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Subchapter T—Patents in Fee, Competency Certificates, Sales and Reinvestment of Proceeds

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CROSS REFERENCES

Further regulations pertaining to the sale of irrigable lands: See Parts 151, 154 and § 141.4.
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Regulations pertaining to the determination of heirs and approval of wills: See Part 81 and §§ 161.30–161.32C.
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PATENTS IN FEE

Section 241.1 Who may apply for patent in fee. The Secretary of the Interior, whenever he shall be satisfied that any Indian 21 years of age or over is capable of managing his or her affairs and has made an application therefor, may cause to be issued to such applicant a patent in fee for his original or inherited land held under a trust patent. This Act (34 Stat. 182; 25 U.S.C. 349) does not apply to members of the Five Civilized Tribes or the Indians under the jurisdiction of the Quapaw, Kaw, or Osage Agencies. The issuance of a patent in fee is discretionary with the Secretary of the Interior. Such a patent will not be issued unless it can be affirmatively shown that its issuance will not affect unfavorably the consolidation and use by the Indians of restricted Indian lands and that the applicant is in all respects competent to care for his or her own affairs. Such competency must be shown affirmatively regardless of the blood status of the applicant.*† (34 Stat. 182; 25 U.S.C. 349) [Sec. 1, par. 2]

*§§ 241.1 to 241.33, inclusive, (with exceptions noted in the text,) issued under the authority contained in R.S. 161, sec. 7, 32 Stat. 275, 34 Stat. 1018, 48 Stat. 647; 5 U.S.C. 22, 25 U.S.C. 379, 405, 372.

†The source of §§ 241.1 to 241.48, inclusive, is Regulations relating to the issuance of patents in fee, certificates of competency, and the sale of allotted and inherited Indian lands, including lands belonging to the Five Civilized Tribes, and the reinvestment of the proceeds in nontaxable lands, Secretary of the Interior, May 31, 1938.

241.2 Applications for patent in fee and Superintendent's report thereon. All applications for patents in fee should be made on Form 5–105 [5] to the Superintendent having jurisdiction over the land the applicant seeks to have patented. Whenever an applicant for a patent in fee is obviously not qualified to receive one, or the land covered by the application lies within a territory largely occupied and used by Indians, the Superintendent will deny his application in writing, stating therein the reasons therefor and advising the applicant that he may if he desires appeal to the Commissioner of Indian Affairs. A copy of the Superintendent's denial should be furnished the Indian Office for its records. All cases in which Superintendents are in doubt that an application should be denied and in those cases in which they believe the applications should be approved are to be submitted to the Indian Office accompanied by the recommendation of the tribal council, tribal executive committee, or other governing body.*† (34 Stat. 182; 25 U.S.C. 349) [Sec. 2]

[5] See footnote on page 27.

*†For statutory and source citations, see note to § 241.1.

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CERTIFICATES OF COMPETENCY

241.3 Applications for certificates of competency. Applications on Form 5–105,[5] modified for certificates of competency authorized by section 1 of the Act of June 25, 1910 (36 Stat. 855, 48 Stat. 647; 25 U.S.C. 372) shall be filed with the Indian Superintendent having jurisdiction over the land from which the allottee or heirs seek to have all restrictions removed. When the land is not located within the territorial limits of an Indian reservation the allottee or heirs may petition the most convenient Superintendent or other officer in charge of an Indian Agency or Indian Tribe or such other public officer of the United States as may be designated by the Secretary of the Interior, who shall take like action as if the lands were within the territorial limits of an Indian reservation.*† [Sec. 3]

241.4 Superintendent's report on certificates of competency. Reports on application for certificates of compentency should be on Form 5–110f [5] and should be accompanied by the recommendation of the tribal council. The issuance of a certificate of compentency is discretionary with the Secretary of the Interior. Such a certificate will not be issued unless it can be affirmatively shown that its issuance will not affect unfavorably the consolidation and use by the Indians of restricted Indian lands. The provisions of the Act of June 25, 1910 apply only to Indians or their heirs to whom a patent in fee containing restrictions on alienation has been issued.*† [Sec. 4]

241.5 Certificates of competency to Osage adults. Applications for the issuance of certificates of compentency to adult members of the Osage Tribe of Indians shall be on forms prescribed by the Secretary of the Interior. These forms may be obtained from the Superintendent of the Osage Indian Agency, Pawhuska, Oklahoma. If the applicant be of one-half or more Indian blood and the Secretary finds that the applicant is capable of managing his or her own affairs and transacting his or her own business, a certificate of competency removing the restrictions from the surplus lands and funds of the applicant may be issued to be effective 30 days from the date of its issuance.

All restrictions against the alienation of allotment selections, both homestead and surplus, of all adult Osage Indians of less than one-half Indian blood, were removed by the Act of March 3, 1921 (41 Stat. 1249). Certificates of competency may, however, be issued to Osage Indians of less than one-half blood and such certificates, when issued, will have the effect of releasing from Federal control all funds accrued and accruing to the applicants from the Osage tribal income.

The issuance of certificates of competency in all cases is discretionary with the Secretary of the Interior. Certificates of competency will not be issued unless it can be affirmatively shown that its issuance will not affect unfavorably the consolidation and use by the Indians

[5] See footnote on page 27.

*†For statutory and source citations, see note to § 241.1.

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of restricted Indian lands.† (Sec. 2, 34 Stat. 545, secs. 3, 4, 41 Stat. 1250) [Sec. 6]

241.6 Applications for certificates of competency to Kaw or Kansas adults. Applications for the issuance of certificates of competency to adult members of the Kaw or Kansas Tribe of Indians shall be upon form prescribed by the Secretary of the Interior and furnished by the Superintendent in charge of Kaw or Kansas allottees, Pawnee, Oklahoma.*† (Sec. 10, 32 Stat. 639) [Sec. 8]

241.7 Issuance of certificates of competency. When the Secretary of the Interior finds that the applicant is capable of transacting his or her own affairs and transacting his or her own business, the restrictions may be removed and a certificate of competency issued, to be effective 30 days from the date of its issuance. The issuance of a certificate of competency is discretionary with the Secretary of the Interior. Such a certificate will not be issued unless it be affirmatively shown that its issuance will not affect unfavorably the consolidation and use by the Indians of restricted Indian lands.*† (Sec. 10, 32 Stat. 639) [Sec. 9]

PARTITIONS OF INHERITED ALLOTMENTS

241.8 Applications for partitions. In case the trust land of a deceased allottee is susceptible of partition among the heirs, the Secretary of the Interior may make such partition and issue new patents to the several heirs for the portions selected by them. If the allotment is held under a restricted fee title (as distinguished from a trust title) partition may be made by approved deeds among the heirs. Petitions for partition should be made upon Form 5–1101.[5]*† (Sec. 1, 39 Stat. 127; 25 U.S.C. 378) [Sec. 11]

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

SALE OF ALLOTTED LANDS, EXCLUSIVE OF FIVE CIVILIZED TRIBES' LANDS

241.9 Sale of heirship lands on all reservations. On all reservations heirship lands may be sold by the Secretary of the Interior to an Indian tribe. Such sale may be made with or without the consent of the interested heirs. It is necessary that reasonable compensation be paid by the tribe for the land thus sold. Such reasonable compensation may be based upon the actual income-producing prospects and record of the land, due consideration being given to the expenses of leasing created by heirship status in so far as these expenses would be deducted from the sums paid to the lessors. Except for the requirement that 10 percent of the purchase price be paid in advance, the terms of payment are within the discretion of the Secretary of the Interior.*† [Sec. 12]

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

241.10 Sale of heirship lands on reservations under Reorganization Act. On reservations within the Act of June 18, 1934, (48

[5] See footnote on page 27.

*†For statutory and source citations, see note to § 241.1.

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Stat. 984; 25 U.S.C. 461–479), sales of heirship land may be made to the United States in trust for the tribe or for individual Indians. With respect to the terms and manner of sale and the basis of valuation, § 241.9 shall govern.*† (Sec. 5, 48 Stat. 985; 25 U.S.C. 465) [Sec. 13]

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

241.11 Sale of heirship lands on reservations not under Reorganization Act. On reservations not within the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), heirship lands may be sold directly to individual Indians or to an Indian cooperative or tribe. It is within the discretion of the Secretary of the Interior to make such sales with or without the consent of the heirs, without calling for bids or after bids have been called for. Patents in fee must issue to the purchaser upon final completion of payments for the land, unless all the heirs join in making a conveyance of the trust title. If bids are called for, the call for bids may limit the bidders either to Indians or to Indians of a particular tribe or to Indians interested in the particular estate or to any other reasonably defined class of Indians, provided that in any case a fair price, in the light of all circumstances, is obtained for the land that is sold. With respect to the terms and manner of sale, and the basis for valuation, § 241.9 shall govern.*† [Sec. 14]

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

241.12 Sales of original and inherited allotments not under Reorganization Act. On reservations not under the Indian Reorganization Act, in cases where sales cannot be consummated pursuant to §§ 241.9, 241.10, 241.11, sales may be made of both original and inherited allotments. In such cases sales of Indian lands except where special or specific acts govern, are authorized under the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); June 25, 1910, 36 Stat. 855 as amended by the Act of April 30, 1934 (48 Stat. 647; 25 U.S.C. 372).*† [Sec. 15]

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

241.13 Preference right to purchase lands in Oklahoma. In the case of any sale of restricted Indian land at public auction or by sealed bids in Oklahoma, except in the case of the Osage Reservation, the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., Sup., 501–509), provides in part that whenever any restricted Indian land or interests in land other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of this or any other act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor.

*†For statutory and source citations, see note to § 241.1.

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In order to expeditiously carry out these requirements Superintendents or other officers in charge of the several Indian Agencies and reservations in the State of Oklahoma, except Osage, are required to keep close watch for notice of the sale of restricted Indian land at public auction or through sealed bids. In all cases of this class full cooperation of State and county authorities is desired, and in order to avoid unnecessary delay in exercising the preferential right and in waiving it in cases where the lands are not wanted for Indian purposes, and to avoid undue hardship either to the Indian or to others in the exercise of such preferential right, such cases shall receive prompt consideration by the several agencies and officers in the field and forwarded to the Indian Office and the Department to the end that this right to purchase shall be either exercised or waived as promptly as circumstances will permit. Such preference right to purchase is placed in the Secretary of the Interior under the Act and is recognized as remaining in full force and effect until released by said Secretary through endorsement on deeds of conveyance or in an appropriate order the form of which is "Preference right of purchase resting in the Secretary of the Interior under section 2 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., Sup., 502), is hereby waived as to the lands herein described."† (Sec. 9, 49 Stat. 1968; 25 U.S.C., Sup., 509) [Sec. 16]

241.14 Selection of lands under preference right. Preference right of purchase is not to be construed as indiscriminate land purchasing. Land acquired under this Act must be agricultural or grazing of good character and quality. The purchase of town lots or homesites is not authorized. The Superintendent is to exercise this right to purchase in areas where there are Indian settlements and schools available for education of the children, or at other points where desirable lands can be obtained in comparatively consolidated areas for Indian benefit. All lands being considered for purchase must be carefully examined and appraised. The Superintendent whenever feasible shall utilize the services of the special land purchasing force and in all instances the Land Field Agent's office must be notified of each such proposed purchase to the end that his record of land acquisition in Oklahoma may be kept current. Where Superintendents conduct all the land purchase activities within their jurisdiction all papers are to be transmitted direct to the Commissioner for consideration and appropriate action. In all cases copies of such papers are to be sent to the Land Field Agent. In those cases where the purchase work has been handled by or with the assistance of the Land Field Agent's force, all purchase papers should be routed through the Land Field Agent for preparation of report to the Commissioner.† (Sec. 9, 48 Stat. 1968; 25 U.S.C., Sup., 509) [Sec. 17]

241.15 Waiver of preference right. Where restricted lands are offered for sale which are not within an area wanted for rehabilitation or other Indian purposes and the Superintendents in charge are fully satisfied that the tract or tracts offered will not be needed in connection with the land program. Superintendents are hereby authorized to waive such preferential purchase right for and on

†For source citation, see note to § 241.1.

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behalf of the Secretary of the Interior.† (Sec. 9, 49 Stat. 1968; 25 U.S.C., Sup., 509) [Sec. 18]

241.16 Reinvestment of proceeds in restricted nontaxable land. Funds derived from the sale of restricted lands may be used to acquire other lands as provided for by the Act of March 2, 1931, as amended by the Act of June 30, 1932 (47 Stat. 474). The lands so acquired shall be restricted and nontaxable as provided in said Act.*† (47 Stat. 474; 25 U.S.C. 409a) [Sec. 19]

METHOD OF SALES

241.17 Petition to sell original allotments. Any Indian owner may petition the Commissioner of Indian Affairs, through the Superintendent or other officer in charge, for the sale of the land described therein. When petition is made for the sale of an original allotment, there must be set forth clearly, on Form 5–110,[5] the reason for the sale and a showing made as to whether the allotment, or any part thereof, is leased; and if so, the annual rental thereof. The owner must subscribe his name or affix his mark or thumb mark to the petition.*† [Sec. 20]

241.18 Petition to sell inherited lands. If the petition is made by the heirs of a decedent, it shall set forth every material fact necessary to show full title in the petitioners, on Form 5–110j,[5] and shall be signed by all the adult heirs on their own behalf, by the guardian of a minor heir who has such guardian, and by the Superintendent or other officer in charge of the Agency or School on behalf of any orphan minor heir.

Guardians for orphan minors and mental incompetents duly appointed by the properly constituted authority under the terms, provisions and conditions of the constitution, bylaws or charter of the tribe or tribes of such reservation shall be recognized.*† [Sec. 21]

CROSS REFERENCES: For regulations pertaining to determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

241.19 Petition to sell interests of minors. Only parents will be recognized as natural guardians. If the father and mother are living together, the father must sign the petition on behalf of his minor child; otherwise the parent having the actual care and custody of the minor must sign. No sale of inherited land shall be permitted without a petition from the heirs except when expressly authorized by the Department.*† [Sec. 22]

CROSS REFERENCES: For regulations pertaining to determination of heirs and approval of wills, see Part 81 and §§ 161.30–161.32C.

241.20 Petition to sell lands outside reservation boundaries. When the land is not located within the territorial limits of an Indian reservation the owner thereof must petition the most convenient Superintendent or other officer in charge of an Indian Agency or Indian Tribe or such other officer of the United States as may be designated by the Secretary of the Interior, who may

[5] See footnote on page 27.

*†For statutory and source citations, see note to § 241.1.

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take like action thereon as if the land were within the territorial limits of an Indian reservation.*† [Sec. 23]

241.21 **Costs of conveyances; payment.** Purchasers shall pay all costs of conveyancing and in addition the following sums, to wit: If the purchase price is $1,000 or less, $1.50. If it be more than $1,000 and not more than $2,000, $2. If the purchase price is more than $2,000, $2.50. Such fees should not be included in checks covering payment for the land, but collected separately, taken into accounts as "Sundry receipts" and deposited to the credit of the United States.† (47 Stat. 1417; 25 U.S.C. 413) [Sec. 24]

241.22 **Additional sale fee required.** In all cases of the sale of restricted allotted Indian lands, either on a cash basis or on deferred payments, the purchasers will be required to deposit with the Superintendent, in addition to the consideration for the land and the fee provided for in § 241.21, the sum of $20, such amount to be paid when the purchaser is notified that he is the successful bidder. This fee is collected for the purpose of paying for the work incident to the sale as required by the Act of February 14, 1920, as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413). The fee may be reduced to a lesser amount than $20 or to a nominal amount if the circumstances justify such reduction in the discretion of the Secretary of the Interior. The sales fee if conditions warrant may be deducted from the proceeds of sale.† (47 Stat. 1417; 25 U.S.C. 413) [Sec. 25]

241.23 **Irrigation fees; payment.** In sales involving irrigable land, the purchaser will be required to pay the proportionate per acre construction cost of the particular project to be assessed against the land. Payments made by the Indian owner prior to July 1, 1932 shall be taken into consideration in fixing the appraisements of the land. All appraisements covering irrigable land will be submitted to the Supervising or Project Engineer of the district in which such land is situated for his approval. Purchasers will be required to pay in addition to the per acre construction cost the annual operation and maintenance charges assessed against the land which will be based on the annual cost of the operation of the system. All such charges, remaining unpaid as of the date of the acceptance of the bid, must be paid by the purchaser. In all cases purchasers will be required to enter into an agreement for the payment of all such charges. A lien clause covering the cost of all irrigation charges, past and future, will be inserted in the patent or other instrument issued to the purchaser.*† [Sec. 26]

CROSS REFERENCES: For regulations pertaining to construction costs, see Parts 141, 144, 147. For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see Parts 151, 154, and § 141.4.

241.24 **Appraisement of lands for sale.** Before any tract of land is offered for sale the Superintendent or other officer in charge shall visit, view and appraise it at its full value for the purpose for which it is best adapted, according to his best judgment. If a Superintendent or other officer in charge is for any cause unable personally to appraise the lands he shall require the appraisement to be made by the officer or employee under his charge best qualified for the

*†For statutory and source citations, see note to § 241.1.

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purpose. No bid for less than the appraised value shall be considered. If the appraisement is made by a person other than the Superintendent or officer in charge, the Superintendent or officer in charge, shall file with the papers a certificate of the qualifications and integrity of the appraiser, to the effect that he believes the appraisement to be the value of the land. Lands shall not be offered for sale unless an appraisement thereof has been made within 6 months prior thereto. Certificates of appraisement should be made on Form 5–110a.[5] *† [Sec. 27]

241.25 Bids; how made. Each bid on Indian lands offered for sale must be accompanied by a duly certified check payable to the order of the Superintendent or other officer in charge for the use of the vendor, for not less than 10 percent of the offer made, as a guaranty of the bidder's faithful performance of his proposition. If the bid is accepted and the successful bidder shall within 30 days after due notice fail to comply with the terms of his bid, his deposit shall be forfeited to the use of the owner of the land. All bids should be enclosed in a sealed envelope which must be marked by the bidder "Bid for Indian Land" and show the date of opening, but the description of the land shall not be noted on the envelope.*† [Sec. 28]

241.26 Bids; designation of first, second, and third choice. No bidder will be permitted to include more than one allotment in any bid, but if a prospective purchaser desires to bid on more than one allotment he must submit a separate bid for each allotment. A bidder shall have the privilege, however, of designating in his bid not more than three allotments as first, second and third choice and his offer on each such allotment will be considered according to such designations. In that case but one certified check for 10 percent of the highest amount offered by him need accompany the bid.*† [Sec. 29]

241.27 Bidding not open to employees. Under no circumstances will the Superintendent or other officer in charge or any person connected with the Agency office or the Indian Service directly or indirectly be permitted to bid or to make or to prepare any bid or assist any bidder in preparing his bid.*† [Sec. 30]

241.28 Bids; right to reject. The right to reject any and all bids is reserved to the Commissioner of Indian Affairs.*† [Sec. 31]

241.29 Bidders, right to be present when bids are opened. Bidders, owners and other interested persons may be present when bids are opened and when so opened the bids shall be recorded in a book or on cards kept for that purpose so as to show the name of the bidder, description of the land, amount offered, and action taken thereon. The award shall be made to the highest bidder and the checks of the unsuccessful bidders shall be returned immediately to them, receipts therefor being taken and filed at the Agency.*† [Sec. 32]

241.30 Exchange submitted with bids; disposal. The exchange submitted with the bid of the successful bidder shall be imme-

[5] See footnote on page 27.

*†For statutory and source citations, see note to § 241.1.

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diately deposited by the Superintendent or other officer in charge to his official credit in a designated depositary for Individual Indian Money. As soon as practicable the Superintendent or other officer in charge shall require the successful bidder to furnish additional exchange for the remaining 90 percent of the amount bid, which shall be deposited forthwith to the official credit of the disbursing officer in the same depositary to await the action of the Department on the sale.*† [Sec. 33]

241.31 Deferred payment sales; when made. In any case where the Indian owner and purchaser desire, a sale may be completed on the deferred payment plan and in such case the purchaser shall pay not less than 25 percent of his bid in cash and execute notes for the balance payable in three equal payments on or before 1, 2 and 3 years after date, on Form 5–110g.[5] *† [Sec. 34]

241.32 Deferred payment sales; execution. At the time the petition for sale is executed by the allottee or heirs interested they should designate thereon whether they wish the sale to be made for cash or on deferred payments bearing the usual rate of interest of the locality. In deferred payment sales 10 percent of the purchase price should accompany the bid, an additional 15 percent to be paid when the bid be accepted, and the balance to be paid on or before 1, 2 and 3 years. When the purchase price and the agreed interest on the notes have been paid in full, a patent in fee will be issued to the purchaser or his assigns, and in cases where a patent in fee is not authorized by law or cannot be issued on account of irregular description of the land, a deed executed by the allottee or heirs and approved by the Secretary of the Interior will be delivered to such purchaser or assignee. When lands are sold on deferred payments a certificate or memorandum of purchase, setting out fully the terms thereof and approved by the said Secretary, will be delivered to the purchaser. If the purchaser makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner. When lands are sold on deferred payments, and title is to be conveyed by approved deed, the deed shall be held in the Indian Office in escrow until full payment is made when it will be delivered to the grantee.*† [Sec. 35]

241.33 Sales; approval of Secretary of Interior required. All sales of lands made under the Acts referred to herein, to be valid must be approved by the Secretary of the Interior and accompanied by the original petition for sale, the appraisement, all bids relating to the land covered by the petition, and a full report in accordance with Forms 5–110e, 5–110m or 5–110n,[4] or as required by the Commissioner of Indian Affairs, by the Superintendent or other officer in charge of all proceedings prior to his report which relates to the sale.*† [Sec. 36]

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[5] See footnote on page 27.

*†For statutory and source citations, see note to § 241.1.

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REMOVAL OF RESTRICTIONS AND SALE OF LANDS, FIVE CIVILIZED TRIBES AND REINVESTMENT OF FUNDS IN NONTAXABLE LANDS.

241.34 Removal of restrictions, application and Superintendent's report. Subject to the limitations of Order No. 420,[33] approved on August 14, 1933, precluding the removal of restrictions and sales of land except in individual cases of great distress or other emergency, etc., applications must be made in triplicate on approved Form Five Civilized Tribes, 5–484. These forms will be furnished free of charge on application to the Superintendent for the Five Civilized Tribes or any field clerk.

When an application is received by the field clerk, he shall, after investigation, including a personal interview with the applicant, forward the application with report and recommendation to the Superintendent for the Five Civilized Tribes to be transmitted with his report and recommendation for such action as the Secretary of the Interior may deem proper.*† [Secs. 38, 39]

*§§ 241.34 to 241.48, inclusive, (with exception noted in the text,) issued under the authority contained in R.S. 161; 5 U.S.C. 22, and secs. 1, 9, 35 Stat. 312, 315, sec. 1, 45 Stat. 495, secs. 1, 7, 47 Stat. 777, 778, and 46 Stat. 1471; 25 U.S.C. 409a.

241.35 Removal of restrictions, unconditionally. Upon proper showing to the Secretary of the Interior that an applicant for the removal of restrictions should have the unrestricted control of his allotment or a part thereof, he may remove the restrictions therefrom*† [Sec. 40]

241.36 Removal of restrictions, conditionally. When the Secretary of the Interior finds it to be for the best interest of any applicant that all or part of his restricted lands should be sold with conditions concerning terms of sale and disposal of the proceeds, he may remove the restrictions, to become effective only and simultaneously with the execution of a deed by said applicant and issue an order specifically providing the terms under which the land may be sold and providing for the disposal of the proceeds.*† [Sec. 41]

241.37 Advertising lands for sale. The Superintendent for the Five Civilized Tribes will advertise for sale at public auction for not less than 30 days the land included in conditional removal of restrictions orders by posting notices at his office; at the offices of the several field clerks, and at the county court houses of the Five Civilized Tribes area. Such notices shall contain information as to time and place of sale, legal description of the land, information as to character of land, minimum price at which the land may be sold, and terms of sale, with reservation of right to reject any bid submitted. The determination of the minimum price at which lands may be sold will be made by the Superintendent after an inspection and appraisement of the land by a representative of his office. No bid for an amount less than the minimum price will be considered. All cost of conveyance and recording shall be at the expense of the purchaser.*† [Sec. 42]

[33] Order No. 420 is not codified. It may be obtained from the Commissioner of Indian Affairs, Washington, D. C.

*For statutory citation, see note to § 241.34.
†For source citation, see note to § 241.1.

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241.38 Bids; how made and accepted. Bids may be made in writing on any of the lands to be offered for sale. Any written bid submitted to be given consideration must be received at the place of sale prior to the hour of sale by the officer named in the notice offering the land for sale and accompanied by a deposit of 10 percent of the amount bid. Deposits accompanying unsuccessful bids will be returned promptly. Each successful oral bid must be accompanied by a deposit of 10 percent of the amount bid as guaranty of faithful compliance of the bidder with the terms of sale.*† [Sec. 43]

241.39 Fees and consideration for sale; acceptance and deposit. A remittance of $20 will be required from the successful bidder as a land sale fee on each tract sold. This fee is collected for the purpose of paying for the work incident to the sale as required by the Act of February 14, 1920, as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413). Where the circumstances justify a reduction in the sales fee the Secretary of the Interior may reduce the amount. The sales fee if conditions warrant and the advertisement so provides may be deducted from the proceeds of the sale.

If a bid is accepted and the successful bidder shall fail within 10 days from the receipt of notice of the acceptance of his bid, to comply with the terms thereof, such deposit will be subject to forfeiture by the Superintendent for the Five Civilized Tribes for the use of the owner of the land.

The proceeds of all such sales shall be held by said Superintendent for the Five Civilized Tribes in his official capacity, and be disbursed for the benefit of the respective Indians.*† (47 Stat. 1417; 25 U.S.C. 413) [Sec. 44]

241.40 Deferred payment sales; how made. Upon the approval by the Secretary of the Interior of a conditional order for the removal of restrictions the land covered thereby to be sold under the supervision of the Superintendent for the Five Civilized Tribes, the said Superintendent is hereby authorized, in such cases as he considers to be for the best interests of the respective allottees so to do, to advertise and sell said land at public auction for not less than the appraised value for cash or upon deferred payments, any such deferred payment sales to be made under the following terms:

(a) Where the consideration is $500 or less, at least one-half to be paid in cash at the time of the sale and the remainder to be evidenced by purchasers' notes due and payable in not more than 18 months after the date of purchase and secured by first mortgage on the premises conveyed.

(b) Where the consideration exceeds $500 and is not more than $1500, at least one-third to be paid in cash at the time of sale and the remainder in two equal payments evidenced by purchaser's note or notes to fall due not more than 2½ years from date of purchase, and secured by first mortgage on the premises conveyed.

(c) Where the consideration exceeds $1500 at least one-fourth to be paid in cash at the time of sale and the remainder in three equal payments evidenced by purchaser's note or notes to fall due not more than 3½ years from the date of purchase and secured by first mortgage on the premises conveyed.*† [Sec. 45]

*For statutory citation, see note to § 241.34.
†For source citation, see note to § 241.1.

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241.41 Cash payments; how accounted. All cash payments at the time of sale to be paid into the hands of the cashier and special disbursing agent for the Five Civilized Tribes, Muskogee, Oklahoma, or his successor in authority, and all notes and mortgages securing same to contain the express condition that no payment purporting to discharge, satisfy, or release the indebtedness evidenced thereby shall operate as a release, satisfaction, discharge, or payment thereof unless such payments and interest accruing thereon are made to the said cashier or his successor, for the benefit of the proper allottees, or if such note or notes are properly negotiated with the approval of the Secretary of the Interior, to the owner or owners of such notes, and such notes shall be nonnegotiable except with the approval of the said Secretary. The note or notes shall be held by the said cashier or his successor for collection when due. Said notes shall draw interest from date of execution until paid at the rate of 6 percent per annum.*† [Sec. 46]

241.42 Deferred payments; how accounted. All moneys received by the cashier or his successor as consideration for land, including moneys received on account of deferred payments and accrued interest thereon, shall be deposited or held to the credit of the proper allottee in Individual Indian Accounts and be subject to the rules, regulations and orders of this Department governing the holding of moneys so deposited and the disbursement thereof.*† [Sec. 47]

CROSS REFERENCES: For individual Indian money regulations, see Part 221. For deposit of Indian funds in banks, see Part 230.

241.43 Consummation of sale. Upon the consummation of a sale in compliance with the regulations in this part the Superintendent, or other officer in charge of the office of the Five Civilized Tribes, will make appropriate endorsements upon the order for the removal of restrictions from the land sold and on the deed of conveyance as prescribed by Forms Five Civilized Tribes 5–540 and 5–183c.[34] The order for the removal of restrictions and the deed thus endorsed shall, after proper record thereof has been made at the office of the said Superintendent, be delivered to the grantee.*† [Sec. 48]

241.44 Reinvestment of funds in restricted nontaxable land. In any case where lands are purchased for the use and benefit of any citizen of the Five Civilized Tribes of the restricted class, payment for which is made from proceeds arising from the sale of restricted nontaxable land, the said Superintendent shall cause conveyance of such lands to be made on form of conveyance containing an habendum clause against alienation, taxation, or encumbrances, as follows:

TO HAVE AND TO HOLD said described premises, unto said grantee _____ heirs and assigns, forever, free, clear, and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature, subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described or the title thereto shall be of any force and effect, unless approved by the Secretary of the Interior or the restrictions from said land are otherwise removed by operation of law.

*† [Sec. 49]

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[34] For further information regarding forms, see § 241.34.

*For statutory citation, see note to § 241.34.
†For source citation, see note to § 241.1.

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241.45 Superintendent's certificate on deed. Before delivery and recording of such deed of conveyance the said Superintendent will attach a certificate of notice in the following form:

I hereby certify that the land described in the above deed was purchased for a home for the said _____ with funds HELD IN TRUST by the United States for H_____ derived from the sale of restricted lands as authorized by the terms of the Act of March 2, 1931 (46 Stat. 1471) as amended June 30, 1932 (47 Stat. 474), and is nontaxable as therein provided.

_____
Superintendent for the Five Civilized Tribes.

*† [Sec. 50]

241.46 Purchase of restricted, nontaxable personal property with restricted funds. In all cases where purchases of automobiles, horses, wagons, buggies, cattle, agricultural implements, or other personal property are made for individual Indians, payments for which are made from moneys received from the sale of restricted allotted lands, or from other moneys held under the control of the Department of the Interior, the Superintendent for the Five Civilized Tribes will, when in his judgment it is to the Indian's best interest, cause a bill of sale to be executed by the vendor or vendors conveying the property purchased to the United States, to be held in trust for the use and benefit of the respective allottees or their heirs who are of the restricted class.*† [Sec. 51]

241.47 Identification U.S.I.S. The Superintendent for the Five Civilized Tribes may cause all such property to be branded on some prominent place, "U.S.I.S." to indicate that the property was purchased by the United States through the Indian Service.

The law of the State of Oklahoma shall be followed in taking bills of sale. The bill of sale should be filed at the Office of the County Clerk for the county in which the property is located and duplicate thereof retained in the office of the Superintendent for the Five Civilized Tribes.

Before filing the bill of sale, certificate of notice shall be indorsed thereon by the said Superintendent or such other officer of the Department as he may designate for the purpose, evidencing the official character of the transaction and the nature of the funds affected.*† [Sec. 52]

241.48 Alienation of property covered by bill of sale, invalid unless previously authorized. No sale, mortgage, or other disposition of the property covered by a bill of sale, as provided in the regulations in this part, shall be of any force or validity except with the written consent previously obtained and the approval subsequently given of the Superintendent for the Five Civilized Tribes, or such other officer as he may designate for the purpose; and in the event the Indian attempts to sell, mortgage, or otherwise dispose of such property the said Superintendent shall promptly notify the Department to that effect, forwarding the original bill of sale, in order that proper proceedings may be instituted for the recovery of the property.*† [Sec. 53]

*For statutory citation, see note to § 241.34.
†For source citation, see note to § 241.1.

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