

Statutory Notes and Related Subsidiaries

REPEAL OF SECTION AS TO OSAGE INDIANS

Act June 28, 1906, ch. 3572, §1, 34 Stat. 540, provided in part that: "the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-eighth Statutes at Large, page three hundred and five [this section], granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided."

§ 346. Proceedings in actions for allotments

The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the United States attorney in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the United States attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided*, That should the United States attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

(Feb. 6, 1901, ch. 217, §2, 31 Stat. 760; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

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CHANGE OF NAME

"United States attorney" substituted in text for "district attorney of the United States" on authority of act June 25, 1948. See section 541 of Title 28, Judiciary and Judicial Procedure.

§ 347. Limitations of actions for lands patented in severalty under treaties

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians.

(May 31, 1902, ch. 946, §1, 32 Stat. 284.)

§ 348. Patents to be held in trust; descent and partition

Upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108-374; 118 Stat. 1810), the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply to that land for which patents have been executed and delivered: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and

void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at 3 per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the Bureau of Land Management, and afterwards delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization was occupying on February 8, 1887, any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Provided further, That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the Siletz Indian Reservation, in the State of Oregon, fully capable of managing their own business affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise, become the owner of more than eighty acres of land upon said reservation, he shall cause patents to be issued to such Indian or Indians for all of such lands over and above the eighty acres thereof. Said patent or patents shall be issued for the least valuable portions of said lands, and the same shall be discharged of any trust and free of all charge, incumbrance, or restriction whatsoever; and the Secretary of the Interior is authorized and directed to ascertain, as soon as shall be practicable, whether any of said Indians of the Siletz Reservation should receive patents conveying in fee lands to them under the provisions of this Act.

(Feb. 8, 1887, ch. 119, § 5, 24 Stat. 389; Mar. 3, 1901, ch. 832, § 9, 31 Stat. 1085; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; Pub. L. 106-462, title I, § 106(a)(2), Nov. 7, 2000, 114 Stat. 2007; Pub. L. 108-374, § 6(c), Oct. 27, 2004, 118 Stat. 1805; Pub. L. 109-221, title V, § 501(b)(2), May 12, 2006, 120 Stat. 344.)

Editorial Notes

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

Section 8(b) of the American Indian Probate Reform Act of 2004, referred to in text, is section 8(b) of Pub. L.

108-374, which is set out as a note under section 2201 of this title.

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97-459, Jan. 12, 1983, 96 Stat. 2517, 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

2006—Pub. L. 109-221 inserted in second proviso of first par. “, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108-374; 118 Stat. 1810),” after “That”.

2004—Pub. L. 108-374 inserted second proviso of first par. and struck out former second proviso which read as follows: “*Provided*, That the law of descent in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as provided by the Indian Land Consolidation Act or a tribal probate code approved under such Act and except as herein otherwise provided.”

2000—Pub. L. 106-462, in second proviso of first par., struck out “and partition” after “law of descent” and substituted “except as provided by the Indian Land Consolidation Act or a tribal probate code approved under such Act and except as herein otherwise provided.” for “except as herein otherwise provided.”

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EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-221, title V, § 501(c), May 12, 2006, 120 Stat. 344, provided that: “The amendments made by subsection (b) [amending this section, section 464 of this title, and provisions set out as a note under section 2201 of this title] shall take effect as if included in the enactment of the American Indian Probate Reform Act of 2004 (Public Law 108-374; 118 Stat. 1773).”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-374 applicable on and after the date that is 1 year after June 20, 2005, see section 8(b) of Pub. L. 108-374, set out as a Notice; Effective Date of 2004 Amendment note under section 2201 of this title.

Executive Documents

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.

“Bureau of Land Management” substituted in text for “General Land Office” on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Interior of authority vested in President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

EXTENSION OF TRUST PERIODS

The periods of trust applying to Indian lands, whether of a tribal or individual status, which would expire during the years 1943 to 1950, were extended for a further period of twenty-five years, respectively, by Ex. Ord. No. 9272, Nov. 17, 1942, 7 F.R. 9475; Ex. Ord. No. 9398, Nov. 25, 1943, 8 F.R. 16269; Ex. Ord. No. 9500, Nov. 14, 1944, 9 F.R. 13699; Ex. Ord. No. 9659, Nov. 21, 1945, 10 F.R. 14353; Ex. Ord. No. 9811, Dec. 17, 1946, 11 F.R. 14483; Ex. Ord. No. 9920, Jan. 8, 1948, 13 F.R. 143; Ex. Ord. No. 10027,

Jan. 7, 1949, 14 F.R. 107; Ex. Ord. No 10091, Dec. 11, 1949, 14 F.R. 7513.

EX. ORD. NO. 10191. EXTENSION OF TRUST PERIODS ON
INDIAN LANDS EXPIRING DURING 1951

Ex. Ord. No. 10191, Dec. 13, 1950, 15 F.R. 8889, provided: By virtue of and pursuant to the authority vested in me by section 5 of the act of February 8, 1887, 24 Stat. 388, 389 [this section], by the act of June 21, 1906, 34 Stat. 325, 326, and by the act of March 2, 1917, 39 Stat. 969, 976, and other applicable provisions of law, it is hereby ordered that the periods of trust or other restrictions against alienation contained in any patent applying to Indian lands, whether of a tribal or individual status, which, unless extended, will expire during the calendar year 1951, be, and they are hereby, extended for a further period of twenty-five years from the date on which any such trust would otherwise expire.

This order is not intended to apply to any case in which the Congress has specifically reserved to itself authority to extend the period of trust on tribal or individual Indian lands.

HARRY S. TRUMAN.

§ 348a. Extension of trust period for Indians of Klamath River Reservation

The period of trust on lands allotted to Indians of the Klamath River Reservation, California, which expired July 31, 1919, and the legal title to which is still in the United States, is reimposed and extended for a period of twenty-five years from July 31, 1919: *Provided*, That further extension of the period of trust may be made by the President, in his discretion, as provided by section 348 and section 391 of this title.

(Dec. 24, 1942, ch. 814, 56 Stat. 1081.)

§ 349. Patents in fee to allottees

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: *Provided*, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of this Act shall not extend to any Indians in the former Indian Territory.

(Feb. 8, 1887, ch. 119, § 6, 24 Stat. 390; May 8, 1906, ch. 2348, 34 Stat. 182.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as

the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

CODIFICATION

Provisions relating to the grant of citizenship to certain Indians born within the territorial limits of the United States were omitted in view of act June 2, 1924, ch. 233, 43 Stat. 253, which granted citizenship to all non-citizen Indians born within the territorial limits of the United States. See section 1401 of Title 8, Aliens and Nationality.

§ 350. Surrender of patent, and selection of other land

The Secretary of the Interior is authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under the act of February 8, 1887, to permit any Indian to whom a patent has been issued for land on the reservation to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: *Provided*, That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of the act of February 8, 1887.

(Oct. 19, 1888, ch. 1214, § 2, 25 Stat. 612.)

Editorial Notes

REFERENCES IN TEXT

Act of February 8, 1887, referred to in text, was in the original "the statute aforesaid" and "the act of February eighth, eighteen hundred and eighty-seven", respectively. The act appears in 24 Stat. 388, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 351. Patents with restrictions for lots in villages in Washington

The Secretary of the Interior is authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the State of Washington to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to June 25, 1910, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and shall be disposed of as provided for in section 372 of this title.

(June 25, 1910, ch. 431, § 10, 36 Stat. 858.)

§ 352. Cancellation of trust patents within power or reservoir sites

The Secretary of the Interior, after notice and hearing, is authorized to cancel trust patents issued to Indian allottees for allotments within