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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

Sec. 2201. Definitions

For the purpose of this chapter--

(1) ``Indian tribe'' or ``tribe'' means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;

(2) ``Indian'' means any person who is a member of any Indian tribe or is eligible to become a member of any Indian tribe, or any person who has been found to meet the definition of ``Indian'' under a provision of Federal law if the Secretary determines that using such law's definition of Indian is consistent with the purposes of this chapter;

(3) ``Secretary'' means the Secretary of the Interior;

(4) ``trust or restricted lands'' means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation; and

(5) ``heirs of the first or second degree'' means parents, children, grandchildren, grandparents, brothers and sisters of a decedent.

(Pub. L. 97-459, title II, Sec. 202, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 106-462, title I, Sec. 103(1), Nov. 7, 2000, 114 Stat. 1992.)

References in Text

This chapter, referred to in par. (2), was in the original ``this Act'', which was translated as reading ``this title'', meaning title II of Pub. L. 97-459, to reflect the probable intent of Congress.

Amendments

2000--Par. (1). Pub. L. 106-462, Sec. 103(1)(A), substituted ``(1) `Indian tribe' or `tribe' '' for ``(1) `tribe' ''.

Par. (2). Pub. L. 106-462, Sec. 103(1)(B), added par. (2) and struck out former par. (2) which read as follows: `` `Indian' means any person who is a member of a tribe or any person who is recognized as an Indian by the Secretary of the Interior;''.

Par. (5). Pub. L. 106-462, Sec. 103(1)(C)-(E), added par. (5).

Short Title of 2000 Amendment

Pub. L. 106-462, Sec. 1, Nov. 7, 2000, 114 Stat. 1991, provided that: ``This Act [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 464, 2204, and 2207 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and sections 396 and 2206 of this title] may be cited as the `Indian Land Consolidation Act Amendments of 2000'.''

Short Title of 1991 Amendment

Pub. L. 102-238, Sec. 1, Dec. 17, 1991, 105 Stat. 1908, provided that: ``This Act [amending sections 2203, 2703, and 2718 of this title, enacting provisions set out as a note under section 1437f of Title 42, The Public Health and Welfare, and repealing provisions set out as a note under section 1437f of Title 42] may be cited as the `Technical Amendments to Various Indian Laws Act of 1991'.''

Short Title

Section 201 of title II of Pub. L. 97-459 provided that: ``This title [enacting this chapter] may be cited as the `Indian Land Consolidation Act'.''

Congressional Findings

Pub. L. 106-462, title I, Sec. 101, Nov. 7, 2000, 114 Stat. 1991, provided that: ``Congress finds that--

``(1) in the 1800's and early 1900's, the United States sought to assimilate Indian people into the surrounding non-Indian culture by allotting tribal lands to individual members of Indian tribes;

``(2) as a result of the allotment Acts and related Federal policies, over 90,000,000 acres of land have passed from tribal ownership;

``(3) many trust allotments were taken out of trust status, often without their owner's consent;

``(4) without restrictions on alienation, allotment owners were subject to exploitation and their allotments were often sold or disposed of without any tangible or enduring benefit to their owners;

``(5) the trust periods for trust allotments have been extended indefinitely;

``(6) because of the inheritance provisions in the original treaties or allotment Acts, the ownership of many of the trust allotments that have remained in trust status has become fractionated into hundreds or thousands of undivided interests, many of which represent 2 percent or less of the total interests;

``(7) Congress has authorized the acquisition of lands in trust for individual Indians, and many of those lands have also become fractionated by subsequent inheritance;

``(8) the acquisitions referred to in paragraph (7) continue to be made;

``(9) the fractional interests described in this section often provide little or no return to the beneficial owners of those interests and the administrative costs borne by the United States

for those interests are inordinately high;

“(10) in *Babbitt v. Youpee* (117 S.Ct. 727 (1997)), the United States Supreme Court found the application of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) to the facts presented in that case to be unconstitutional, forcing the Department of the Interior to address the status of thousands of undivided interests in trust and restricted lands;

“(11)(A) on February 19, 1999, the Secretary of the Interior issued a Secretarial Order which officially reopened the probate of all estates where an interest in land was ordered to escheat to an Indian tribe pursuant to section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206); and

“(B) the Secretarial Order also directed appropriate officials of the Bureau of Indian Affairs to distribute such interests to the rightful heirs and beneficiaries without regard to 25 U.S.C. 2206’;

“(12) in the absence of comprehensive remedial legislation, the number of the fractional interests will continue to grow exponentially;

“(13) the problem of the fractionation of Indian lands described in this section is the result of a policy of the Federal Government, cannot be solved by Indian tribes, and requires a solution under Federal law.[];

“(14) any devise or inheritance of an interest in trust or restricted Indian lands is a matter of Federal law; and

“(15) consistent with the Federal policy of tribal self-determination, the Federal Government should encourage the recognized tribal government that exercises jurisdiction over a reservation to establish a tribal probate code for that reservation.’’

Declaration of Policy

Pub. L. 106-462, title I, Sec. 102, Nov. 7, 2000, 114 Stat. 1992, provided that: ‘‘It is the policy of the United States--

“(1) to prevent the further fractionation of trust allotments made to Indians;

“(2) to consolidate fractional interests and ownership of those interests into usable parcels;

“(3) to consolidate fractional interests in a manner that enhances tribal sovereignty;

“(4) to promote tribal self-sufficiency and self-determination; and

“(5) to reverse the effects of the allotment policy on Indian tribes.’’

Authorization of Appropriations

Pub. L. 106-462, title I, Sec. 105, Nov. 7, 2000, 114 Stat. 2007, provided that: ‘‘There are authorized to be appropriated not to exceed \$8,000,000 for fiscal year 2001 and each subsequent fiscal year to carry out the provisions of this title [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 464, 2204, and 2207 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and section 2206 of this title] (and the amendments made by

this title) that are not otherwise funded under the authority provided for in any other provision of Federal law.''

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

Sec. 2202. Other applicable provisions

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

(Pub. L. 97-459, title II, Sec. 203, Jan. 12, 1983, 96 Stat. 2517.)

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

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

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: Provided, That--

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

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

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

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

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

(b) Conveyancing requirement; specific findings for nonexecution

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

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

homesites

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

(Pub. L. 97-459, title II, Sec. 204, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98-608, Sec. 1(1), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 102-238, Sec. 3, Dec. 17, 1991, 105 Stat. 1908.)

Amendments

1991--Subsec. (a)(1). Pub. L. 102-238, Sec. 3(1), substituted ``'(1) except as provided by subsection (c) of this section, the sale price'' for ``(1) the sale price''.

Subsec. (c). Pub. L. 102-238, Sec. 3(2), added subsec. (c).

1984--Subsec. (a). Pub. L. 98-608 amended subsec. (a) generally, substituting ``: Provided, That--'' for period at end and inserting five numbered pars., thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, the text of which had a portion of section 204 appearing in section 206 (classified to section 2205 of this title) as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill. Pub. L. 97-459 enacted subsec. (a) as ending with ``tribal landholdings.'', and included portion of section 204 containing proviso and five numbered pars. within text of section 206.

Subsec. (b). Pub. L. 98-608 included subsec. (b) within this section and substituted a period for the dash after ``tribal land consolidation plan'', thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, which, as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill, enacted subsec. (b) as part of section 206(b) of Pub. L. 97-459 and ended it with ``tribal land consolidation plan--''.

Section Referred to in Other Sections

This section is referred to in sections 2204, 2212 of this title.

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

(a) In general

Subject to subsection (b) of this section, any Indian tribe may purchase at no less than the fair market value part or all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract. Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met.

(b) Conditions applicable to purchase

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

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

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

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

(Pub. L. 97-459, title II, Sec. 205, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98-608, Sec. 1(2), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 106-462, title I, Sec. 103(2), Nov. 7, 2000, 114 Stat. 1993.)

Amendments

2001--Pub. L. 106-462, Sec. 103(2)(A)(iii), which directed substitution of subsec. (b) designation and heading and ``Subsection (a) of this section applies on the condition that--'' for ``: Provided, That--'', was executed by making the substitution for ``Provided, That--'' to reflect the probable intent of Congress and the amendment by Pub. L. 106-462, Sec. 103(2)(A)(ii). See below.

Pub. L. 106-462, Sec. 103(2)(A)(i), (ii), substituted subsec. (a) designation and heading and ``Subject to subsection (b) of this section, any Indian'' for ``Any Indian'' and ``. Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met.'' for the colon before ``Provided, That--''.

Subsec. (b)(2). Pub. L. 106-462, Sec. 103(2)(B)(ii), inserted ``and'' at end.

Pub. L. 106-462, Sec. 103(2)(B)(i), which directed substitution of ``if'' for ``If'', was executed by making the substitution for ``if,'' to reflect the probable intent of Congress.

Subsec. (b)(3). Pub. L. 106-462, Sec. 103(2)(C), added par. (3) and struck out former par. (3) which read as follows: ``all purchases and sales initiated under this section shall be subject to approval by the Secretary.''

1984--Pub. L. 98-608 amended section generally, substituting ``the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract'' for ``of over 50 per centum of the owners or with the consent of the owners of over 50 per centum of undivided interests in such tract'' before proviso.

Par. (1). Pub. L. 98-608 redesignated par. (2) as (1) and inserted ``for at least three years preceding the tribal initiative,'' before ``may purchase such tract''. Former par. (1), which provided that no such tract shall be acquired by any Indian or tribe over the objections of three or less owners owning 50 per centum or more of the total interest in such tract, was struck out.

Par. (2). Pub. L. 98-608 added par. (2). Former par. (2) redesignated (1).

Pars. (3), (4). Pub. L. 98-608 redesignated par. (4) as (3), and in par. (3), as so redesignated, substituted ``subject to approval'' for ``approved'' and struck out former par. (3), which provided that ``this section shall not apply to any tract of land owned by less than fifteen persons; and''.

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

(a) Tribal probate codes

(1) In general

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

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

(2) Possible inclusions

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

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

(3) Limitations

The Secretary shall not approve a tribal probate code if such code prevents an Indian person from inheriting an interest in an allotment that was originally allotted to his or her lineal ancestor.

(b) Secretarial approval

(1) In general

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

(2) Review and approval

(A) In general

Each Indian tribe that adopts a tribal probate code under subsection (a) of this section shall submit that code to the

Secretary for review. Not later than 180 days after a tribal probate code is submitted to the Secretary under this paragraph, the Secretary shall review and approve or disapprove that tribal probate code.

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

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

(C) Consistency of tribal probate code with chapter

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

(D) Explanation

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

(E) Amendments

(i) In general

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

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

If the Secretary fails to approve or disapprove an amendment submitted under clause (i), the amendment shall be deemed to have been approved by the Secretary, but only to the extent that the amendment is consistent with Federal law and promotes the policies set forth in section 102 of the Indian Land Consolidation Act \1\ of 2000.

\1\ So in original. Probably should be followed by ``Amendments''.

(3) Effective dates

A tribal probate code approved under paragraph (2) shall become

effective on the later of--

- (A) the date specified in section 2206(g)(5) of this title;
- or
- (B) 180 days after the date of approval.

(4) Limitations

(A) Tribal probate codes

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

(B) Amendments to tribal probate codes

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

(5) Repeals

The repeal of a tribal probate code shall--

- (A) not become effective earlier than the date that is 180 days after the Secretary receives notice of the repeal; and
- (B) apply only to the estate of a decedent who dies on or after the effective date of the repeal.

(c) Authority available to Indian tribes

(1) In general

If the owner of an interest in trust or restricted land devises an interest in such land to a non-Indian under section 2206(a)(6)(A) of this title, the Indian tribe that exercises jurisdiction over the parcel of land involved may acquire such interest by paying to the Secretary the fair market value of such interest, as determined by the Secretary on the date of the decedent's death. The Secretary shall transfer such payment to the devisee.

(2) Limitation

(A) In general

Paragraph (1) shall not apply to an interest in trust or restricted land if, while the decedent's estate is pending before the Secretary, the non-Indian devisee renounces the interest in favor of an Indian person.

(B) Reservation of life estate

A non-Indian devisee described in subparagraph (A) or a non-Indian devisee described in section 2206(a)(6)(B) of this title, may retain a life estate in the interest involved, including a life estate to the revenue produced from the interest. The amount of any payment required under paragraph (1) shall be reduced to reflect the value of any life estate reserved by a

non-Indian devisee under this subparagraph.

(3) Payments

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

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

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

(d) Use of proposed findings by tribal justice systems

(1) Tribal justice system defined

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

(2) Regulations

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

(Pub. L. 97-459, title II, Sec. 206, as added Pub. L. 106-462, title I, Sec. 103(3), Nov. 7, 2000, 114 Stat. 1993.)

References in Text

Section 102 of the Indian Land Consolidation Act Amendments of 2000, referred to in subsecs. (a)(2)(B), (b)(2)(B), (C), (E)(ii), is section 102 of Pub. L. 106-462, which is set out as a note under section 2201 of this title.

This chapter, referred to in subsec. (b)(2)(C), was in the original ``this Act'', which was translated as reading ``this title'', meaning title II of Pub. L. 97-459, to reflect the probable intent of Congress.

Prior Provisions

A prior section 2205, Pub. L. 97-459, title II, Sec. 206, Jan. 12, 1983, 96 Stat. 2518; Pub. L. 98-608, Sec. 1(3), Oct. 30, 1984, 98 Stat. 3172, related to descent and distribution of trust or restricted or controlled lands, tribal ordinance barring nonmembers of tribe or non-Indians from inheritance by devise or descent, and limitation on life estate, prior to repeal by Pub. L. 106-462, title I, Sec. 103(3), Nov. 7, 2000, 114 Stat. 1993.

Section Referred to in Other Sections

This section is referred to in sections 2206, 2207 of this title.

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

Sec. 2206. Descent and distribution

(a) Testamentary disposition

(1) In general

Interests in trust or restricted land may be devised only to--
(A) the decedent's Indian spouse or any other Indian person;
or
(B) the Indian tribe with jurisdiction over the land so
devised.

(2) Life estate

Any devise of an interest in trust or restricted land to a non-
Indian shall create a life estate with respect to such interest.

(3) Remainder

(A) In general

Except where the remainder from the life estate referred to
in paragraph (2) is devised to an Indian, such remainder shall
descend to the decedent's Indian spouse or Indian heirs of the
first or second degree pursuant to the applicable law of
intestate succession.

(B) Descent of interests

If a decedent described in subparagraph (A) has no Indian
heirs of the first or second degree, the remainder interest
described in such subparagraph shall descend to any of the
decedent's collateral heirs of the first or second degree,
pursuant to the applicable laws of intestate succession, if on
the date of the decedent's death, such heirs were a co-owner of
an interest in the parcel of trust or restricted land involved.

(C) Definition

For purposes of this section, the term ``collateral heirs of
the first or second degree'' means the brothers, sisters, aunts,
uncles, nieces, nephews, and first cousins, of a decedent.

(4) Descent to tribe

If the remainder interest described in paragraph (3)(A) does not descend to an Indian heir or heirs it shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to paragraph (5).

(5) Acquisition of interest by Indian co-owners

An Indian co-owner of a parcel of trust or restricted land may prevent the descent of an interest in Indian land to an Indian tribe under paragraph (4) by paying into the decedent's estate the fair market value of the interest in such land. If more than 1 Indian co-owner offers to pay for such an interest, the highest bidder shall obtain the interest. If payment is not received before the close of the probate of the decedent's estate, the interest shall descend to the tribe that exercises jurisdiction over the parcel.

(6) Special rule

(A) In general

Notwithstanding paragraph (2), an owner of trust or restricted land who does not have an Indian spouse, Indian lineal descendant, an Indian heir of the first or second degree, or an Indian collateral heir of the first or second degree, may devise his or her interests in such land to any of the decedent's heirs of the first or second degree or collateral heirs of the first or second degree.

(B) Acquisition of interest by tribe

An Indian tribe that exercises jurisdiction over an interest in trust or restricted land described in subparagraph (A) may acquire any interest devised to a non-Indian as provided for in section 2205(c) of this title.

(b) Intestate succession

(1) In general

An interest in trust or restricted land shall pass by intestate succession only to a decedent's spouse or heirs of the first or second degree, pursuant to the applicable law of intestate succession.

(2) Life estate

Notwithstanding paragraph (1), with respect to land described in such paragraph, a non-Indian spouse or non-Indian heirs of the first or second degree shall only receive a life estate in such land.

(3) Descent of interests

If a decedent described in paragraph (1) has no Indian heirs of the first or second degree, the remainder interest from the life estate referred to in paragraph (2) shall descend to any of the decedent's collateral Indian heirs of the first or second degree,

pursuant to the applicable laws of intestate succession, if on the date of the decedent's death, such heirs were a co-owner of an interest in the parcel of trust or restricted land involved.

(4) Descent to tribe

If the remainder interest described in paragraph (3) does not descend to an Indian heir or heirs it shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to paragraph (5).

(5) Acquisition of interest by Indian co-owners

An Indian co-owner of a parcel of trust or restricted land may prevent the descent of an interest in such land for which there is no heir of the first or second degree by paying into the decedent's estate the fair market value of the interest in such land. If more than 1 Indian co-owner makes an offer to pay for such an interest, the highest bidder shall obtain the interest. If no such offer is made, the interest shall descend to the Indian tribe that exercises jurisdiction over the parcel of land involved.

(c) Joint tenancy; right of survivorship

(1) Testate

If a testator devises interests in the same parcel of trust or restricted lands to more than 1 person, in the absence of express language in the devise to the contrary, the devise shall be presumed to create joint tenancy with the right of survivorship in the land involved.

(2) Intestate

(A) In general

Any interest in trust or restricted land that--

(i) passes by intestate succession to more than 1 person, including a remainder interest under subsection (a) or (b) of this section; and

(ii) that constitutes 5 percent or more of the undivided interest in a parcel of trust or restricted land;

shall be held as tenancy in common.

(B) Limited interest

Any interest in trust or restricted land that--

(i) passes by intestate succession to more than 1 person, including a remainder interest under subsection (a) or (b) of this section; and

(ii) that constitutes less than 5 percent of the undivided interest in a parcel of trust or restricted land;

shall be held by such heirs with the right of survivorship.

(3) Effective date

(A) In general

This subsection (other than subparagraph (B)) shall become effective on the later of--

- (i) the date referred to in subsection (g)(5) of this section; or
- (ii) the date that is six months after the date on which the Secretary makes the certification required under subparagraph (B).

(B) Certification

Upon a determination by the Secretary that the Department of the Interior has the capacity, including policies and procedures, to track and manage interests in trust or restricted land held with the right of survivorship, the Secretary shall certify such determination and publish such certification in the Federal Register.

(d) Descent of off-reservation lands

(1) Indian reservation defined

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

- (A)(i) Oklahoma; and
- (ii) the boundaries of an Indian tribe's former reservation (as defined and determined by the Secretary);
- (B) the boundaries of any Indian tribe's current or former reservation; or
- (C) any area where the Secretary is required to provide special assistance or consideration of a tribe's acquisition of land or interests in land.

(2) Descent

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

- (A) by testate or intestate succession in trust to an Indian; or
- (B) in fee status to any other devisees or heirs.

(e) Approval of agreements

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

(f) Estate planning assistance

(1) In general

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

(2) Requirements

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

(A) inform, advise, and assist Indian landowners with respect to estate planning in order to facilitate the transfer of trust or restricted lands to a devisee or devisees selected by the landowners; and

(B) assist Indian landowners in accessing information pursuant to section 2216(e) of this title.

(3) Contracts

In carrying out this section, the Secretary may enter into contracts with entities that have expertise in Indian estate planning and tribal probate codes.

(g) Notification to Indian tribes and owners of trust or restricted lands

(1) In general

Not later than 180 days after November 7, 2000, the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by the Indian Land Consolidation Act Amendments of 2000.

(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 chapter, with emphasis on the effect of the provisions of this section, on the testate disposition and intestate descent of their interests in trust or restricted land; and

(B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice.

(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 certify that the requirements of this subsection have been met and shall publish notice of such certification in the Federal Register.

(5) Effective date

The provisions of this section shall not apply to the estate of an individual who dies prior to the day that is 365 days after the Secretary makes the certification required under paragraph (4).

(Pub. L. 97-459, title II, Sec. 207, as added Pub. L. 106-462, title I, Sec. 103(4), Nov. 7, 2000, 114 Stat. 1995.)

References in Text

The Indian Land Consolidation Act Amendments of 2000, referred to in subsec. (g)(1), is Pub. L. 106-462, Nov. 7, 2000, 114 Stat. 1991. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

This chapter, referred to in subsec. (g)(2)(A), was in the original ``this Act'', which was translated as reading ``this title'', meaning title II of Pub. L. 97-459, to reflect the probable intent of Congress.

Prior Provisions

A prior section 2206, Pub. L. 97-459, title II, Sec. 207, Jan. 12, 1983, 96 Stat. 2519; Pub. L. 98-608, Sec. 1(4), Oct. 30, 1984, 98 Stat. 3172; Pub. L. 101-644, title III, Sec. 301(a), Nov. 29, 1990, 104 Stat. 4666, related to escheat to tribe of trust or restricted or controlled lands, fractional interests, and Indian tribal codes, prior to repeal by Pub. L. 106-462, title I, Sec. 103(4), Nov. 7, 2000, 114 Stat. 1995.

Judicial Review

Pub. L. 106-462, title I, Sec. 104, Nov. 7, 2000, 114 Stat. 2006, provided that: ``Notwithstanding section 207(g)(5) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(5) [2206(g)(5)]), after the Secretary of the Interior provides the certification required under section 207(g)(4) of such Act, the owner of an interest in trust or restricted land may bring an administrative action to challenge the application of such section 207 to the devise or descent of his or her interest or interests in trust or restricted lands, and may seek judicial review of the final decision of the Secretary of the Interior with respect to such challenge.''

Section Referred to in Other Sections

This section is referred to in sections 2205, 2212, 2218 of this title.

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

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

(Pub. L. 97-459, title II, Sec. 208, Jan. 12, 1983, 96 Stat. 2519; Pub. L. 106-462, title I, Sec. 103(5), Nov. 7, 2000, 114 Stat. 1999.)

Amendments

2000--Pub. L. 106-462 substituted ``subsections (a) and (b) of section 2205'' for ``section 2205''.

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

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

(Pub. L. 97-459, title II, Sec. 209, Jan. 12, 1983, 96 Stat. 2519.)

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

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

(Pub. L. 97-459, title II, Sec. 210, Jan. 12, 1983, 96 Stat. 2519.)

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

Sec. 2210. Tax exemption

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

(Pub. L. 97-459, title II, Sec. 211, Jan. 12, 1983, 96 Stat. 2519.)

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TITLE 25--INDIANS

CHAPTER 24--INDIAN LAND CONSOLIDATION

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

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

(Pub. L. 97-459, title II, Sec. 212, as added Pub. L. 98-608, Sec. 1(5),
Oct. 30, 1984, 98 Stat. 3173.)

References in Text

This chapter, referred to in text, was in the original ``this Act'',
which was translated as reading ``this title'', meaning title II of Pub.
L. 97-459, to reflect the probable intent of Congress.