

### § 372-2. Indian probate judges

Notwithstanding any other provision of law, for fiscal year 2006 and each fiscal year thereafter, for the purpose of adjudicating Indian probate cases in the Department of the Interior, the hearing requirements of chapter 10 of this title are deemed satisfied by a proceeding conducted by an Indian probate judge, appointed by the Secretary without regard to the provisions of title 5 governing the appointments in the competitive service, for such period of time as the Secretary determines necessary: *Provided*, That the basic pay of an Indian probate judge so appointed may be fixed by the Secretary without regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5, governing the classification and pay of General Schedule employees, except that no such Indian probate judge may be paid at a level which exceeds the maximum rate payable for the highest grade of the General Schedule, including locality pay.

(Pub. L. 109-54, title I, §108, Aug. 2, 2005, 119 Stat. 522; Pub. L. 112-74, div. E, title I, §111, Dec. 23, 2011, 125 Stat. 1009.)

#### AMENDMENTS

2011—Pub. L. 112-74 substituted “for fiscal year 2006 and each fiscal year thereafter, for the purpose of adjudicating” for “in fiscal years 2006 through 2010, for the purpose of reducing the backlog of”.

### § 372a. Heirs by adoption

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption—

- (1) Unless such adoption shall have been—
  - (a) by a judgment or decree of a State court;
  - (b) by a judgment or decree of an Indian court;
  - (c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or
  - (d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or

(2) Unless such adoption shall have been recognized by the Department of the Interior prior to the effective date of this section or in the distribution of the estate of an Indian who has died prior to that date: *Provided*, That an adoption by Indian custom made prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation.

This section shall not apply with respect to the distribution of the estates of Indians of the

Five Civilized Tribes or the Osage Tribe in the State of Oklahoma, or with respect to the distribution of estates of Indians who have died prior to the effective date of this section.

(July 8, 1940, ch. 555, §§1, 2, 54 Stat. 746.)

#### REFERENCES IN TEXT

For effective date of this section, referred to in text, see Effective Date note set out below.

#### CODIFICATION

First and second paragraphs of this section are from sections 1 and 2, respectively, of act July 8, 1940.

#### EFFECTIVE DATE

Act July 8, 1940, ch. 555, §3, 54 Stat. 746, provided that: “This Act shall become effective six months after the date of its approval [July 8, 1940].”

#### TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

### § 373. Disposal by will of allotments held under trust

Any persons of the age of eighteen years or older having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with the Indian Land Consolidation Act [25 U.S.C. 2201 et seq.] or a tribal probate code approved under such Act and regulations to be prescribed by the Secretary of the Interior: *Provided, however*, That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further*, That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located: *Provided further*, That the approval of the will and the death of the testator shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit: *Provided also*, That this

section and section 372 of this title shall not apply to the Five Civilized Tribes or the Osage Indians.

(June 25, 1910, ch. 431, §2, 36 Stat. 856; Feb. 14, 1913, ch. 55, 37 Stat. 678; Pub. L. 100-153, §2, Nov. 5, 1987, 101 Stat. 886; Pub. L. 106-462, title I, §106(b)(2), Nov. 7, 2000, 114 Stat. 2007.)

#### REFERENCES IN TEXT

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97-459, Jan. 12, 1983, 96 Stat. 2517, as amended, which is classified generally to chapter 24 (§2201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

#### AMENDMENTS

2000—Pub. L. 106-462 substituted “with the Indian Land Consolidation Act or a tribal probate code approved under such Act and regulations to be prescribed by the Secretary of the Interior:” for “with regulations to be prescribed by the Secretary of the Interior:”.

1987—Pub. L. 100-153 which directed amendment of this section by substituting “the age of eighteen years or older” for “the age of twenty-one years, or over” was executed by substituting the new language for “the age of twenty-one years” as the probable intent of Congress because the words “, or over” did not appear.

1913—Act Feb. 14, 1913, amended section generally.

### § 373a. Disposition of trust or restricted estate of intestate without heirs; successor tribe; sale of land

Upon final determination by the Secretary of the Interior that the Indian holder of a trust or restricted allotment of lands or an interest therein has died intestate without heirs, the lands or interest so owned, together with all accumulated rents, issues, and profits therefrom held in trust for the decedent, shall escheat to the tribe owning the land at the time of allotment subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate and subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder.

If the tribe which owned the land at the time of allotment has been reorganized or reconstituted by reason of amalgamation with another tribe or group of Indians or of subdivision within the tribe or otherwise, the land shall escheat to the tribe or group which has succeeded to the jurisdiction of the original tribe over the area in question. If neither the tribe which owned the land at the time of allotment nor a successor tribe or group exists, the land or interest therein shall be held in trust for such Indians as the Secretary may designate within the State or States wherein the land is situated or, if the Secretary determines that the land cannot appropriately be used by or for such Indians, it shall be sold, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the proceeds of such sale shall be held in trust for such Indians as the Secretary may designate, within the State or States wherein the land is situated.

(Nov. 24, 1942, ch. 640, §1, 56 Stat. 1021.)

### § 373b. Restricted estate or homestead on the public domain

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the land shall become part of the public domain subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate: *Provided*, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed \$50,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder<sup>1</sup> *Provided further*, That interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

(Nov. 24, 1942, ch. 640, §2, 56 Stat. 1022; Pub. L. 98-25, §§2, 3, May 2, 1983, 97 Stat. 185.)

#### AMENDMENTS

1983—Pub. L. 98-25, §2, inserted proviso that interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

Pub. L. 98-25, §3, substituted “\$50,000” for “\$2,000”.

#### NON-INDIAN LANDS IN HARNEY COUNTY, OREGON

Pub. L. 98-25, §2, May 2, 1983, 97 Stat. 185, provided in part that no non-Indian lands in Harney County, Oregon, shall be considered Indian country as defined in section 1151 of Title 18, Crimes and Criminal Procedure.

### § 373c. Sections 373a and 373b as inapplicable to certain Indians

The provisions of sections 373a and 373b of this title shall not apply to the Indians of the Five Civilized Tribes or the Osage Reservation, in Oklahoma.

(Nov. 24, 1942, ch. 640, §3, 56 Stat. 1022.)

### § 374. Attendance of witnesses

The authority delegated to judges of the United States courts by section 24 of title 35 is conferred upon the Secretary of the Interior to require the attendance of witnesses at hearings,

<sup>1</sup> So in original. Probably should be followed by a colon.