



**WRITING WILLS  
FOR  
TRIBAL CLIENTS**



**Mary E. Guss**



**NATIVE  
PEOPLES**  
TECHNICAL ASSISTANCE OFFICE

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then has included teaching an AIPRA will-writing clinic at Arizona Law, coordinating the Lunch in Indian Country CLE series with the state bar, and sitting on the Yavapai Apache and Salt River Pima Maricopa tribal appellate courts.

## ACKNOWLEDGMENTS

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*This book would never have been written without the nurturing and assistance of a number of individuals, to whom I owe a large debt of gratitude.*

*I would never have been involved in writing AIPRA wills at all if it were not for FTO Steve Loveless formerly of the Papago District of the OST and Philbert Bailey, then-treasurer of the San Xavier Allottees Association. They showed up on our doorstep one day and lobbied for the creation of a partnership to write AIPRA wills for Tohono O'odham tribal members. That partnership has now been in existence for four years, and has given me marvelous opportunities to work with tribal members who wish to have their wills written. Every moment spent with those individuals has been instructional, inspirational and often humorous. I thank them all.*

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*Finally, to all my students over the course of the will writing clinic. You all had such good ideas and enthusiasm, and made me a better teacher and a more thoughtful practitioner. Special thanks to Megan DeCorse and Lisa Davary, who helped with the writing and editing of the book as you see it. I appreciate all their hard work, unflagging enthusiasm and good cheer no matter what situation we found ourselves in, as well as their love of learning and kindness toward all the people we worked with. I learned so much from them.*

*Mary E. Guss*



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# 1

# INTRODUCTION

This book is designed to alert practitioners to the special will-writing needs of clients who own allotted land and to provide assistance with writing such wills. The book is meant to guide and highlight the processes we have identified as either most helpful, best practices, or statutory requirements of an attorney preparing a will for a client possessing Indian trust allotted lands and/or Indian trust personalty. We start by explaining how to identify what will be referred to throughout as a “tribal client” or “client,” the initial concerns and considerations in preparing an Indian will, and how to prepare the actual will. Throughout the text, bold, italicized items are defined at the end of each chapter.

## TRIBAL CLIENTS

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The ***American Indian Probate Reform Act*** (AIPRA, found at 25 U.S.C. Chapter 24, see Appendix A) is the only federal probate code in the United States. It has limited application in terms of the grand scheme of the general practice of law. But there are two kinds of property to which it applies absolutely: ***Indian trust allotted lands*** and ***Indian trust personalty***. The essential component and determining factor requiring an AIPRA-compliant will is a client’s possession of either of these two kinds of property.

These unique properties will be found on any of the 153 Indian reservations (out of roughly 567 total) which have allotted lands. Geographically, these reservations are found predominantly in the west – in Washington, Oregon, California, Montana, Idaho, New Mexico, Arizona and some states in between. Allotted lands were created following the passage of the Dawes Act, or General Allotment Act in 1887. The idea of the Act was to transfer specific plots of land to Indian landholders and thereby convert those Indians to settled farmers, ideally assimilated into the broader culture. Reservation lands were transferred to all tribal members who took the beneficial interest

in the parcels. The lands were and continue to be **held in trust** by the federal government and managed by the Bureau of Indian Affairs (BIA).

Determining whether a client needs an AIPRA will can be tricky and not necessarily obvious. Some clues to help determine that a client who has just come into your office may need such a will prepared include:

- The client receives a quarterly **Individual/Tribal Interests** (ITI) Report, showing their ownership interest in reservation land(s);
- The client brings in an **Individual Indian Monies** (IIM) report, showing the income generated by their land;
- The client advises that s/he inherited reservation land from a relative.

Even without these particular items as clues, if you have a tribal client you should inquire of them whether they do own allotted lands on their reservation. If they are not sure, there are several easy ways to check:

1. Call the Office of The Special Trustee for American Indians (hereafter OST or Office of Special Trustee) call center at 1-888-678-6836 (the Office of The Special Trustee for American Indians was created by federal law in 1994 and in 1996 was given responsibility for management of Indian trust funds<sup>1</sup>). The OST will provide the client with reports related to land ownership.
2. Check online to find their local BIA (<http://www.indianaffairs.gov/>) or OST office (<https://www.doi.gov/ost>) and make an inquiry there; or
3. Check with the lands office (if there is one) on their reservation. Examples of tribal land offices include the Tribal Lands Department at Confederated Salish & Kootenai Tribes on the Flathead Reservation in Montana and the Navajo Land Department, which has multiple offices on the Navajo Reservation. Some research may be required to determine if the reservation at issue for your client also has such a department.

## **OST REPORTS AND HOW TO READ THEM**

The Office of The Special Trustee will provide the client with the reports relating to their particular land and income upon receipt of a signed release

<sup>1</sup> While the OST is referenced here as the agency which handles trust land and IIM reports, there is pending legislation to transfer OST's functions to other federal agencies. It is possible that in the future will writers will be dealing with agencies other than OST on these matters.



from the client. If it does develop that the client owns allotted lands, their will should be written pursuant to AIPRA. AIPRA does include intestate provisions, but those provisions are not what the client would necessarily choose with respect to their lands/income. There are two basic OST-prepared reporting documents related to an individual's ownership of allotted lands:

1. Individual/Tribal Interests Report (ITI) and
2. Individual Indian Monies Statement of Performance (IIM)

It is important to be able to assist a client in reading these two documents for a number of reasons. Between them, the ITI and the IIM contain such information as the location of the parcel(s); total number of acres in the parcel; the client's percentage ownership interest; the income received by the client from the parcel and the source of that income. These details are helpful in working with clients, who may want to leave specific allotments to specific heirs (a good way to stop **fractionation**) or need to determine how the allotments should best be shared. A review of the property report is a good place to start these discussions.

In the section of the sample property report included on page 4, the parcel described as LAC 611, number 130 is listed, and the report provides the following detailed information concerning it:

- The name of the original allottee (Jose Ignacio)
- The Land Area Code or LAC (in this case it's 611, which is the Tohono O'odham Reservation. Each reservation has its own distinctive LAC)
- The location by section, township, range and county of the particular parcel (an individual parcel may consist of several separate pieces)
- The aggregate number of acres in the allotment (330.490 for number 130)
- The ownership interest of this particular owner (here it is 27/256) and the aggregate decimal representing ownership (.1054687500 or 10%). The decimal point needs to be moved two spaces to the right in the aggregate number to represent the actual percentage.

If the tribe you are working with has a map of its allotted lands, the exact location of an individual's parcels can be found. This is often helpful to the client. Not all individuals who come in to have a will written know either the location or the extent of their property.

ALL TITLE HOLDINGS

MULTIPLE INTEREST ARE AGGREGATED DEATHDATE:

BIRTHDATE:

OWNER ---  
TRB CL NUMBER  
610 U 044612

TRIBE NAME  
TOHONO O'ODHAM NATION - AZ

LAST NAME FIRST NAME MIDDLE NAME

TRACT ID --- TITLE  
LAC PFX NUMBER SFX PLANT  
611 130 SOUTHWEST

JOSE IGNACIO  
\*\* ORIGINAL ALLOTTEE \*\*

LAND AREA  
SAN XAVIER

RESOURCES  
Both (Mineral and Surface)

EXAM DATE  
12/29/2014

DATE OF LAST VERIFY DATE  
12/29/2014

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION ACRES	CUMULATIVE ACRES
26	015.00S	013.00E	PIMA	AZ Gila and Salt River	W SW SW	20.000	20.000
25	016.00S	012.00E	PIMA	AZ Gila and Salt River		177.500	197.500

DESCRIPTION:  
E NE=97.500; E SE=80.000

30	016.00S	013.00E	PIMA	AZ Gila and Salt River	LOT 2= NW NW	55.670	253.170
					LOT 3= NW SW	38.200	291.370
					LOT 4= SW SW	39.120	330.490
TOTAL SECTION ACRES:						330.490	330.490

OWNER --- DOCUMENT --- NAME IN WHICH  
TYP OT INT CLS TYP NUMBER FIRST ACQUIRED FRACTION ACQUIRED

AGGREGATE SHARE CONVERTED TO LCD  
AGGREGATE DECIMAL

I	T	A	11	TS	SL245G998	9	128
I	T	A	11	TS	WS6100403	9	256

27  
256 .1054687500

An Individual Indian Monies Statement of Performance (IIM) shows any lease, right-of-way, or other income-generating activity related to an allotment. It will show the actual income received during the reporting period, the encumbrance type, and encumbrance holder the income is received from. These pieces of information are found on separate pages of the IIM report (see Appendices B and C for the full ITI and IIM reports).

In the example on page 6, parcel number 130 is subject to a subsurface lease with Asarco Incorporated (a mining company). This information, as well as a highway encumbrance with the Arizona Highway Department, are found on page 8 of the IIM report in Appendix C. The first page of the IIM report shows the cash receipts which the parcel generated in November of 2014; page 2 of the IIM shows the same information for December 1, 2014; page 4 for December 19 and page 7 for January 17, 2015. Those amounts were paid into the IIM account for this allottee. Not all encumbrances pay amounts to allottees every month; it depends on the lease terms. By law, the Office of Special Trustee is required to send out the ITI and IIM reports quarterly, more often if they generate above a certain level of income, and annually if the income balance is very low and activity has been slight.

Amounts in the IIM account earn interest and are paid out to the individual allottee once \$15.00 has accumulated (unless the allottee directs otherwise). The payments are made via direct deposit to a bank or into a debit card account established for the person at Chase Bank (in 2016 Chase is the contract bank for these accounts, although that could change). At the present time the rate of interest paid on those accounts is generally better than the rate paid by banks on typical savings or checking accounts. An allottee may therefore opt to leave their money in the account and let the interest and funds accrue.

With these pieces of information, a will-writer can assist his or her client in making decisions about how to distribute the allotments in their will. If the client has multiple children and wants to leave separate parcels to each of them, it will be distinctly helpful to know the size, ownership interest and income of each parcel. Then equivalent distributions can be made to each of the children. The Frequently Asked Questions section of the website of the Office of the Special Trustee (<https://www.doi.gov/ost/FAQs>) provides additional detailed information about the income generated by tribal members' allotted lands.

IF YOU HAVE ANY QUESTIONS,  
 PLEASE CALL 888.678.6836  
 TRUST BENEFICIARY CALL CENTER  
 HOURS OF OPERATION:  
 MONDAY - FRIDAY: 7:00AM - 6:00PM (MT)  
 SATURDAY: 8:00AM - NOON (MT)

OFFICE OF THE SPECIAL TRUSTEE  
 FOR AMERICAN INDIANS



INDIVIDUAL INDIAN MONIES  
 Statement of Performance

ACCOUNT OF XXXXXXXXXX  
 XXXXXX4612

SELLS AZ 85634-0073

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
	BEGINNING BALANCES	11.30
11/05/14	CASH RECEIPT MONTHLY INCOME EARNED OCT 2014 INCOME AT THE ANNUALIZED RATE OF 2.85%	0.03
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0703125000	90.72
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0351562500	45.36
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0468750000	15.58
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0234375000	7.79

**CULTURAL CONSIDERATIONS**

Every tribe and every individual client is different. While broad generalizations thus cannot be made about clients, it is wise for the practitioner to be attuned to some differences they may experience with clients who are writing AIPRA wills. It is not uncommon for such a client to bring family members and/or friends to the meeting with the attorney. Some attorneys take the position that they will only meet with the client and they refuse to have anyone else in the room. We have not taken such a hard and fast position, believing that it is the client's decision and not the attorney's. But there are two concerns that must be addressed in this circumstance: 1. Confidentiality and 2. Possible

undue influence.

It is best to spend a few minutes alone with the client to discuss having additional people in the room. Tell the client that they are entitled to absolute confidentiality of whatever they relate to you and that having someone else in the room can negate that. Also advise them that it is totally their choice whether to have another person sit in with them and that you will be the “bad guy” and keep the person outside if that is their wish. Let the client know that what goes in the will is also totally their choice and that you need to hear from them and not from someone else who might be present. Do not let someone else who is in the room tell you what should be in the client’s will.

You will need to use your own good judgment in light of the client’s expressed wishes about having other individuals in the room when you are interviewing them for their will. With many of the clients we have worked with, confidentiality and individual choice are not as important as having family members participate with them. If you have concerns about the client’s choice, you may want to put some notes in the file clarifying what you did and why.

Silence or lengthy deliberation before responding to questions is also not uncommon when working with tribal clients. Silence on their part does not mean that they haven’t listened and taken in all the information you gave. Try not to be in a hurry or rush the client to give you an answer or make a decision. Many times a client comes in with no idea of what property they own, much less who they would like to leave it to. In those circumstances, it often helps to start by discussing their land with them and acquainting them with what they own and how they own it. Also, asking the easy questions first – name, enrollment number, marital status, family members, etc. – helps give them time to think about the others.

Because clients often arrive at their appointment not knowing what lands they have an interest in and not sure what they want to do with their lands and income, we do the will writing as a two-step process. Following the initial meeting, and using all the information we’ve been given, a rough draft is written and mailed to the client. At that point the will is in the attorney’s computer. We do a follow-up meeting with the client roughly a month later. There we fill in any blanks in the will and make any changes or corrections

requested by the client. At that point the will is printed and signed – and it is then final. With a few clients multiple meetings were required before they were satisfied with the document and fully ready to sign.

Another potential cultural concern involves language barriers. If a client is either hard of hearing or does not speak English you will need to work with them to accommodate their needs. Sometimes clients request an interpreter because they are more comfortable talking about these things in their first language, even though they may be able to converse with you in English generally when they come in. Be cautious about having family members interpret, since they may insert their own concerns or thoughts into the translation (although at times a family member may be your only or best option). And ask anyone who is providing interpretation to translate exactly what you and the client say, rather than injecting their own explanations.

We always bring snacks and water to will-writing meetings on the reservation and have always done will writing by going out to communities on the reservation rather than having clients come to an office in town. When we have been involved in day-long will writing sessions on the reservation, these frequently turn into social events for tribal members who enjoy the opportunity to visit with one another.

### **Key Terms**

**American Indian Probate Reform Act** is the federal probate statute passed by Congress in 2004 as an amendment to the Indian Land Consolidation Act. It relates to trust or restricted lands held by Indian tribes or individuals.

**Indian trust allotted lands** are lands divided into parcels under the General Allotment Act and conveyed to individual Indian landowners, held in trust by the federal government.

**Indian trust personality** is income generated by an allottee landowner's ownership interest.

**Held in Trust** means that the legal title rests in the trustee (for allotted lands, this is the BIA who has authority to then manage the land), while beneficial interest is held by an individual or tribe.

**Individual Indian Monies** are the funds paid to owners of trust or restricted lands by the Office of Special Trustee in connection with leases, rights-of-way, etc. on those lands, which are managed by the Bureau of Indian Affairs.

**Individual/Tribal Interests** are those whole or fractional property interests owned by individuals or tribes in parcels of land on the reservation. Reports are sent regularly to land owners detailing their interests.

**Fractionation** is the result of allotments having been inherited by multiple generations over many years, so that the parcel currently has numerous owners each owning a small fraction of the parcel.

# 2 HISTORICAL CONTEXT

Allotted reservation lands exist as a result of the General Allotment or Dawes Act, which was passed by the U.S. Congress in 1887. The Act represented one in a series of varied policy and practical approaches taken by the U.S. government in its ongoing dealings with the Indian tribes present in North America before the arrival of European settlers. Other eras of federal Indian policy included such things as the Treaty-making era (roughly 1778-1871, during which the newly-created federal government signed treaties with Indian tribes typically exchanging Indian lands for government promises); the Removal era (1815-1860 + or -, during which tribes were forcibly removed from their traditional eastern locations and resettled in lands far to the west); and the Self-Determination era (beginning during Richard Nixon's presidency and continuing to the present time, in which tribes have assumed for themselves functions formerly handled by the federal government).

These eras differed in focus and in the relation and interaction of the federal government and the tribes. At one extreme in the shifting tribal-federal government relationship was the government's wish to eliminate tribes and tribalism altogether and see individual Indians assimilated into the non-Indian population. The other end of the continuum encouraged tribal sovereignty and tribal management of programs and peoples on Indian lands.

The stated goal of the Dawes or General Allotment Act (GAA) was to transfer discrete parcels of land (typically 80 to 240 acres) to individual tribal members who would then farm or ranch the lands, and thereby become settled, assimilated citizens. The more subtle purpose was to open up "surplus" lands (all reservation lands that remained after parcels had been transferred to all eligible tribal members on a reservation) for sale to non-Indians. In fact, during the time the Dawes Act was in effect, tribes lost roughly 86 million acres (~70%) of land they previously communally occupied.

Even though the parcels were transferred to individual owners (allottees) under the GAA, the lands remained in trust. The trust doctrine was yet another of the particular relationships between the federal government and tribes. It was “announced” in one of the Marshall Trilogy cases, *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 1831: “[The relation of the tribes] to the United States resembles that of a ward to his guardian.” All reservation lands not owned in fee title, whether tribally or individually owned, are held in trust by the federal government with the tribe or individual holding beneficial title. This means that the lands were and continue to be managed by the federal government (specifically the Bureau of Indian Affairs (BIA)) on behalf of the tribal members.

In practice, the management of allotted lands has often consisted of leasing the parcels or negotiating for royalties for road rights-of-way, grazing, mining, farming, water or gas pipelines, or the like. The proceeds from these ventures have gone into the federal trust account to be distributed to the appropriate individuals – those who share ownership of the allotment. An Individual Indian Money account is set up for each landowner. Payments are made into those accounts on a periodic basis. Some payments are tiny – under \$10 per quarter, for example. And the actual use of the land is not in the hands of the various allottees. Meanwhile, management of these lands, tracking the income and distributing it to allottees, is very expensive to the Bureau of Indian Affairs and the Office of Special Trustee, and will only grow more so as allotments continue to be further fractionated.

These are not the only difficulties with federal management of allotments. Over generations, there has been a great deal of mismanagement of the trust funds, as evidenced in the Cobell litigation. That class action lawsuit claimed that the BIA had grossly mismanaged over 500,000 Individual Indian Money accounts over the course of many years. The \$3.4 billion settlement in Cobell recognized that accounting for actual missing or misapplied moneys was hopeless, and instead agreed upon set sums that would be paid to Indian trust beneficiaries. These amounts bear no measurable relationship to the amounts actually paid pursuant to any given lease over the years of its operation.

Finally, trust management includes the requirement that the BIA probate these allotted parcels when an owner dies. The BIA is required to open a



probate for any owner, no matter how small their fractional interest, who passes away holding an interest in allotted land. The cost involved in such probates may well exceed the amount of money distributed to an owner. And the probate often takes a year or longer to resolve. More about BIA Probates appears in Chapter 5.

In addition to the huge loss of tribal lands and other concerns mentioned above, there were a number of other ongoing problems that grew out of the General Allotment Act and its transfer of lands to individual Indians. Many recipients were actually unaware when land titles were issued to them and subsequently lost their parcels due to tax foreclosures. When landowners died, their interests were typically inherited under intestate provisions of state law, and went to their children in equal shares. As generations passed, the share owned by any given individual became smaller and smaller and the number of owners on a parcel larger and larger. This result is known as ***fractionation***.

Permission from a majority of one's fellow owners is required to do anything with a fractionated parcel, and often renders the parcel essentially unusable. The Department of the Interior (DOI) estimates that there are close to 250,000 unique owners who have some size ownership interest in one or more allotted parcels. A 2011 DOI report indicated that there are more than 4 million fractionated interests in Indian Country. Ownership of an allotted parcel is as an ***undivided interest*** in the entire parcel. Thus an owner cannot demarcate any particular portion of the parcel that is theirs and can be used by them. The lands themselves, following passage of the GAA, were (and are) managed from afar by the BIA, who often leased them to non-Indians. The Indian owners themselves meanwhile experienced increasing poverty, with only tiny payments going to them for their interest in their allotments. Ultimately, allotment was acknowledged to be a failed policy, and the General Allotment Act was repealed by Congress in 1934.

In 1983 Congress passed the *Indian Land Consolidation Act* (ILCA; 25 USC §2201 et seq.) as a first attempt to solve the problems of allotment and fractionation. The ILCA aimed to prevent further fractionation of protected trust lands, and provided that tribes could develop their own land consolidation plans and probate codes (which would need to be approved by the Secretary of the Interior). The Act also contained a special "***escheat***" provision, which

mandated that any interest in trust land consisting of less than 2% of the original plot, which had earned less than \$100 in the previous year, would revert permanently to the tribe. However, the Supreme Court nullified the escheat provision in *Hodel v. Irving*, 481 U.S. 704 (1987). The court found that the escheat resulted in an unconstitutional uncompensated taking of Indian property, as it interfered with the right of an individual to leave their property to whomever they wished.

The American Indian Probate Reform Act (AIPRA; 25 U.S.C. §§ 2201-2221), which became effective in 2006, represents the third amendment to ILCA. In the next chapter we examine AIPRA in detail as it provides the framework under which wills must be written.

### **Key Terms**

**Fractionation** is the result of allotments having been inherited by multiple generations over many years, so that the parcel currently has numerous owners each owning a small fraction of the parcel.

**Undivided interests** in allotments (and other real property) means partial ownership (the fraction or decimal expressed on the ITI report) of the entire parcel. No owner can restrict another from use or demarcate and use for themselves a particular portion of the property.

**Escheat** means that property of a decedent is forfeited to the government because there is no qualifying individual to inherit the property.

# 3 THE AMERICAN INDIAN PROBATE REFORM ACT

The American Indian Probate Reform Act (AIPRA; 25 U.S.C. §§ 2201-2221), effective 2006, takes a unique approach to halting fractionation. The statute is the first-ever federal probate code and preempts the state **intestacy** laws that contributed to fractionation. AIPRA also allows tribes to institute their own probate codes subject to Secretarial approval, which could modify some provisions of AIPRA. Many tribes have probate codes or language that predate AIPRA; a handful have post AIPRA codes.

## WHY A WILL IS NEEDED/INTESTACY UNDER AIPRA

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In the event that a tribal member dies intestate (without a will), their trust property will be inherited subject to the AIPRA eligibility requirements (no such requirements were present in state law). So long as no post-AIPRA tribal probate code exists to state otherwise, AIPRA provides that any descendant, parent, or sibling may inherit Indian land in trust only so long as the person who will inherit is:

- Indian; or
- A lineal descendant within two degrees of consanguinity of an Indian; or
- An owner of a trust asset or restricted interest in a parcel of land prior to 2004

AIPRA eligibility requirements do not extend to surviving spouses, who may keep a **life estate** in the decedent's property, regardless of whether the surviving spouse is a tribal member or eligible to be a tribal member. The only restriction is that the surviving spouse must live on the interest in question. Retaining a life estate includes the right to use the land, to keep any income it generates, and to receive royalties—all to the exclusion of any heirs who will inherit the trust property after the surviving spouse's death.

### Less Than 5% Interest & Single Heir Rule (25 USC §§ 2206(a)(2)(D))

AIPRA identifies two categories of restricted or trust land within the context of tribal intestacy and the eligible heir requirements, and treats those two categories differently:

1. Interests less than 5% of the total allotted parcel, and
2. Interests in the allotted parcel equal to or greater than 5%

If a tribal member dies intestate or his/her will fails, and if the portion of restricted or trust land that s/he owns is less than 5% of the original allotted tract, AIPRA states that this interest can only be distributed to a *single heir*. “The oldest surviving eligible child, grandchild, or great-grandchild,” will inherit. Again, an eligible heir is one who is either Indian, a lineal descendant within two degrees of consanguinity of an Indian or a co-owner of the trust or restricted property.

If no eligible heir exists, then the ownership goes to the tribe where the land is located. If there is no tribe with jurisdiction to take possession of the interest in the parcel, it must be distributed equally among the decedent’s co-owners. If there is neither a tribe nor co-owners, then the property goes to the United States, to be sold. The parcel must be offered at not less than fair market value, first to the owners of contiguous parcels. If more than one contiguous owner is interested in buying, the sale must be by public auction or sealed bid with contiguous owners participating. If there are no contiguous allotted parcels then the sale shall be to any interested buyer. Any recipient of a life estate in the protected interest that passes to the tribe, co- or contiguous owner(s), including a surviving spouse, would retain all use and income from the interest until his or her death.

### 5% or Greater Rule (25 USC § 2206(a)(2)(A)-(C))

If a tribal member dies intestate, and his/her interest in an allotted parcel is *5% or greater*, the life estate in any surviving spouse still applies. The spouse also receives a portion of the decedent’s trust personal property. If there is no surviving spouse or after the surviving spouse dies, the remainder of the interest passes first, to any eligible child(ren). If there are multiple children who survive the decedent, they receive the property in equal shares. If a child of the decedent has died, their share goes to the grandchildren, i.e., the children of the child who died. If neither children nor grandchildren

survive, then equal shares go to the surviving great-grandchildren.

Sometimes there are no descendants who are living or eligible to take the land, and in that case surviving parents and siblings can inherit as long as they meet the eligibility requirement. If neither eligible descendants nor extended family are alive to take the interest, then the tribe with jurisdiction takes ownership. However, if an Indian co-owner wishes to purchase rather than allow the property to go to the tribe, there are provisions that allow for that.

If there is no Indian tribe with jurisdiction then the property is to be divided equally among co-owners or, absent co-owners, it goes to the federal government, to be offered for sale. Proceeds from such a sale are to be deposited by the government into an Acquisition Fund, to “be available for the purpose of acquiring additional fractional interests in trust or restricted lands...” (25 USC §2215).

### **Tribal Probate Codes (25 USC §2205)**

If a tribe does develop its own post-AIPRA probate code and obtains Secretary of Interior approval, the tribal code will be operative. However, that code still cannot be used to probate trust property (that probate remains the exclusive province of the BIA) and cannot permit more than one heir to inherit a trust property interest of less than 5% if the decedent dies without a will. Section 2205 of AIPRA details what can and cannot be included in a tribal probate code. Rules of intestate succession and other items consistent with ILCA are permissible inclusions.

## **TESTAMENTARY DISPOSITIONS UNDER AIPRA (25 USC §2206(B))**

### **Trust Lands**

Although the options available to an allottee landowner are broader when they do indeed write a will, the options are not completely wide open. Tribal members can only leave their trust or restricted property interests to certain individuals in their wills if they wish the property to retain its trust status. An eligible heir is one who qualifies to inherit a trust or restricted interest in land, and may be any of the following:

- Any lineal descendant of the testator.

- Any person who owns a preexisting undivided trust or restricted interest in the same parcel of land.
- The tribe with jurisdiction over the parcel.
- Any Indian, which means for these purposes "Any person who is a member of an Indian tribe, is eligible to become a member of an Indian tribe, or is an owner of a trust or restricted interest in land."
- Any person meeting the definition of Indian under the Indian Reorganization Act and the regulations promulgated thereunder.

Giving restricted property to any of the qualified beneficiaries described above allows it to remain in trust. A provision in a will that leaves property in trust to someone not statutorily qualified to take it will fail. The Secretary of the Interior will then apply AIPRA's intestacy rules to determine an appropriate heir. That is, it will be just as though the decedent did not write a will at all concerning that particular property. Clients can leave a life estate to anyone they wish, so long as upon that person's death the property then goes to an eligible heir.

What if a person wants to leave trust property to someone not in trust but in fee? Or what if they want to leave it to someone who does not qualify to hold the property in trust status? Within certain parameters, AIPRA permits this. (25 USC § 2206(b)(2)(A)) If the tribe is a non-IRA tribe, a non-Indian may receive land in fee status from the client. It should be noted that if the person receiving under the will fits the definitions of eligible heir, s/he cannot take the land in fee but must take it in trust.

For IRA tribes, in a situation where there are no eligible heirs, the land can be transferred in fee only if the nation's constitution or code specifically allows it (25 USC §2206(b)(2)(B)). The constitutional or code provision that allows such transfers must be approved by the Secretary of the Interior in order to be effective.

If a tribal member leaves property to another in fee rather than trust, the tribe with jurisdiction over that parcel of land has the opportunity to buy the interest. AIPRA allows the tribe to pay the Secretary of the Interior the fair market value as of the decedent's date of death and acquire the property (with certain exceptions).

### Trust Personalty (25 USC §2206(b)(3))

Trust personalty is defined in AIPRA as “all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.” Essentially, trust personalty is the moneys that have been received from leases, rights-of-way, etc., and deposited into the individual’s trust account. Trust personalty can be bequeathed to whomever the client wishes, regardless of whether the heir would qualify as “eligible”. However, if the person receiving the personalty fits within the AIPRA definition of an eligible heir, then the funds retain trust status and the Secretary continues to maintain and manage them. If the person is not an eligible heir then the Secretary transfers the funds directly over to the recipient. The funds which have accumulated in the decedent’s account are the funds that get transferred. Once the trust lands are transferred to the heirs, future trust money follows.

The only obstacle to testators devising their IIM interests occurs if the tribe with jurisdiction over the testator has passed its own probate code. If a tribe has passed a probate code that sets eligibility requirements for IIMs, Indians wishing to bequeath their interests to people who might not qualify as proper heirs must take these restrictions into account. Such proposed gifts would fail.

For example, the Nez Perce Probate Code states:

[O]nly persons enrolled or eligible for enrollment in a federally recognized Indian tribe or who otherwise meet the definition of “Indian” or “eligible heir” in the Indian Land Consolidation Act, as amended, shall take by intestate succession or by will any interest in the restricted or trust property of a deceased member of the Nez Perce Tribe, or which consists of any interest in the rents, issues, or profits from an allotment or assignment of trust or restricted property within the Nez Perce Reservation...

-Section 10-1-12 (a), Nez Perce Probate Ordinance, effective 5/29/07.

### Property to Spouses and Children Under 18

If no will was written, a decedent’s surviving spouse will inherit either:

- 100% of the trust personalty at the death of the account holder-spouse, if there are no descendants who are alive or in existence, or

- 1/3 of the trust personalty, while surviving children, grandchildren, or great-grandchildren would inherit the remainder of the account.

Note that AIPRA does not define spouse anywhere. Care should be taken to be clear about the client's intentions if property is being left to a tribal customary spouse; such a spouse has no rights under AIPRA's intestacy language.

The divorce of the client from his or her spouse after the will is written revokes by operation of law any gift that was made in the will. If a spouse is deliberately or specifically omitted from a will they still may be entitled to take property. AIPRA Section 2206(j)(2)(A)(iii) provides that an omitted spouse should be treated the same as if no will had been written. However this takes effect only if one of the following circumstances applies:

- The spouses were married for 5 years immediately preceding the death;
- The spouses have a surviving child;
- The surviving spouse made substantial payments toward either the purchase or improvement of the property; or
- The surviving spouse has a binding obligation to continue making loan payments on the property.

This clause will not apply if there is evidence that the client took care of the surviving spouse (and any children under 18) by transferring property outside of the will.

Trust property cannot be left in trust. Thus an individual's allotments may not be left to their minor children (or to anyone) in trust. The BIA will continue to manage any trust or restricted property on behalf of any child under 18 who inherits, so no trust language is required and none should be put in the will for such a child. If a child will inherit non-trust property under state law, which the **testator** wants to put in a trust, that can certainly be done.

### Non-Trust Real & Personal Property

AIPRA and the federal government do not usually control probate of non-trust real and personal property. State and tribal courts determine the descent of non-trust assets owned by Indians who live on or off the reservation. The individual's domicile and the location of the property play



roles in determining whether a state court or tribal court has jurisdiction over the client's real estate and personal effects.

If a member of a tribe owns personal property on and was domiciled on the reservation at death, any tribal **probate** laws that apply to the disposition of that property will determine who inherits. However, if a tribe has not established its own probate code, the tribal courts will apply state law in determining ultimate ownership. If the tribe does not have a probate code then the state court will probate on-reservation (non-trust) property. Thus, tribal probate codes are important for additional reasons beyond their potential interaction with AIPRA.

The disposition of an Indian decedent's non-trust real property depends on its location: if it is in Indian Country, tribal courts decide who inherits; if it is located outside Indian country and within a state, then the state's court decides the heirs according to state law. Ideally, then, any will should be written so as to be valid in all three jurisdictions: tribal, state and federal.

## **PROPERTY PURCHASES**

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### **Purchase at Probate**

AIPRA contains provisions which allow a co-owner (whether an individual or the tribe) to purchase at probate a decedent's undivided interests in allotted land if no will was written (25 USC § 2206(o)). If the decedent owned less than 5% of the allotment, the tribe or a co-owner may purchase without anyone's consent, unless a spouse or heir is actually residing on the parcel. The sale must be for no less than the property's fair market value and to one of a statutory list of potential eligible purchasers. If the ownership interest is 5% or greater, then permission from the heirs is required before a sale to the co-owners or the tribe can take place. The sale must be for fair market value and the proceeds of the sale are to be distributed to the heirs whose interests were sold. If decedent does write a will, then the sale described above is stopped.

### **Purchase by Indian tribe**

Should a decedent leave trust or restricted property to a non-Indian, the tribe with jurisdiction over that land has the authority to step in and purchase it for its fair market value. There are some limited exceptions to this ability,

such as if the land is part of a family farm (25 USC §2216(f)).

### Purchase of trust or restricted lands

AIPRA also provides that the tribe can purchase all of the interests in a tract if it obtains the consent of 50% or more of the co-owners of the undivided interests in that tract. This provision (25 USC § 2204 (a)(1)) relates to purchase as part of a land consolidation plan rather than to purchase at probate.

## LIFE ESTATES

A life estate can be given to anyone, whether or not they are Indian. The simplest way is to leave the life estate to one individual, “To Slim Pickens for life, remainder to Tom Mix.” A life estate can, if the client wishes, be left to a number of individuals, as joint tenants with the right of survivorship.

AIPRA’s provisions award life estates to individuals without regard to waste. This means that the resources of the allotment can be used entirely by the life tenant with none left for the person(s) who then inherits the property. If the will writer wants to limit the life tenant’s ability to use the resources, language should be included in the will saying so. Such language can also be included in a tribal probate code. The life estate includes the receipt of any moneys managed by the BIA for leases of the property or the like.

### Key Terms

**Intestate or intestacy** means that the decedent left no will and their property is passed to heirs by state or federal statute.

A **life estate** allows someone to occupy, use, or receive income from property throughout their lifetime. Upon their death the “remainder” goes to another owner or owners.

**Testator** (or **testatrix** for females) is the person who writes a will leaving their property to others.

**Probate** is the court process by which an individual’s property is passed to those who are to inherit it and decedent’s debts are paid.

# 4 OTHER IMPORTANT CONSIDERATIONS

## TECHNICAL REQUIREMENTS

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In order to be valid under AIPRA a will must be in writing, signed and dated by the testator, and signed by two witnesses who do not receive any property under the will. In order to write a will the testator must be over the age of 18 and of sound mind. The sound mind requirement has two components:

- The person writing the will must know what property they own and
- They must know who they want to leave it to.

For each will, to assist with the admission of the will to probate and the determination that it is a valid will, an Affidavit (called a “self-proving affidavit” in 25 CFR § 15.7-9) should be prepared for the signature of the testator and the two independent witnesses. The affidavit will recite that the testator/testatrix asked the witnesses to sign after signing in their presence; that s/he signed of her own free will and no one exerted undue influence over him/her and appears to the witnesses to be over the age of 18 and of sound mind. Further, the witnesses will attest that neither is taking any property under the will. A sample Affidavit to Accompany Indian Will is found in Appendix D.

## USING A WILL TO REDUCE FURTHER FRACTIONATION

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The Indian Land Consolidation Act and AIPRA, its amendment, were passed in part to try to stop the serious fractionation of allotted lands. A client’s will can be written in a number of different ways that will enhance that goal. A client’s interests in all of his or her trust or restricted property can be left to *one heir* only, as a way to prevent further fractionation of the property. If the client has multiple children and multiple allotment interests another option is to leave specific individual allotments to individual heirs. This also serves to

remove the danger of additional fractionation.

Trust or restricted property may be willed to multiple qualified heirs in one of two ways:

- As joint tenants with the right of survivorship or
- As tenants in common by right of representation.

What do these mean and what is their relationship to stopping further fractionation? **Joint tenants** each take an undivided interest in the share of property owned by the client, which they then own jointly with the other heirs. When one of the joint tenants dies, their share is divided among the remaining joint tenants until at some point there is only one joint tenant remaining. The remaining joint tenant will then be the owner of the fractionated interest left by the client and the property interest will be distributed according to his or her will. This reduces additional fractionation in that parcel, at least for one generation.

**Tenants in common** each take an undivided interest in the parcel. When something happens to any of the tenants in common their interest goes to their descendants – thus resulting in greater fractionation of the land.

If property is given to multiple heirs in a will without specifying which way they are to take the property, AIPRA applies a presumption that they receive it as joint tenants with right of survivorship. To devise property to tenants in common, the language of the will needs to be clear and definite. If individuals wish to leave their property in a way that increases future fractionation, it is certainly their right to do so. But at least they should be advised of all options with respect to their property.

## **RESIDUARY CLAUSES**

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Residuary clauses take care of items that the client acquires after the will is first written and items that are not able to go to the named beneficiary. It is wise to put in residuary clauses in AIPRA wills, one for trust and one for non-trust property. The will writer should make sure that there is an eligible beneficiary included in the trust property clause. If an eligible heir is not included then gifts of trust or restricted assets will fail and those assets will be divided as though no will was written.

## **PROPERTY PASSED OUTSIDE THE WILL**

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The usual sorts of property can be passed outside an AIPRA (and state and tribal) will, just as they can with any other will. Items such as insurance policies or retirement accounts that have designated beneficiaries need not be included in the will. Checking accounts can have specified Payable on Death forms on file that will transfer the account to the person indicated. Those things will be awarded directly to the named recipient (and usually much faster than they would be passed through the probate).

## **GIFT DEEDS**

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Gift deeds can be used as a way to avoid both further fractionation and probate. A gift deed transfers property outright while the transferor is still living. Gift deeds cannot be revoked once the transfer is made. In order to execute a gift deed, an allottee needs to complete a series of documents obtained from his or her local BIA realty office or the tribal realty office, if there is one. Each BIA region uses different forms, so care must be taken to get the right ones. The documents can include such things as a Waiver of Estimate of Value Requirement, Application for the Gift Deed of Indian Land, and Gift Deed Question and Answer. These documents go to the Bureau of Indian Affairs Office once they are completed. The BIA will then prepare the deed and send it back to the landowner for signature and witnessing. The BIA must then approve the deed and accept it for filing. A set of sample Gift Deed forms is included in Appendix E.

## **NAMING A PERSONAL REPRESENTATIVE**

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No Personal Representative is needed for trust or restricted property, as the BIA will handle the probate of those items. The client may wish to name a Personal Representative for non-trust property which is likely go through state court or tribal court probate proceedings.

## **HOMES ON RESERVATIONS**

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AIPRA does not clearly include any residence on an allotment as part of the inheritance of the allotment share itself. It is best to express in clear language

that any house or permanent improvements are included with the property given. There are some unusual and important things to know about houses on reservations and how to reference them in wills:

- The BIA considers homes to be personal property separate from the land underneath them.
- Each BIA realty office is different, but tribal members often receive an assignment for the land under the house (essentially a long-term lease).
- Do not assume that their home is built on a client's allotment. Instead the homes often are on tribal lands and have been obtained by the client through a tribal housing program.

The following are all possible home ownership schemes which might need reference in a will:

- HUD homes, which can only be inherited if they've been paid in full;
- Traditional homes, which pre-date AIPRA and were just built on the property without any documentation of any kind;
- Modular homes moved onto property;
- At Tohono O'odham some houses have been given to individuals through the passing of a resolution by the district council.

Houses are not real property and are not trust property. It is best to research what your client's ownership interest actually is and make the proper award of the house and, separately, its underlying land, in their will.

### **Key Terms**

**Joint Tenants** are individuals who share equal ownership of property, with the ownership interest going to co-owner(s) upon the death of any joint tenant.

**Tenants in Common** own property jointly but when something happens to one of the co-owners their share goes to their descendants.

# 5

## **BUREAU OF INDIAN AFFAIRS PROBATES**

The Bureau of Indian Affairs (BIA) probates all estates involving allotments and IIM funds. But it handles only those two aspects of an Indian's estate, so that other property may have to be probated elsewhere.

The Code of Federal Regulations (25 C.F.R.), Part 15 (see Appendix F) covers Probate of Indian Estates. Part 30 of Title 43 (Public Lands: Interior) details the Indian Probate Hearings Procedures (see Appendix G).

Title 43 §30.102, subsection (a) states that the Secretary will “probate only the trust or restricted land or trust personalty owned by the decedent at the time of death.” Specifically excluded are lands from allotments made to the Five Civilized Tribes and the Osage Nation in Oklahoma.

The first step in the probate process is to notify the BIA of the death of a person who owns trust or restricted property (25 U.S.C. §15.101). There is no particular requirement as to who should provide that notice or any particular format in which the notice must be given. Notice can be by telephone or in writing and it can go to the nearest BIA office, the regional BIA office, the regional Fiduciary Trust Officer (FTO) or the OST call center in Albuquerque (1-888-678-6836 or [www.doi.gov/ost/fto](http://www.doi.gov/ost/fto)). While there is no particular deadline or timeline for providing notice of an allottee's death, sooner is always better than later. Probates are relatively lengthy processes under the best of circumstances and it is wise to start as early as possible. If potential heirs die during the pendency of the original probate, matters can become further complicated, cumbersome, and delayed.

Upon receipt of notice of the death, BIA will set about putting a probate file together for the decedent and his/her property. A number of documents need to be included in that file; these documents will necessarily come from the decedent's relatives and/or close friends. A certified copy of the death

certificate (if one exists) must be provided to the BIA. If no death certificate exists then an affidavit must be submitted containing information about the decedent to include, according to §15.104:

- The state, city, reservation, location, date, and cause of death;
- The last known address of the deceased;
- Names and addresses of others who may have information about the deceased; and
- Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

Within thirty days of the assembly of all documents in the BIA file, the file is forwarded to the Office of Hearings and Appeals (OHA) to be assigned to a probate judge. The OHA has field offices in places such as Phoenix; Sacramento, CA; Bloomington, MN; Billings, MT; Albuquerque; Oklahoma City; Portland, OR and Rapid City, SD. Each office covers a large geographical area. The judge will schedule a probate hearing to be held at the closest location to decedent's residence at the time of his/her death. Notice of the hearing will then be sent to the potential heirs, to creditors, to the tribe and to other interested parties (Section 30.114). Such notices are often also posted in appropriate locations near the hearing site.

Attorneys are not usually involved in these probate hearings. They may become involved if there are issues as to the authenticity of the will or whether there was undue influence exerted on the will-writer, or the like (and unless one of these issues is raised the proceedings are conducted as informal probates). Typical probate hearings are set at half hour intervals on the judge's calendar. During the hearing the judge swears in the parties and explains the procedures to them, takes testimony and evidence, and answers questions that they may have. The hearing is then adjourned and the judge goes back to his or her office to write a decision distributing decedent's trust property. Pursuant to §30.120 the judge has authority to make a large number of factual and legal findings in the probate case, everything from approving/disapproving a will to conducting sales at probate to allowing/disallowing claims by creditors.

Once the decision is issued by the OHA, it is forwarded to the BIA and to



the interested parties. A party has 30 days from the date of mailing within which to file an appeal of the decision, by filing a Petition for Rehearing. No distributions will be made from an estate while an appeal is pending. If the judge thinks there might be merit in the appeal s/he can request answers or briefs from interested parties. After reviewing the rehearing materials, a written decision is again issued. If a party disagrees with this decision, an appeal must be filed with the Interior Board of Indian Appeals.

Separate from appeals are case re-openings (Section 30.243). A probate case can be reopened on the judge's own motion or on a petition filed by the BIA or an interested party. The paperwork for reopening a case must be filed within 3 years of the original decision. If the judge determines there are no grounds to reopen the case, s/he will issue a written decision so stating. If the case is reopened then the court can affirm, modify or vacate the original decision and make any needed corrections to factual or legal issues. When the decision is then issued, the parties have 30 days from its mailing to appeal it to the Interior Board of Indian Appeals (IBIA). If no appeal is filed within that time frame the decision becomes final and the lands and funds are distributed. The Department of Interior maintains a searchable electronic database of IBIA decisions.



# 6

# WILL WRITING TEMPLATE

There is no particular magic language or phrasing, for the most part, which must be used in writing the will. The main purpose of the will is to state the client's intentions. Clear and precise language making those intentions known is the main goal. However, AIPRA addresses and the BIA probates wills covering two particular things: an individual Indian's allotments and his or her IIM account. So the language used to deal with those items should closely reflect AIPRA's requirements.

The template that appears in this chapter contains sample language for almost every situation that may arise when drafting wills and almost every way a person may wish to leave their property (see Appendix H for the complete template). Much of the language will not be used in any individual will. Once the client's wishes are known, the appropriate paragraphs can be filled in with the required details. Paragraphs that do not apply should be deleted, as should all headings at the top of individual paragraphs.

The will template discussed in detail below is just one template used by one will-drafting program. We have found it distinctly useful, but you may prefer other templates or sample wills that you locate. As long as all the necessary items are properly included there is absolutely no reason not to use any language preferred by you or your client. There is a different template in Appendix I which writers may also use.

## **WILL WRITING TEMPLATE**

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The following is an Article by Article discussion of using the template in writing AIPRA wills:

### **INTRODUCTORY PARAGRAPH**

I, \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_, residing in the State of Arizona, know the nature and extent of my property and the persons to whom I leave that property. I also understand that by writing this document I designate to whom my property, both real and personal, will go after my death.

This paragraph requires the name and birthday of the individual client whose will is being drafted. Use the name with which they sign their most important documents. If they have used another name, you may want to mention it here or explain the details of that use. There is also a space for the individual’s tribal enrollment number. These pieces of information assist in identifying the individual and finding the appropriate related documents once the will is submitted for probate. If the client absolutely cannot find their enrollment number, the will can be prepared without it.

### **ARTICLE I. Revocation of All Prior Wills**

I revoke any and all Wills and Codicils previously executed by me.

This paragraph revokes any prior wills (and codicils) written by the individual. You should instruct the client to destroy any old will(s) they have once the current one is completed and signed, so that there is no confusion generated by the existence of two original wills. Typically the most recent will take precedence, but confusion is best avoided so as not to slow down the probate process.

## ARTICLE II. Identification of Family

I am not married.

I am married to \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the \_\_\_\_\_ Tohono O'odham Nation. (If leave nothing to spouse explain why).

I am divorced.

The names and birthdates of my children are:

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O'odham Nation, with an enrollment number of \_\_\_\_\_; and

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O'odham Nation, with an enrollment number of \_\_\_\_\_; and

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O'odham Nation, with an enrollment number of \_\_\_\_\_; and

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O'odham Nation, with an enrollment number of \_\_\_\_\_.

(If leave nothing to some children, explain).

I have raised (am raising) \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the \_\_\_\_\_ Nation, with an enrollment number of \_\_\_\_\_ and consider him/her to be my child although not my natural or adopted child.

I am the legal guardian of \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O'odham Nation, with an enrollment number of \_\_\_\_\_, and consider him/her to be my child although not my natural or adopted child.

I also consider \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O'odham Nation, with an enrollment number of \_\_\_\_\_, to be my child, although not my natural or adopted child.

It is my intent to only provide for the beneficiaries named in this will. Any of my children who are omitted by me in this will are omitted deliberately.

The Identification of Family paragraph is the place to list family members and/or those to whom the client's property is being given. Again, these details are included for ease of identification of the persons who will need to receive notice under the will, who will be involved in the probate and who will ultimately inherit property from the decedent.

The template first addresses a person's marital status. Under AIPRA the spouse may be entitled to claim a share of the estate even if they are omitted. So if the will writer intends to leave their spouse nothing, it is wise to give an explanation for that action, in hopes that the action will be sustained. The explanation can be something along the lines of, "I leave nothing to my spouse, as we have discussed it and mutually decided we want all of our property to go to our children," or whatever the particular circumstances are.

Individuals may wish to acknowledge and respect the person with whom they have lived for many years, even if they are not legally married. Some clients assume that if they've lived with a person for an extended time then a common law marriage exists. That is not necessarily so. Common law marriages are defined by local law and the best practice is to explain the circumstances in the will itself and/or check the local law before further advising the client. There is room in this Article to do that.

There is also room in this Article to acknowledge non-biological children with whom the will writer enjoys what they consider a relationship of parent-child. The relationship can be mentioned in this Article and the individual given an interest in the estate, if they are eligible under AIPRA to receive it.

A client may not wish to leave property to each of their children. And children are legally easier to disinherit than spouses. But again, an explanation for leaving the child(ren) nothing should be included in the will, so that the court does not assume the child was simply forgotten. The explanation can be along the lines of, "I leave nothing to my daughter as she has had no contact with the family for years," or, "I leave nothing to my son in this will as he will inherit from his father and be amply provided for that way." If some children are included and some excluded, it is wise to include the final paragraph in this Article, which signals to the probate judge that those children who were omitted were omitted deliberately.

### **ARTICLE III. Trust or Restricted Land Bequests**

Single beneficiary:

I give to my \_\_ (relationship) \_\_\_\_\_, \_\_ (name) \_\_\_\_\_, any and all of my interests in Trust or Restricted real property which I have at the time of writing this Will or that I may acquire in the future, including any home or permanent improvements located on that property. In the event that \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then to \_\_\_\_\_.

Specific parcels to specific recipients:

I give to my \_\_ (relationship) \_\_\_\_\_, \_\_ (name) \_\_\_\_\_, any and all of my interests in the Trust or Restricted real property located at San Xavier described as: Tract number \_\_\_\_\_, Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Pima County, Arizona.

I give to my \_\_ (relationship) \_\_\_\_\_, \_\_ (name) \_\_\_\_\_, any and all of my interests in the Trust or Restricted real property located at San Xavier described as: Tract number \_\_\_\_\_, Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Pima County, Arizona.

Etc.

Multiple beneficiaries:

Joint tenants with right of survivorship: I give to \_\_\_\_\_ (e.g., my children), \_\_\_\_\_ and \_\_\_\_\_, as joint tenants with the right of survivorship, any and all of my interests in Trust or Restricted real property that I have at time of the execution of this Will or that I may acquire in the future.

Tenants in common:

I give to \_\_\_\_\_ and \_\_\_\_\_, as tenants in common in equal shares by right of representation, any and all of my interests in Trust or Restricted real property that I have at the time of the execution of this Will or that I may acquire in the future.

This Article deals with an individual's allotments. As the subtitles indicate and as was discussed in earlier chapters, there are a number of different ways the allotments can be left in the will.

The single beneficiary option is one clear way to stop future fractionation of the parcels. AIPRA requires that whoever inherits from the will writer survive them by 120 hours; hence language to that effect appears here. If the will writer does not have a second choice in mind when the will is initially drafted, they can come in and execute a codicil if their first choice should predecease them.

There are differences of opinion about whether to list the person's actual allotment numbers in this paragraph of the will. One option is to list all the parcels that appear on an allottee's Individual Tribal Interests report. This may simplify matters for the BIA when they are called upon to open the probate file for the person. However, the allotments owned by an individual shift each time another probate is completed and additional property is inherited. So another option is to simply use the language leaving "any and all interests in Trust or Restricted real property," owned at the time the will was written or which are acquired afterwards to the designated beneficiary(ies). The BIA and OST have the most current lists of the property owned by each allottee and can make the determination at the time the probate proceeds. Either way will work and the client and/or author can determine how they wish to proceed.

Should the client opt to give specific parcels of allotted lands to specific individuals, the LAC number and parcel number will need to be included in this Article, along with the names of the individuals to whom those parcels are being given. The LAC and parcel number found in the ITI report are sufficiently descriptive for probate purposes, but additional information can be included as well, such as the Section, Township, Range and County in which the property is located. If contemplating leaving their property this way, the client may want to do a detailed study of their ITI report to learn the size of their various parcels, the ownership interest they have in each, the income each produces, and similar information. That will help them determine an equitable way to leave the allotments to their heirs. It may be that they don't care about those details but wish to leave their heirs the parcels they wish to receive. This is also perfectly legitimate and can be included in this Article.



Under AIPRA there are two basic ways to leave the allotments to multiple heirs. As discussed previously, these are: 1. As Joint Tenants with the Right of Survivorship (JTROS) and 2. As Tenants in Common, by right of representation.

Leaving parcels to individuals as JTROS gives each of those individual joint tenants an equal ownership interest in the client's allotments. When one of the joint-tenant heirs dies, their shares are divided among the other joint tenants, until ultimately all shares are owned by the last survivor. It is then up to that individual how the property should be left. This method of heirship stops further fractionation. It should be noted, however, that *the Cobell Settlement Land Buyback will not make purchase offers on property owned as JTROS*; the program considers such interests unpurchaseable.

Alternatively, the allotments can be left to heirs as Tenants in Common by right of representation. This leaves the allotment in equal shares to the heirs, with each person's shares to go to their children or grandchildren upon their death. Clearly, this will worsen fractionation rather than putting a stop to it. However, these shares are subject to purchase in the Cobell Land Buyback.

#### **ARTICLE IV. Trust Personalty Bequests**

Single beneficiary:

I give to my \_\_\_\_\_, \_\_\_\_\_, any and all funds contained in my Individual Indian Money (IIM) account. In the event \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then I give the funds in my IIM account to \_\_\_\_\_.

Multiple beneficiaries:

I give to my \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who survive me by at least 120 hours, any and all funds contained within my Individual Indian Money (IIM) account, in equal shares. or

I give to my \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, any and all funds contained within my Individual Indian Money (IIM) account, in equal shares, by right of representation.

Article IV addresses trust personalty – which is how AIPRA refers to funds in the individual’s IIM account. The IIM funds are what the allottee owner has received in payment for their share of whatever lease, right-of-way or the like exists with respect to their allotments. Once an estate has been probated, the IIM funds will follow the land. So what is left to heirs in the will is what has accumulated prior to the decedent’s death but not been distributed or what accrues during probate. The full amount in the IIM account can be left to a single individual. Alternatively, the funds can be divided among multiple heirs. The funds of a predeceased individual may go either to his fellow heirs named in decedent’s will or to his own heirs designated in his will.

AIPRA requires that anyone inheriting personalty from a client must survive them by 120 hours, so that language appears in the paragraph awarding IIM funds to an heir or heirs.

SPECIAL NOTE: It should be noted that the BIA handles all probates involving allotted lands and IIM accounts. Thus the AIPRA will could be limited to paragraphs dealing with those items of property and in some instances that will be sufficient. However, it is entirely possible that the individual has property off-reservation or non-trust property on the reservation that will be probated by the tribe or the state. When writing the person’s will it makes sense to include all items that they own in the one document, which may mean the following additional paragraphs are needed.

**ARTICLE V. Non-Trust Real Property Bequests**

I give to my \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_,  
as joint tenants with the right of survivorship, any and all of my interests  
that I have at the time of the execution of this, my Last Will and Testament,  
or that I may acquire in the future, in my non-Trust or Non-Restricted  
real property located at \_\_\_\_\_, including any home and permanent  
improvements thereon.

Article V disposes of any non-trust real property that may be owned by the client. This article is designed to include real property located off-reservation, such as a house in a nearby community or farmland that is not within the reservation boundaries. Such property will need to be probated in a state proceeding.

## **ARTICLE VI. Non Trust Property Bequests by Separate Writing**

I may leave a handwritten or typed list, dated and signed by me, giving items of tangible (touchable) personal property not otherwise specifically disposed of by this Will to the person or persons indicated in that writing. If I decide to have such a separate writing, it will be located with my Will.

The list will include only items of tangible personal property other than money. I understand that tangible property includes items within the following categories: articles of personal or household uses or ornament, furniture, furnishings, auto-mobiles, tools, jewelry, baskets, and precious metals in tangible form, such as coins. If any such separate writing through inadvertence includes non-qualifying property, it is my intent that the separate writing be given effect to the extent of the qualifying property only.

If no separate writing is found following my death, then any and all property not otherwise specifically provided for shall pass into the residue of this Will.

State probate codes often contain a provision allowing a client to leave a separate list of personal items and the individuals to whom those items should be awarded. Article VI is designed to reference such a list, in case the individual opts to leave one. The list can be handwritten or typed, and needs to be signed and dated by the will writer. The advantage to proceeding via the use of such a list is that the will does not have to be changed whenever personal items are changed, and it gives the author time to think about what they would like to include.

Since this paragraph talks about *personal property* bequests, it is also a good place to list what the will-writer wants done with their house. Houses on reservations are generally personal property, though there are a number of different ways they can be owned and individual BIA offices handle the issue differently. The house may be a HUD house; it may be personal property sitting on land occupied pursuant to a land assignment; it may be a traditional home built on the reservation before there were regulations concerning such construction; it may be a house that the local council has passed a resolution awarding to the individual, etc. The status of the house needs

to be determined and then provision made for it in the will. If the house is included in Article VI then the caption of that article should be changed to read Personal Property Bequests.

**ARTICLE VII. Residue for Trust or Restricted Real Property and Trust Personality**

Single Beneficiary:

I give to \_\_\_\_\_, all of the rest, residue, and remainder of my trust property not otherwise validly devised by this instrument. The residue shall include all trust property of any kind of nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then to \_\_\_\_\_.

Multiple Beneficiaries:

I give to my children, \_\_\_\_\_ and \_\_\_\_\_, who survive me by at least 120 hours, all of the rest, residue, and remainder of my trust property not otherwise validly devised by this instrument. The residue shall include all trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated, with any trust real property passing here-under as joint tenants with the right of survivorship, and any trust personality passing in equal shares.

Articles VII and VIII are catch-all, residuary paragraphs. They will not be needed in every will; the personal situation of the client whose will is being written should be the guide to that. Since the paragraph about an individual's allotments (Article III) states that the allotments then owned or acquired in the future are being willed, these two residuary articles may be redundant. They are designed to cover the situation where an individual acquires property after the will is written and signed. If there is concern that the individual may find himself in that situation then it makes sense to include these paragraphs. It hurts nothing to have them in the will even if they turn out to not be needed.

**ARTICLE VIII. Residue for Non-Trust Property**

Single Beneficiary:

I give to \_\_\_\_\_, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then to \_\_\_\_\_.

Multiple Beneficiaries:

I give to my children, \_\_\_\_\_ and \_\_\_\_\_, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated, with any non-trust real property passing hereunder in equal shares as tenants in common by right of representation, and any non-trust personalty passing in equal shares by right of representation.

## **ADDITIONAL READING**

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Department of the Interior Report: Coordination of Efforts to Address Indian Land Fractionation, found at: <http://www.doi.gov/cobell/commission/upload/34-2011-01-04-OIG-Report-on-Fractionated-Lands.pdf>.

Anthony J. Franken, "Dealing with the Whip End of Someone Else's Crazy: Individual-Based Approaches to Indian Land Fractionation," 57 *University of South Dakota Law Journal* Vol. 2, 345 (2012).

Diana K. Lutt, "The American Indian Probate Reform Act: A Five-Year Review" 51 *Washburn Law Journal* 1 (Fall 2011).

Kristina L. McCulley, "The American Indian Probate Reform Act of 2004: The Death of Fractionation or Individual Native American Property Interests and Tribal Customs," 30 *American Indian Law Review*, Vol 2, 401 (2005-06).

## **HELPFUL WEB SITES**

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Seattle University Institute for Indian Estate Planning and Probate: <http://www.law.seattleu.edu/centers-and-institutes/center-for-indian-law-and-policy/indian-institute>.

Montana University, Fact Sheets about inheriting Indian Land: <http://www.montana.edu/indianland/factsheets.html>.

Tribal Court Clearinghouse, "Understanding the American Indian Probate Reform Act of 2004" <http://www.tribal-institute.org/lists/understanding.htm>.

There will be a live website to accompany and update this book (a launch in 2017 is anticipated). Look for it at [www.tribalwillwriting.com](http://www.tribalwillwriting.com).

# A AIPRA PUBLIC LAW

PUBLIC LAW 108–374—OCT. 27, 2004

118 STAT. 1773

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,*

**SECTION 1. SHORT TITLE.**

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

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

**SEC. 2. FINDINGS.**

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

15 USC 2201  
note.

- (ii) makes probate planning more difficult;
- (4) a uniform Federal probate code would likely—
  - (A) reduce the number of fractionated interests in trust or restricted land;
  - (B) facilitate efforts to provide probate planning assistance and advice and create incentives for owners of trust and restricted land to engage in estate planning;
  - (C) facilitate intertribal efforts to produce tribal probate codes in accordance with section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and
  - (D) provide essential elements of general probate law that are not applicable on the date of enactment of this Act to interests in trust or restricted land; and
- (5) the provisions of a uniform Federal probate code and other forth in this Act should operate to further the policy of the United States as stated in the Indian Land Consolidated Act Amendments of 2000, Public Law 106-462, 102, November 7, 2000, 114 Stat. 1992.

### SEC. 3. INDIAN PROBATE REFORM.

(a) **NONTESTAMENTARY DISPOSITION.**—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking subsection (a) and inserting the following:

“(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 206; 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  $\frac{1}{3}$  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 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 216 (25 U.S.C. 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 (iv).

“(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).

“(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 clause (iii), 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) any 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 set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if—

Applicability.

“(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;

“(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).

Deadline.

“(v) RULE OF CONSTRUCTION.—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).

“(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 personally 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.”.

(b) TESTAMENTARY DISPOSITION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking subsection (b) and inserting the following:

“(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 206, 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.

“(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.—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);

provided that 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 PERSONALITY DEFINED.—The term ‘trust personality’ 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.—Subject to any applicable Federal law relating to the devise or descent of such trust personality, or a tribal probate code approved by the Secretary in accordance with section 206, the owner of an interest in trust personality 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 personality 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 personality.

“(D) DIRECT DISBURSEMENT AND DISTRIBUTION.—In the case of a devise of an interest in trust personality to a person or Indian tribe not eligible to be a devisee under paragraph (1)(A), the Secretary shall directly disburse and distribute such personality to the devisee.

“(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 personality 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.—Section 207(c) of the Indian Land Consolidation Act (25 U.S.C. 2206(c)) is amended by striking all that follows the heading, “Joint Tenancy; Right of Survivorship”, and inserting the following:

“(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 the date that is 1 year after the date on which the Secretary publishes the certification required by section 8(a)(4) of the American Indian Probate Reform Act of 2004.”.

(d) RULE OF CONSTRUCTION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

“(h) 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) Public Law 92-377 (86 Stat. 530);

“(C) Public Law 92-443 (86 Stat. 744);

“(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 described in paragraph (1), or any other Federal law that pertains 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.

“(i) 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 206, 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

Applicability.

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 personality 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.

“(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 personality to the testator’s grandparents or to the lineal descendant 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 206 (25 U.S.C. 2205), if a devise other than a residuary devise of a trust or restricted interest in land or trust personality 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.

“(j) 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 OBLIGEEES.—

“(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 surviving joint tenants.

“(C) Notwithstanding any other provision of this subsection, the decedent’s trust or restricted interest 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.

“(k) GENERAL RULES GOVERNING PROBATE.—

“(1) SCOPE.—Except as provided under applicable Federal law or a tribal probate code approved under section 206, 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 where—

“(I) the will of a testator is executed before the date of enactment of this subparagraph;

“(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 section 207(a)(2)(A), 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 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 LIFE-TIME; 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 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.

“(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 section 207(a)(2)(D) (25 U.S.C. 2206(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 207(e) (25 U.S.C. 2206(e)) shall not be available for purchase under section 207(p) (25 U.S.C. 2206(p)) unless the decisionmaker determines that the agreement should not be approved.”

#### SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.

Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) (as amended by section 6(a)(2)) is amended by adding at the end the following:

“(d) 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—

“(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 (D)(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 202(6) (25 U.S.C. 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 unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

“(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.

Deadline.

“(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 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—

Newspaper.

“(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).

“(ii) NOTICE.—Notice shall be given—

“(I) in accordance with subparagraph (H), where the new appraisal results in a higher valuation of the land; 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.

“(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 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 less 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 to implement this section.

“(iv) **INTEREST ACQUIRED.**—A purchaser of a parcel of land under this subparagraph shall 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.

“(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.

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Deadline.

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

“(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 214(b) (25 U.S.C. 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

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

“(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. 5. OWNER-MANAGED INTERESTS.**

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

**“SEC. 221. OWNER-MANAGED INTERESTS.**

25 USC 2220.

“(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.

**“(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.

“(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 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. 6. ADDITIONAL AMENDMENTS.

(a) IN GENERAL.—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended—

(1) in the second sentence of section 205(a) (25 U.S.C. 2204(a)), by striking “over 50 per centum of the undivided interests” and inserting “undivided interests equal to at least 50 percent of the undivided interest”;

(2) in section 207 (25 U.S.C. 2206), by adding a subsection at the end as follows:

“(p) 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 section 207(a)(2) (A) or (D), 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 207(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; AUCTION; CONSENT REQUIREMENTS.—No sale of an interest in probate shall occur under this subsection unless—

“(A) 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

“(B) 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 207(a)(2) (A) or (D) consent to the sale.

If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as determined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.

“(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;

“(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; and

“(C) if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold—

“(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.

“(5) SMALL UNDIVIDED INTERESTS IN INDIAN LANDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the consent of a person who is an heir 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; and

“(ii) prior to the auction the Secretary determines in the probate proceeding that the interest passing to such heir represents 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.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), the consent of such heir shall be required for the sale at probate of the heir’s interest if, at the time of the decedent’s death, the heir was residing on the parcel of land of which the interest to be sold was a part.



“(6) DISTRIBUTION OF PROCEEDS.—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. The proceeds attributable to an heir or devisee shall be held in an account as trust personality if the interest sold would have otherwise passed to the heir or devisee in trust or restricted status.”;

(3) in section 206 (25 U.S.C. 2205)—

(A) in subsection (a), by striking paragraph (3) and inserting the following:

“(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).”; and

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by striking the paragraph heading and inserting the following:

“(1) AUTHORITY.—

“(A) IN GENERAL.—”;

(II) in the first sentence of subparagraph (A) (as redesignated by clause (i)), by striking “section 207(a)(6)(A) of this title” and inserting “section 207(b)(2)(A)(ii) of this title”; and

(III) by striking the last sentence and inserting the following:

“(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.”; and

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking the subparagraph heading and all that follows through “Paragraph (1) shall not apply” and inserting the following:

“(A) INAPPLICABILITY TO CERTAIN INTERESTS.—

“(i) IN GENERAL.—Paragraph (1) shall not apply”;

(bb) in clause (i) (as redesignated by item (aa)), by striking “if, while” and inserting the following: “if—

“(I) while”;

(cc) by striking the period at the end and inserting “; or”; and

(dd) by adding at the end the following:

“(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 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.”; and

(II) in subparagraph (B), by striking “subparagraph (A)” and all that follows through “207(a)(6)(B) of this title” and inserting “paragraph (1)”;

(4) in section 207 (25 U.S.C. 2206), by striking subsection (g);

(5) in section 213 (25 U.S.C. 2212)—

(A) by striking the section heading and inserting the following:

**“SEC. 2212. FRACTIONAL INTEREST ACQUISITION PROGRAM.”;**

(B) in subsection (a), by—

(i) adding in paragraph (1) “or from an heir during probate in accordance with section 207(p) (25 U.S.C. 2206(p))” after “owner,”; and

(ii) striking “(2) AUTHORITY OF SECRETARY.—” and all that follows through “the Secretary shall submit” and inserting the following:

“(2) AUTHORITY OF SECRETARY.—The Secretary shall submit”; and

(iii) by striking “whether the program to acquire fractional interests should be extended or altered to make resources” and inserting “how the fractional

interest acquisition program should be enhanced to increase the resources made”;

(C) in subsection (b), by striking paragraph (4) and inserting the following:

“(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.”;

(D) in subsection (c)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “at least 5 percent of the” and inserting in its place “an”;

(II) in subparagraph (A), by inserting “in such parcel” following “the Secretary shall convey an interest”;

(III) in subparagraph (A), by striking “landowner upon payment” and all that follows and inserting the following: “landowner—

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

“(ii) if—

“(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.”; and

(IV) in subparagraph (B), by inserting before the period at the end the following: “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);” and

(ii) in paragraph (3), by striking “10 percent or more of the undivided interests” and inserting “an undivided interest”; and

(E) by adding at the end of the section:

“(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.”;

(6) in section 214 (25 U.S.C. 2213), by striking subsection (b) and inserting the following:

“(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 213 shall be deposited in the fund created under section 216.

“(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.

“(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 213(b)(3), periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.”;

(7) in section 215 (25 U.S.C. 2214), in the last sentence, by striking “section 2212 of this title” and inserting “this Act”;

(8) in section 216 (25 U.S.C. 2215)—

(A) in subsection (a), by striking paragraph (2) and inserting the following:

“(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213.”; and

(B) in subsection (b)—

(i) in paragraph (1)—

(1) in the matter preceding subparagraph (A), by striking “Subject to paragraph (2), all” and inserting “All”;

(II) in subparagraph (A), by striking “and” at the end;

(III) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(IV) by adding at the end the following:

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

(ii) by striking paragraph (2) and inserting the following:

“(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 205.”;

(9) in section 217 (25 U.S.C. 2216)—

(A) in subsection (b)(1), by striking subparagraph (B) and inserting a new subparagraph (B) as follows:

“(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.”;

(B) in subsection (e), by striking the matter preceding paragraph (1), and inserting “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”;

(C) in subsection (e)(1), by striking “Indian”;

(D) in subsection (e)(3), by striking “prospective applicants for the leasing, use, or consolidation of” and inserting “any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate.”; and

(E) by striking subsection (f) and inserting the following:

“(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 206(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 206(c)(2)(A) shall apply with respect to the recording and mortgaging of any trust or restricted land referred to in subparagraph (A).”;

(10) in section 219(b)(1)(A) (25 U.S.C. 2218(b)(1)(A)), by striking “100” and inserting “90”; and

(11) in section 219, by adding at the end of the section:

“(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.”.

(b) DEFINITIONS.—Section 202 of the Indian Land Consolidation Act (25 U.S.C. 2201) is amended—

(1) by striking paragraph (2) and inserting the following:

“(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 207, 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.”;

(2) by striking paragraph (4) and inserting the following:

“(4) ‘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 ‘trust or restricted interest in land’ or ‘trust or restricted interest in a parcel of land’ means an interest in land, title to which 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.”; and

(3) by adding at the end the following:

“(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) ‘land’ means any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property;

“(8) ‘person’ or ‘individual’ means a natural person;

“(9) ‘eligible heirs’ means, for purposes of section 207 (25 U.S.C. 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 207 (25 U.S.C. 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.”.

(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.”.

Applicability.

(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):”.

(e) ESTATE PLANNING.—

(1) CONDUCT OF ACTIVITIES.—Section 207(f)(1) of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking paragraph (1) and inserting the following:

“(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.

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

(2) REQUIREMENTS.—Section 207(f)(2) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(2)) is amended by striking

“and” at the end of subparagraph (A), redesignating subparagraph (B) as subparagraph (D), and adding the following:

“(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”.

(3) PROBATE CODE DEVELOPMENT AND LEGAL ASSISTANCE GRANTS.—Section 207(f)(3) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(3)) is amended by striking paragraph (3) and inserting the following:

“(3) PROBATE CODE DEVELOPMENT AND LEGAL ASSISTANCE GRANTS.—In carrying out this section, the Secretary may award 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).”.

(4) NOTIFICATION TO LANDOWNERS.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

“(1) NOTIFICATION TO LANDOWNERS.—After receiving 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.

“(m) 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, 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

“(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

“(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.

“(n) 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.

“(o) MISSING HEIRS.—

“(1) For purposes of this subsection and subsection (m), an heir may be presumed missing if—

“(A) such heir’s whereabouts remain unknown 60 days after completion of notice efforts under subsection (m); 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.”.

**SEC. 7. ANNUAL NOTICE AND FILING REQUIREMENT FOR OWNERS OF INTERESTS IN TRUST OR RESTRICTED LANDS.**

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

**“SEC. 222. ANNUAL NOTICE AND FILING; CURRENT WHEREABOUTS OF INTEREST OWNERS.**

25 USC 2221.

“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.”.

**SEC. 8. NOTICE; EFFECTIVE DATE.**

25 USC 2201 note.

(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.

Deadline.

(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

Federal Register,  
publication.

(B) publish notice of that certification in the Federal Register.

(b) EFFECTIVE DATE.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206), except subsections (e) and (f) of that section, shall not apply to the estate of an individual who dies before the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).

25 USC 2201  
note.

**SEC. 9. SEVERABILITY.**

If any provision of this Act or of any amendment made by this Act, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this Act and of amendments made by this Act, and the application of the provisions and of the amendments made by this Act to any other person or circumstance shall not be affected by such holding, except that each of subclauses (II), (III), and (IV) of section 205(d)(2)(I)(i) is deemed to be inseverable from the other 2, such that if any 1 of those 3 subclauses is held to be invalid for any reason, neither of the other 2 of such subclauses shall be given effect.

25 USC 2201  
note.

**SEC. 10. REGULATIONS.**

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this Act.

Approved October 27, 2004.

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**LEGISLATIVE HISTORY—S. 1721:**

HOUSE REPORTS: No. 108-656 (Comm. on Resources).

SENATE REPORTS: No. 108-264 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 2, considered and passed Senate.

Oct. 6, considered and passed House.





# SAMPLE ITI REPORT

DATE: 2/24/2015  
TIME: 17:56:03 CST

BUREAU OF INDIAN AFFAIRS  
INDIVIDUAL/TRIBAL INTERESTS REPORT

REQUESTOR: EPILONE  
PAGE: 1

OWNER: TRB CL NUMBER: 610 U 044612  
BIRTHDATE: TOHONO O'ODHAM NATION - AZ  
DEATHDATE:   
MIDDLE NAME:   
FIRST NAME:   
LAST NAME:   
TRIBE NAME: TOHONO O'ODHAM NATION - AZ  
TITLE:   
RANGE: SOUTHWEST  
COUNTY: PIMA  
RANGE: 013.00E  
COUNTY: PIMA  
RANGE: 012.00E  
COUNTY: PIMA

RESOURCES: Both (Mineral and Surface)  
EXAM DATE: 12/29/2014  
DATE OF LAST VERIFY DATE: 12/29/2014

LAND AREA: SAN XAVIER  
ST MERIDIAN: AZ Gila and Salt River  
LEGAL DESCRIPTION: AZ Gila and Salt River  
SECTION ACRES: 20.000  
CUMULATIVE ACRES: 20.000

LOT 2= NW NW  
LOT 3= NW SW  
LOT 4= SW SW  
TOTAL SECTION ACRES: 330.490  
SECTION ACRES: 55.670  
CUMULATIVE ACRES: 253.170

AGGREGATE SHARE CONVERTED TO LCD DECIMAL: 128  
FRACTION ACQUIRED: 9  
AGGREGATE SHARE CONVERTED TO LCD DECIMAL: 256  
FRACTION ACQUIRED: 9

MULTIPLE INTEREST ARE AGGREGATED

TRACT ID	---	TITLE	---	DATE OF LAST	---
LAC	PFY	NUMBER	SFX	EXAM	DATE
611	132	SOUTHWEST	SAN XAVIER	12/29/2014	12/29/2014
			Both (Mineral and Surface)		

MARTINA IGNACIO  
 \*\* ORIGINAL ALLOTTEE \*\*

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION	CUMULATIVE
25	016.00S	012.00E	PIMA	AZ	Gila and Salt River	80.000	80.000
				E SW		80.000	80.000
					TOTAL SECTION ACRES:	80.000	80.000

-- OWNER	--	---	DOCUMENT	---	NAME IN WHICH	---	AGGREGATE
---	---	---	---	---	---	---	---
TYP	OT	INT	CLS	TYP	NUMBER	FRACTION	ACQUIRED
I	T	A	11	TS	SL245G998	3	64

I T A 11 TS WS6100403

TRACT ID	---	TITLE	---	DATE OF LAST	---
LAC	PFY	NUMBER	SFX	EXAM	DATE
611	133	SOUTHWEST	SAN XAVIER	10/15/2014	10/15/2014
			Both (Mineral and Surface)		

AUGUSTIN IGNACIO  
 \*\* ORIGINAL ALLOTTEE \*\*

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION	CUMULATIVE
25	016.00S	012.00E	PIMA	AZ	Gila and Salt River	100.000	100.000
					TOTAL SECTION ACRES:	100.000	100.000

DESCRIPTION:  
 SWNE=52.500; SENW=47.500

TOTAL SECTION ACRES: 100.000

MULTIPLE INTEREST ARE AGGREGATED

OWNER	INT	CLS	TYP	DOCUMENT	NAME IN WHICH FIRST ACQUIRED	FRACTION ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
I	T	A	11	TS	SL245G998	3		
						32		

I	T	A	11	TS	WS6100403	3		
						64		

----- TRACT ID ----- TITLE

LAC	PFX	NUMBER	SFX	PLANT	LAND AREA	RESOURCES	EXAM DATE	DATE OF LAST VERIFY DATE
611		151		SOUTHWEST	SAN XAVIER	Both (Mineral and Surface)	12/29/2014	12/29/2014

JOSE LISTO ESTRADA  
 \*\* ORIGINAL ALLOTTEE \*\*

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION ACRES	CUMULATIVE ACRES
2	016.00S	012.00E	PIMA	AZ	Gila and Salt River	80.000	80.000
						W SW	80.000
						TOTAL SECTION ACRES:	80.000

----- TRACT ID ----- TITLE

OWNER	INT	CLS	TYP	DOCUMENT	NAME IN WHICH FIRST ACQUIRED	FRACTION ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
I	T	A	11	TS	SL245G998	3		
						64		

I	T	A	11	TS	WS6100403	3		
						128		

----- TRACT ID ----- TITLE

LAC	PFX	NUMBER	SFX	PLANT	LAND AREA	RESOURCES	EXAM DATE	DATE OF LAST VERIFY DATE
611		233		SOUTHWEST	SAN XAVIER	Both (Mineral and Surface)	02/19/2015	02/19/2015

HOSEFA RIOS  
 \*\* ORIGINAL ALLOTTEE \*\*

ALL TITLE HOLDINGS

MULTIPLE INTEREST ARE AGGREGATED

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION ACRES	CUMULATIVE ACRES
9	016.00S	013.00E	PIMA	AZ Gila and Salt River	W SE	80.000	80.000
TOTAL SECTION ACRES:						80.000	80.000

---	OWNER	---	DOCUMENT	---	NAME IN WHICH FIRST ACQUIRED	FRACTION ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
I	T	A	11	TS	WS6100403	43		
I	T	A	12	AM	SL245G998	11520		
						187		
						23040		
I	T	A	12	AM	WS6100403	1	561	
						3072	46080	.0121744792

----- TRACT ID ----- TITLE  
 LAC PFX NUMBER SFX PLANT  
 611 235 SOUTHWEST

RESOURCES  
 Both (Mineral and Surface)

----- DATE OF LAST -----  
 EXAM DATE VERIFY DATE  
 02/19/2015 02/19/2015

LUIS RIOS  
 \*\* ORIGINAL ALLOTTEE \*\*

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION ACRES	CUMULATIVE ACRES
9	016.00S	013.00E	PIMA	AZ Gila and Salt River	W SW	80.000	80.000
TOTAL SECTION ACRES:						80.000	80.000

---	OWNER	---	DOCUMENT	---	NAME IN WHICH FIRST ACQUIRED	FRACTION ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
I	T	A	11	TS	WS6100403	43		
I	T	A	12	AM	SL245G998	46080		
						187		
						92160		

I T A 12 AM WS6100403

561



**ALL TITLE HOLDINGS**

MULTIPLE INTEREST ARE AGGREGATED

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-----TRACT ID -----TITLE
LAC PFX NUMBER SFX PLANT
611 288 SOUTHWEST
LAND AREA RESOURCES
SAN XAVIER Both (Mineral and
Surface)
-----EXAM DATE DATE OF LAST
10/14/2014 10/14/2014

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CHILI PAY  
 \*\* ORIGINAL ALLOTTEE \*\*

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION	SECTION ACRES	CUMULATIVE ACRES
27	016.00S	012.00E	PIMA	AZ	Gila and Salt River	W NW 80.000	80.000
28	016.00S	012.00E	PIMA	AZ	Gila and Salt River	S NE 80.000	160.000
TOTAL SECTION ACRES:						160.000	160.000

--- OWNER ---	--- DOCUMENT ---	NAME IN WHICH	FRACTION ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
TYP	OT	INT	CLS	TYP	NUMBER
I	T	A	11	TS	SL245G998
					3
					64
I	T	A	11	TS	WS6100403
					3
					128
					9
					128 .0703125000

\*\*\* END OF REPORT \*\*\*



# C SAMPLE IIM REPORT

IF YOU HAVE ANY QUESTIONS,  
PLEASE CALL 888.678.6836  
TRUST BENEFICIARY CALL CENTER  
HOURS OF OPERATION:  
MONDAY - FRIDAY: 7:00AM - 6:00PM (MT)  
SATURDAY: 8:00AM - NOON (MT)

OFFICE OF THE SPECIAL TRUSTEE  
FOR AMERICAN INDIANS



INDIVIDUAL INDIAN MONIES  
*Statement of Performance*

ACCOUNT OF XXXXXXXX  
XXXXXX4612

SELLS AZ 88634-UU/3

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
	BEGINNING BALANCES	11.30
11/05/14	CASH RECEIPT MONTHLY INCOME EARNED OCT 2014 INCOME AT THE ANNUALIZED RATE OF 2.85%	0.03
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0703125000	90.72
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0351562500	45.36
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0468750000	15.58
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0234375000	7.79

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0937500000	38.96
11/21/14	CASH RECEIPT COPPER CT11T690074 , 568002 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 655157 PAYMENT DUE: 11/19/2014 OWNERSHIP: 0.0468750000	19.48
11/21/14	CASH DISBURSEMENT PAID TO JP MORGAN CHASE NA 728 W AJO WAY TUCSON AZ 85713 DEPOSITED TO CHECKING-\$15 MIN	-229.22
12/01/14	CASH RECEIPT RENTAL CT11H100207 , 569100 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 656272 PAYMENT DUE: 9/17/2014 OWNERSHIP: 0.0703125000	21.83
12/01/14	CASH RECEIPT RENTAL CT11H100207 , 569100 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 656272 PAYMENT DUE: 9/17/2014 OWNERSHIP: 0.0351562500	10.92

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
12/01/14	CASH RECEIPT RENTAL CT11H100207 , 569100 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 656272 PAYMENT DUE: 9/17/2014 OWNERSHIP: 0.0468750000	3.75
12/01/14	CASH RECEIPT RENTAL CT11H100207 , 569100 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 656272 PAYMENT DUE: 9/17/2014 OWNERSHIP: 0.0234375000	1.88
12/01/14	CASH RECEIPT RENTAL CT11H100207 , 569100 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 656272 PAYMENT DUE: 9/17/2014 OWNERSHIP: 0.0937500000	9.38
12/01/14	CASH RECEIPT RENTAL CT11H100207 , 569100 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 656272 PAYMENT DUE: 9/17/2014 OWNERSHIP: 0.0468750000	4.69
12/01/14	CASH DISBURSEMENT PAID TO JP MORGAN CHASE NA 728 W AJO WAY TUCSON AZ 85713 DEPOSITED TO CHECKING-\$15 MIN	-52.45

ACCOUNT OF  
XXXXXX4612

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
12/03/14	CASH RECEIPT MONTHLY INCOME EARNED NOV 2014 INCOME AT THE ANNUALIZED RATE OF 2.83%	0.02
12/19/14	CASH RECEIPT COPPER CT12T670098 , 574663 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 660386 PAYMENT DUE: 12/18/2014 OWNERSHIP: 0.0703125000	559.68
12/19/14	CASH RECEIPT COPPER CT12T670098 , 574663 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 660386 PAYMENT DUE: 12/18/2014 OWNERSHIP: 0.0351562500	279.84
12/19/14	CASH RECEIPT COPPER CT12T670098 , 574663 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 660386 PAYMENT DUE: 12/18/2014 OWNERSHIP: 0.0468750000	96.14
12/19/14	CASH RECEIPT COPPER CT12T670098 , 574663 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 660386 PAYMENT DUE: 12/18/2014 OWNERSHIP: 0.0234375000	48.07

ACCOUNT OF  
XXXXXX4612

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
12/19/14	CASH RECEIPT COPPER CT12T670098 , 574663 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 660386 PAYMENT DUE: 12/18/2014 OWNERSHIP: 0.0937500000	240.34
12/19/14	CASH RECEIPT COPPER CT12T670098 , 574663 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 660386 PAYMENT DUE: 12/18/2014 OWNERSHIP: 0.0468750000	120.17
12/19/14	CASH DISBURSEMENT PAID TO JP MORGAN CHASE NA 728 W AJO WAY TUCSON AZ 85713 DEPOSITED TO CHECKING-\$15 MIN	-1,344.26
01/27/15	CASH RECEIPT COPPER CT01T710066 , 581236 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 668454 PAYMENT DUE: 1/21/2015 OWNERSHIP: 0.0703125000	991.57
01/27/15	CASH RECEIPT COPPER CT01T710066 , 581236 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 130 INVOICE #: 668454 PAYMENT DUE: 1/21/2015 OWNERSHIP: 0.0351562500	495.79

PAGE 5

ACCOUNT OF  
XXXXXX4612

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
01/27/15	CASH RECEIPT COPPER CT01T710066 , 581236 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 668454 PAYMENT DUE: 1/21/2015 OWNERSHIP: 0.0468750000	170.32
01/27/15	CASH RECEIPT COPPER CT01T710066 , 581236 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 132 INVOICE #: 668454 PAYMENT DUE: 1/21/2015 OWNERSHIP: 0.0234375000	85.16
01/27/15	CASH RECEIPT COPPER CT01T710066 , 581236 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 668454 PAYMENT DUE: 1/21/2015 OWNERSHIP: 0.0937500000	425.81
01/27/15	CASH RECEIPT COPPER CT01T710066 , 581236 LEASE NUMBER: 611 MN00956399 SS 08311959 LESSEE: ASARCO INCORPORATED TRACT ID: 611 133 INVOICE #: 668454 PAYMENT DUE: 1/21/2015 OWNERSHIP: 0.0468750000	212.90
01/27/15	CASH DISBURSEMENT PAID TO JP MORGAN CHASE NA 728 W AJO WAY TUCSON AZ 85713 DEPOSITED TO CHECKING-\$15 MIN	-2,381.55
	ENDING BALANCES	0.00

THE BALANCE IN YOUR ACCOUNT IS INVESTED DAILY. REALIZED GAINS OR LOSSES MAY OCCUR IN THE



ACCOUNT OF :  
XXXXXXXX461Z

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 11/01/14 THROUGH 01/31/15

DATE	TRANSACTION DESCRIPTION	CASH
------	-------------------------	------

\*\*\*\*\*  
THE LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS, CREATED TO IMPLEMENT PART OF THE COBELL SETTLEMENT, IS OFFERING FAIR MARKET VALUE TO SELECT LANDOWNERS TO RESTORE FRACTIONAL LAND INTERESTS TO TRIBES, WHICH HELPS ENSURE INDIAN LANDS STAY IN TRUST.  
ALL SALES ARE VOLUNTARY, AND OWNERS WILL HAVE 45 DAYS TO ACCEPT OFFERS RECEIVED.  
IF YOU ARE AN INDIAN TRUST LANDOWNER, YOU CAN CALL THE TRUST BENEFICIARY CALL CENTER, 1-888-678-6836, FOR MORE INFORMATION ABOUT THE PROGRAM, YOUR OPTIONS, AND TO ENSURE THAT YOUR CONTACT INFORMATION IS CURRENT.  
YOU MAY ALSO GET INFORMATION FROM YOUR LOCAL FIDUCIARY TRUST OFFICER OR BY VISITING WWW.DOI.GOV/BUYBACKPROGRAM  
\*\*\*\*\*  
IF YOU CURRENTLY RECEIVE A PRINTED ACH/DIRECT DEPOSIT ADVISE, PLEASE NOTE THAT OCT WILL STOP PRINTING THEM EFFECTIVE FEBRUARY 28, 2015. PLEASE CALL THE TRUST BENEFICIARY CALL CENTER AT 1-888-678-6836 TO REQUEST AN EMAIL OR TEXT NOTIFICATION INSTEAD OF A PRINTED COPY.  
\*\*\*\*\*

LIST OF REAL PROPERTY ASSETS

ACCOUNT NO. XXXXXX4612

AS OF 01/31/15

TRUST LAND		TRACT ID	TRACT NAME	TRACT ACRES	LOCATION	OWNERSHIP CLASSIFICATION
UNDIVIDED OWNERSHIP	0.1054687500	*611 130	JOSE IGNACIO	330.490	PIMA, AZ	TITLE & BENEFICIAL
	0.0703125000	*611 132	MARTINA IGNACIO	80.000	PIMA, AZ	TITLE & BENEFICIAL
	0.1406250000	*611 133	AUGUSTIN IGNACIO	100.000	PIMA, AZ	TITLE & BENEFICIAL
	0.0703125000	611 151	JOSE LISTO ESTRADA	80.000	PIMA, AZ	TITLE & BENEFICIAL
	0.0121744790	611 233	HOSEFA RIOS	80.000	PIMA, AZ	TITLE & BENEFICIAL
	0.0030436199	611 235	LUIS RIOS	80.000	PIMA, AZ	TITLE & BENEFICIAL
	0.0703125000	611 288	CHILI PAY	160.000	PIMA, AZ	TITLE & BENEFICIAL
ENCUMBRANCES						
TRACT ID	DOCUMENT ID	ENCUMBRANCE TYPE	ENCUMBRANCE HOLDER	EFFECTIVE DATE	EXPIRATION DATE	
611 130	611 MN00956399 611 311---	SUBSURFACE HIGHWAYS/ROADS	ASARCO INCORPORATED ARIZONA HIGHWAY DEPT.	09/18/1959	HBP IP	
611 132	611 MN00956399	SUBSURFACE	ASARCO INCORPORATED	09/18/1959	HBP	
611 133	611 MN00956399	SUBSURFACE	ASARCO INCORPORATED	09/18/1959	HBP	

LIST OF REAL PROPERTY ASSETS

ACCOUNT NO. XXXXXX4612

AS OF 01/31/15

-----LEGEND TO REAL PROPERTY ASSET SCHEDULE-----

ACCOUNT NUMBER: THIS IS YOUR IIM ACCOUNT NUMBER AND LAND OWNER ID NUMBER.

UNDIVIDED OWNERSHIP: THIS IS THE UNDIVIDED OWNERSHIP INTEREST YOU OWN IN THE RESPECTIVE TRACT AND/OR ENCUMBRANCES; WHEN FOLLOWED BY A PLUS ('+'), THE OWNERSHIP INTEREST IS SMALLER THAN CAN BE REPRESENTED BY A DECIMAL AMOUNT.

TRACT ID: THIS IS THE UNIQUE BIA NUMBER ASSIGNED TO THE TRACT OF LAND; WHEN PRECEDED BY AN ASTERISK (\*), THE TRACT IS ENCUMBERED.

OWNERSHIP CLASSIFICATION: THE FOLLOWING ARE THE DIFFERENT OWNERSHIP CLASSIFICATIONS THAT COULD BE LISTED ON YOUR STATEMENT:  
'TITLE' ONLY - THE ACCOUNT HOLDER HAS TITLE, BUT NOT BENEFICIAL OWNERSHIP TO THE LAND. A TITLE ONLY ACCOUNT HOLDER DOES NOT RECEIVE TRUST INCOME DERIVED FROM ENCUMBRANCE ACTIVITY.  
'BENEFICIAL' ONLY - THE ACCOUNT HOLDER HAS BENEFICIAL, BUT NOT TITLE, OWNERSHIP TO THE LAND. A BENEFICIAL ONLY ACCOUNT HOLDER RECEIVES TRUST INCOME DERIVED FROM ENCUMBRANCE ACTIVITY. BENEFICIAL OWNERSHIP REVERTS TO THE TITLE OWNER/REMAINDERMAN UPON THE BENEFICIAL OWNER'S DEATH.  
'TITLE & BENEFICIAL' - THE ACCOUNT HOLDER HAS BOTH TITLE AND BENEFICIAL OWNERSHIP TO THE LAND. A TITLE AND BENEFICIAL ACCOUNT HOLDER RECEIVES TRUST INCOME FROM ENCUMBRANCE ACTIVITY.

ENCUMBRANCE/ ENCUMBERED: ANY LEASE, RIGHT OF WAY, PERMIT OR ANY OTHER LEGAL INSTRUMENT WHICH AUTHORIZES USE OF THE PROPERTY

DOCUMENT ID: BIA ASSIGNED NUMBER TO IDENTIFY THE ENCUMBRANCE DOCUMENT

EFFECTIVE DATE: DATE THE ENCUMBRANCE STARTS

EXPIRATION DATE: DATE THE ENCUMBRANCE ENDS IF THERE IS AN END DATE OR HBP = HELD BY PRODUCTION (OIL AND GAS) OR IP = IN PERPETUITY (THE ENCUMBRANCE DOES NOT HAVE AN EXPIRATION DATE)

NOTE: THIS ASSET STATEMENT REFLECTS THOSE REAL PROPERTY ASSETS RECORDED AT THE BUREAU OF INDIAN AFFAIRS' OFFICIAL LAND TITLE AND RECORDS OFFICE.





# AFFIDAVIT TO ACCOMPANY INDIAN WILL

STATE of ARIZONA \_\_\_\_\_ )

) SS: AFFIDAVIT to ACCOMPANY INDI-

AN WILL

COUNTY of PIMA \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, on oath depose and say: That I am an enrolled member of the Tohono O’Odham Tribe of the State of Arizona; that on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, I requested \_\_\_\_\_ to prepare a Will for me; that the attached Will was prepared for me and I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses thereto; that the witnesses heard me publish and declare the same to be my Last Will and Testament; that I signed the Will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; and that the Will was read by me or read and explained to me, after being prepared and before I signed it; and it clearly and accurately states my wishes; and I further state that no person has influenced me to make the disposition of any part of my property in any other manner than I myself of my own free will desire and wish to dispose of it.

\_\_\_\_\_  
Signature of Testator/Testatrix

\_\_\_\_\_  
Tribal ID No.

We, \_\_\_\_\_ and \_\_\_\_\_,  
 (Witness name) (Witness name)

each being duly sworn, on oath depose and state: That on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, \_\_\_\_\_, a member of the Tohono O’odham Nation of the State of Arizona, published and declared the attached instrument to be his/her Last Will and Testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix-

trix was not acting under duress, menace, fraud or undue influence of any person, so far as we could ascertain and in our opinion was mentally capable of disposing of all his/her estate by Will; and that neither of us is named as a beneficiary in the Will and/or in any wise interested in the distribution of the estate of said testator/testatrix.

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
Signature of Witness #2

Subscribed and Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, Testator/testatrix, and by  
\_\_\_\_\_ and \_\_\_\_\_,  
Attesting Witnesses.

\_\_\_\_\_  
Notary Public, State of Arizona, PIMA COUNTY

Title Commission expires: \_\_\_\_\_



# GIFT DEED FORM PACKET

(Do not write in this space)

5-5446  
(Jan. 1980)

Land being conveyed was  
allotted to Manuel Castillo  
Allotment No. 611-257

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

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## DEED TO RESTRICTED INDIAN LAND SPECIAL FORM

THIS INDENTURE, made and entered into this 04th day of , 2010, by and between **Tohono O’odham I.D. No. , DOB: \_**, a member of the Tohono O’odham Nation of Arizona, party of the first part, and the United States of America in trust for ID#, **Tohono O’odham I.D. No. , DOB: \_**, of the Tohono O’odham Nation of Arizona, party of the second part:

WITNESSETH, that said party of the first part, for and in consideration of the sum of **\*\*Gift\*\*** Dollar and other valuable considerations, does hereby grant, bargain, sell, and convey unto said party of the second part, a 2/567 interest in the following-described real estate and premises situated in Pima County, on the San Xavier Indian Reservation, to wit:

**ALLOTMENT** Parcels of land located:  
Section 3, Township 16 South, Range 12 East,  
Section 4, Township Gila and Salt River Base and Meridian,  
Pima County, State of Arizona. Containing 80.00 acres,  
more or less. **\*\*RETAINING A FULL LIFE ESTATE\*\***

This conveyance is made pursuant to the Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. 465, and the Indian Land Consolidation Act Amendments of November 7, 2000, 114 Stat. 1992, 25 U.S.C. 2216, and subject to subsection 2216(b)(2) on 5 year restriction, from date of approval, of removal from trust or restricted status of such interest.

Together with all the improvements thereon and the appurtenances thereunto belonging, and the said party of the first part, for **her** and **her** heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, **his** heirs and assigns, that they will forever warrant and defend the said premises against the





**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs**

**APPLICATION FOR THE GIFT DEED OF INDIAN LAND**

From: \_\_\_\_\_ Reservation: Tohono O’odham Nation  
To: \_\_\_\_\_ San Xavier Reservation

Application is hereby made for the GIFT DEED of the following described land: \_\_\_\_\_% interest in and  
to \_\_\_\_\_  
\_\_\_\_\_, G&SRB&M, Pima County, Arizona

containing \_\_\_\_\_ Acres, more or less.

In justification of this application, true statements are made to the following items:

PLEASE ANSWER ALL QUESTIONS

1. Age: \_\_\_\_\_
2. Date of Birth \_\_\_\_\_
3. Degree of Indian Blood \_\_\_ Tohono O’odham \_\_\_\_\_
4. Single \_\_\_ Widow \_\_\_ Divorced \_\_\_ Married \_\_\_ Widower \_\_\_  
Separated \_\_\_
5. Education: Years in Elementary School \_\_\_\_\_ High School \_\_\_\_\_  
College \_\_\_\_\_
6. The following persons are dependent upon me for support. (Give names, ages, and relationship)  
\_\_\_\_\_  
\_\_\_\_\_
7. I am enrolled as a \_\_\_\_\_ Indian enrollment number: \_\_\_\_\_  
Name of Tribe
8. Permanent Address \_\_\_\_\_  
(Address) (City) (State) (Zip)
9. Telephone Number \_\_\_\_\_
10. The amount of my annual income is \$ \_\_\_\_\_
11. My income is obtained from the following sources \_\_\_\_\_  
\_\_\_\_\_
12. Social Security Number \_\_\_\_\_
13. If receiving public assistance grants from the State or general assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration , Social Security, or any regular public benefit, state kind and amount (If none, state none.) \_\_\_\_\_

14. I do\_\_\_ I do not\_\_\_ live on or make personal use of the land or made improvements to the land covered the application\_\_\_\_\_

15. The land is leased and the annual rent received is \$\_\_\_\_\_ (If not leased, state none)

16. I intend to use the proceeds of the sale for the following purpose: Living Expense\_\_\_ or Personal\_\_\_

This conveyance is made pursuant to the authority contained in the Act of June 18, 1934, (48Stat.,984), and the provision of the Indian Land Consolidation Act Amendments of 2000 (114 Stat. 1991), P.L. 106-462, as amended November 7, 2000, 25 USC 2216.

X \_\_\_\_\_  
APPLICANT PLEASE SIGN HERE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

I hereby certify that the effect of this application was explained to and fully understood by the applicant(s) and the application is hereby approved.

Approved: \_\_\_\_\_  
Superintendent, Papago Agency, Sells, AZ  
Phone: 520/383-3250

Date: \_\_\_\_\_

## Gift Deed Checklist

### Initiate the case

- o Notice and Waiver signed and witnessed
- o Print ITI from TAAMS
  - o Determine what the individual wants to convey
- o Application signed and witnessed
- o Personal data form
  - o Identify's information about the Grantee
- o Waiver of estimate form signed (only if individual waives appraisal)
- o Gift Deed question and answer

### Preparation of case

- o Update database
- o Create file, labels, etc
- o Create spreadsheet (if necessary)
- o Print plat maps
- o Write Letter to Tribe (only necessary if Grantee is a non-Tribal/Nation member)
  - o Original letter signed by Supt.
  - o Copy of application signed by Supt.
  - o Spreadsheet (if necessary)
  - o Plat maps
  - o CC: Landowner, District Chairman, (??)
- o Request Cultural Clearance
  - o Prepare memo to Garry Cantley, WRO
    - o Copy of application
    - o Plat maps
- o Request Appraisal  
(only necessary if individual does not waive or if no special relationship exists)

### Upon receipt of documents

- o Notify landowner
  - o Copy of appraisal (if requested)
- o Prepare deed
  - o landowner signature
  - o witnessed and notorized
  - o Superintendent signature
- o Prepare Transmittal of deed to LTRO for recording
  - o Yellow-Original to LTRO
  - o Pink-COPY to LTRO
  - o White-COPY to remain in file

### Document recorded

- o Make copies of recorded deed
  - o Put in original allottee, previous owner, and new landowner file in vault
  - o Prepare letter and mail one copy to each previous owner and new landowner

## GIFT DEED - QUESTION & ANSWERS

**To the Interviewer:** Please ask the following questions in a private session. Make sure you have another BIA employee as a witness to the session. No other parties should be allowed into the session. No other parties should be allowed to answer for the Grantor. Please provide *explanations* to questions 4 and 5 if necessary.

1. Please state your name \_\_\_\_\_
2. Who do you want to give your land to? \_\_\_\_\_
3. Why do you want to give them your land?
4. Do you understand how much your land is worth? \_\_\_\_\_ *If No explain approximately how much the land is worth to the Grantor.*
5. Do you understand how a **life estate** works? \_\_\_\_\_ *If No explain how a life estate works to the Grantor.*
6. Do you want to retain a **life estate** on this land? \_\_\_\_\_ .
7. Do you understand that once you gift deed your land to (grantee) you cannot get your land back at a later date? \_\_\_\_\_ .
8. After knowing all of the above do you still wish to gift deed your land to (grantee)? \_\_\_\_\_ .

\_\_\_\_\_  
Grantor Date \_\_\_\_\_

\_\_\_\_\_  
Interviewer Date \_\_\_\_\_

**WAIVER OF ESTIMATE OF VALUE REQUIREMENT  
FOR SALES, EXCHANGES AND GIFTS FOR NO OR NOMINAL CONSID-  
ERATION**

I, \_\_\_\_\_, a member of the **Tohono O’odham Nation**, I.D. Number \_\_\_\_\_, pursuant to Section 217 (b)(1) (B) of the Indian Land Consolidation Act, as amended, hereby waive the requirement that I receive an Estimate of Value. I am (selling) (exchanging) (conveying by gift deed) for (no) (nominal) consideration my undivided interest in allotment #\_\_\_\_\_ on the **San Xavier Indian** Reservation to \_\_\_\_\_, who is a member of the **Tohono O’odham Nation**.

I acknowledge that for a period of five (5) years after the Secretary approves this conveyance, the Secretary shall not approve an application to terminate the trust status or remove the restriction on the interest, which I am conveying.

I certify that there are no additional monies being paid to me as consideration for this transaction other than the amount stated in my gift deed application.

\_\_\_\_\_  
Landowner

\_\_\_\_\_  
Date

WITNESS:

\_\_\_\_\_  
Bureau of Indian Affairs, Papago Agency



## TITLE 25—INDIANS

### PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE OSAGE NATION AND THE FIVE CIVILIZED TRIBES

Revised as of February 10, 2011

See 25 C.F.R. Part 15 (2010), as amended by 76 Fed. Reg. 7500 (Feb. 10, 2011)

#### Subpart A—Introduction

Sec.

- 15.1 What is the purpose of this part?
- 15.2 What definitions do I need to know?
- 15.3 Who can make a will disposing of trust or restricted land or trust personalty?
- 15.4 What are the requirements for a valid will?
- 15.5 May I revoke my will?
- 15.6 May my will be deemed revoked by the operation of the law of any State?
- 15.7 What is a self-proved will?
- 15.8 May I make my will, codicil, or revocation self-proved?
- 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?
- 15.10 What assets will the Secretary probate?
- 15.11 What are the basic steps of the probate process?
- 15.12 What happens if assets in an estate may be diminished or destroyed while the probate is pending?

#### Subpart B—Starting the Probate Process

- 15.101 When should I notify the agency of a death of a person owning trust or restricted property?
- 15.102 Who may notify the agency of a death?
- 15.103 How do I begin the probate process?
- 15.104 Does the agency need a death certificate to prepare a probate file?
- 15.105 What other documents does the agency need to prepare a probate file?
- 15.106 May a probate case be initiated when an owner of an interest has been absent?
- 15.107 Who prepares the probate file?
- 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?

#### Subpart C—Preparing the Probate File

- 15.201 What will the agency do with the documents that I provide?
- 15.202 What items must the agency include in the probate file?
- 15.203 What information must tribes provide BIA to complete the probate file?
- 15.204 When is a probate file complete?

## **Subpart D—Obtaining Emergency Assistance and Filing Claims**

- 15.301 May I receive funds from the decedent’s IIM account for funeral services?
- 15.302 May I file a claim against an estate?
- 15.303 Where may I file my claim against an estate?
- 15.304 When must I file my claim?
- 15.305 What must I include with my claim?

## **Subpart E—Probate Processing and Distributions**

- 15.401 What happens after BIA prepares the probate file?
- 15.402 What happens after the probate file is referred to OHA?
- 15.403 What happens after the probate order is issued?

## **Subpart F—Information and Records**

- 15.501 How may I find out the status of a probate?
- 15.502 Who owns the records associated with this part?
- 15.503 How must records associated with this part be preserved?
- 15.504 Who may inspect records and records management practices?
- 15.505 How does the Paperwork Reduction Act affect this part?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410, 2201 et seq.; 44 U.S.C. 3101 et seq.

CROSS REFERENCE: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see title 43, Code of Federal Regulations, part 4, subpart D, and part 30; Funds of deceased Indians other than the Five Civilized Tribes, see title 25 Code of Federal Regulations, part 115.

## **Subpart A—Introduction**

### **§ 15.1 What is the purpose of this part?**

(a) This part contains the procedures that we follow to initiate the probate of the estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personality. This part tells you how to file the necessary documents to probate the estate. This part also describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of Hearings and Appeals (OHA) for disposition.

(b) The following provisions do not apply to Alaska property interests:

- (1) Section 15.202(c), (d), (e)(2), (n), and (o); and
- (2) Section 15.401(b).



**§ 15.2 What definitions do I need to know?**

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108-374, as codified at 25 U.S.C. 2201 *et seq.*

*Administrative law judge (ALJ)* means an administrative law judge with the Office of Hearings and Appeals appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Affidavit* means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person’s knowledge and belief.

*Agency* means:

- (1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personality; and
- (2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*Attorney Decision Maker (ADM)* means an attorney with OHA who conducts a summary probate proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Child* means a natural or adopted child.

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

*Consolidation agreement* means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent’s heirs and devisees consolidate interests in trust or restricted land.

*Creditor* means any individual or entity that has a claim for payment from a decedent’s estate.

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order (or decision and order)* means:

- (1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personality;
- (2) The decision issued by an attorney decision maker in a summary probate proceeding; or
- (3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is dead by reason of unexplained absence.

*Department* means the Department of the Interior.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Eligible heir* means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are any of the following:

- (1) Indian;
- (2) Lineal descendants within two degrees of consanguinity of an Indian; or
- (3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting -- by descent, renunciation, or consolidation agreement -- another trust or restricted interest in such parcel from the decedent.

*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

*Indian* means, for the purposes of the Act, any of the following:

- (1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;
- (2) Any person meeting the definition of Indian under 25 U.S.C. 479; or
- (3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means:

- (1) Any potential or actual heir;
- (2) Any devisee under a will;
- (3) Any person or entity asserting a claim against a decedent's estate;
- (4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or
- (5) A co-owner exercising a purchase option.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge* means an ALJ or IPJ.

*Lockbox* means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

*LTRO* means the Land Titles and Records Office within BIA.

*OHA* means the Office of Hearings and Appeals within the Department of the Interior.

*OST* means the Office of the Special Trustee for American Indians within the Department of the Interior.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent’s estate is applied in order to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine devisees;
- (3) Determine whether claims against the estate will be paid from trust personality;

and

(4) Order the transfer of any trust or restricted land or trust personality to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Purchase option at probate* means the process by which eligible purchasers can purchase a decedent’s interest during the probate proceeding.

*Restricted property* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary’s consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term “restricted property” as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Summary probate proceeding* means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that did not exceed \$5,000 in value on the date of the decedent’s death.

*Superintendent* means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

*Testate* means that the decedent executed a valid will as determined in the probate proceeding.

*Testator* means a person who has executed a valid will as determined in the probate proceeding.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*We or us* means, the Secretary, an authorized representative of the Secretary, or the authorized employee or representative of a tribe performing probate functions under a contract or compact approved by the Secretary.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent’s trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent’s estate unless the context requires otherwise.

### **§ 15.3 Who can make a will disposing of trust or restricted land or trust personality?**

Any person 18 years of age or over and of testamentary capacity, who has any right, title, or interest in trust or restricted land or trust personality, may dispose of trust or restricted land or trust personality by will.

**§ 15.4 What are the requirements for a valid will?**

You must meet the requirements of § 15.3, date and execute your will, in writing and have it attested by two disinterested adult witnesses.

**§ 15.5 May I revoke my will?**

Yes. You may revoke your will at any time. You may revoke your will by any means authorized by tribal or Federal law, including executing a subsequent will or other writing with the same formalities as are required for execution of a will.

**§ 15.6 May my will be deemed revoked by operation of the law of any State?**

No. A will that is subject to the regulations of this subpart will not be deemed to be revoked by operation of the law of any State.

**§ 15.7 What is a self-proved will?**

A self-proved will is a will with attached affidavits, signed by the testator and the witnesses before an officer authorized to administer oaths, certifying that they complied with the requirements of execution of the will.

**§ 15.8 May I make my will, codicil, or revocation self-proved?**

Yes. A will, codicil, or revocation may be made self-proved as provided in this section.

(a) A will, codicil, or revocation may be made self-proved by the testator and attesting witnesses at the time of its execution.

(b) The testator and the attesting witnesses must sign the required affidavits before an officer authorized to administer oaths, and the affidavits must be attached to the will, codicil, or revocation.

**§ 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?**

(a) A testator’s affidavit must contain substantially the following content:

Tribe of \_\_\_\_\_ or  
State of \_\_\_\_\_  
County of \_\_\_\_\_ .

I, \_\_\_\_\_, swear or affirm under penalty of perjury that, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it,

and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

\_\_\_\_\_  
Testator

(b) Each attesting witness' affidavit must contain substantially the following content:

We, \_\_\_\_\_ and \_\_\_\_\_, swear or affirm under penalty of perjury that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, of the State of \_\_\_\_\_, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to or affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ testator, and by \_\_\_\_\_ and \_\_\_\_\_, attesting witnesses.

\_\_\_\_\_  
\_\_\_\_\_  
(Title)

### § 15.10 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land, or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or Osage Nation.

**§ 15.11 What are the basic steps of the probate process?**

The basic steps of the probate process are:

- (a) We learn about a person’s death (see subpart B for details);
- (b) We prepare a probate file that includes documents sent to the agency (see subpart C for details);
- (c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D for details); and
- (d) The judge or ADM decides how to distribute any trust or restricted land and/or trust personality, and we make the distribution (see subpart D for details).

**§ 15.12 What happens if assets in an estate may be diminished or destroyed while the probate is pending?**

- (a) This section applies if an interested party or BIA:
  - (1) Learns of the death of a person owning trust or restricted property; and
  - (2) Believes that an emergency exists and the assets in the estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.
- (b) An interested party, the Superintendent, or other authorized representative of BIA has standing to request relief.
- (c) The interested party or BIA representative may request:
  - (1) That OHA immediately assign a judge or ADM to the probate case;
  - (2) That BIA transfer a probate file to OHA containing sufficient information on potential interested parties and documentation concerning the alleged emergency for a judge to consider emergency relief in order to preserve estate assets; and
  - (3) That OHA hold an expedited hearing or consider ex parte relief to prevent impending or further loss or destruction of trust assets.

**Subpart B—Starting the Probate Process**

**§ 15.101 When should I notify the agency of the death of a person owning trust or restricted property?**

There is no deadline for notifying us of a death.

- (a) Notify us as provided in § 15.103 to assure timely distribution of the estate.
- (b) If we find out about the death of a person owning trust or restricted property we may initiate the process to collect the necessary documentation.

**§ 15.102 Who may notify the agency of a death?**

Anyone may notify us of a death.

**§ 15.103 How do I begin the probate process?**

As soon as possible, contact any of the following offices to inform us of the decedent's death:

- (a) The agency or BIA regional office nearest to where the decedent was enrolled;
- (b) Any agency or BIA regional office; or
- (c) The Trust Beneficiary Call Center in OST.

**§ 15.104 Does the agency need a death certificate to prepare a probate file?**

(a) Yes. You must provide us with a certified copy of the death certificate if a death certificate exists. If necessary, we will make a copy from your certified copy for our use and return your copy.

(b) If a death certificate does not exist, you must provide an affidavit containing as much information as you have concerning the deceased, such as:

- (1) The State, city, reservation, location, date, and cause of death;
- (2) The last known address of the deceased;
- (3) Names and addresses of others who may have information about the deceased;

and

(4) Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

**§ 15.105 What other documents does the agency need to prepare a probate file?**

In addition to the certified copy of a death certificate or other reliable evidence of death listed in § 15.104, we need the following information and documents:

(a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;

(b) The Social Security number of the decedent;

(c) The place of enrollment and the tribal enrollment or census number of the decedent and potential heirs or devisees;

(d) Current names and addresses of the decedent's potential heirs and devisees;

(e) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(f) Any statements renouncing an interest in the estate including identification of the person or entity in whose favor the interest is renounced, if any;

(g) A list of claims by known creditors of the decedent and their addresses, including copies of any court judgments; and

(h) Documents from the appropriate authorities, certified if possible, concerning the public record of the decedent, including but not limited to, any:

- (1) Marriage licenses and certificates of the decedent;

- (2) Divorce decrees of the decedent;
- (3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;
- (4) Use of other names by the decedent, including copies of name changes by court order; and
- (5) Orders requiring payment of child support or spousal support.

**§ 15.106 May a probate case be initiated when an owner of an interest has been absent?**

- (a) A probate case may be initiated when either:
  - (1) Information is provided to us that an owner of an interest in trust or restricted land or trust personalty has been absent without explanation for a period of at least 6 years; or
  - (2) We become aware of other facts or circumstances from which an inference may be drawn that the person has died.
- (b) When we receive information as described in §15.106(a), we may begin an investigation into the circumstances, and may attempt to locate the person. We may:
  - (1) Search available electronic databases;
  - (2) Inquire into other published information sources such as telephone directories and other available directories;
  - (3) Examine BIA land title and lease records;
  - (4) Examine the IIM account ledger for disbursements from the account; and
  - (5) Engage the services of an independent firm to conduct a search for the owner.
- (c) When we have completed our investigation, if we are unable to locate the person, we may initiate a probate case and prepare a file that may include all the documentation developed in the search.
- (d) We may file a claim in the probate case to recover the reasonable costs expended to contract with an independent firm to conduct the search.

**§ 15.107 Who prepares a probate file?**

The agency that serves the tribe where the decedent was an enrolled member will prepare the probate file in consultation with the potential heirs or devisees who can be located, and with other people who have information about the decedent or the estate.

**§ 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?**

- Unless otherwise provided by Federal law, the agency that has jurisdiction over the tribe with the strongest association with the decedent will serve as the home agency and will prepare the probate file if the decedent owned interests in trust or restricted land or trust personalty and either:
- (a) Was not an enrolled member of a tribe; or
  - (b) Was a member of more than one tribe.



## Subpart C—Preparing the Probate File

### § 15.201 What will the agency do with the documents that I provide?

After we receive notice of the death of a person owning trust or restricted land or trust personality, we will examine the documents provided under §§ 15.104 and 15.105, and other documents and information provided to us to prepare a complete probate file. We may consult with you and other individuals or entities to obtain additional information to complete the probate file. Then we will transfer the probate file to OHA.

### § 15.202 What items must the agency include in the probate file?

We will include the items listed in this section in the probate file.

- (a) The evidence of death of the decedent as provided under § 15.104.
- (b) A completed “Data for Heirship Findings and Family History Form” or successor form, certified by BIA, with the enrollment or other identifying number shown for each potential heir or devisee.
- (c) Information provided by potential heirs, devisees, or the tribes on:
  - (1) Whether the heirs and devisees meet the definition of “Indian” for probate purposes, including enrollment or eligibility for enrollment in a tribe; or
  - (2) Whether the potential heirs or devisees are within two degrees of consanguinity of an “Indian.”
- (d) If an individual qualifies as an Indian only because of ownership of a trust or restricted interest in land, the date on which the individual became the owner of the trust or restricted interest.
- (e) A certified inventory of trust or restricted land, including:
  - (1) Accurate and adequate descriptions of all land; and
  - (2) Identification of any interests that represent less than 5 percent of the undivided interests in a parcel.
- (f) A statement showing the balance and the source of funds in the decedent’s IIM account on the date of death.
- (g) A statement showing all receipts and sources of income to and disbursements, if any, from the decedent’s IIM account after the date of death.
- (h) Originals or copies of all wills, codicils, and revocations that have been provided to us.
- (i) A copy of any statement or document concerning any wills, codicils, or revocations the BIA returned to the testator.
- (j) Any statement renouncing an interest in the estate that has been submitted to us, and the information necessary to identify any person receiving a renounced interest.
- (k) Claims of creditors that have been submitted to us under § 15.302 through 15.305, including documentation required by §15.305.
- (l) Documentation of any payments made on requests filed under the provisions of § 15.301.
- (m) All the documents acquired under § 15.105.
- (n) The record of each tribal or individual request to purchase a trust or restricted land interest at probate.

(o) The record of any individual request for a consolidation agreement, including a description, such as an Individual/Tribal Interest Report, of any lands not part of the decedent's estate that are proposed for inclusion in the consolidation agreement.

**§ 15.203 What information must Tribes provide BIA to complete the probate file?**

Tribes must provide any information that we require or request to complete the probate file. This information may include enrollment and family history data or property title documents that pertain to any pending probate matter, and a copy of Tribal probate orders where they exist.

**§ 15.204 When is a probate file complete?**

A probate file is complete for transfer to OHA when a BIA approving official includes a certification that:

(a) States that the probate file includes all information listed in § 15.202 that is available; and

(b) Lists all sources of information BIA queried in an attempt to locate information listed in § 15.202 that is not available.

**Subpart D—Obtaining Emergency Assistance and Filing Claims**

**§ 15.301 May I receive funds from the decedent's IIM account for funeral services?**

(a) You may request an amount of no more than \$1,000 from the decedent's IIM account if:

(1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;

(2) You have an immediate need to pay for funeral arrangements before burial; and

(3) The decedent's IIM account contains more than \$2,500 on the date of death.

(b) You must apply for funds under paragraph (a) of this section and submit to us an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs of no more than \$1,000 that are necessary for the burial services, taking into consideration:

(1) The total amount in the IIM account;

(2) The availability of non-trust funds; and

(3) Any other relevant factors.

(d) We will make payments directly to the providers of the services.

**§ 15.302 May I file a claim against an estate?**

If a decedent owed you money, you may make a claim against the estate of the decedent.

**§ 15.303 Where may I file my claim against an estate?**

(a) You may submit your claim to us before we transfer the probate file to OHA or you may file your claim with OHA after the probate file has been transferred if you comply with 43 CFR 30.140 through 30.148.

(b) If we receive your claim after the probate file has been transmitted to OHA but before the order is issued, we will promptly transmit your claim to OHA.

**§ 15.304 When must I file my claim?**

You must file your claim before the conclusion of the first hearing by OHA or, for cases designated as summary probate proceedings, as allowed under 43 CFR 30.140. Claims not timely filed will be barred.

**§ 15.305 What must I include with my claim?**

(a) You must include an itemized statement of the claim, including copies of any supporting documents such as signed notes, account records, billing records, and journal entries. The itemized statement must also include:

- (1) The date and amount of the original debt;
- (2) The dates, amounts, and identity of the payor for any payments made;
- (3) The dates, amounts, product or service, and identity of any person making charges on the account;
- (4) The balance remaining on the debt on the date of the decedent’s death; and
- (5) Any evidence that the decedent disputed the amount of the claim.

(b) You must submit an affidavit that verifies the balance due and states whether:

- (1) Parties other than the decedent are responsible for any portion of the debt alleged;

- (2) Any known or claimed offsets to the alleged debt exist;
- (3) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent’s non-trust or non-restricted property in any other judicial or quasi-judicial proceeding, and the status of such action; and

- (4) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent’s trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

(c) A secured creditor must first exhaust the security before a claim against trust personalty for any deficiency will be allowed. You must submit a verified or certified copy of any judgment or other documents that establish the amount of the deficiency after exhaustion of the security.

**Subpart E—Probate Processing and Distributions**

**§ 15.401 What happens after BIA prepares the probate file?**

Within 30 days after we assemble all the documents required by §§ 15.202 and 15.204, we will:

(a) Refer the case and send the probate file to OHA for adjudication in accordance with 43 CFR part 30; and

(b) Forward a list of fractional interests that represent less than 5 percent of the entire undivided ownership of each parcel of land in the decedent's estate to the tribes with jurisdiction over those interests.

### **§ 15.402 What happens after the probate file is referred to OHA?**

When OHA receives the probate file from BIA, it will assign the case to a judge or ADM. The judge or ADM will conduct the probate proceeding and issue a written decision or order, in accordance with 43 CFR part 30.

### **§ 15.403 What happens after the probate order is issued?**

(a) If the probate decision or order is issued by an ADM, you have 30 days from the decision mailing date to file a written request for a de novo review.

(b) If the probate decision or order is issued by a judge, you have 30 days from the decision mailing date to file a written request for rehearing. After a judge's decision on rehearing, you have 30 days from the mailing date of the decision to file an appeal, in accordance with 43 CFR parts 4 and 30.

(c) When any interested party files a timely request for de novo review, a request for rehearing, or an appeal, we will not pay claims, transfer title to land, or distribute trust personalty until the request or appeal is resolved.

(d) If no interested party files a request or appeal within the 30-day deadlines in paragraphs (a) and (b) of this section, we will wait at least 15 additional days before paying claims, transferring title to land, and distributing trust personalty. At that time:

(1) The LTRO will change the land title records for the trust and restricted land in accordance with the final decision or order; and

(2) We will pay claims and distribute funds from the IIM account in accordance with the final decision or order.

## **Subpart—Information and Records**

### **§ 15.501 How may I find out the status of a probate?**

You may get information about the status of an Indian probate by contacting any BIA agency or regional office, an OST fiduciary trust officer, OHA, or the Trust Beneficiary Call Center in OST.

### **§ 15.502 Who owns the records associated with this part?**

(a) The United States owns the records associated with this part if:

(1) They are evidence of the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part; and

(2) They are either:

- (i) Made by or on behalf of the United States; or
  - (ii) Made or received by a tribe or tribal organization in the conduct of a Federal trust function under this part, including the operation of a trust program under Public Law 93-638, as amended, and as codified at 25 U.S.C. 450 *et seq.*
- (b) The tribe owns the records associated with this part if they:
- (1) Are not covered by paragraph (a) of this section; and
  - (2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

**§ 15.503 How must records associated with this part be preserved?**

(a) Any organization that has records identified in § 15.502(a), including tribes and tribal organizations, must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31, and 33; and

(b) A tribe or tribal organization must preserve the records identified in § 15.502(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

**§ 15.504 Who may inspect records and records management practices?**

(a) You may inspect the probate file at the relevant agency before the file is transferred to OHA. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

(b) The Secretary and the Archivist of the United States may inspect records and records management practices and safeguards required under the Federal Records Act.

**§ 15.505 How does the Paperwork Reduction Act affect this part?**

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0169. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to a collection of information unless the form or regulation requesting the information has a currently valid OMB Control Number.



## TITLE 43—PUBLIC LANDS: INTERIOR

### PART 30—INDIAN PROBATE HEARINGS PROCEDURES

Revised as of February 10, 2011

See 43 C.F.R. Part 30 (2010), as amended by 76 Fed. Reg. 7500 (Feb. 10, 2011)

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AUTHORITY: 5 U.S.C. 301, 503; 25 U.S.C. 9, 372-74, 410, 2201 et seq.; 43 U.S.C. 1201, 1457.

CROSS REFERENCE: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the appeal of decisions of the Probate Hearings Division, Office of Hearings and Appeals, to the Board of Indian Appeals, Office of Hearings and Appeals, see 43 CFR part 4, subpart D. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see 43 CFR part 4, subpart B.

**Subpart A—Scope of Part; Definitions**

**§ 30.100 How do I use this part?**

(a) The following table is a guide to the relevant contents of this part by subject matter.

<b>For provisions relating to...</b>	<b>consult...</b>
(1) All proceedings in part 30 .....	§§ 30.100 through 30.102.
(2) Claims against probate estate .....	§§ 30.140 through 30.148.
(3) Commencement of probate .....	§§ 30.110 through 30.115.
(4) Consolidation of interests .....	§§ 30.150 through 30.153.
(5) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 30.210 through 30.246.
(6) Probate of estates of Indians who die possessed of trust or restricted property.	All sections except §§ 30.260 through 30.274.
(7) Purchases at probate .....	§§ 30.160 through 30.175.
(8) Renunciation of interests .....	§§ 30.180 through 30.188.
(9) Summary probate proceedings before an attorney decision maker.	§§ 30.200 through 30.207.
(10) Tribal purchase of certain property interests of decedents under special laws applicable to particular Tribes.	§§ 30.260 through 30.274.

(b) Except as limited by the provisions of this part, the regulations in part 4, subparts A and B of this subtitle apply to these proceedings.

(c) The following provisions do not apply to Alaska property interests:

- (1) § 30.151;
- (2) §§ 30.160 through 30.175;
- (3) § 30.182 through 30.185, except for § 30.184(c);
- (4) § 30.213; and
- (5) § 30.214(f) and (g).

### **§ 30.101 What definitions do I need to know?**

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108-374, as codified at 25 U.S.C. 2201 *et seq.*

*Administrative law judge (ALJ)* means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Affidavit* means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

*Agency* means:

- (1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personality; and
- (2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*Attorney decision maker (ADM)* means an attorney with OHA who conducts a summary proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

*BIA* means the Bureau of Indian Affairs within the Department.

*BLM* means the Bureau of Land Management within the Department.

*Board* means the Interior Board of Indian Appeals within OHA.

*Chief ALJ* means the Chief Administrative Law Judge, Probate Hearings Division, OHA.

*Child* means a natural or adopted child.

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

*Consolidation agreement* means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

*Covered permanent improvement* means a permanent improvement (including an interest in such an improvement) that is:

- (1) Owned by the decedent at the time of death; and
- (2) Attached to a parcel of trust or restricted land that is also, in whole or in part, owned by the decedent at the time of death.

*Creditor* means any individual or entity that has a claim for payment from a decedent's estate.

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order* (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an ADM in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

*De novo review* means a process in which an administrative law judge or Indian probate judge, without regard to the decision previously issued in the case, will:

(1) Review all the relevant facts and issues in a probate case;

(2) Reconsider the evidence introduced at a previous hearing;

(3) Conduct a formal hearing as necessary or appropriate; and

(4) Issue a decision.

*Department* means the Department of the Interior.

*Deposition* means a proceeding in which a party takes testimony from a witness during discovery.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Discovery* means a process through which a party to a probate proceeding obtains information from another party. Examples of discovery include interrogatories, depositions, requests for admission, and requests for production of documents.

*Eligible heir* means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are:

(1) Indian;

(2) Lineal descendants within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting – by descent, renunciation, or consolidation agreement – another trust or restricted interest in such a parcel from the decedent.

*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

*Indian* means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

*Interrogatories* means written questions submitted to another party for responses as part of discovery.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge* means an ALJ or IPJ.

*Lockbox* means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

*LTRO* means the Land Titles and Records Office within BIA.

*Master* means a person who has been specially appointed by a judge to assist with the probate proceedings.

*Minor* means an individual who has not reached the age of majority as defined by the applicable law.

*OHA* means the Office of Hearings and Appeals within the Department.

*OST* means the Office of the Special Trustee for American Indians within the Department.

*Per stirpes* means by right of representation, dividing an estate into equal shares based on the number of decedent's surviving children and predeceased children who left issue who survive the decedent. The share of a predeceased child of the decedent is divided equally among the predeceased child's surviving children.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personality; and

(4) Order the transfer of any trust or restricted land or trust personality to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Purchase option at probate* means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

*Restricted property* means real property whose title is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term “restricted property” as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Summary probate proceeding* means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that did not exceed \$5,000 in value on the date of the death of the decedent.

*Superintendent* means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

*Testate* means that the decedent executed a valid will as determined in the probate proceeding.

*Testator* means a person who has executed a valid will as determined in the probate proceeding.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*We or us* means the Secretary or an authorized representative as defined in this section.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent’s trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent’s estate unless a specific section states otherwise.

**§ 30.102 What assets will the Secretary probate?**

(a) We will probate only the trust or restricted land or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned either a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or the Osage Nation.

## **Subpart B—Commencement of Probate Proceedings**

### **§ 30.110 When does OHA commence a probate case?**

OHA commences probate of an estate when OHA receives a probate file from the agency.

### **§ 30.111 How does OHA commence a probate case?**

OHA commences a probate case by confirming the case number assigned by BIA, assigning the case to a judge or ADM, and designating the case as a summary probate proceeding or formal probate proceeding.

### **§30.112 What must a complete probate file contain?**

A probate file must contain the documents and information described in 25 CFR 15.202 and any other relevant information.

### **§ 30.113 What will OHA do if it receives an incomplete probate file?**

If OHA determines that the probate file received from the agency is incomplete or lacks the certification described in 25 CFR 15.204, OHA may do any of the following:

- (a) Request the missing information from the agency;
- (b) Dismiss the case and return the probate file to the agency for further processing;
- (c) Issue a subpoena, interrogatories, or requests for production of documents as appropriate to obtain the missing information; or
- (d) Proceed with a hearing in the case.

### **§ 30.114 Will I receive notice of the probate proceeding?**

(a) If the case is designated as a formal probate proceeding, OHA will send a notice of hearing to:

- (1) Potential heirs and devisees named in the probate file;
- (2) Those creditors whose claims are included in the probate file; and
- (3) Other interested parties identified by OHA.

(b) In a case designated a summary probate proceeding, OHA will send a notice of the designation to potential heirs and devisees and will inform them that a formal probate proceeding may be requested instead of the summary probate proceeding.

### **§ 30.115 May I review the probate record?**

After OHA receives the case, you may examine the probate record at the relevant office during regular business hours and make copies at your own expense. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.



## Subpart C—Judicial Authority and Duties

### § 30.120 What authority does the judge have in probate cases?

A judge who is assigned a probate case under this part has the authority to:

(a) Determine the manner, location, and time of any hearing conducted under this part, and otherwise to administer the cases;

(b) Determine whether an individual is deemed deceased by reason of extended unexplained absence or other pertinent circumstances;

(c) Determine the heirs of any Indian or eligible heir who dies intestate possessed of trust or restricted property;

(d) Approve or disapprove a will disposing of trust or restricted property;

(e) Accept or reject any full or partial renunciation of interest in either a testate or intestate proceeding;

(f) Approve or disapprove any consolidation agreement;

(g) Conduct sales at probate and provide for the distribution of interests in the probate decision and order;

(h) Allow or disallow claims by creditors;

(i) Order the distribution of trust property to heirs and devisees and determine and reserve the share to which any potential heir or devisee who is missing but not found to be deceased is entitled;

(j) Determine whether a tribe has jurisdiction over the trust or restricted property and, if so, the right of the tribe to receive a decedent's trust or restricted property under 25 U.S.C. 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV), or other applicable law;

(k) Issue subpoenas for the appearance of persons, the testimony of witnesses, and the production of documents at hearings or depositions under 25 U.S.C. 374, on the judge's initiative or, within the judge's discretion, on the request of an interested party;

(l) Administer oaths and affirmations;

(m) Order the taking of depositions and determine the scope and use of deposition testimony;

(n) Order the production of documents and determine the scope and use of the documents;

(o) Rule on matters involving interrogatories and any other requests for discovery, including requests for admissions;

(p) Grant or deny stays, waivers, and extensions;

(q) Rule on motions, requests, and objections;

(r) Rule on the admissibility of evidence;

(s) Permit the cross-examination of witnesses;

(t) Appoint a guardian ad litem for any interested party who is a minor or found by the judge not to be competent to represent his or her own interests;

(u) Regulate the course of any hearing and the conduct of witnesses, interested parties, attorneys, and attendees at a hearing;

(v) Determine and impose sanctions and penalties allowed by law; and

(w) Take any action necessary to preserve the trust assets of an estate.

**§ 30.121 May a judge appoint a master in a probate case?**

(a) In the exercise of any authority under this part, a judge may appoint a master to do all of the following:

(1) Conduct hearings on the record as to all or specific issues in probate cases as assigned by the judge;

(2) Make written reports including findings of fact and conclusions of law; and

(3) Propose a recommended decision to the judge.

(b) When the master files a report under this section, the master must also mail a copy of the report and recommended decision to all interested parties.

**§ 30.122 Is the judge required to accept the master's recommended decision?**

No, the judge is not required to accept the master's recommended decision.

(a) An interested party may file objections to the report and recommended decision within 30 days of the date of mailing. An objecting party must simultaneously mail or deliver copies of the objections to all other interested parties.

(b) Any other interested party may file responses to the objections within 15 days of the mailing or delivery of the objections. A responding party must simultaneously mail or deliver a copy of his or her responses to the objecting party.

(c) The judge will review the record of the proceedings heard by the master, including any objections and responses filed, and determine whether the master's report and recommended decision are supported by the evidence of record.

(1) If the judge finds that the report and recommended decision are supported by the evidence of record and are consistent with applicable law, the judge will enter an order adopting the recommended decision.

(2) If the judge finds that the report and recommended decision are not supported by the evidence of record, the judge may do any of the following:

(i) Remand the case to the master for further proceedings consistent with instructions in the remand order;

(ii) Make new findings of fact based on the evidence in the record, make conclusions of law, and enter a decision; or

(iii) Hear the case de novo, make findings of fact and conclusions of law, and enter a decision.

(3) The judge may find that the master's findings of fact are supported by the evidence in the record but the conclusions of law or the recommended decision is not consistent with applicable law. In this case, the judge will issue an order adopting the findings of fact, making conclusions of law, and entering a decision.

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

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

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

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

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

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

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

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

- (1) A determination from a court of competent jurisdiction; or
- (2) Clear and convincing evidence.

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

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

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

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

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

- (1) Determine the correct identity of the original allottee, or any heir or devisee;
- (2) Determine whether different persons received the same allotment;
- (3) Decide whether trust patents covering allotments of land were issued

incorrectly or to a non-existent person; or

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

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

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

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

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

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

- (1) Conduct a hearing, if necessary, and issue a decision; and
- (2) File a record of the proceeding with the designated LTRO.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Subpart D—Recusal of a Judge or ADM**

**§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?**

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

**§ 30.131 How will the case proceed after the judge’s or ADM’s recusal?**

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

**§ 30.132 May I appeal the judge’s or ADM’s recusal decision?**

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

**Subpart E—Claims**

**§ 30.140 Where and when may I file a claim against the probate estate?**

You may file a claim against the estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be considered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

**§ 30.141 How must I file a claim against a probate estate?**

You must file your claim under 25 CFR 15.302 through 15.305.

**§ 30.142 Will a judge authorize payment of a claim from the estate if the decedent’s non-trust estate was or is available?**

The judge will not authorize payment of a claim from the estate if the judge determines that the decedent’s non-trust property was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

**§ 30.143 Are there any categories of claims that will not be allowed?**

(a) Claims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it:

(1) Has existed for such a period as to be barred by the applicable statute of limitations at the date of decedent’s death;

(2) Is a tort claim that has not been reduced to judgment in a court of competent jurisdiction;

(3) Is unliquidated; or

(4) Is from a government entity and relates to payments for:

- (i) General assistance, welfare, unemployment compensation or similar benefits;
- or
- (ii) Social Security Administration supplemental security income or old-age, disability, or survivor benefits.

**§ 30.144 May the judge authorize payment of the costs of administering the estate?**

On motion of the superintendent or an interested party, the judge may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

**§ 30.145 When can a judge reduce or disallow a claim?**

The judge has discretion to decide whether part or all of an otherwise valid claim is unreasonable, and if so, to reduce the claim to a reasonable amount or disallow the claim in its entirety. If a claim is reduced, the judge will order payment only of the reduced amount.

**§ 30.146 What property is subject to claims?**

Except as prohibited by law, all intangible trust personalty of a decedent on hand or accrued at the date of death may be used for the payment of claims, including:

- (a) IIM account balances;
- (b) Bonds;
- (c) Unpaid judgments; and
- (d) Accounts receivable.

**§ 30.147 What happens if there is not enough trust personalty to pay all the claims?**

If, as of the date of death, there was not enough trust personalty to pay all allowed claims, the judge may order them paid on a pro rata basis. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

**§ 30.148 Will interest or penalties charged after the date of death be paid?**

Interest or penalties charged against claims after the date of death will not be paid.

**Subpart F—Consolidation and Settlement Agreements**

**§ 30.150 What action will the judge take if the interested parties agree to settle matters among themselves?**

- (a) A judge may approve a settlement agreement among interested parties resolving any issue in the probate proceeding if the judge finds that:
  - (1) All parties to the agreement are advised as to all material facts;

(2) All parties to the agreement understand the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle.

(b) In considering the proposed settlement agreement, the judge may consider evidence of the respective values of specific items of property and all encumbrances.

(c) If the judge approves the settlement agreement under paragraph (a) of this section, the judge will issue an order approving the settlement agreement and distributing the estate in accordance with the agreement.

**§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?**

The devisees or eligible heirs may consolidate interests in trust property already owned by the devisees or heirs or in property from the inventory of the decedent's estate, or both.

(A) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

(i) Interests in trust or restricted land in the decedent's trust inventory;

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory; and

(iii) Interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

(c) In order to approve an agreement, the judge must find that:

(1) The agreement to consolidate is voluntary;

(2) All parties to the agreement know the material facts;

(3) All parties to the agreement understand the effect of the agreement on their rights; and

(4) The agreement accomplishes consolidation.

(d) An interest included in an approved agreement may not be purchased at probate without consent of the owner of the consolidated interest.

**§ 30.152 May the parties to an agreement waive valuation of trust property?**

The parties to a settlement agreement or a consolidation agreement may waive valuation of trust property otherwise required by regulation or the Secretary's rules and



requirements. If the parties waive valuation, the waiver must be included in the written agreement.

**§ 30.153 Is an order approving an agreement considered a partition or sale transaction?**

An order issued by a judge approving a consolidation or settlement agreement will not be considered a partition or sale transaction under 25 CFR part 152.

**Subpart G—Purchase at Probate**

**§ 30.160 What may be purchased at probate?**

An eligible purchaser may purchase, during the probate, all or part of the estate of a person who died on or after June 20, 2006.

(a) Any interest in trust or restricted property, including a life estate that is part of the estate (i.e., a life estate owned by the decedent but measured by the life of someone who survives the decedent), may be purchased at probate with the following exceptions:

(1) If an interest is included in an approved consolidation agreement, that interest may not be purchased at probate without consent of the owner of the consolidated interest; and

(2) An interest that a devisee will receive under a valid will cannot be purchased without the consent of the devisee.

(b) A purchase option must be exercised before a decision or order is entered and must be included as part of the order in the estate.

**§ 30.161 Who may purchase at probate?**

An eligible purchaser is any of the following:

(a) Any devisee or eligible heir who is taking an interest in the same parcel of land in the probate proceeding;

(b) Any person who owns an undivided trust or restricted interest in the same parcel of land;

(c) The Indian tribe with jurisdiction over the parcel containing the interest; or

(d) The Secretary on behalf of the tribe.

**§ 30.162 Does property purchased at probate remain in trust or restricted status?**

Yes. The property interests purchased at probate must remain in trust or restricted status.

**§ 30.163 Is consent required for a purchase at probate?**

(a) Except as provided in paragraphs (b) and (c) of this section, to purchase an interest in trust or restricted land at probate you must have the consent of:

(1) The heirs or devisees of such interest; and

(2) Any surviving spouse who receives a life estate under 25 U.S.C. 2206(a)(2)(A) or (D).

(b) If you are the Tribe with jurisdiction over the parcel containing the interest, you do not need consent under paragraph (a) of this section if the following four conditions are met:

(1) The interest will pass by intestate succession;

(2) The judge determines based on our records that the decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the parcel of land;

(3) The heir or surviving spouse was not residing on the property at the time of the decedent's death; and

(4) The heir or surviving spouse is not a member of your Tribe or eligible to become a member.

(c) We may purchase an interest in trust or restricted land on behalf of the Tribe with jurisdiction over the parcel containing the interest. If we do so, we must obtain consent under paragraph (a) of this section, unless the conditions in paragraphs (b)(1) through (3) of this section are met.

### **§ 30.164 What must I do to purchase at probate?**

Any eligible purchaser must submit a written request to OHA to purchase at probate before the decision or order is issued.

### **§ 30.165 Who will OHA notify of a request to purchase at probate?**

OHA will provide notice of a request to purchase at probate as shown in the following table:

OHA will provide notice to...	By...
(a) The heirs or devisees and the Indian tribe with jurisdiction over the interest.	First class mail.
(b) The BIA agency with jurisdiction over the interest.	First class mail.
(c) All parties who have submitted a written request for purchase.	First class mail.
(d) To all other eligible purchasers.	Posting written notice in: (1) At least five conspicuous places in the vicinity of the place of the hearing; and (2) One conspicuous place at the agency with jurisdiction over the parcel.

**§ 30.166 What will the notice of the request to purchase at probate include?**

The notice under § 30.165 will include:

- (a) The type of sale;
- (b) The date, time, and place of the sale;
- (c) A description of the interest to be sold; and
- (d) The appraised market value, determined in accordance with § 30.167(b), of

the parcel containing the interest to be sold, a description of the interest to be sold, and an estimate of the market value allocated to the interest being sold.

**§ 30.167 How does OHA decide whether to approve a purchase at probate?**

(a) OHA will approve a purchase at probate if an eligible purchaser submits a bid in an amount equal to or greater than the market value of the interest.

(1) In cases where the sale of the interest does not require consent under § 30.163(b), OHA will sell the interest to the eligible purchaser.

(2) In all other cases, OHA will sell the interest to the eligible purchaser selected by the applicable heir, devisee, or surviving spouse.

(b) The market value of the interest to be sold at probate must be based on an appraisal that meets the standards in the Uniform Standards for Professional Appraisal Practice (USPAP), or on a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

**§ 30.168 How will the judge allocate the proceeds from a sale?**

(a) The judge will allocate the proceeds of sale among the heirs based on the fractional ownership interests in the parcel.

(b) For the sale of an interest subject to a life estate, the judge must use the ratios in 25 CFR part 179 to allocate the proceeds of the sale among the holder of the life estate and the holders of any remainder interests.

**§ 30.169 What may I do if I do not agree with the appraised market value?**

(a) If you are the heir whose interest is to be sold or a potential purchaser and you disagree with the appraised market value, you may:

(1) File a written objection with OHA within 30 days after the date on which the notice provided under § 30.165 was mailed, stating the reasons for the objection; and

(2) Submit any supporting documentation showing why the market value should be modified within 15 days after filing a written objection.

(b) The judge will consider your objection, make a determination of the market value, determine whether to approve the purchase under § 30.167, and notify all interested parties. The determination must include a notice stating that interested parties who are adversely affected may file written objections and request an interlocutory appeal to the Board as provided in § 30.170.

**§ 30.170 What may I do if I disagree with the judge’s determination to approve a purchase at probate?**

(a) If you are adversely affected by the judge’s determination to approve a purchase at probate under § 30.167(a), you may file a written objection with the judge within 15 days after the mailing of a determination under § 30.169(b).

(1) The written objection must state the reasons for the objection and request an interlocutory appeal of the determination to the Board.

(2) You must serve a copy of the written objection on the other interested parties and the agencies, stating that you have done so in your written objection.

(b) If the objection is timely filed, the judge must forward a certified copy of the complete record in the case to the Board, together with a table of contents for the record, for review of the determination. The judge will not issue the decision in the probate case until the Board has issued its decision on interlocutory review of the determination.

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.238 after the judge issues a decision under § 30.235.

**§ 30.171 What happens when the judge grants a request to purchase at probate?**

When the judge grants a request to purchase at probate, the judge will:

(a) Notify all bidders by first class mail; and

(b) Notify OST, the agency that prepared the probate file, and the agency having jurisdiction over the interest sold, including the following information:

(1) The estate involved;

(2) The parcel and interest sold;

(3) The identity of the successful bidder; and

(4) The amount of the bid.

**§ 30.172 When must the successful bidder pay for the interest purchased?**

The successful bidder must pay to OST, by cashier’s check or money order via the lockbox, or by electronic funds transfer, the full amount of the purchase price within 30 days after the mailing of the notice of successful bid.

**§ 30.173 What happens after the successful bidder submits payment?**

(a) When OST receives payment, it will notify OHA, and the judge will enter an order approving the sale and directing the LTRO to record the transfer of title of the interest to the successful bidder. The order will state the date of the title transfer, which is the date payment was received.

(b) OST will deposit the payment in the decedent’s estate account.

**§ 30.174 What happens if the successful bidder does not pay within 30 days?**

(a) If the successful bidder fails to pay the full amount of the bid within 30 days, the sale will be canceled and the interest in the trust or restricted property will be distributed as determined by the judge.

(b) The time for payment may not be extended.

(c) Any partial payment received from the successful bidder will be returned.

**§ 30.175 When does a purchased interest vest in the purchaser?**

An interest in trust or restricted property purchased under this subpart is considered to have vested in the purchaser on the date specified in §30.173(a).

**Subpart H—Renunciation of Interest**

**§ 30.180 May I give up an inherited interest in trust or restricted property or trust personalty?**

You may renounce an inherited or devised interest in trust or restricted property, including a life estate, or in trust personalty if you are 18 years old and not under a legal disability.

**§ 30.181 How do I renounce an inherited interest?**

To renounce an interest under § 30.180, you must file with the judge, before the issuance of the final order in the probate case, a signed and acknowledged declaration specifying the interest renounced.

(a) In your declaration, you may retain a life estate in a specified interest in trust or restricted land and renounce the remainder interest, or you may renounce the complete interest.

(b) If you renounce an interest in trust or restricted land, you may either:

(1) Designate an eligible person or entity meeting the requirements of § 30.182 or § 30.183 as the recipient; or

(2) Renounce without making a designation.

(c) If you choose to renounce your interests in favor of a designated recipient, the judge must notify the designated recipient.

**§ 30.182 Who may receive a renounced interest in trust or restricted land?**

(a) If the interest renounced is an interest in land, you may renounce only in favor of:

(1) An eligible heir of the decedent;

(2) A person eligible to be a devisee of the interest, if you are a devisee of the interest under a valid will; or

(3) The tribe with jurisdiction over the interest.

(b) For purposes of paragraph (a)(2) of this section, a person eligible to be a devisee of the interest is:

- (1) A lineal descendant of the testator;
- (2) A person who owns a preexisting undivided trust or restricted interest in the same parcel;
- (3) Any Indian; or
- (4) The tribe with jurisdiction over the interest.

**§ 30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land?**

You may renounce an interest in trust or restricted land that is not disposed of by a valid will and that represents less than 5 percent of the entire undivided ownership of a parcel of land only in favor of:

- (a) One other eligible heir;
- (b) One Indian who is related to you by blood;
- (c) One co-owner of another trust or restricted interest in the same parcel; or
- (d) The Indian tribe with jurisdiction over the interest.

**§ 30.184 Who may receive a renounced interest in trust personalty?**

(a) You may renounce an interest in trust personalty in favor of any person or entity.

(b) The Secretary will maintain and continue to manage trust personalty transferred by renunciation to:

- (1) A lineal descendant of the testator;
- (2) A tribe; or
- (3) Any Indian.

(c) The Secretary will directly disburse and distribute trust personalty transferred by renunciation to a person or entity other than those listed in paragraph (b) of this section.

**§ 30.185 May my designated recipient refuse to accept the interest?**

Yes. Your designated recipient may refuse to accept the interest, in which case the renounced interest passes to the devisees or heirs of the decedent as if you had predeceased the decedent. The refusal must be made in writing and filed with the judge before the judge issues the final order in the probate case.

**§ 30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?**

Any renunciation filed and included as part of a probate decision or order issued before the effective date of the American Indian Probate Reform Act of 2004 remains valid.

**§ 30.187 May I revoke my renunciation?**

A written renunciation is irrevocable after the judge enters the final order in the probate proceeding. A revocation will not be effective unless the judge actually receives it before entry of a final order.

**§ 30.188 Does a renounced interest vest in the person who renounced it?**

No. An interest in trust or restricted property renounced under § 30.181 is not considered to have vested in the renouncing heir or devisee, and the renunciation is not considered a transfer by gift of the property renounced.

(a) If the renunciation directs the interest to an eligible person or entity, the interest passes directly to that person or entity.

(b) If the renunciation does not direct the interest to an eligible person or entity, the renounced interest passes to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent, or if there are no other heirs, to the residuary devisees.

**Subpart I—Summary Probate Proceedings**

**§ 30.200 What is a summary probate proceeding?**

(a) A summary probate proceeding is the disposition of a probate case without a formal hearing on the basis of the probate file received from the agency. A summary probate proceeding may be conducted by a judge or an ADM, as determined by the supervising judge.

(b) A decedent’s estate may be processed summarily if the estate involves only cash and the total value of the estate does not exceed \$5,000 on the date of death.

**§ 30.201 What does a notice of a summary probate proceeding contain?**

The notice of summary probate proceeding under § 30.114(b) will contain the following:

(a) Notice of the right of any interested party to request that OHA handle the probate case as a formal probate proceeding;

(b) A summary of the proposed distribution of the decedent’s estate, a statement of the IIM account balance, and a copy of the death certificate;

(c) A notice that the only claims that will be considered are those from eligible heirs or devisees, or from any person or entity who filed a claim with BIA before the transfer of the probate file to OHA, with a copy of any such claim;

(d) A notice that an interested party may renounce or disclaim an interest, in writing, either generally or in favor of a designated person or entity; and

(e) Any other information that OHA determines to be relevant.

**§ 30.202 May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding?**

(a) Claims that have been filed with the agency before the probate file is transferred to OHA will be considered in a summary probate proceeding.

(b) If you are a devisee or eligible heir, you may also file a claim with OHA as a creditor within 30 days after the mailing of the notice of the summary probate proceeding.

(c) You may renounce or disclaim an interest in the estate within 30 days after the mailing of the notice of the summary probate.

**§ 30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?**

Yes. Interested parties who are devisees or eligible heirs have 30 days after the mailing of the notice to file a written request for a formal probate hearing.

**§ 30.204 What must a summary probate decision contain?**

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with a proposed decision and order for distribution. The judge or ADM must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The decision must satisfy the requirements of this section.

- (a) Each decision must contain one of the following:
  - (1) If the decedent did not leave heirs or devisees, a statement to that effect; or
  - (2) If the decedent left heirs or devisees:
    - (i) The names of each heir or devisee and their relationships to the decedent;
    - (ii) The distribution of shares to each heir or devisee; and
    - (iii) The names of the recipients of renounced or disclaimed interests.
- (b) Each decision must contain all of the following:
  - (1) Citations to the law of descent and distribution under which the decision is made;
  - (2) A statement allowing or disallowing claims against the estate under this part, and an order directing the amount of payment for all approved claims;
  - (3) A statement approving or disapproving any renunciation;
  - (4) A statement advising all interested parties that they have a right to seek de novo review under § 30.205, and that, if they fail to do so, the decision will become final 30 days after it is mailed; and
  - (5) A statement of whether the heirs or devisees are:
    - (i) Indian;
    - (ii) Non-Indian but eligible to hold property in trust status; or
    - (iii) Non-Indian and ineligible to hold property in trust status.
- (c) In a testate case only, the decision must contain a statement that:
  - (1) Approves or disapproves a will;
  - (2) Interprets provisions of the approved will; and



- (3) Describes the share each devisee is to receive, subject to any encumbrances.

### **§ 30.205 How do I seek review of a summary probate proceeding?**

(a) If you are adversely affected by the written decision in a summary probate proceeding, you may seek de novo review of the case. To do this, you must file a request with the OHA office that issued the decision within 30 days after the date the decision was mailed.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

- (1) The name of the decedent;
- (2) A description of your relationship to the decedent;
- (3) An explanation of what errors you allege were made in the summary probate decision; and
- (4) An explanation of how you are adversely affected by the decision.

### **§ 30.206 What happens after I file a request for de novo review?**

(a) Within 10 days of receiving a request for de novo review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the de novo review, and assign the case to a judge.

(b) The judge will review the merits of the case, conduct a hearing as necessary or appropriate under the regulations in this part, and issue a new decision under this part.

### **§ 30.207 What happens if nobody files for de novo review?**

If no interested party requests de novo review within 30 days of the date of the written decision, it will be final for the Department. OHA will send:

- (a) The complete original record and the final order to the agency that prepared the probate file; and
- (b) A copy of any relevant portions of the record to any other affected agency.

## **Subpart J—Formal Probate Proceedings**

### NOTICE

### **§ 30.210 How will I receive notice of the formal probate proceeding?**

OHA will provide notice of the formal probate proceeding under § 30.114(a) by mail and by posting. A posted and published notice may contain notices for more than one hearing, and need only specify the names of the decedents, the captions of the cases and the dates, times, places, and purposes of the hearings.

(a) The notice must:

- (1) Be sent by first class mail;
- (2) Be sent and posted at least 21 days before the date of the hearing; and

(3) Include a certificate of mailing with the date of mailing, signed by the person mailing the notice.

(b) A presumption of actual notice exists with respect to any person to whom OHA sent a notice under paragraph (a) of this section, unless the notice is returned by the Postal Service as undeliverable to the addressee.

(c) OHA must post the notice in each of the following locations:

(1) Five or more conspicuous places in the vicinity of the designated place of hearing; and

(2) The agency with jurisdiction over each parcel of trust or restricted property in the estate.

(d) OHA may also post the notice in other places and on other reservations as the judge deems appropriate.

**§ 30.211 Will the notice be published in a newspaper?**

The judge may cause advance notice of hearing to be published in a newspaper of general circulation in the vicinity of the designated place of hearing. The cost of publication may be paid from the assets of the estate under § 30.144.

**§ 30.212 May I waive notice of the hearing or the form of notice?**

You may waive your right to notice of the hearing and the form of notice by:

(a) Appearing at the hearing and participating in the hearing without objection; or

(b) Filing a written waiver with the judge before the hearing.

**§ 30.213 What notice to a tribe is required in a formal probate proceeding?**

(a) In probate cases in which the decedent died on or after June 20, 2006, the judge must notify any tribe with jurisdiction over the trust or restricted land in the estate of the pendency of a proceeding.

(b) A certificate of mailing of a notice of probate hearing to the tribe at its record address will be conclusive evidence that the tribe had notice of the decedent's death, of the probate proceedings, and of the right to purchase.

**§ 30.214 What must a notice of hearing contain?**

The notice of hearing under § 30.114(a) must:

(a) State the name of the decedent and caption of the case;

(b) Specify the date, time, and place that the judge will hold a hearing to determine the heirs of the decedent and, if a will is offered for probate, to determine the validity of the will;

(c) Name all potential heirs of the decedent known to OHA, and, if a will is offered for probate, the devisees under the will and the attesting witnesses to the will;

(d) Cite this part as the authority and jurisdiction for holding the hearing;

(e) Advise all persons who claim to have an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing to preserve the right to present evidence at the hearing;

(f) Include notice of the opportunity to consolidate interests at the probate hearing, including that the heirs or devisees may propose additional interests for consolidation, and include notice of the opportunity for renunciation either generally or in favor of a designated recipient;

(g) In estates for decedents whose date of death is on or after June 20, 2006, include notice of the possibilities of purchase and sale of trust or restricted property by heirs, devisees, co-owners, a tribe, or the Secretary; and

(h) State that the hearing may be continued to another time and place.

#### DEPOSITIONS, DISCOVERY, AND PREHEARING CONFERENCE

### **§ 30.215 How may I obtain documents related to the probate proceeding?**

(a) You may make a written demand to produce documents for inspection and copying. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the hearing;

(2) May be made on any other party to the proceeding or on a custodian of records concerning interested parties or their trust property;

(3) Must be made in writing, and a copy must be filed with the judge; and

(4) May demand copies of any documents, photographs, or other tangible things that are relevant to the issues, not privileged, and in another party's or custodian's possession, custody, or control.

(b) Custodians of official records will furnish and reproduce documents, or permit their reproduction, under the rules governing the custody and control of the records.

(1) Subject to any law to the contrary, documents may be made available to any member of the public upon payment of the cost of producing the documents, as determined reasonable by the custodians of the records.

(2) Information within federal records will be maintained and disclosed as provided in 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

### **§ 30.216 How do I obtain permission to take depositions?**

(a) You may take the sworn testimony of any person by deposition on oral examination for the purpose of discovery or for use as evidence at a hearing:

(1) On stipulation of the parties; or

(2) By order of the judge.

(b) To obtain an order from the judge for the taking of a deposition, you must file a motion that sets forth:

(1) The name and address of the proposed witness;

(2) The reasons why the deposition should be taken;

(3) The name and address of the person qualified under § 30.217(a) to take depositions; and

(4) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the motion.

(c) An order for the taking of a deposition must be served upon all interested parties and must state:

(1) The name of the witness;

(2) The time and place of the examination, which must be at least 15 days after the date of the order; and

(3) The name and address of the officer before whom the examination is to be made.

(d) The officer and the time and place specified in paragraphs (c)(2) and (c)(3) of this section need not be the same as those requested in the motion under paragraph (b) of this section.

(e) You may request that the judge issue a subpoena for the witness to be deposed under § 30.224.

### **§ 30.217 How is a deposition taken?**

(a) The witness to be deposed must appear before the judge or before an officer authorized to administer oaths by the laws of the United States or by the laws of the place of the examination, as specified in:

(1) The judge's order under § 30.216(c); or

(2) The stipulation of the parties under § 30.216(a)(1).

(b) The witness must be examined under oath or affirmation and subject to cross-examination. The witness's testimony must be recorded by the officer or someone in the officer's presence.

(c) When the testimony is fully transcribed, it must be submitted to the witness for examination and must be read to or by him or her, unless examination and reading are waived.

(1) Any changes in form or substance that the witness desires to make must be entered on the transcript by the officer, with a statement of the reasons given by the witness for making them.

(2) The transcript must then be signed by the witness, unless the interested parties by stipulation waive the signing, or the witness is unavailable or refuses to sign.

(3) If the transcript is not signed by the witness, the officer must sign it and state on the record the fact of the waiver, the unavailability of the witness, or the refusal to sign together with the reason given, if any. The transcript may then be used as if it were signed, unless the judge determines that the reason given for refusal to sign requires rejection of the transcript in whole or in part.

(d) The officer must certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the witness's testimony. The officer must then hand deliver or mail the original and two copies of the transcript to the judge.

**§ 30.218 How may the transcript of a deposition be used?**

A transcript of a deposition taken under this part may be offered by any party or the judge in a hearing if the judge finds that the evidence is otherwise admissible and if either:

- (a) The witness is unavailable; or
- (b) The interest of fairness is served by allowing the transcript to be used.

**§ 30.219 Who pays for the costs of taking a deposition?**

The party who requests the taking of a deposition must make arrangements for payment of any costs incurred. The judge may assign the costs in the order.

**§ 30.220 How do I obtain written interrogatories and admission of facts and documents?**

(a) You may serve on any other interested party written interrogatories and requests for admission of facts and documents if:

- (1) The interrogatories and requests are served in sufficient time to permit answers to be filed before the hearing, or as otherwise ordered by the judge; and
  - (2) Copies of the interrogatories and requests are filed with the judge.
- (b) A party receiving interrogatories or requests served under paragraph (a) of this section must:
- (1) Serve answers upon the requesting party within 30 days after the date of service of the interrogatories or requests, or within another deadline agreed to by the parties or prescribed by the judge; and
  - (2) File a copy of the answers with the judge.

**§ 30.221 May the judge limit the time, place, and scope of discovery?**

Yes. The judge may limit the time, place, and scope of discovery either:

- (a) On timely motion by any interested party, if that party also gives notice to all interested parties and shows good cause; or
- (b) When the judge determines that limits are necessary to prevent delay of the proceeding or prevent undue hardship to a party or witness.

**§ 30.222 What happens if a party fails to comply with discovery?**

- (a) If a party fails to respond to a request for admission, the facts for which admission was requested will be deemed to be admitted, unless the judge finds good cause for the failure to respond.
- (b) If a party fails without good cause to comply with any other discovery under this part or any order issued, the judge may:
  - (1) Draw inferences with respect to the discovery request adverse to the claims of the party who has failed to comply with discovery or the order, or
  - (2) Make any other ruling that the judge determines just and proper.

- (c) Failure to comply with discovery includes failure to:
  - (1) Produce a document as requested;
  - (2) Appear for examination;
  - (3) Respond to interrogatories; or
  - (4) Comply with an order of the judge.

**§ 30.223 What is a prehearing conference?**

Before a hearing, the judge may order the parties to appear for a conference to:

- (a) Simplify or clarify the issues;
- (b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;
- (c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;
- (d) Facilitate agreements disposing of all or any of the issues in dispute; or
- (e) Resolve such other matters as may simplify and shorten the hearing.

HEARINGS

**§ 30.224 May a judge compel a witness to appear and testify at a hearing or deposition?**

(a) The judge can issue a subpoena for a witness to appear and testify at a hearing or deposition and to bring documents or other material to the hearing or deposition.

(1) You may request that the judge issue a subpoena for the appearance of a witness to testify. The request must state the name, address, and telephone number or other means of contacting the witness, and the reason for the request. The request must be timely. The requesting party must mail the request to all other interested parties and to the witness at the time of filing.

(2) The request must specify the documents or other material sought for production under the subpoena.

(3) The judge will grant or deny the request in writing and mail copies of the order to all the interested parties and the witness.

(4) A person subpoenaed may seek to avoid a subpoena by filing a motion to quash with the judge and sending copies to the interested parties.

(b) Anyone whose legal residence is more than 100 miles from the hearing location may ask the judge to excuse his or her attendance under subpoena. The judge will inform the interested parties in writing of the request and the judge's decision on the request in writing in a timely manner.

(c) A witness who is subpoenaed to a hearing under this section is entitled to the fees and allowances provided by law for a witness in the courts of the United States (see 28 U.S.C. 1821).

(d) If a subpoenaed person fails or refuses to appear at a hearing or to testify, the judge may file a petition in United States District Court for issuance of an order requiring the subpoenaed person to appear and testify.

**§ 30.225 Must testimony in a probate proceeding be under oath or affirmation?**

Yes. Testimony in a probate proceeding must be under oath or affirmation.

**§ 30.226 Is a record made of formal probate hearings?**

(a) The judge must make a verbatim recording of all formal probate hearings. The judge will order the transcription of recordings of hearings as the judge determines necessary.

(b) If the judge orders the transcription of a hearing, the judge will make the transcript available to interested parties on request.

**§ 30.227 What evidence is admissible at a probate hearing?**

(a) A judge conducting probate proceedings under this part may admit any written, oral, documentary, or demonstrative evidence that is:

- (1) Relevant, reliable, and probative;
- (2) Not privileged under Federal law; and
- (3) Not unduly repetitious or cumulative.

(b) The judge may exclude evidence if its probative value is substantially outweighed by the risk of undue confusion of the issues or delay.

(c) Hearsay evidence is admissible. The judge may consider the fact that evidence is hearsay when determining its probative value.

(d) A judge may admit a copy of a document into evidence or may require the admission of the original document. After examining the original document, the judge may substitute a copy of the original document and return the original.

(e) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the judge and the parties in interpreting and applying the provisions of this section.

(f) The judge may take official notice of any public record of the Department and of any matter of which federal courts may take judicial notice.

(g) The judge will determine the weight given to any evidence admitted.

(h) Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

(i) There is no privilege under this part for any communication that:

- (1) Occurred between a decedent and any attorney advising a decedent; and
- (2) Pertained to a matter relevant to an issue between parties, all of whom claim through the decedent.

**§ 30.228 Is testimony required for self-proved wills, codicils, or revocations?**

The judge may approve a self-proved will, codicil, or revocation, if uncontested, and order distribution, with or without the testimony of any attesting witness.

**§ 30.229 When will testimony be required for approval of a will, codicil, or revocation?**

(a) The judge will require testimony if someone contests the approval of a self-proved will, codicil, or revocation, or submits a non-self-proved will for approval. In any of these cases, the attesting witnesses who are in the reasonable vicinity of the place of hearing must appear and be examined, unless they are unable to appear and testify because of physical or mental infirmity.

(b) If an attesting witness is not in the reasonable vicinity of the place of hearing or is unable to appear and testify because of physical or mental infirmity, the judge may:

(1) Order the deposition of the attesting witness at a location reasonably near the residence of the witness;

(2) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

(3) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

**§ 30.230 Who pays witnesses' costs?**

Interested parties who desire a witness to testify at a hearing must make their own financial and other arrangements for the witness.

**§ 30.231 May a judge schedule a supplemental hearing?**

Yes. A judge may schedule a supplemental hearing if he or she deems it necessary.

**§ 30.232 What will the official record of the probate case contain?**

The official record of the probate case will contain:

(a) A copy of the posted public notice of hearing showing the posting certifications;

(b) A copy of each notice served on interested parties with proof of mailing;

(c) The record of the evidence received at the hearing, including any transcript made of the testimony;

(d) Claims filed against the estate;

(e) Any wills, codicils, and revocations;

(f) Inventories and valuations of the estate;

(g) Pleadings and briefs filed;

(h) Interlocutory orders;

(i) Copies of all proposed or accepted settlement agreements, consolidation agreements, and renunciations and acceptances of renounced property;

(j) In the case of sale of estate property at probate, copies of notices of sale, appraisals and objections to appraisals, requests for purchases, all bids received, and proof of payment;

(k) The decision, order, and the notices thereof; and



- (l) Any other documents or items deemed material by the judge.

**§ 30.233 What will the judge do with the original record?**

- (a) The judge must send the original record to the designated LTRO under 25 CFR part 150.
- (b) The judge must also send a copy of:
  - (1) The order to the agency originating the probate, and
  - (2) The order and inventory to other affected agencies.

**§ 30.234 What happens if a hearing transcript has not been prepared?**

When a hearing transcript has not been prepared:

- (a) The recording of the hearing must be retained in the office of the judge issuing the decision until the time allowed for rehearing or appeal has expired; and
- (b) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

DECISIONS IN FORMAL PROCEEDINGS

**§ 30.235 What will the judge's decision in a formal probate proceeding contain?**

The judge must decide the issues of fact and law involved in any proceeding and issue a written decision that meets the requirements of this section.

- (a) In all cases, the judge's decision must:
  - (1) Include the name, birth date, and relationship to the decedent of each heir or devisee;
  - (2) State whether the heir or devisee is Indian or non-Indian;
  - (3) State whether the heir or devisee is eligible to hold property in trust status;
  - (4) Provide information necessary to identify the persons or entities and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;
  - (5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;
  - (6) Allow or disallow claims against the estate under this part, and order the amount of payment for all approved claims;
  - (7) Include the probate case number that has been assigned to the case in any case management or tracking system then in use within the Department;
  - (8) Make any other findings of fact and conclusions of law necessary to decide the issues in the case; and
  - (9) Include the signature of the judge and date of the decision.
- (b) In a case involving a will, the decision must include the information in paragraph (a) of this section and must also:
  - (1) Approve or disapprove the will;
  - (2) Interpret provisions of an approved will as necessary; and

(3) Describe the share each devisee is to receive under an approved will, subject to any encumbrances.

(c) In all intestate cases, including a case in which a will is not approved, and any case in which an approved will does not dispose of all of the decedent’s trust or restricted property, the decision will include the information in paragraph (a) of this section and must also:

(1) Cite the law of descent and distribution under which the decision is made; and

(2) Describe the distribution of shares to which the heirs are entitled; and

(3) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

**§ 30.236 How are covered permanent improvements treated?**

(a) In an intestate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If...	then the covered permanent improvement passes to...
(1) A Tribal probate code approved under 25 CFR part 18 specifies how the covered permanent improvement will be handled.	the person(s) designated in the Tribal probate code to receive it.
(2) A consolidation agreement approved under subpart F of this part specifies how the covered permanent improvement will be handled.	the person(s) designated in the consolidation agreement to receive it.
(3) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, but there is a renunciation of the trust or restricted interest in the parcel under subpart H of this part.	the recipient of the trust or restricted interest in the parcel under the renunciation.
(4) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, and there is no renunciation of the trust or restricted interest in the parcel under subpart H of this part.	each eligible heir to whom the trust or restricted interest in the parcel descends.

(b) In a testate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If...	then the covered permanent improvement passes to...

(1) The will expressly states how the covered permanent improvement will be handled.	the person(s) designated in the will to receive it.
(2) The will does not expressly state how the covered permanent improvement will be handled.	the person(s) designated in the will to receive the trust or restricted interest in the parcel.

- (c) The provisions of the Act apply to a covered permanent improvement:
  - (1) Even though it is not held in trust; and
  - (2) Without altering or otherwise affecting its non-trust status.
- (d) The judge’s decision will specifically direct the distribution only of the decedent’s trust or restricted property, and not any non-trust permanent improvement attached to a parcel of trust or restricted land. However, the judge:
  - (1) Will include in the decision a general statement of the substantive law of descent or devise of permanent improvements; and
  - (2) Can approve a consolidation agreement under subpart F of this part that includes a covered permanent improvement.

**§ 30.237 What notice of the decision will the judge provide?**

When the judge issues a decision, the judge must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The notice must include a statement that interested parties who are adversely affected have a right to file a petition for rehearing with the judge within 30 days after the date on which notice of the decision was mailed. The decision will become final at the end of this 30-day period, unless a timely petition for rehearing is filed with the judge.

**§ 30.238 May I file a petition for rehearing if I disagree with the judge’s decision in the formal probate hearing?**

- (a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.237.
- (b) If the petition is based on newly discovered evidence, it must:
  - (1) Be accompanied by one or more affidavits of witnesses stating fully the content of the new evidence; and
  - (2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision.
- (c) A petition for rehearing must state specifically and concisely the grounds on which it is based.
- (d) The judge must forward a copy of the petition for rehearing to the affected agencies.

**§ 30.239 Does any distribution of the estate occur while a petition for rehearing is pending?**

The agencies must not initiate payment of claims or distribute any portion of the estate while the petition is pending, unless otherwise directed by the judge.

**§ 30.240 How will the judge decide a petition for rehearing?**

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will:

(1) Issue an order denying the petition for rehearing and including the reasons for denial; and

(2) Furnish copies of the order to the petitioner, the agencies, and the interested parties.

(b) If the petition appears to show merit, the judge must:

(1) Cause copies of the petition and supporting papers to be served on all persons whose interest in the estate might be adversely affected if the petition is granted;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in response to the petition; and

(3) Consider, with or without a hearing, the issues raised in the petition.

(c) The judge may affirm, modify, or vacate the former decision.

(d) On entry of a final order, the judge must distribute the order as provided in this part. The order must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board, within 30 days of the date on which the order was mailed, and giving the Board's address.

**§ 30.241 May I submit another petition for rehearing?**

No. Successive petitions for rehearing are not permitted. The jurisdiction of the judge terminates when he or she issues a decision finally disposing of a petition for rehearing, except for:

(a) The issuance of necessary orders nunc pro tunc to correct clerical errors in the decision; and

(b) The reopening of a case under this part.

**§ 30.242 When does the judge's decision on a petition for rehearing become final?**

The decision on a petition for rehearing will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part and § 4.320 of this chapter.

**§ 30.243 May a closed probate case be reopened?**

(a) The judge may reopen a closed probate case as shown in the following table.

How the case can be reopened	Applicable deadline	Standard for reopening the case
(1) On the judge's own motion.	(i) Initiated within 3 years after the date of the original decision.	To correct an error of fact or law in the original decision.
	(ii) Initiated more than 3 years after the date of the original decision.	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(2) On a petition filed by the agency.	(i) Filed within 3 years after the date of the original decision.	To correct an error of fact or law in the original decision.
	(ii) Filed more than 3 years after the date of the original decision.	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(3) On a petition filed by the interested party.	(i) Filed within 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error.	To correct an error of fact or law in the original decision.
	(ii) Filed more than 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error.	To correct an error of act or law in the original decision which, if not corrected, would result in a manifest injustice.

(b) All grounds for reopening must be set forth fully in the petition.

(c) A petition filed by an interested party must:

(1) Include all relevant evidence, in the form of documents or affidavits, concerning when the petitioner discovered the alleged error; and

(2) If the grounds for reopening are based on alleged errors of fact, be supported by affidavit.

### **§ 30.244 How will the judge decide my petition for reopening?**

(a) If the judge finds that proper grounds are not shown, the judge will issue an order denying the petition for reopening and giving the reasons for the denial. An order denying reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the order to the Board within 30 days of the date on which the order was mailed, and giving the Board's address. Copies of the judge's decision

must be mailed to the petitioner, the agencies, and those persons whose rights would be affected.

(b) If the petition appears to show merit, the judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be affected if the petition is granted. They may respond to the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the judge.

**§ 30.245 What happens if the judge reopens the case?**

On reopening, the judge may affirm, modify, or vacate the former decision.

(a) The final order on reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board within 30 days of the date on which the order was mailed, and giving the Board’s address.

(b) Copies of the judge’s decision on reopening must be mailed to the petitioner and to all persons who received copies of the petition.

(c) By order directed to the agency, the judge may suspend further distribution of the estate or income during the reopening proceedings.

(d) The judge must file the record made on a reopening petition with the designated LTRO and must furnish a duplicate record to the affected agencies.

**§ 30.246 When will the decision on reopening become final?**

The decision on reopening will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

**Subpart K—Miscellaneous Provisions**

**§ 30.250 When does the anti-lapse provision apply?**

(a) The following table illustrates how the anti-lapse provision applies.

If...	And...	Then...
A testator devises trust property to any of his or her grandparents or to the lineal descendant of a grandparent.	The devisee dies before the testator, leaving lineal descendants.	The lineal descendants take the right, title, or interest given by the will per stirpes.

(b) For purposes of this section, relationship by adoption is equivalent to relationship by blood.

**§ 30.251 What happens if an heir or devisee participates in the killing of the decedent?**

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 may not take, directly or indirectly, any inheritance or devise under the decedent’s will. This person will be treated as if he or she had predeceased the decedent.

**§ 30.252 May a judge allow fees for attorneys representing interested parties?**

(a) Except for attorneys representing creditors, the judge may allow fees for attorneys representing interested parties.

(1) At the discretion of the judge, these fees may be charged against the interests of the party represented or as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

**§ 30.253 How must minors or other legal incompetents be represented?**

Minors and other legal incompetents who are interested parties must be represented by legally appointed guardians, or by guardians ad litem appointed by the judge. In appropriate cases, the judge may order the payment of fees to the guardian ad litem from the assets of the estate.

**§ 30.254 What happens when a person dies without a valid will and has no heirs?**

The judge will determine whether a person with trust or restricted property died intestate and without heirs, and the judge will determine whether 25 U.S.C. 2206(a) applies, as shown in the following table.

If...	Then...	Or...
(a) 25 U.S.C. 2206(a) applies.	The judge will order distribution of the property under § 2206(a)(2)(B)(v) through (a)(2)(C).	The judge will order distribution of the property under § 2206(a)(2)(D)(iii)(IV) through (V).
(b) 25 U.S.C. 2206(a) does not apply.	If the trust or restricted property is not on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373a.	If the trust or restricted property is on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373b.

## Subpart L—Tribal Purchase of Interests under Special Statutes

### § 30.260 What land is subject to a tribal purchase option at probate?

Sections 30.260 through 30.274 apply to formal Indian probate proceedings that relate to the tribal purchase of a decedent's interests in trust and restricted land under the statutes shown in the following table.

Location of trust or restricted land	Statutes governing purchase
(a) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951).	The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968).
(b) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37).	The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530).
(c) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).	The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744).

### § 30.261 How does a tribe exercise its statutory option to purchase?

- (a) To exercise its option to purchase, the tribe must file with the agency:
- (1) A written notice of purchase; and
  - (2) A certification that the tribe has mailed copies of the notice on the same date to the judge and to the affected heirs or devisees.
- (b) A tribe may purchase all or part of the available interests specified in the probate decision. A tribe may not, however, claim an interest less than decedent's total interest in any one individual tract.

### § 30.262 When may a Tribe exercise its statutory option to purchase?

- (a) A tribe may exercise its statutory option to purchase:
- (1) Within 60 days after mailing of the probate decision unless a petition for rehearing has been filed under § 30.238 or a demand for hearing has been filed under § 30.268; or
  - (2) If a petition for rehearing or a demand for hearing has been filed, within 20 days after the date of the decision on rehearing or hearing, whichever is applicable, provided the decision on rehearing or hearing is favorable to the tribe.
- (b) On failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.



**§ 30.263 May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?**

Yes. When the heir or devisee whose interests are subject to the tribal purchase option is a surviving spouse, the spouse may reserve a life estate in one-half of the interests.

(a) To reserve a life estate, the spouse must, within 30 days after the tribe has exercised its option to purchase the interest, file with the agency both:

(1) A written notice to reserve a life estate; and

(2) A certification that copies of the notice have been mailed on the same date to the judge and the tribe.

(b) Failure to file the notice on time, as required by paragraph (a)(1) of this section, constitutes a waiver of the option to reserve a life estate.

**§ 30.264 When must BIA furnish a valuation of a decedent's interests?**

(a) BIA must furnish a valuation report of the decedent's interests when the record reveals to the agency:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 30.260; and

(2) That one or more of the probable heirs or devisees who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) When required by paragraph (a) of this section, BIA must furnish a valuation report in the probate file when it is submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the agency.

(c) The valuation must be made on the basis of the fair market value of the property, as of the date of decedent's death.

(d) If there is a surviving spouse whose interests may be subject to the tribal purchase option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests.

**§ 30.265 What determinations will a judge make with respect to a tribal purchase option?**

(a) If a tribe files a written notice of purchase under § 30.261(a), a judge will determine:

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the applicable statute;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, as determined by an appraisal or other valuation method developed by the Secretary under 25 U.S.C. 2214, including the value of any life estate reserved by a surviving spouse.

(b) In making a determination under paragraph (a)(1) of this section, the following issues will be determined by the official tribal roll, which is binding on the judge:

- (1) Enrollment or refusal of the tribe to enroll a specific individual; and
- (2) Specification of blood quantum, where pertinent.

(c) For good cause shown, the judge may stay the probate proceeding to permit an interested party who is adversely affected to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

### **§ 30.266 When is a final decision issued?**

This section applies when a decedent is shown to have owned land interests in any one or more of the reservations designated in § 30.260.

(a) The probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors must first be concluded as final for the Department under this part. This decision is referred to in this section as the “probate decision.”

(b) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal purchase option.

(1) The finding must be included in the probate decision and must state:

- (i) The apparent rights of the tribe as against affected heirs or devisees; and
- (ii) The right of a surviving spouse whose interests are subject to the tribal purchase option to reserve a life estate in one-half of the interests.

(2) If the finding is that there are no interests subject to the tribal purchase option, the decision must so state.

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.237.

### **§ 30.267 What if I disagree with the probate decision regarding tribal purchase option?**

If you are an interested party who is adversely affected by the probate decision, you may, within 30 days after the date on which the probate decision was mailed, file with the judge a written petition for rehearing under this part.

### **§ 30.268 May I demand a hearing regarding the tribal purchase option decision?**

Yes. You may file with the judge a written demand for hearing if you are an interested party who is adversely affected by the exercise of the tribal purchase option or by the valuation of the interests in the valuation report.

(a) The demand for hearing must be filed by whichever of the following deadlines is applicable:

- (1) Within 30 days after the date of the probate decision;
- (2) Within 30 days after the date of the decision on rehearing; or
- (3) Within 20 days after the date on which the tribe exercises its option to purchase available interests.

- (b) The demand for hearing must:
  - (1) Include a certification that copies of the demand have been mailed on the same date to the agency and to each interested party; and
  - (2) State specifically and concisely the grounds on which it is based.

**§ 30.269 What notice of the hearing will the judge provide?**

On receiving a demand for hearing, the judge must:

- (a) Set a time and place for the hearing after expiration of the 30-day period fixed for the filing of the demand for hearing as provided in § 30.268; and
- (b) Mail a notice of the hearing to all interested parties not less than 20 days in advance of the hearing.

**§ 30.270 How will the hearing be conducted?**

(a) At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests in the valuation report will have the burden of proving his or her position.

(b) On conclusion of the hearing, the judge will issue a decision that determines all of the issues including, but not limited to:

- (1) The fair market value of the interests purchased by the tribe; and
- (2) Any adjustment to the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(c) The decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address.

(d) The judge must:

- (1) Forward the complete record relating to the demand for hearing to the LTRO as provided in § 30.233;
- (2) Furnish a duplicate record thereof to the agency; and
- (3) Mail a notice of such action together with a copy of the decision to each interested party.

**§ 30.271 How must the tribe pay for the interests it purchases?**

(a) A tribe must pay the full fair market value of the interests purchased, as set forth in the appraisal or other valuation report, or as determined after hearing under § 30.268, whichever is applicable.

(b) Payment must be made within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever is later.

**§ 30.272 What are BIA's duties on payment by the tribe?**

On payment by the tribe of the interests purchased, the Superintendent must:

- (a) Issue a certificate to the judge that payment has been made; and
- (b) File with the certificate all supporting documents required by the judge.

**§ 30.273 What action will the judge take to record title?**

After receiving the certificate and supporting documents, the judge will:

- (a) Issue an order that the United States holds title to the interests in trust for the tribe;
- (b) File the complete record, including the decision, with the LTRO as provided in § 30.233;
- (c) Furnish a duplicate copy of the record to the agency; and
- (d) Mail a notice of the action together with a copy of the decision to each interested party.

**§ 30.274 What happens to income from land interests during pendency of the probate?**

During the pendency of the probate, there may be income received or accrued from the land interests purchased by the tribe, including the payment from the tribe. This income will be credited to the estate and paid to the heirs. For purposes of this section, pendency of the probate ends on the date of transfer of title to the United States in trust for the tribe under § 30.273.



# LAST WILL AND TESTAMENT TEMPLATE

## LAST WILL AND TESTAMENT

of

\_\_\_\_\_  
Date of Birth: \_\_\_\_\_

I, \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_, residing in the State of Arizona, know the nature and extent of my property and the persons to whom I leave that property. I also understand that by writing this document I designate to whom my property, both real and personal, will go after my death.

### ARTICLE I REVOCATION OF ALL PRIOR WILLS

I revoke any and all Wills and Codicils previously executed by me.

### ARTICLE II IDENTIFICATION OF FAMILY

I am not married.

I am not married to \_\_\_\_\_, but have lived with him/her for many years and consider him/her as my full life partner [or similar language].

I am married to \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation. (If leave nothing to spouse explain why)

I am divorced.

The names and birthdates of my children are:

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_; and

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_; and

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_; and

My \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_.

(If leave nothing to some children, explain)

I have raised (am raising) \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the \_\_\_\_\_ Nation, with an enrollment number of \_\_\_\_\_ and consider him/her to be my child although not my natural or adopted child.

I am the legal guardian of \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_, and consider him/her to be my child although not my natural or adopted child.

I also consider \_\_\_\_\_, born \_\_\_\_\_, an enrolled member of the Tohono O’odham Nation, with an enrollment number of \_\_\_\_\_, to be my child, although not my natural or adopted child.

It is my intent to only provide for the beneficiaries named in this will. Any of my children who are omitted by me in this will are omitted deliberately.

**ARTICLE III  
TRUST OR RESTRICTED LAND BEQUESTS**

Single beneficiary:

I give to my \_\_\_\_\_(relationship), \_\_\_\_\_(name), any and all of my interests in Trust or Restricted real property which I have at the time of writing this Will or that I may acquire in the future, including any home or permanent improvements located on that property. In the event that \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then to \_\_\_\_\_.

Specific parcels to specific recipients:

I give to my \_\_\_\_\_(relationship), \_\_\_\_\_(name), any and all of my interests in the Trust or Restricted real property located at San Xavier described as: Tract number \_\_\_\_\_, Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Pima County, Arizona.

I give to my \_\_\_(relationship) \_\_\_\_\_, \_\_\_(name)\_\_\_\_, any and all of my interests in the Trust or Restricted real property located at San Xavier described as: Tract number \_\_\_\_\_, Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Pima County, Arizona.

Etc.

Multiple beneficiaries:

Joint tenants with right of survivorship:

I give to \_\_\_\_\_ (e.g., my children), \_\_\_\_\_and \_\_\_\_\_, as joint tenants with the right of survivorship, any and all of my interests in Trust or Restricted real property that I have at time of the execution of this Will or that I may acquire in the future, including any home or permanent improvements on that property.

Tenants in common:

I give to \_\_\_\_\_ and \_\_\_\_\_, as tenants in common in equal shares by right of representation, any and all of my interests in Trust or Restricted ral property that I have at the time of the execution of this Will or that I may acquire in the future, including any home or permanent improvements on that property.

**ARTICLE IV  
TRUST PERSONALTY BEQUESTS**

Single beneficiary:

I give to my \_\_\_\_\_, \_\_\_\_\_, any and all funds contained in my Individual Indian Money (IIM) account. In the event \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then I give the funds in my IIM account to \_\_\_\_\_.

Multiple beneficiaries:

I give to my \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who survive me by at least 120 hours, any and all funds contained within my Individual Indian Money (IIM) account, in equal shares.

or

I give to my \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, any and all funds contained within my Individual Indian Money (IIM) account,

in equal shares, by right of representation.

**ARTICLE V  
NON-TRUST REAL PROPERTY BEQUESTS**

I give to my \_\_\_\_\_, \_\_\_\_\_, as joint tenants with the right of survivorship, any and all of my interests that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, in my non-Trust or Non-Restricted real property located at \_\_\_\_\_, including any home and permanent improvements thereon.

**ARTICLE VI  
NON-TRUST PERSONAL PROPERTY BEQUESTS**

[This is typically where we put in whatever the person wants to do with their house. Also such things as livestock, brands, tools, vehicles, or the like if they want to be specific with those.]

I may leave a handwritten or typed list, dated and signed by me, giving items of tangible (touchable) personal property not otherwise specifically disposed of by this Will to the person or persons indicated in that writing. If I decide to have such a separate writing, it will be located with my Will.

The list will include only items of tangible personal property other than money. I understand that tangible property includes items within the following categories: articles of personal or household uses or ornament, furniture, furnishings, auto-mobiles, tools, jewelry, baskets, and precious metals in tangible form, such as coins. If any such separate writing through inadvertence includes non-qualifying property, it is my intent that the separate writing be given effect to the extent of the qualifying property only.

If no separate writing is found following my death, then any and all property not otherwise specifically provided for shall pass into the residue of this Will.

**ARTICLE VII  
RESIDUE FOR TRUST OR RESTRICTED REAL PROPERTY AND TRUST PERSONALTY**

Single Beneficiary:

I give to \_\_\_\_\_, all of the rest, residue, and remainder of my trust property not otherwise validly devised by this instrument. The



residue shall include all trust property of any kind of nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then to \_\_\_\_\_.

Multiple Beneficiaries:

I give to my children, \_\_\_\_\_ and \_\_\_\_\_, who survive me by at least 120 hours, all of the rest, residue, and remainder of my trust property not otherwise validly devised by this instrument. The residue shall include all trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated, with any trust real property passing hereunder as joint tenants with the right of survivorship, and any trust personalty passing in equal shares.

**ARTICLE VIII  
RESIDUE FOR NON-TRUST PROPERTY**

Single Beneficiary:

I give to \_\_\_\_\_, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that \_\_\_\_\_ predeceases me or does not survive me by at least 120 hours, then to \_\_\_\_\_.

Multiple Beneficiaries:

I give to my children, \_\_\_\_\_ and \_\_\_\_\_, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated, with any non-trust real property passing hereunder in equal shares as tenants in common by right of representation, and any non-trust personalty passing in equal shares by right of representation.

**ARTICLE IX  
SEVERABILITY**

If a court of competent jurisdiction rules invalid or unenforceable any of the provisions of this, my Last Will and Testament, the remaining provisions shall nevertheless remain in full force and effect.

**ARTICLE X  
CHOICE OF LAW**

Any questions of law regarding the execution of this, my Last Will and Testament, or its effect shall be determined in accordance with the laws of the United States, or the Tohono O’odham Nation, or the State of Arizona, whichever jurisdiction probates this Will.

**IN WITNESS WHEREOF, I,** \_\_\_\_\_, have hereunto set my hand, sealed, published, and declared this to be my Last Will and Testament, consisting of \_\_\_\_\_ pages, including this page and the pages following, this \_\_\_\_\_ day of \_\_\_\_\_, in the year Two Thousand and \_\_\_\_\_.

\_\_\_\_\_  
Testator/Testatrix

**ATTESTATION & DECLARATION UNDER PENALTY OF PERJURY**

In accordance with the requirements of Arizona Revised Statutes Section 14-2504, each of us declares under penalty of perjury under the laws of the State of Arizona that the following is true and correct:

1. I am of legal age and competent to be a witness to a Will
2. The Testator/Testatrix appears to me to be of legal age and sound mind and not acting under any duress, menace, fraud, or undue influence.
3. On the date shown immediately above, in my presence and in the presence of the other witnesses, the Testator/Testatrix declared this document to be his/her Will, requested me and the other witnesses to act as witnesses to his/her signing of the Will, and then signed the Will.
4. Immediately thereafter and at the Testator’s/Testatrix’s request, I and the other witnesses signed the Will as witnesses in the presence of the Testator/Testatrix and each other, on the date shown immediately above the Testator’s/Testatrix’s signature.

**WITNESSES**

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

# ALTERNATIVE WILL TEMPLATE

## LAST WILL AND TESTAMENT

### OF NAME

I, **Name**, DOB: **MM/DD/YYYY**, of city/town name, State of Arizona, being of sound mind and judgment, declare this to be my Last Will and Testament.

1. I revoke all Wills and Codicils I have previously made.
2. I desire that all my legitimate debts be paid, including the expenses of my final medical obligation, funeral expenses, and burial costs.
3. I name **Named Executor**, DOB: **MM/DD/YYYY**, my relationship-of-nominee-to-Testator, who is an enrolled member of the Colorado River Indian Tribes, to serve the position of Executor. I expressly waive any bond requirement for said person in that capacity.
4. The Executor shall have those powers set forth in the laws governing the Colorado River Indian Tribes and the Colorado River Indian Reservation, as existing on the date of the execution of this Last Will and Testament, and any other powers now or hereafter conferred by law.
5. **Minor Children or Dependents:** In the event of my passing and if my passing should cause my minor children or dependents to become orphans, then it is my desire that the guardianship of my minor children or dependents be as follows:
  - a. **Named Guardian**, DOB: **MM/DD/YYYY**, my relationship-of-Named-Guardian-to-Testator, should be given permanent guardianship of **Child/Ward's Name**, DOB: **MM/DD/YYYY**, my son/daughter/ward;
  - b. **Named Guardian**, DOB: **MM/DD/YYYY**, my relationship-of-Named-Guardian-to-Testator, should be given permanent guardianship of **Child/Ward's Name**, DOB: **MM/DD/YYYY**, my son/daughter/ward.

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However, if at the time of my passing, and if any of my children should have reached the age of majority and there still be other minor children or dependents, then it is my desire that my eldest child who has reached the age of majority be given permanent guardianship of any minor children or dependents if that eldest child should accept this responsibility. If the eldest child declines, then it is my desire that the permanent guardianship of any minor children or dependents be carried out consistent with the provisions listed herein.

6. I may give certain items of tangible personal property to certain persons, which items and persons shall, in the event, be identified by a list to be prepared, signed, and kept by me. The list, if any, shall control over any other gifts and bequests, not mentioned or specified herein, in this my Last Will and Testament.

7. I give, devise, and bequeath to **beneficiary name**, DOB: **MM/DD/YYYY**, my relationship-of-beneficiary-to-Testator, enrolled with the Colorado River Indian Tribes, my undivided interest in Colorado River Indian Reservation Allotments/Assignments No. XXXXXX.

8. I give, devise, and bequeath to **beneficiary name**, DOB: **MM/DD/YYYY**, my relationship-of-beneficiary-to-Testator, enrolled with the Colorado River Indian Tribes, my describe property here. Specify whether any life estates, joint-tenancies, tenancies-in-common, JTWRORS, etc., are being created, or special provisions.

9. I give, devise, and bequeath to **beneficiary name**, DOB: **MM/DD/YYYY**, my relationship-of-beneficiary-to-Testator, enrolled with the Colorado River Indian Tribes, my describe property here. Specify special provisions.

10. **Residuary:** I give, devise, and bequeath to **beneficiary name** (DOB: **MM/DD/YYYY**), my relationship-of-beneficiary-to-Testator, enrolled with the Colorado River Indian Tribes,

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any remainder or residuary of my estate; (if multiple beneficiaries: to be divided equally (or however) between all of my beneficiaries listed in this section)..

11. I give, devise, and bequeath to the rest of my family, which have not been mentioned previously, my love and affection, as I have provided for them by other means.

12. For a beneficiary to receive any gift herein stated, the beneficiary must survive me by at least one-hundred-twenty (120) hours. If a beneficiary fails to survive me by at least one-hundred-twenty (120) hours, then that beneficiary shall be treated as though the beneficiary predeceased me, and my Executor shall distribute any gift accordingly.

13. I have decided to keep the original copy of this Last Will and Testament in the possession of the Colorado River Indian Tribes Legal Aid Department; I understand that only I shall have the ability to access the original copy during my lifetime, and that my Executor, **Named Executor**, shall be able to retrieve the original copy after my passing.

14. It is my desire that my funeral and burial arrangements be as follows:

a. For my funeral service, I wish to be laid out at X location, for a reasonable visitation period, and for a service to be performed in a manner consistent with the traditions and customs of the Colorado River Indian Tribes. I wish that XXXX be the person to perform the service.

b. For my burial arrangements, I wish to be buried at X. I wish to be cremated and for my ashes to be given to XXX, with the instructions that they scatter my ashes at XXX.

15. It is my intention that throughout this Last Will and Testament, that any terms describing relationships by-blood shall include adopted persons as well.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_, Arizona.

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Name, *Testator*

This Last Will and Testament consisting of three (3) pages, was signed by the Testator on the date written above in the presence of us who have signed our names as witnesses.

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
Signature of Witness #2

Printed Name: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

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