocation, provided that, after such revocation becomes effective, the Secretary shall be responsible for the collection of, and accounting for, all future lease revenues accruing to the trust or restricted interests in the parcel from and after such effective date.

(i) Defined terms.

- (1) For purposes of subsection (d)(1), the term “qualified applicant” means--
- (A) a person over the age of 18 who owns a trust or restricted interest in a parcel of land; and
 - (B) the parent or legal guardian of a minor or incompetent person who owns a trust or restricted interest in a parcel of land.
- (2) For purposes of this section, the term “owner-managed status” means, with respect to a trust or restricted interest, that--
- (A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d);
 - (B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and
 - (C) no revocation has occurred under subsection (h)(2).

(j) Secretarial approval of other transactions.

Except with respect to the specific lease transaction described in paragraph (1) of subsection (c), interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all

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Federal laws requiring the Secretary to approve transactions involving trust or restricted land (including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

(k) Effect of section.

Subject to subsections (c), (f), and (h), nothing in this section diminishes or otherwise affects any authority or responsibility of the Secretary with respect to an interest in trust or restricted land.

Sec. 2221. Annual notice and filing; current whereabouts of interest owners

On at least an annual basis, the Secretary shall include along with other regular reports to owners of trust or restricted interests in land and individual Indian money account owners a change of name and address form by means of which the owner may confirm or update the owner's name and address. The change of name and address form shall include a section in which the owner may confirm and update the owner's name and address.

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AIRPA Sec. 6. Additional amendments

(c) Issuance of patents.

Section 5 of the Act of February 8, 1887 (25 U.S.C. 348), is amended by striking the second proviso and inserting the following: "Provided, That the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply to that land for which patents have been executed and delivered:".

(d) Transfers of restricted Indian land.

Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by--

- (1) striking ", in accordance with" and all that follows through "or in which the subject matter of the corporation is located,";
- (2) striking ", except as provided by the Indian Land Consolidation Act" and all that follows through the colon; and
- (3) inserting "in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):".

AIPRA Sec. 8. Notice; effective date

(a) Notice.

(1) In general.

Not later than 180 days after the date of enactment of this Act, the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by this Act.

(2) Specifications.

The notice required under paragraph (1) shall be designed to inform Indian owners of trust or restricted land of--

- (A) the effect of this Act and the amendments made by this Act, with emphasis on the effect of the provisions of this Act and the amendments made by this Act, on the testate disposition and intestate descent of their interests in trust or restricted land;
- (B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;
- (C) the use of negotiated sales, gift deeds, land exchanges, and other transactions for consolidating the ownership of land; and
- (D) a toll-free telephone number to be used for obtaining information regarding the provisions of this Act and any trust assets of such owners.

(3) Requirements.

The Secretary shall provide the notice required under paragraph (1)--

- (A) by direct mail for those Indians with interests in trust and restricted lands for which the Secretary has an address for the interest holder;
- (B) through the Federal Register;
- (C) through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed at an Indian audience; and
- (D) through any other means determined appropriate by the Secretary.

(4) Certification.

After providing notice under this subsection, the Secretary shall--

- (A) certify that the requirements of this subsection have been met; and
- (B) publish notice of that certification in the Federal Register.

(b) EFFECTIVE DATES.--

"(1) IN GENERAL.--Except as provided in paragraph (2), the amendments made by this Act apply on and after the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).

"(2) EXCEPTIONS.--The following provisions of law apply as of the date of enactment of this Act:

"(A) Subsections (e) and (f) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by this Act).

"(B) Subsection (g) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as in effect on March 1, 2006).

"(C) The amendments made by section 4, section 5, paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), and (11) of section 6(a), section 6(b)(3), and section 7 of this Act."

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