

### § 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