

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-157 effective as if included in Pub. L. 108-374, see section 9 of Pub. L. 109-157, set out as a note under section 464 of this title.

## SEVERABILITY

Invalidity of any provision of Pub. L. 108-374 not to affect validity of remaining provisions, except that each of subcls. (II), (III), or (IV) of subsection (c)(2)(I)(i) of this section deemed to be inseverable from the other two, such that invalidity of any one subcl. renders the other two without effect, see section 9 of Pub. L. 108-374, as amended, set out as a note under section 2201 of this title.

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

#### (a) Tribal probate codes

##### (1) In general

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

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

##### (2) Possible inclusions

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

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

##### (3) Tribal probate codes

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

- (A) an Indian lineal descendant of the original allottee; or
- (B) an Indian who is not a member of the Indian tribe with jurisdiction over such an interest;

unless the code provides for—

- (i) the renouncing of interests to eligible devisees in accordance with the code;
- (ii) the opportunity for a devisee who is the spouse or lineal descendant of a testator to reserve a life estate without regard to waste; and
- (iii) payment of fair market value in the manner prescribed under subsection (c)(2) of this section.

#### (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<sup>1</sup> of 2000.

##### (3) Effective dates

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

- (A) the date that is 1 year after the date on which the Secretary makes the certification required under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374); or

<sup>1</sup>So in original. Probably should be followed by "Amendments".

(B) 180 days after the date of approval.

**(4) Limitations**

**(A) Tribal probate codes**

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

**(B) Amendments to tribal probate codes**

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

**(5) Repeals**

The repeal of a tribal probate code shall—

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

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

**(c) Authority available to Indian tribes**

**(1) Authority**

**(A) In general**

If the owner of an interest in trust or restricted land devises an interest in such land to a non-Indian under section 2206(b)(2)(A)(ii) 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.

**(B) Transfer**

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

**(2) Limitation**

**(A) Inapplicability to certain interests**

**(i) In general**

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

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

(II)(aa) the interest is part of a family farm that is devised to a member of the family of the decedent; and

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

**(ii) Recording of interest**

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

recorded as part of the deed relating to the interest involved.

**(iii) Mortgage and foreclosure**

Nothing in clause (i)(II) limits—

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

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

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

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

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

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

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

(IV) the spouse of a decedent or landowner.

**(B) Reservation of life estate**

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

**(3) Payments**

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

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

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

**(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, §206, as added Pub. L. 106-462, title I, §103(3), Nov. 7, 2000, 114 Stat. 1993; amended Pub. L. 108-374, §6(a)(3), Oct. 27, 2004, 118 Stat. 1799; Pub. L. 109-157, §3, Dec. 30, 2005, 119 Stat. 2950.)

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, § 206, Jan. 12, 1983, 96 Stat. 2518; Pub. L. 98-608, § 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, § 103(3), Nov. 7, 2000, 114 Stat. 1993.

#### AMENDMENTS

2005—Subsec. (b)(3)(A). Pub. L. 109-157, § 3(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "the date specified in section 2206(g)(5) of this title; or".

Subsec. (c)(1)(A). Pub. L. 109-157, § 3(2)(A), substituted "section 2206(b)(2)(A)(ii)" for "section 2206(a)(6)(A)".

Subsec. (c)(2)(A)(i)(II)(bb). Pub. L. 109-157, § 3(2)(B), inserted "in writing" after "agrees".

2004—Subsec. (a)(3). Pub. L. 108-374, § 6(a)(3)(A), added par. (3) and struck out heading and text of former par. (3). Text read as follows: "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."

Subsec. (c)(1). Pub. L. 108-374, § 6(a)(3)(B)(i)(I), (III), substituted "Authority" for "In general" in heading, designated existing provisions as subpar. (A), inserted heading, and struck out at end "The Secretary shall transfer such payment to the devisee.", and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 108-374, § 6(a)(3)(B)(i)(II), which directed the substitution of "section 207(b)(2)(A)(ii) of this title" for "section 207(a)(6)(A) of this title" in the original, could not be executed, because "of this title" did not appear in the original.

Subsec. (c)(2)(A). Pub. L. 108-374, § 6(a)(3)(B)(ii)(I), substituted "Inapplicability to certain interests" for "In general" in heading, designated existing provisions as cl. (i) and inserted heading, inserted subcl. (I) designation and added subcl. (II), and added cls. (ii) to (iv).

Subsec. (c)(2)(B). Pub. L. 108-374, § 6(a)(3)(B)(ii)(II), which directed the substitution of "paragraph (1)" for "subparagraph (A) or a non-Indian devisee described in section 2206(a)(6)(B) of this title" was executed by making the substitution for language which did not contain the words "of this title" in the original, to reflect the probable intent of Congress.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-157 effective as if included in Pub. L. 108-374, see section 9 of Pub. L. 109-157, set out as a note under section 464 of this title.

### § 2206. Descent and distribution

#### (a) Nontestamentary disposition

##### (1) Rules of descent

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

(A) shall descend according to an applicable tribal probate code approved in accordance with section 2205 of this title; 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)<sup>1</sup> 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

<sup>1</sup> So in original. Another par. (2) follows par. (5).