



With Montana AAA Legal Services

Present

Indian Wills

Handouts

May 26th, 2015
Missoula, MT

Indian Wills CLE & Clinic

May 26 – 27, 2015

St. Paul Lutheran Church

202 Brooks

Missoula, Montana 59801

**Indian Wills CLE
Tuesday-May 26, 2015
Sponsored by State Bar of Montana**

Agenda

- | | |
|-------------------------|--|
| 9:00 – Noon | Indian Wills: Nuts & Bolts of Will Drafting
Joe Hardgrave |
| Noon – 1:00 p.m. | Lunch Presentation – AIPRA updates
Probate Judge – Judge Albert Jones |
| 1:00 – 2:00 p.m. | Indian Estate Planning and Procedure
Deb DuMontier |
| 2:00 – 2:15 p.m. | Break |
| 2:15 – 3:15 p.m. | Tribal Wills Project & Lessons Learned from Subject
Matter Experts (SMEs)
Roberta Kay Decker and Frances Skare |
| 3:15 – 4:15 p.m. | Ethics: Rule 6.1 Professional Responsibility
Janice Doggett |
| 4:15 pm | Closing |

Indian Wills Clinic
Wednesday-May 27, 2015
Sponsored by Montana AAA Legal Services

St. Paul Lutheran Church
202 Brooks
Missoula, Montana 59801

Agenda

- 8:00 a.m.** Legal Volunteers & support staff arrive at the clinic. Workspace will be assigned to legal volunteers
Orientation meeting – Review Guidelines
- 9:00 – Noon** Clinic appointments
- 12:00 – 1:00 p.m.** Lunch for legal volunteers and support staff
- 1:00 – 5:00 p.m.** Clinic appointments
-

2015 Indian Wills Clinics Schedule

May	Missoula	May 27, 2015 Indian Wills Clinic St. Paul's Lutheran Church
August	Pablo	August 26, 2015 Legal Document Clinic August 27, 2015 Indian Wills Clinic CSKT College – Joe McDonald Health & Fitness Center – Camas Room
September	Hardin	September 23, 2015 Legal Document Clinic September 24, 2015 Indian Wills Clinic Big Horn County Council on Aging
October	Harlem	October 21, 2015 Legal Document Clinic October 22, 2015 Indian Wills Clinic Harlem Senior Center

Janice Frankino Doggett

Janice received her undergraduate degree from Carroll College in 1979 and her law degree from the University of Montana School of Law in 1982. In her first position out of law school Janice served as a law clerk for former Montana Supreme Court Justice John C. Sheehy. Her legal experience includes serving as the Assistant General Counsel for the US Small Business Administration and hearing officer and attorney for the Montana Human Rights Commission. For most of the 1990s Janice worked as Chief Counsel for the Montana School Boards Association and the Montana Rural Education Association and served on the National Council of School Attorneys. In those roles she represented most of the school districts in Montana and wrote articles that were published statewide and nationally. Janice has also served as Chief Counsel for both democrat and republican statewide elected officials at the Office of Public Instruction and the Montana Secretary of State's Office. She was recently the Equal Justice Coordinator and Deputy Counsel for Admissions for the State Bar of Montana. She currently Chairs an Advisory Committee for a federal grant to improve legal services to low income elders in Montana.

Doggett was the first female and first appointed member elected as president of the Montana High School Association Board of Control; served on the Montana Supreme Court Gender Fairness Task Force; received the Haswell Award from the State Bar and was past president of the Women's Law Section. During her employment with the Secretary of State's Office Doggett was instrumental in designing the state's Elector Identity Verification Process that was awarded the National Council of State Government's Innovations Award in 2005. In 2007 she was selected as a National Toll Fellow. She is married to Stuart, they have two grown children and four grandchildren.

Debra L. DuMontier, JD.,

University of Montana 1992; University of Montana School of Law, 1995; Master in Public Administration (MPA) 2011. Deb has extensive legal experience and knowledge in Federal Indian law, regulations, and policy. Currently Deb serves as the Acting Principal Deputy Special Trustee for the Office of Special Trustee for American Indians (OST), Department of the Interior, responsible for management of Indian financial trust resources, a \$4.9 billion fund, held in 3,300 trust accounts for more than 250 Indian Tribes and over 397,000 open Individual Indian Money Accounts. She was on the legislative review workgroups for the Indian Land Consolidation Act Amendments of 2000 and the American Indian Probate Reform Act of 2004 and has taught the Indian Estate Planning and Probate Procedures class during the American Indian Summer Law Program at the University of Montana School of Law.

Betsy Brandborg

Betsy became the State Bar of Montana's first bar counsel in 1995. She came to this position by way of a two and a half year stint as a U.S. Senate staff assistant in Washington, D.C., a clerkship with the Montana Supreme Court and eight years' employment as an assistant attorney general in Montana handling both criminal and civil litigation. She is a graduate of the University of Montana Law School and holds a B.A. from the American University in Washington, D.C.

Joe Hardgrave

Joe Hardgrave has represented clients in tribal courts since 2008. Mr. Hardgrave graduated from law school in South Florida, came to MLSA in 2008 as an AmeriCorps Legal Fellow working on the Indian Wills Project, then worked for a year at California Indian Legal Services. Since his return to MLSA, Mr. Hardgrave has served as a public defender for the Northern Cheyenne and Crow, and now provides public defense services to Fort Belknap. In addition to defending clients charged with major crimes, he also handles all types of civil cases in tribal courts, including now at Fort Belknap and Rocky Boy.

Frances Skare

Frances currently holds the position of Probate Specialist, Supervisor, in the Tribal Lands Department at the CSKT Tribal Offices, in Pablo, MT. She has been in this position since November of 1990; the Land Services functions of the Flathead Agency were contracted by the Confederated Salish and Kootenai Tribes (CSKT) in the spring of 1990. She was born on the Flathead Indian Reservation, MT, and is an enrolled member of the CSKT. She is a graduate of Ronan Senior High School and also attended Flathead Valley Community College, Kalispell, MT, majoring in Business and Physical Education. Frances received her Associate of Arts degree in Computer Science from Salish and Kootenai College, Pablo, MT, in 1988. She has lived and worked on the Flathead Reservation for most of her life. She has worked for the Bureau of Indian Affairs (Flathead Agency) in the Administration, Land Services, Rights Protection, and Wildlife Departments; and, has worked for CSKT in the Tribal Summer Recreation Program, Natural Resources Water Rights Department, and Tribal Lands Department. Frances has also worked as a Tribal and Federal contractor. Her service to the Flathead Agency and CSKT totals 36 years. She has been trained in Will writing by the Bureau of Indian Affairs; scribing Wills for the last 2 years. And is a Notary for the State of Montana for the last 24 years.

Roberta K. Matt Decker

Roberta currently holds the position of Land Specialist, in the Tribal Lands Department with the Confederated Salish and Kootenai Tribes. She has been in this position since November of 1990; the Land Services function of the Bureau of Indian Affairs, Flathead Agency, was contracted by the Confederated Salish and Kootenai Tribes in 1990. Previously she was employed with the Bureau of Indian Affairs from 1980 to 1990, working in the Realty Department as Realty Clerk and Realty Specialist. She has been trained in Will Writing by the Bureau of Indian Affairs, scribing Wills for the last 24 years. Roberta is also a Notary Public for the State of Montana. She is graduate of Arlee High School and has also attended Missoula Business College and Salish Kootenai College. Roberta is a proud member of The Confederated Salish and Kootenai Tribes, and has lived and worked on the Flathead Reservation most of her life.

Judge Albert C. Jones

Judge Jones is member of the Western Shoshone Nation, is an Indian Probate Judge for the Office of Hearings and Appeals, Billings, Montana, having previously served as an Attorney Decision Maker with the Bureau of Indian Affairs. He received his J.D. from the University of South Dakota in 1983 and thereafter practiced exclusively Indian and tribal law. Previously, Mr. Jones served in various capacities, including staff and managing attorney for Dakota Plains Legal Services. He also served as Chief Judge for the Three Affiliated Tribes in North Dakota and as general counsel to the Flandreau Santee Sioux Tribe in South Dakota and the Shoshone-Bannock Tribe in Idaho. He further served as Senior Corporate Attorney with Harrah's Entertainment, Memphis, Tennessee, with emphasis on Indian Gaming development.



With Montana AAA Legal Services

Present

Indian Wills

Handouts

Joe Hardgrave

May 26th, 2015

Missoula, MT

INDIAN WILLS PROJECT



MONTANA LEGAL SERVICES ASSOCIATION

IN PARTNERSHIP WITH EQUAL JUSTICE WORKS
AMERICORPS LEGAL FELLOWSHIPS



The Context for Drafting Indian Wills

Introduction

Montana Legal Services created the Indian Wills Project in 2006 to address a significant unmet need for estate planning services in Indian Country. The need stems in large part from the limited number of private attorneys practicing on or near Indian Reservations, and the fact that many Native Americans lack sufficient financial resources to retain a private attorney. The perceived complexity of dealing with Indian trust land is a contributing factor as well. Attorneys who are unfamiliar with federal and tribal laws governing the transfer, descent and distribution of Indian lands are unlikely to devote a significant portion of their practice to estate planning for Native Americans. There is no doubt that such work requires a basic understanding of the history of Indian policy and the circumstances leading up to the enactment of the American Indian Probate Reform Act of 2004.

The purpose of the following materials is to provide pro bono attorneys with everything necessary to draft an Indian will, including background information, step-by-step instructions, and a will template. The materials are written for attorneys who may have little or no experience in the field of Indian law. Mindful of your limited time, we have summarized a complex and detailed body of law to the greatest extent possible. Please see Section IX of the binder for suggested further reading.

Montana Legal Services greatly appreciates your participation in the Indian Wills Project, and we welcome any suggestions for improvement of these materials.

What is Trust Land?

The United States holds legal title to over 10 million acres of land for the benefit of individual Indians. Most, but not all, of these lands are located within Indian reservation boundaries. They are often leased out for grazing, oil and gas development, or other income-generating activities. The Department of Interior collects some \$300 million in revenue a year on the lands, and distributes it to hundreds of thousands of individual Indian beneficiaries. To understand how the United States came to assume these substantial trust responsibilities, a brief history of Indian policy is in order.

Allotment and Its Consequences

When Europeans first arrived in what is now the United States, they encountered complex tribal societies with established territories and systems of government. In the first years of its existence, the United States government regarded Indian tribes as having the same status as foreign nations, and interacted with tribes on a government-to-government basis. With the westward expansion of the United States, this deference began to erode. Tribes were compelled during this period to move to and accept smaller reservations of land in exchange for compensation and promises of protection.

By the late nineteenth century, a pronounced policy shift had occurred. In 1871, Congress ended the practice of making treaties with Indian tribes. And in 1887, Congress enacted the Dawes or General Allotment Act, which provided for communally-held reservation lands to be divided up among individual tribal members. The ultimate purpose of the Dawes Act was to weaken tribes and persuade their members to assimilate into non-Indian society. Under the Act, each tribal member received a parcel of land, generally 80 to 160 acres, which would be held “in trust” by the federal government for 25 years. During the trust period, allotments were protected against alienation, encumbrance and taxation; thereafter, all restrictions on the land would be lifted and the allottee would receive a patent in fee. A 1906 amendment to the Act shortened the trust period if the Indian owner was deemed by the federal government to be “competent” to manage his or her own affairs.

Fee patented lands were invariably sold off to non-Indians or lost for non-payment of state property taxes, and within two generations, approximately two-thirds of all allotted Indian land had passed out of Indian hands. Allotment had serious consequences as well for lands which remained in Indian ownership, and these consequences continue to reverberate today.

Because few original Indian allottees prepared wills, their lands passed to heirs in accordance with state law, meaning that heirs took the land as tenants in common, each holding an undivided interest in the whole. With each succeeding intestate generation, the undivided individual interests in original allotments grew exponentially. Today, it is not uncommon for an 80 or 160 acre allotment to have hundreds of co-owners.

Fractionated ownership has created enormous problems for both individual Indian beneficiaries and the federal government. It has limited land use options, reduced the economic value of the land, and resulted in an administrative nightmare for the Department of Interior, which is charged with management of the land and any income generated thereon.

Although the problem of fractionation became clear within a generation, it took Congress nearly fifty years to respond. In 1934, the Indian Reorganization Act (IRA) ushered in a new era of Indian policy aimed at strengthening tribes. The IRA repudiated the allotment of tribal lands and extended indefinitely the trust period for existing allotments. In Montana, the IRA applies on all reservations except for Crow and Fort Peck, where Indian residents voted against its application. As explained in more detail below, the IRA status of a reservation determines the extent of federal restrictions on the devise of Indian lands.

The IRA acknowledged the devastating impact of allotment, but did little to address the growing fractionation problem; this took Congress yet another fifty years. The Indian Land Consolidation Act of 1983 (ILCA) authorized tribes to adopt tribal probate codes and land consolidation plans, and established federal restrictions on the descent and devise of allotments. Its most controversial provision specified that very small undivided interests in allotments could not be inherited or devised, but would instead “escheat” (be returned to) the tribe. The Supreme Court invalidated this provision as an unconstitutional taking in *Hodel v. Irving*, 481 U.S. 704 (1987). Minor amendments were made to the escheat provision of the ILCA in 1984, but the amended version was struck down as well. *Babbitt v. Youpee*, 519 U.S. 234 (1997). Comprehensive amendments to the ILCA’s inheritance provisions were enacted in 2000, but never took effect.

The American Indian Probate Reform Act

In 2004, Congress enacted the American Indian Probate Reform Act (AIPRA), which repealed and replaced many of the provisions of the ILCA. AIPRA creates a uniform federal probate code governing the descent and distribution of Indian trust lands. The Act strictly limits who may inherit trust lands in an effort to control further fractionation. Under certain circumstances, it provides for both involuntary sale and escheat of small undivided interests in allotments.

AIPRA attempts to address the unconstitutional taking issue by preserving most options for the testamentary disposition of trust lands. Individual Indian trust beneficiaries can avoid application of AIPRA's escheat and forced sale provisions, as well as most limitations on inheritance, simply by executing a will. Unfortunately, the Act itself contributes to the lack of estate planning services available to Native Americans. AIPRA is a lengthy and highly technical statute which can seem daunting to an attorney faced with the task of drafting an Indian will.

AIPRA's most complex and restrictive provisions are those governing intestate succession; the section of the statute dealing with testamentary distributions is actually quite straightforward. While a basic understanding of the federal Indian bureaucracy and probate process can be helpful (and is provided below), it is not necessary to understand AIPRA's controversial rules regarding non-testamentary disposition in order to draft an Indian will. Suggestions for further reading on this topic are listed in Section IX of the binder, and a complete copy of AIPRA (with the relevant provisions on testamentary disposition (§ 2206(b)) is provided in Section VI.

The Federal Indian Bureaucracy and Probate Process

Very few activities can occur in Indian Country without the involvement of the federal government. The Bureau of Indian Affairs (BIA) in the Department of Interior is responsible for carrying out the bulk of the federal government's trust responsibilities to individual Indians and tribes. The BIA manages Indian lands and resources, and plays a central role in the probate of Indian estates. Until recently, the BIA also drafted and stored wills for tribal members.

The BIA Rocky Mountain Regional Office is located in Billings, and has authority over six reservations in Montana (Crow, Northern Cheyenne, Fort Peck, Rocky Boys, Fort Belknap, and Blackfeet) and the Wind River Reservation in Wyoming. The BIA maintains agency offices on each of these reservations, with the exception of Rocky Boys, where the BIA presence is limited to a Field Representative.

A second Interior agency, the Office of the Special Trustee (OST), was created in the mid-1990's in an effort to improve federal management of Indian trust property. OST is responsible for managing funds in Individual Indian Money (IIM) accounts, into which income generated on trust land is deposited. OST has Fiduciary Trust Officers on the Crow, Northern Cheyenne, Fort Peck, Fort Belknap, and Blackfeet Reservations (the names and contact information for each of these officers is listed in the Contacts section of this binder).

You may interact with both the BIA and OST in drafting Indian wills. Either agency can supply a comprehensive listing of trust property interests held by any enrolled tribal member. This report is known as an **Individual Trust Inventory (ITI)**, and you will use it to draft the section of the will on trust land bequests. In the next Section of the binder, we provide detailed instructions for reading this sometimes voluminous report. Another useful document listing income generated on trust lands is the **Landowner Income Report (LIR)**. Both reports can be produced immediately upon request, and provided directly to the Indian trust beneficiary, or to an attorney with a signed and notarized authorization to release information from the Indian client to release information. In the event that you need to obtain one or both of these reports, release forms are provided in Section VIII of the binder. Refer to Section VII for a list of BIA and OST contacts from whom to obtain ITI and LIR reports.

All Indian trust property – including trust land, homes and other structures permanently affixed to trust land, and IIM funds – is probated exclusively by the federal government. The main rules applicable to the testamentary devise of trust property are discussed below.

Limitations on the devise of trust property under AIPRA

AIPRA specifies who can and cannot inherit Indian trust land. Whether a particular person is an “eligible” heir under the statute depends upon whether the trust land is to be devised in trust or in fee. The assumption is that trust land will remain in trust, and the list of eligible trust land devisees under AIPRA is broad:

- any lineal descendent of the testator;
- any co-owners in the same parcel of trust land;
- the tribe with jurisdiction over the trust land;
- any Indian.

However, a client may wish to devise trust land interests to a non-Indian who is neither a lineal descendent nor a co-owner. The most common example is a non-Indian spouse. In this case, the trust land may be devised as a life estate, with the remainder to an eligible heir. Alternatively, on non-IRA reservations (Crow and Fort Peck), the trust land may be devised in fee to a non-Indian. The rule for non-Indian devises in fee on IRA reservations is less clear. If a client wishes to devise trust property in fee to a non-Indian on one of these IRA reservations (Northern Cheyenne, Fort Belknap, Rocky Boys and Blackfeet), contact us and we will research the issue on an individual basis.

Unlike trust lands, income generated on trust lands may be bequeathed to anyone. Income in an Individual Indian Money account is referred to as “trust personalty” under AIPRA, and the Act specifies that such income will remain in trust if devised to an eligible heir.

In keeping with its goal of reducing fractionation, AIPRA presumes the devise of trust land to more than person creates a joint tenancy with right of survivorship. If a client wishes to pass their land to heirs as tenants in common, clear and express language to this effect must be included in the will.

Devises that facilitate consolidation

Despite the problems associated with further fractionation, some Native American clients are uncomfortable with the idea of a joint tenancy with right of survivorship. A common concern is that such a devise among children disinherits all grandchildren but for those of the last surviving heir. Other options exist for avoiding further fractionation, and should be discussed with clients. A simple devise – leaving all trust land interests to one eligible heir – is the most straightforward alternative. Where a client owns interests in numerous allotments, a series of specific devises may be a preferable option. In order to achieve an equitable distribution among heirs, it is often necessary to review and consider the value of each individual trust land interest (the Landowner Income Report is very helpful for this purpose). Montana Legal Services can assist in gathering and reviewing land and income records if the client wishes to pursue this option.

Rather than explaining additional methods for facilitating consolidation here, we encourage attorneys to read Part VIII of John Sledd's article, *Indian Will Drafting and Probate*. Montana Legal Services also stands ready to provide further guidance and support on this topic (or any other issue) as needed.

Conclusion

We hope this background information has helped to put the need for Indian estate planning services into context, and has strengthened your commitment to participate in the Montana Legal Services Indian Wills Project. While the statutory context is certainly complex, we believe you will quickly realize that the challenges of drafting Indian wills are more than justified by the rewards. With a modest commitment of time and ongoing support from Montana Legal Services, you can provide a much-needed service to Native Americans, and help preserve precious Indian lands for future generations.

How to Read an Individual Trust Interest (ITI) Report

What is an ITI Report?

ITI reports are generated by the Bureau of Indian Affairs Land Title and Records Office, and list each *undivided interest* in trust land owned by an individual Indian on any reservation in the United States. The report includes a legal description of each allotment in which the individual owns an interest, the name of the original allottee, the type of interest owned (surface, mineral or both), and the size of the interest. This report is indispensable because each allotment in which a client owns an interest must be listed in his or her will.

The ITI report can be generated upon request by either the Bureau of Indian Affairs or the Office of the Special Trustee. A list of BIA and OST contacts from whom to obtain the report is provided in Section VI of the binder. The client can obtain the report him- or herself, or you can request it using the release form in Section VII.

Explaining “Undivided Interests” to Clients

As discussed in Section I of the binder, individual Indians seldom own 100% of an allotment; instead, they generally own fractional interests in a number of different allotments, possibly even on different reservations. These interests are *undivided*, meaning they do not represent physical acreage. In other words, if an individual owns 2% of an 80 acre allotment, there is not an identifiable 1.6 acre portion which the individual can lease out for a cell phone tower or use for a home site without the permission of the co-owners. Where the entire allotment has been leased by the Bureau of Indian Affairs for grazing or other income-generating purposes, the size of the individual’s interest determines the percentage of the lease income to which the individual is entitled.

In order to make informed decisions as to how trust land interests should be devised, it may be necessary for you to explain the concept of undivided interests and the problem of fractionation to a client. The opportunity to avoid further fractionation by bequeathing a fractional interest to one heir, rather than dividing it equally among a number of heirs, should be presented. By examining the size and type of each interest listed on the ITI report, you can assist the client in deciding which specific interest(s) to devise to which specific heir(s). The Landowner Income Report can also be very helpful in this regard.

Understanding the ITI Report

The ITI report is not particularly reader-friendly, and contains some information that is more difficult to explain than it is useful. The following discussion refers to lettered sections of the sample ITI report at the end of this guide. Those parts of the sample report for which no explanation is provided are self-explanatory, or are not important for purposes of drafting a will.

- A** The three codes under ---**OWNER**--- together make up the BIA identification number of the individual owner. “**TRB**” stands for tribe, and the number below this abbreviation is

the government code for the reservation of the tribe to which the owner belongs. On the sample ITI report, the code indicates that the owner is a member of the Blackfeet Tribe. The codes in Montana are:

- 201 - Blackfeet
- 202 - Crow
- 203 - Flathead
- 204 - Fort Belknap
- 205 - Rocky Boys
- 206 - Fort Peck
- 207 - Northern Cheyenne

“**CL**” is a classification for the type of owner. “**A**” means original allottee, “**U**” means unallotted Indian, “**N**” means non-enrolled, and “**X**” means non-member or business. The owner on the sample ITI report is unallotted.

Under “**NUMBER**” is the owner’s tribal enrollment number. Many people use the terms “enrollment number” and “BIA identification number” interchangeably. The enrollment number on the sample ITI report is 017693.

Remember that the full BIA identification number (including the tribe code, classification, and enrollment number), must be listed in the heading of an Indian will. The BIA identification on the sample report is 201 U 017693.

- B** In this section, all names and aliases for the owner which are contained in BIA records are listed.
- C** “**LAC**” stands for Land Area Code, and specifies where the land interest is located, using the same reservation codes listed above. On the sample ITI report, the interest is in a Fort Peck Reservation allotment. Note that the same information is provided further to the right on the report.

“**PFX**” stands for Prefix, and provides additional information about the allotment. The most common prefix you will encounter here is “**M**” for a mineral interest. There is no additional information for the allotment listed on the sample ITI report.

“**NUMBER**” here refers to the allotment number assigned by the BIA. On the sample, the allotment number is 83.

“**SFX**” stands for Suffix, and usually specifies whether an allotment has been subdivided (if it has, the subdivisions are identified by letters, A, B, C, etc.). The allotment on the sample report has not.
- D** “**TITLE PLANT**” specifies which regional BIA office has responsibility for the allotment. In the sample ITI report, the responsible office is in Billings.

- E** “**RESOURCES**” describes the type of interest owned. “Both” means surface and mineral rights. “Surface” means surface rights only (land), and “Mineral” means mineral rights only (such as oil, gravel, gas, coal). The sample report concerns an interest in both surface and mineral rights.
- F** The information under **---DATE OF LAST---** is not important for purposes of drafting a will.
- G** Above “**ORIGINAL ALLOTTEE**” appears the name of the Indian to whom the allotment was originally assigned, in most cases many decades ago.
- H** Under the name of the original allottee is a complete legal description of the allotment, including the section, township, range, county, and state. There may be multiple listings here; for the allotment on the sample report, there is only one.
- I** To the right of the legal description, acreage information for the allotment is provided. Keep in mind that this is the overall acreage for the allotment, and what the client owns is an undivided interest in the whole (as explained below). The allotment on the sample report contains 20 acres.
- J** The information under **---OWNER---** and **---DOCUMENT---** is not important for purposes of drafting a will.
- K** “**NAME IN WHICH FIRST ACQUIRED**” is the name the owner used when he or she inherited (or otherwise acquired) the trust land interest.
- L** The actual undivided interest acquired by the owner, expressed as a fraction, is provided under “**FRACTION ACQUIRED.**” On the sample ITI report, the owner acquired a 5/288 interest in the allotment.
- M** In some instances, an individual will own multiple undivided interests in the same allotment. If this is the case, the interests will be totaled under “**AGGREGATE SHARE CONVERTED TO LCD.**” “LCD” stands for lowest common denominator. On the sample report, the individual owns only one interest in Allotment 83, so the aggregate share is the same as the fraction acquired (5/288).
- N** “**AGGREGATE DECIMAL**” is the total interest owned expressed as a decimal. On the sample report, 5 divided by 288 equals .0173611111. Moving the decimal two places to the right reveals the interest as a percentage of the whole. On the sample report, the individual owns a 1.736% undivided interest in a 20 acre allotment

Summary

A client's ITI report can be many pages long, and include interests in dozens of different allotments on multiple reservations. Each allotment must be listed in the will, as explained in more detail in the following section of the binder. It may take some time to review the report and assist the client in deciding how best to divide trust interests among heirs, in which case we hope this guide is helpful. Or it may be as simple as listing the allotments to be devised to a single heir. Either way, Montana Legal Services stands ready to provide further assistance.

REPORT ID: TAO071R
REQUESTOR: ADERICHE

BUREAU OF INDIAN AFFAIRS
INDIVIDUAL/TRIBAL INTERESTS REPORT
ALL TITLE HOLDINGS

PAGE: 1
DATE: 2/20/2006
CST TIME: 12:04:13

A -----OWNER-----
TRB CL NUMBER
201 U 017693

TRIBE NAME
BLACKFEET, MT
BIRTHDATE: 12/19/1979

B --NAMES OR ALIASES--
FIRST NAME
TARA
TARA LYNN
MIDDLE NAME
LYNN

C -----TRACT ID-----
LAC PFX NUMBER SFX
206 83

D TITLE
PLANT
BILLINGS, MT
LAND AREA
FORT PECK
E RESOURCES
BOTH

G BOWE, SAM
** ORIGINAL ALLOTEE **

F -----DATE OF LAST-----
ExamDate / VerifDate
5/12/1997 0/00/0000

H SEC TOWNSHIP RANGE COUNTY
16 027.000N 052.00E ROOSEVELT

I SECTION COUNTY ACRES
20.000 20.000

CUM SECTION ACRES
20.000

J -----OWNER-----
TYP OT INT CLS TYP NUMBER

K ---DOCUMENT---
NAME IN WHICH FIRST ACQUIRED

L FRACTION ACQUIRED
5 288

M AGGREGATE SHARE CONVERTED TO LCD
5 288

N AGGREGATE SHARE CONVERTED TO LCD
5 288

I T A 11 IT TC124R988 BIRDSWING, TARA LYNN

.0173611111

REPORT CONT...

The Nuts and Bolts of Writing an Indian Will

Writing an Indian will is much like writing any other will, except that Indian wills include trust property, the descent and devise of which is governed by the American Indian Probate Reform Act. The two most important ingredients in any will are information and the testator's intent. The completed will information form from your client's file will have all the information you need to begin drafting the will. You may have questions on issues or incomplete information as you proceed. Montana Legal Services stands ready to provide as much or as little continued support as you need throughout the process. Simply draft as much of the will as possible, then contact Legal Services or the client for further guidance. If a majority of the will is drafted, then you should only need to meet once in person with the client to finalize and execute the will.

Below is a step-by-step explanation of each section of an Indian will, following the format of the fill-in will template provided by Montana Legal Services. See a complete sample will in Section VII of the binder.

Step 1: Title and Identification of Testator

You must identify the client by name, BIA identification number, and birth date in the will heading. Then you must fill in the client's name again, along with his or her tribal affiliation, in the opening paragraph.

Step 2: Revocation of All Prior Wills (Article I)

Always ask the client if they have ever made a will before. If so, explain to them that the current will revokes all previous wills. Even if the client states that no previous will was made, leave Article I intact.

Step 3: Identification of Family (Article II)

This important section should clearly identify the desired beneficiaries. It is important to identify family members by tribal affiliation and BIA identification number because they may be inheriting trust property under the will. The form provides formats for several situations, including various adoption scenarios.

One situation the will template does not cover is the disinheritance of a family member. When the client desires to do so, insert an express statement of disinheritance in the will ("I expressly disinherit and do not make any provisions for my husband, _____, to benefit from this, my last will and testament"). An example of such an provision is included in the sample will in Section VII of the binder.

The client may want to devise property to someone other than a lineal descendant, such as an aunt, niece, or friend. In this circumstance, identify the person expressly near the end of the Article II.

Step 4: Personal Representative (Article III)

It is imperative that the client name a personal representative and an alternate representative. It may be necessary to explain to the client what a personal representative is. Using simple terms, explain to the client that a personal representative is the person they trust to take care of things when they are gone. In some cases, the client may want to designate more than one person, in which case they may appoint joint representatives. The will template provides alternative language to assist in defining the appropriate parameters of the representative's authority.

The fourth paragraph of Article III deals with paying the expenses and debts of the estate through the residuary. If the client wishes to have expenses paid through some other means first, such as an IIM account, note this under the appropriate article of the will.

Step 5: Trust or Restricted Land (Article IV)

Each allotment in which the client owns an interest is listed in this important section of the will. The information comes from the client's ITI report. Allotments may be numbered consecutively, or simply listed as follows:

- Blackfeet Allotment 201 249, located in Glacier County, Montana;
- Blackfeet Allotment 201 249 -A, located in Glacier County, Montana;
- Blackfeet Allotment 201 249 D, located in Glacier County, Montana;
- Blackfeet Allotment 201 M 249 -A, located in Glacier County, Montana.

The interests in each of the listed allotments will pass to a sole beneficiary or to multiple beneficiaries as joint tenants or tenants in common. As explained in Section I of the binder, only certain people qualify as eligible heirs to trust property under AIPRA. Always confirm that the client's beneficiaries are eligible. If the heirs are any lineal descendants of the client, such as children, grandchildren, or great grandchildren, they will always be eligible. When in doubt, contact Montana Legal Services for further guidance.

If the client wishes to name multiple beneficiaries, the difference between joint tenancy with right of survivorship and tenancy in common must be explained. Other options for avoiding further fractionation should be discussed with the client at this time as well. The will template includes several alternatives for devise, one of which will hopefully be appropriate for your client's situation. If not, and you need further guidance, contact Legal Services.

There is no standard format for listing the client's home or other permanent fixtures on trust land. Clearly identify each structure and describe its location at the end of Article IV. A legal description may be unavailable, in which case the structure should be described as specifically as possible, including the number of the allotment on which it is located.

Step 6: Trust Personalty (Article V)

This section concerns the income generated from the client's trust land interests. In other words, it specifies who will inherit the client's Individual Indian Money (IIM) account.

There are no eligibility requirements under AIPRA with respect to the inheritance of an IIM account. But be sure to explain that funds in the account will not remain in trust if devised to a non-Indian. Clients often assert that they do not have an IIM account, or if they do, there is nothing in it. You should explain to the client that this devise should still be made, in the event that they inherit Indian trust funds or trust lands which generate income prior to their passing.

Step 7: Non-trust Property Bequests by Separate Writing (Article VI)

This section deals with any and all of the client's personal, non-trust property, and provides for a separate writing which lists items of personal property and the person(s) to whom they will be bequeathed. The separate writing is valid as long as the client signs and dates it, and attaches it to the will (no witnesses required). The testator can update the writing as often as necessary. If the client does not want to go to the trouble of creating a separate writing, the personal representative can be charged with deciding how personal property is to be devised.

Step 8: Other Specific Bequests of Non-Trust Property

This section is for larger, more valuable pieces of personal property, such as an automobile or boat (something that carries title with it). If there is nothing to list in this section, it can be deleted.

Step 9: Residue for Trust Land

This section is important because the client may well inherit additional trust land interests and personalty after executing his or her will. Explain to the client that this section is a safety net, and will provide for the devise of any trust interests they expect to inherit, as well as others they are currently unaware of. The formatting of this section mirrors that of Article IV.

Step 10: Residue for Non-Trust Property

This section is the catch-all for property not listed elsewhere. Many times, the client will want to keep it simple and list the same beneficiaries as for trust residue.

Step 11: Guardian

If the testator has any minor children they are caring for, they should assign a guardian and an alternate guardian in this section. If there are no minors, the section should be deleted.

Step 12: Burial

Always ask the client if they have any special burial instructions they would like to include here. Many times clients have not thought about this yet and do not know what to specify in terms of instructions. Explain that this decision may be left up to the personal representative, if desired.

Step 13: Invalidity Clause

This is a standard invalidity clause contained in virtually every will. You should explain to the client that this clause protects the rest of the will, should a part of it be invalid.

Step 14: Signature of Testator and Attestation of Witnesses

This is the all-important step in which the testator signs the will in the presence of two witnesses, and the witnesses sign in front of the client. Be sure to delete either “Testator” or “Testatrix” each of the seven times the alternative terms appear on this page of the will. This detail is easily overlooked.

Step 15: Self-Proving Affidavit

The final step is to complete the self-proving affidavit required for Indian wills. Again, be sure to delete either “Testator” or “Testatrix,” and either “his” or “her,” each time the alternative terms appear on the affidavit.

Step 16: Proofread and Meet With Client

All that is left is to proofread the will. You may want to set up an appointment with the client at this point in order to fill in any missing information, clarify ambiguities, and execute the will. Remember that Legal Services will provide additional support as needed at this or any other stage of the process.

See the next section of the binder for instructions on execution.

Execution and Storage of the Will

Execution

Once you have finished drafting the will and reviewing it with the client, it is time to execute. I usually ask the client if they feel comfortable with the will and if so, we proceed with execution. It may or may not be easy finding two witnesses and a notary, depending on where you are working with the client. The notary must be separate from and not serving as one of your two witnesses. It is a good idea to plan for execution before you set up the meeting with the client. The Bureau of Indian Affairs and the Office of Special Trustee are located in the same building on each reservation in Montana, and these are accommodating places where you can find witnesses and notaries. AIPRA and Montana law do not require that the two witnesses be disinterested, but it is good policy to ensure that your witnesses are not beneficiaries under the will, or related to the testator in anyway.

The manner in which you execute is up to you. Depending on what seems appropriate, you can be more or less formal. Some attorneys may want to read out loud the attestation clause, or the will as a whole. Others may want to merely follow the minimum requirements under the law, making sure that each witness and the testator actually see each other signing the will. I usually preface the signing with a brief statement like "Just to make sure that everyone knows what is happening here, by signing your names as witnesses you are attesting to the identity of the testator, the fact that the testator is in their right mind, and that he/she understands that they are signing their will."

I usually begin by having the testator initial and date the bottom of each page (there will be a place for this on the will form). I then have the testator sign the will, followed by the witnesses. You may need to show each person where to sign. The process is repeated on the self-proving affidavit page, and then the last step is to have the affidavit notarized.

The Original Document, Revocation, and Amendments

Once the execution is complete, you give the original, signed will to the client. Explain to the client that the original, signed will is the only one with any real legal effect. Clients often ask about copies. I tell them they can make copies of it if they want, as long as they understand that the original is the only one with legal authority.

The client should also be aware that they can revoke the will. In order to revoke, the testator must destroy, burn, or tear the will. The language of Montana code is a good guide to follow in determining whether a will has been revoked:

A will or any part of a will is revoked. . . .by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subsection. . ."revocatory act on the will" includes burning, tearing,

canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will. MCA § 72-2-527(b) (2007).

I usually warn the client that revoking the will in this manner is not a good idea unless they have a new will to take its place. The client should also be aware that they can amend the will at anytime, but they must go through the same formalities of execution.

Storage

The storage of the will has become a problem with no real solution as of yet. For many years, the BIA not only drafted wills for tribal members, but stored them as well. This practice ended in 2005, and you will need to explain to the client that they are responsible for storing the will in a safe place. Ideally, they would store the will in a safety deposit box at their bank, but many clients don't have one and this is not a realistic option. If they do plan to use a safety deposit box, the client's personal representative must be given authority at the bank to open the box upon the client's passing.

There is a provision in the Montana Code that provides for wills to be stored with the court. However, this provision is not well known and infrequently utilized.¹

A will stored at home is susceptible to destruction or loss, but it may be the only alternative for the client. This is an unfortunate reality of which the client should be made aware.

¹ A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request or the court may deliver the will to the appropriate court. MCA § 72-2-535 (2007).

**INDIAN WILL UNDER THE ACT OF JUNE 25, 1910 (36 STAT. 855-856)
AS AMENDED BY THE ACT OF FEBRUARY 14, 1913 (37 STAT 678)**

**LAST WILL AND TESTAMENT
OF
Rosemary M**

**B.I.A. Identification Number 301 U0 5555
Born 1/31/1928**

I, Rosemary M of the Three Affiliated Tribes of the State of North Dakota, being of sound mind and not acting under any duress, menace, fraud, or undue influence, do hereby make, publish, and declare this to be my Last Will and Testament as follows:

**Article I
REVOCATION OF ALL PRIOR WILLS**

I hereby revoke any and all Wills and Codicils previously made by me.

**Article II
IDENTIFICATION OF FAMILY**

I am a widow, my spouse's full name was X. Born on 5/15/1925 and deceased on 5/15/1985.

The names and birthdates of my children are as follows:

My son, W, born 5/15/1948, an enrolled member of the Three Affiliated Tribes, ID No. 301 U0 5555; and

My son, B, born 5/15/1950, an enrolled member of the Three Affiliated Tribes, ID No. 301 U0 5555.

Except as provided below, I make no provisions in this, my Last Will and Testament, for any of my children hereafter born to or adopted by me who survive me, nor for the issue of any child who does not survive me except for the following granddaughter whom I wish to provide for in this Will:

**Article III
PERSONAL REPRESENTATIVE**

I hereby nominate and appoint M to serve as sole Personal Representative of this, my Last Will and Testament. In the event that M fails to qualify or is unable or unwilling to so act, or fails to survive me, then and in that event, I appoint T as an alternate or successor Personal Representative.

This Will shall be a non-intervention Will to the extent allowable by federal, tribal, and state law. I further direct that my Personal Representative shall act without bond and without intervention of any court, insofar as possible, and shall have the power, whether or not necessary for the administration of my estate, to sell, exchange, lease, mortgage, pledge, trade and otherwise deal with or dispose of the whole or any part of my estate.

I authorize my Personal Representative to pay all just debts for which proper claims are filed against my estate, the expenses of my last illness and funeral, and the expenses incurred in the administration of my estate to be paid by my Personal Representative as soon after my death as is practicable; provided, however, that this direction shall not authorize any creditor to require payment of any debt or obligation prior to its normal maturity in due course. The above payments shall be made from the residue of my estate.

**Article IV
TRUST OR RESTRICTED LAND BEQUESTS**

I hereby give, devise and bequeath unto my children, D and T, in equal shares as joint tenants with right of survivorship, any and all of my interests in:

Crow Allotment 202 5555 –B, located in Big Horn County, Montana.

I hereby give, devise and bequeath unto my children, D, T and A in equal shares as tenants in common, any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament located on the Fort Berthold Reservation in North Dakota, including:

Fort Berthold Allotment 301 555, located in Mclean County, North Dakota;

Fort Berthold Allotment 301 M 555, located in Mclean County, North Dakota;

Fort Berthold Allotment 301 5555, located in Mclean County, North Dakota;

I hereby give, devise and bequeath unto C my home located at 55555 Pryor Loop in Pryor, Montana. The legal description of the lot: xxxxxxxxxxxx

Article V
TRUST PERSONALTY BEQUESTS

I specifically request that monies from my Individual Indian Money (IIM) Account be used to pay for all my funeral expenses and I hereby give, devise and bequeath unto M, any and all remaining funds from my IIM Account at the time of my passing. In the event that M predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto T any and all funds contained within my IIM account at the time of my passing.

Article VI
NON-TRUST PROPERTY BEQUESTS BY SEPARATE WRITING

I hereby give, devise and bequeath such items of tangible (touchable) personal property not otherwise specifically disposed of by this Will to such person or persons as may be indicated by separate writing. If I decide to have such a separate writing, it will be located with my Will. Such writing will be dated and signed by me but may be replaced by a subsequent writing dated and signed by me.

Such tangible property will at most include only items within the following categories: Articles of personal or household uses or ornament, furniture, furnishings, automobiles, boats, jewelry and precious metals in tangible form, such as coins. Such tangible personal property will not include any trust or restricted lands, trust personalty, real property or interests in lands, mobile home, money that is normal currency or legal tender, evidences of indebtedness, bank accounts, monetary deposits, and documents of title or securities. If any such separate writing through inadvertence includes non-qualifying property, it is my intent that the separate writing be given effect to the extent of the qualifying property only.

If no separate writing is found following my death, then any and all property not otherwise specifically provided for shall pass into the residue of this Will.

**Article VII
RESIDUE FOR TRUST OR RESTRICTED LAND
AND TRUST PERSONALTY**

I hereby give, devise, and bequeath unto M, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that M predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto T, all of the rest, residue and remainder of my trust or restricted property not otherwise validly devised by this instrument.

**Article VIII
RESIDUE FOR NON-TRUST PROPERTY**

I hereby give, devise, and bequeath unto M, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that M predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto T, all of the rest, residue and remainder of my non-trust property not otherwise validly devised by this instrument.

**Article IX
BURIAL**

I specifically request that I am buried next to my husband X. I also specifically request that I am buried in a simple wooden casket.

**Article X
INVALIDITY CLAUSE**

If any provisions of this, my Last Will and Testament, or if any codicil to it should be invalid, it is my intention that all of the remaining provisions shall continue to be fully effective.

IN WITNESS WHEREOF, I, Rosemary M, the Testatrix, sign my name to this instrument this _____ day of _____, 2008, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament.

Rosemary M
Testatrix

Attestation & Declaration of Witnesses

We, the witnesses, sign our names to this instrument and do hereby declare that:

1. I am of legal age and competent to be a witness to a Will.
2. The Testatrix appears to me to be of legal age and sound mind and not acting under any duress, menace, fraud or undue influence.
3. On the date shown immediately above, in my presence and in the presence of the other witness, the Testatrix declared this document to be her Will, requested the other witness and myself to as act as witnesses to her signing of the Will, and then signed the Will.
4. Immediately thereafter and at the Testatrix's request, I and the other witness signed the Will as witnesses in the presence of the Testatrix and each other, on the date shown immediately above the Testatrix's signature.

WITNESSES

Signature of Witness #1

Signature of Witness #2

Print Name of Witness #1

Print Name of Witness #2

Residing at:

Residing at:

STATE OF Montana :)
) SS AFFIDAVIT TO ACCOMPANY INDIAN WILL
County of _____ :)

I, Rosemary M being first duly sworn, on oath depose and say: That I am an enrolled member of the Three Affiliated Tribes of North Dakota; that on the _____ day of _____, 2008, that I requested _____ and _____ to act as witnesses thereto; that the said witnesses heard me publish and declare the same to be my last Will and Testament; that I signed said Will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; and that said Will was read and explained to me (or read by me), after being prepared and before I signed it; and it clearly and accurately expresses my wishes; and I further state that I am 18 years of age or older, and no person has influenced me to make the disposition of any part of my property in any other manner than I myself of my own free will desire and wish to dispose of it, and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

Rosemary M
BIA ID No. 301 U5555

We, _____ and _____ each being duly sworn, on oath depose and state; That on the _____ day of _____, 2008, Rosemary M a member of the Three Affiliated Tribes of North Dakota published and declared the attached instrument to be her last Will and Testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with her request, signed the same as witnesses in her presence and in the presence of each other; that to the best of our knowledge the testatrix is 18 years of age or older, that said testatrix was not acting under duress, menace, fraud or undue influence of any person, so far as we could ascertain and in our opinion was mentally capable of disposing of all her estate by Will; and that neither of us is named as a beneficiary in said Will or are in any wise interested in the distribution of the estate of said testatrix.

Signature of Witness #1

Signature of Witness #2

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____, by _____ testatrix, and _____ and _____, attesting witnesses.

Notary Public State of Montana
Printed name: _____
Residing in _____
My commission expires: _____

AMERICAN INDIAN PROBATE REFORM ACT

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**EASY READ FORMAT OF
TITLE 25—INDIANS
CHAPTER 24--INDIAN LAND CONSOLIDATION
With Technical Amendments Incorporated**

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--
 - (A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of the date of enactment of the American Indian Probate Reform Act of 2004) of a trust or restricted interest in land;
 - (B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and
 - (C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 2206, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.
- (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 tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and "trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in land, title to which is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.
- (5) "heirs of the first or second degree" means parents, children, grandchildren, grandparents, brothers and sisters of a decedent.
- (6) "parcel of highly fractionated Indian land" means a parcel of land that the Secretary, pursuant to authority under a provision of this Act, determines to have, as evidenced by the Secretary's records at the time of the determination--
 - (A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or
 - (B) 100 or more co-owners of undivided trust or restricted interests;
- (7) "land" means any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property;
- (8) "person" or "individual" means a natural person;
- (9) "eligible heirs" means, for purposes of section 2206, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are--
 - (A) Indian; or
 - (B) lineal descendants within 2 degrees of consanguinity of an Indian; or
 - (C) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 2206, another trust or restricted interest in such parcel from the decedent; and
- (10) "without regard to waste" means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

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).

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.

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

(a) Purchase of Land.--

(1) IN GENERAL.--Subject to subsection (b), any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in-

(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or

(B) land that is otherwise subject to the jurisdiction of the tribe.

(2) REQUIRED CONSENT.—

(A) IN GENERAL.--The Indian tribe may purchase all interests in a tract described in paragraph (1) with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

(B) INTEREST OWNED BY TRIBE.--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 subparagraph (A) 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.

(c) Partition of highly fractionated Indian lands

(1) Applicability.

This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B), to be parcels of highly fractionated Indian land.

(2) Requirements.

Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

(A) Application.

Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by--

Sec. 2204(c)(2)(A)

(i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or

(ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(B) Costs of serving notice and publication.

The costs of serving and publishing notice under subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) otherwise required by this subparagraph, upon making a determination that such waiver will further the policies of this Act.

(C) Determination.

Upon receipt of an application pursuant to subparagraph (A), the Secretary shall determine whether the subject parcel meets the requirements set forth in section 2201(6) to be classified as a parcel of highly fractionated Indian land.

(D) Consent requirements.

(i) In general.

A parcel of land may be partitioned under this subsection only if the applicant obtains the written consent of--

(I) the Indian tribe with jurisdiction over the subject land if such Indian tribe owns an undivided interest in the parcel;

(II) any owner who, for the 3-year period immediately preceding the date on which the Secretary receives the application, has

(aa) continuously maintained a bona fide residence on the parcel;

or

(bb) operated a bona fide farm, ranch, or other business on the parcel; and

(III) the owners (including parents of minor owners and legal guardians of incompetent owners) of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner's total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of \$1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by Secretary [*sic – presumably should be "the Secretary"*] unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

Sec. 2204(c)(2)(D)

(ii) Consent by the secretary on behalf of certain individuals.

For the purposes of clause (i)(III), the Secretary may consent on behalf of--

- (I) undetermined heirs of trust or restricted interests and owners of such interests who are minors and legal incompetents having no parents or legal guardian; and
- (II) missing owners or owners of trust or restricted interests whose whereabouts are unknown, but only after a search for such owners has been completed in accordance with the provisions of this subsection.

(E) Appraisal.

After the Secretary has determined that the subject parcel is a parcel of highly fractionated Indian land pursuant to subparagraph (C), the Secretary shall cause to be made, in accordance with the provisions of this Act for establishing fair market value, an appraisal of the fair market value of the subject parcel.

(F) Notice to owners on completion of appraisal.

Upon completion of the appraisal, the Secretary shall give notice of the requested partition and appraisal to all owners of undivided interests in the parcel, in accordance with principles of due process. Such notice shall include the following requirements:

(i) Written notice.

The Secretary shall attempt to give each owner written notice of the partition action stating the following:

- (I) That a proceeding to partition the parcel of land by sale has been commenced.
- (II) The legal description of the subject parcel.
- (III) The owner's ownership interest in the subject parcel as evidenced by the Secretary's records as of the date that owners are determined in accordance with clause (i).
- (IV) The results of the appraisal.
- (V) The owner's right to receive a copy of the appraisal upon written request.
- (VI) The owner's right to comment on or object to the proposed partition and the appraisal.
- (VII) That the owner must timely comment on or object in writing to the proposed partition or the appraisal, in order to receive notice of approval of the appraisal and right to appeal.
- (VIII) The date by which the owner's written comments or objections must be received, which shall not be less than 90 days after the date that the notice is mailed under this clause or last published under clause (ii)(II).
- (IX) The address for requesting copies of the appraisal and for submitting written comments or objections.
- (X) The name and telephone number of the official to be contacted for purposes of obtaining information regarding the proceeding, including the time and date of the auction of the land or the date for submitting sealed bids.
- (XI) Any other information the Secretary deems to be appropriate.

(ii) Manner of service.

(I) Service by certified mail.

The Secretary shall use due diligence to provide all owners of interests in the subject parcel, as evidenced by the Secretary's records at the time of

Sec. 2204(c)(2)(F)(ii)(I)

the determination under subparagraph (C), with actual notice of the partition proceedings by mailing a copy of the written notice described in clause (i) by certified mail, restricted delivery, to each such owner at the owner's last known address. For purposes of this subsection, owners shall be determined from the Secretary's land title records as of the date of the determination under subparagraph (C) or a date that is not more than 90 days prior to the date of mailing under this clause, whichever is later. In the event the written notice to an owner is returned undelivered, the Secretary shall attempt to obtain a current address for such owner by conducting a reasonable search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if different from that tribe, the Indian tribe of which the owner is a member, and, if successful in locating any such owner, send written notice by certified mail in accordance with this subclause.

(II) Notice by publication.

The Secretary shall give notice by publication of the partition proceedings to all owners that the Secretary was unable to serve pursuant to subclause (I), and to unknown heirs and assigns by--

(aa) publishing the notice described in clause (i) at least 2 times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, 1 time in such newspaper of general circulation and 1 time in such tribal newspaper or newsletter;

(bb) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Secretary to be most appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

(cc) in addition to the foregoing, in the Secretary's discretion, publishing notice in any other place or means that the Secretary determines to be appropriate.

(G) Review of comments on appraisal.

(i) In general.

After reviewing and considering comments or information timely submitted by any owner of an interest in the parcel in response to the notice required under subparagraph (F), the Secretary may, consistent with the provisions of this Act for establishing fair market value--

(I) order a new appraisal; or

(II) approve the appraisal;

provided that if the Secretary orders a new appraisal under subclause (I), notice of the new appraisal shall be given as specified in clause (ii).

Sec. 2204(c)(2)(G)

(ii) Notice.

Notice shall be given--

- (I) in accordance with subparagraph (H), where the new appraisal results a value of the land that is equal to or greater than that of the earlier appraisal; or
- (II) in accordance with subparagraph (F)(ii), where the new appraisal results in a lower valuation of the land.

(H) Notice to owners of approval of appraisal and right to appeal.

Upon making the determination under subparagraph (G), the Secretary shall provide to the Indian tribe with jurisdiction over the subject land and to all persons who submitted written comments on or objections to the proposed partition or appraisal, a written notice to be served on such tribe and persons by certified mail. Such notice shall state--

- (i) the results of the appraisal;
- (ii) that the owner has the right to review a copy of the appraisal upon request;
- (iii) that the land will be sold for not less than the appraised value, subject to the consent requirements under paragraph (2)(D);
- (iv) the time of the sale or for submitting bids under subparagraph (I);
- (v) that the owner has the right, under the Secretary's regulations governing administrative appeals, to pursue an administrative appeal from--
 - (I) the determination that the land may be partitioned by sale under the provisions of this section; and
 - (II) the Secretary's order approving the appraisal;
- (vi) the date by which an administrative appeal must be taken, a citation to the provisions of the Secretary's regulations that will govern the owner's appeal, and any other information required by such regulations to be given to parties affected by adverse decisions of the Secretary;
- (vii) in cases where the Secretary determines that any person's undivided trust or restricted interest in the parcel exceeds \$1,500 pursuant to paragraph (2)(D)(iii), that the Secretary has authority to consent to the partition on behalf of undetermined heirs of trust or restricted interests in the parcel and owners of such interests whose whereabouts are unknown; and
- (viii) any other information the Secretary deems to be appropriate.

(I) Sale to eligible purchaser.

(i) In general.

Subject to clauses (ii) and (iii) and the consent requirements of paragraph (2)(D), the Secretary shall, after providing notice to owners under subparagraph (H), including the time and place of sale or for receiving sealed bids, at public auction or by sealed bid (whichever of such methods of sale the Secretary determines to be more appropriate under the circumstances) sell the parcel of land by competitive bid for not less than the final appraised fair market value to the highest bidder from among the following eligible bidders:

- (I) The Indian tribe, if any, with jurisdiction over the trust or restricted interests in the parcel being sold.
- (II) Any person who is a member, or is eligible to be a member, of the Indian tribe described in subclause (I).
- (III) Any person who is a member, or is eligible to be a member, of an Indian tribe but not of the tribe described in subclause (I), but only if such person already owns an undivided interest in the parcel at the time of sale.

Sec. 2204(c)(2)(I)(i)

(IV) Any lineal descendent of the original allottee of the parcel who is a member or is eligible to be a member of an Indian tribe or, with respect to a parcel located in the State of California that is not within an Indian tribe's reservation or not otherwise subject to the jurisdiction of an Indian tribe, who is a member, or eligible to be a member, of an Indian tribe or owns a trust or restricted interest in the parcel.

(ii) Right to match highest bid.

If the highest bidder is a person who is only eligible to bid under clause (i)(III), the Indian tribe that has jurisdiction over the parcel, if any, shall have the right to match the highest bid and acquire the parcel, but only if--

- (I) prior to the date of the sale, the governing body of such tribe has adopted a tribal law or resolution reserving its right to match the bids of such nonmember bidders in partition sales under this subsection if any and delivered a copy of such law or resolution to the Secretary; and
- (II) the parcel is not acquired under clause (iii).

(iii) Right to purchase.

Any person who is a member, or eligible to be a member, of the Indian tribe with jurisdiction over the trust or restricted interests in the parcel being sold and is, as of the time of sale under this subparagraph, the owner of the largest undivided interest in the parcel shall have a right to purchase the parcel by tendering to the Secretary an amount equal to the highest sufficient bid submitted at the sale, less that amount of the bid attributable to such owner's share, but only if--

- (I) the owner submitted a sufficient bid at the sale;
- (II) the owner's total undivided interest in the parcel immediately prior to the sale was--
 - (aa) greater than the undivided interest held by any other co-owners, except where there are 2 or more co-owners whose interests are of equal size but larger than the interests of all other co-owners and such owners of the largest interests have agreed in writing that 1 of them may exercise the right of purchase under this clause; and
 - (bb) equal to or greater than 20 percent of the entire undivided ownership of the parcel;
- (III) within 3 days following the date of the auction or for receiving sealed bids, and in accordance with the regulations adopted to implement this section, the owner delivers to the Secretary a written notice of intent to exercise the owner's rights under this clause; and
- (IV) such owner tenders the amount of the purchase price required under this clause--
 - (aa) not more than 30 days after the date of the auction or time for receiving sealed bids; and
 - (bb) in accordance with any requirements of the regulations promulgated under paragraph (5).

(iv) Interest acquired.

A purchaser of a parcel of land under this subparagraph may acquire title to the parcel in trust or restricted status, free and clear of any and all claims of title or ownership of all persons or entities (not including the United States) owning or claiming to own an interest in such parcel prior to the time of sale.

Sec. 2204(c)(2)

(J) Proceeds of sale.

- (i) Subject to clauses (ii) and (iii), the Secretary shall distribute the proceeds of sale of a parcel of land under the provisions of this section to the owners of interests in such parcel in proportion to their respective ownership interests.
- (ii) Proceeds attributable to the sale of trust or restricted interests shall be maintained in accounts as trust personalty.
- (iii) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown, of undetermined heirs, and of other persons whose ownership interests have not been recorded shall be held by the Secretary until such owners, heirs, or other persons have been determined, at which time such proceeds shall be distributed in accordance with clauses (i) and (ii).

(K) Lack of bids or consent.

(i) Lack of bids.

If no bidder described in subparagraph (I) presents a bid that equals or exceeds the final appraised value, the Secretary may either--

- (I) purchase the parcel of land for its appraised fair market value on behalf of the Indian tribe with jurisdiction over the land, subject to the lien and procedures provided under section 2213(b); or
- (II) terminate the partition process.

(ii) Lack of consent.

If an applicant fails to obtain any applicable consent required under the provisions of subparagraph (D) by the date established by the Secretary prior to the proposed sale, the Secretary may either extend the time for obtaining any such consent or deny the request for partition.

(3) Enforcement.

(A) In general.

If a partition is approved under this subsection and an owner of an interest in the parcel of land refuses to surrender possession in accordance with the partition decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may--

- (i) commence a civil action in the United States district court for the district in which the parcel of land is located; and
- (ii) request that the court issue an order for ejectment or any other appropriate remedy necessary for the partition of the land by sale.

(B) Federal role.

With respect to any civil action brought under subparagraph (A)--

- (i) the United States--
 - (I) shall receive notice of the civil action; and
 - (II) may be a party to the civil action; and
- (ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is a necessary and indispensable party.

(4) Grants and loans.

The Secretary may provide grants and low interest loans to successful bidders at sales authorized by this subsection, provided that--

- (A) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and
- (B) the grant or loan funds provided shall only be applied toward the purchase price of the parcel of land sold.

Sec. 2204(c)

(5) Regulations.

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection. Such regulations shall include provisions for giving notice of sales to prospective purchasers eligible to submit bids at sales conducted under paragraph (2)(I).

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) 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).

(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.

Sec. 2205(b)(2)

(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 [Amendments] 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. 2001 note; Public Law 108-374); 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) 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 207(b)(2)(A)(ii), 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.

Sec. 2205(c)(1)

(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).

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(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.

Sec. 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; 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) 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 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

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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 that would otherwise descend under that clause by paying into the estate of the decedent, before the close of the probate of the estate, the fair market value of the interest in the land; if more than 1 Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

(C) No Indian tribe.

(i) In general.

If there is no Indian tribe with jurisdiction over the interests in trust or restricted lands that would otherwise descend under subparagraph (B)(v), then such interests shall be divided equally among co-owners of trust or restricted interests in the parcel; if there are no such co-owners, then to the United States, provided that any such interests in land passing to the United States under this subparagraph shall be sold by the Secretary and the proceeds from such sale deposited into the land acquisition fund established under section 2215 and used for the purposes described in subsection (b) of that section.

(ii) Contiguous parcel.

If the interests passing to the United States under this subparagraph are in a parcel of land that is contiguous to another parcel of trust or restricted land, the Secretary shall give the owner or owners of the trust or restricted interest in the contiguous parcel the first opportunity to purchase the interest at not less than fair market value determined in accordance with this Act. If more than 1 such owner in the contiguous parcel request to purchase the parcel, the Secretary shall sell the parcel by public auction or sealed bid (as determined by the Secretary) at not less than fair market value to the owner of a trust or restricted interest in the contiguous parcel submitting the highest bid.

(D) Intestate descent of small fractional interests in land.

(i) General rule.

Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with clauses (ii) through (iv)

(ii) Surviving spouse.

If there is a surviving spouse, and such spouse was residing on a parcel of land described in clause (i) at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with clause (iii).

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(iii) Single heir rule.

Where there is no life estate created under clause (ii) or there is a remainder interest under that clause, the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to--

(I) the decedent's surviving child, but only if such child is an eligible heir; and if 2 or more surviving children are eligible heirs, then to the oldest of such children;

(II) if the interest does not pass under subclause (I), the decedent's surviving grandchild, but only if such grandchild is an eligible heir; and if 2 or more surviving grandchildren are eligible heirs, then to the oldest of such grandchildren;

(III) if the interest does not pass under subclause (I) or (II), the decedent's surviving great grandchild, but only if such great grandchild is an eligible heir; and if 2 or more surviving great grandchildren are eligible heirs, then to the oldest of such great grandchildren;

(IV) if the interest does not pass under subclause (I), (II), or (III), the Indian tribe with jurisdiction over the interest; or

(V) if the interest does not pass under subclause (I), (II), or (III), and there is no such Indian tribe to inherit the property under subclause (IV), the interest shall be divided equally among co-owners of trust or restricted interests in the parcel; and if there are no such co-owners, then to the United States, to be sold, and the proceeds from sale used, in the same manner provided in subparagraph (C).

The determination of which person is the oldest eligible heir for inheritance purposes under this clause shall be made by the Secretary in the decedent's probate proceeding and shall be consistent with the provisions of this Act.

(iv) Exceptions.

Notwithstanding clause (iii)--

(I)(aa) the heir of an interest under this subparagraph, unless the heir is a minor or incompetent person, may agree in writing entered into the record of the decedent's probate proceeding to renounce such interest, in trust or restricted status, in favor of--

(AA) any other eligible heir or Indian person related to the heir by blood, but in any case never in favor of more than 1 such heir or person;

(BB) not more than 1 co-owner of another trust or restricted interest in such parcel of land; or

(CC) the Indian tribe with jurisdiction over the interest, if any; and

(bb) the Secretary shall give effect to such agreement in the distribution of the interest in the probate proceeding; and

(II) the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of decedent [*sic – presumably should be "order of descent"*] set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if--

(aa) a copy of the tribal rule is delivered to the official designated by the Secretary to receive copies of tribal rules for the purposes of this clause;

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(bb) the tribal rule provides for the intestate inheritance of such interest by no more than 1 heir, so that the interest does not further fractionate;

(cc) the tribal rule does not apply to any interest disposed of by a valid will;

(dd) the decedent died on or after the date described in subsection (b) of section 8 of the American Indian Probate Act of 2004, or on or after the date on which a copy of the tribal rule was delivered to the Secretary pursuant to item (aa), whichever is later; and

(ee) the Secretary does not make a determination within 90 days after a copy of the tribal rule is delivered pursuant to item (aa) that the rule would be unreasonably difficult to administer or does not conform with the requirements in item (bb) or (cc).

(v) Rule of construction.

This subparagraph shall not be construed to limit a person's right to devise any trust or restricted interest by way of a valid will in accordance with subsection (b).

(3) Right of representation.

If, under this subsection, all or any part of the estate of a decedent is to pass to children of a deceased child by right of representation, that part is to be divided into as many equal shares as there are living children of the decedent and pre-deceased children who left issue who survive the decedent. Each living child of the decedent, if any, shall receive 1 share, and the share of each pre-deceased child shall be divided equally among the pre-deceased child's children.

(4) Special rule relating to survival.

In the case of intestate succession under this subsection, if an individual fails to survive the decedent by at least 120 hours, as established by clear and convincing evidence--

(A) the individual shall be deemed to have predeceased the decedent for the purpose of intestate succession; and

(B) the heirs of the decedent shall be determined in accordance with this section.

(5) Status of inherited interests.

Except as provided in paragraphs (2) (A) and (D) regarding the life estate of a surviving spouse, a trust or restricted interest in land or trust personalty that descends under the provisions of this subsection shall vest in the heir in the same trust or restricted status as such interest was held immediately prior to the decedent's death.

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(b) Testamentary disposition.

(1) General devise of an interest in trust or restricted land.

(A) In general.

Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, or a tribal probate code approved by the Secretary in accordance with section 2205, the owner of a trust or restricted interest in land may devise such interest to--

(i) any lineal descendant of the testator;

(ii) any person who owns a preexisting undivided trust or restricted interest in the same parcel of land;

(iii) the Indian tribe with jurisdiction over the interest in land; or

(iv) any Indian;

in trust or restricted status.

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(B) Rules of interpretation.

Any devise of a trust or restricted interest in land pursuant to subparagraph (A) to an Indian or the Indian tribe with jurisdiction over the interest shall be deemed to be a devise of the interest in trust or restricted status. Any devise of a trust or restricted interest in land to a person who is only eligible to be a devisee under clause (i) or (ii) of subparagraph (A) shall be presumed to be a devise of the interest in trust or restricted status unless language in such devise clearly evidences an intent on the part of the testator that the interest is to pass as a life estate or fee interest in accordance with paragraph (2)(A).

(2) Devise of trust or restricted land as a life estate or in fee.

(A) In general.

Except as provided under any applicable Federal law, any trust or restricted interest in land that is not devised in accordance with paragraph (1)(A) may be devised only--

- (i) as a life estate to any person, with the remainder being devised only in accordance with subparagraph (B) or paragraph (1); or
- (ii) except as provided in subparagraph (B), as a fee interest without Federal restrictions against alienation to any person who is not eligible to be a devisee under clause (iv) of paragraph (1)(A).

(B) Indian reorganization act lands.

Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464), may be devised only in accordance with--

- (i) that section;
- (ii) subparagraph (A)(i); or
- (iii) paragraph (1)(A);

provided that nothing in this section or in section 4 of the Act of June 18, 1934 (25 U.S.C. 464), shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 4 of that Act to any person as a fee interest under subparagraph (A)(ii).

(3) General devise of an interest in trust personalty.

(A) Trust personalty defined.

The term "trust personalty" as used in this section includes all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.

(B) In general.

Subject to any applicable Federal law relating to the devise or descent of such trust personalty, or a tribal probate code approved by the Secretary in accordance with section 2205, the owner of an interest in trust personalty may devise such an interest to any person or entity.

(C) Maintenance as trust personalty.

In the case of a devise of an interest in trust personalty to a person or Indian tribe eligible to be a devisee under paragraph (1)(A), the Secretary shall maintain and continue to manage such interests as trust personalty.

(D) Direct disbursement and distribution.

In the case of a devise of an interest in trust personalty to a person or Indian tribe not eligible to be a devisee under paragraph (1)(A), the Secretary shall directly disburse and distribute such personalty to the devisee.

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(4) Invalid devises and wills.

(A) Land.

Any trust or restricted interest in land that is not devised in accordance with paragraph (1) or (2) or that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a).

(B) Personalty.

Any trust personalty that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a).

(c) Joint tenancy; right of survivorship.

(1) Presumption of joint tenancy.

If a testator devises trust or restricted interests in the same parcel of land to more than 1 person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

(2) Exception.

Paragraph (1) shall not apply to any devise of an interest in trust or restricted land where the will in which such devise is made was executed prior to the date that is 1 year after the date on which the Secretary publishes the certification required by section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(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.

(A) The activities conducted under this subsection shall be conducted in accordance with any applicable--

(i) tribal probate code; or

(ii) tribal land consolidation plan.

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(B) 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;
- (B) dramatically increase the use of wills and other methods of devise among Indian landowners;
- (C) substantially reduce the quantity and complexity of Indian estates that pass intestate through the probate process, while protecting the rights and interests of Indian landowners; and
- (D) assist Indian landowners in accessing information pursuant to section 2216(e) of this title.

(3) Probate code development and legal assistance grants.

In carrying out this section, the Secretary may award grants, including noncompetitive grants, to--

- (A) Indian tribes, for purposes of tribal probate code development and estate planning services to tribal members;
- (B) organizations that provide legal assistance services for Indian tribes, Indian organizations, and individual owners of interests in trust or restricted lands that are qualified as nonprofit organizations under section 501(c)(3) of the Internal Revenue Code of 1986 and provide such services pursuant to Federal poverty guidelines, for purposes of providing civil legal assistance to such Indian tribes, individual owners, and Indian organizations for the development of tribal probate codes, for estate planning services or for other purposes consistent with the services they provide to Indians and Indian tribes; and
- (C) in specific areas and reservations where qualified nonprofit organizations referred to in subparagraph (B) do not provide such legal assistance to Indian tribes, Indian organizations, or individual owners of trust or restricted land, to other providers of such legal assistance; that submit an application to the Secretary, in such form and manner as the Secretary may prescribe.

(4) Authorization for appropriations.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of paragraph (3).

(g) Applicable federal law.

(1) In general.

Any references in subsections (a) and (b) to applicable Federal law include--

- (A) Public Law 91-627 (84 Stat. 1874);
- (B) the allotted land (or any interest relating to such land) of 1 or more specific Indian tribes expressly identified in Federal law, including any of the Federal laws governing the probate or determination of heirs associated with, or otherwise relating to, the land, interest in land, or other interests or assets that are owned by individuals in—
 - (i) Five Civilized Tribes restricted fee status; or
 - (ii) Osage Tribe restricted fee status.
- (C) Public Law 92-443 (86 Stat. 744);

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(D) Public Law 96-274 (94 Stat. 537); and

(E) Public Law 98-513 (98 Stat. 2411).

(2) No effect on laws.

Nothing in this Act amends or otherwise affects the application of any law specified in paragraph (1), or any other Federal law that pertains specifically to--

(A) trust or restricted land located on 1 or more specific Indian reservations that are expressly identified in such law; or

(B) the allotted lands of 1 or more specific Indian tribes that are expressly identified in such law.

(3) LIMITATION ON EFFECT OF PARAGRAPH.--Except to the extent that this Act would amend or otherwise affect the application of a Federal law specified or described in paragraph (1) or (2), nothing in paragraph (2) limits the application of this Act to trust or restricted land, interests in such land, or any other trust or restricted interests or assets.

(h) Rules of interpretation.

In the absence of a contrary intent, and except as otherwise provided under this Act, applicable Federal law, or a tribal probate code approved by the Secretary pursuant to section 2205, wills shall be construed as to trust and restricted land and trust personalty in accordance with the following rules:

(1) Construction that will pass all property.

A will shall be construed to apply to all trust and restricted land and trust personalty which the testator owned at his death, including any such land or personalty acquired after the execution of his will.

(2) Class gifts.

(A) No differentiation between relationship by blood and relationship by affinity.

Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(B) Meaning of "heirs" and "next of kin", etc.; time of ascertaining class.

A devise of trust or restricted interest in land or an interest in trust personalty to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family" shall mean those persons, including the spouse, who would be entitled to take under the provisions of this Act for nontestamentary disposition. The class is to be ascertained as of the date of the testator's death.

(C) Time for ascertaining class.

In construing a devise to a class other than a class described in subparagraph (B), the class shall be ascertained as of the time the devise is to take effect in enjoyment. The surviving issue of any member of the class who is then dead shall take by right of representation the share which their deceased ancestor would have taken.

(3) Meaning of "die without issue" and similar phrases.

In any devise under this chapter, the words "die without issue", "die without leaving issue", "have no issue", or words of a similar import shall be construed to mean that an individual had no lineal descendants in his lifetime or at his death, and not that there will be no lineal descendants at some future time.

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(4) Persons born out of wedlock.

In construing provisions of this chapter relating to lapsed and void devises, and in construing a devise to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father.

(5) Lapsed devises.

Subject to the provisions of subsection (b), where the testator devises or bequeaths a trust or restricted interest in land or trust personalty to the testator's grandparents or to the lineal descendent of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendents, such descendents shall take the interest so devised or bequeathed per stirpes.

(6) Void devises.

Except as provided in paragraph (5), and if the disposition shall not be otherwise expressly provided for by a tribal probate code approved under section 2205, if a devise other than a residuary devise of a trust or restricted interest in land or trust personalty fails for any reason, such interest shall become part of the residue and pass, subject to the provisions of subsection (b), to the other residuary devisees, if any, in proportion to their respective shares or interests in the residue.

(7) Family cemetery plot.

If a family cemetery plot owned by the testator at his decease is not mentioned in the decedent's will, the ownership of the plot shall descend to his heirs as if he had died intestate.

(i) Heirship by killing.

(1) Heir by killing defined.

As used in this subsection, "heir by killing" means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

(2) No acquisition of property by killing.

Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, no heir by killing shall in any way acquire any trust or restricted interests in land or interests in trust personalty as the result of the death of the decedent, but such property shall pass in accordance with this subsection.

(3) Descent, distribution, and right of survivorship.

The heir by killing shall be deemed to have predeceased the decedent as to decedent's trust or restricted interests in land or trust personalty which would have passed from the decedent or his estate to such heir--

- (A) under intestate succession under this section;
- (B) under a tribal probate code, unless otherwise provided for;
- (C) as the surviving spouse;
- (D) by devise;
- (E) as a reversion or a vested remainder;
- (F) as a survivorship interest; and
- (G) as a contingent remainder or executory or other future interest.

(4) Joint tenants, joint owners, and joint obligees.

(A) Any trust or restricted land or trust personalty held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.

(B) As to trust or restricted land or trust personalty held jointly by 3 or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the death of the decedent shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any

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surviving joint tenants.

(C) Notwithstanding any other provision of this subsection, the decedent's trust or restricted interest land [*sic – presumably should be “interest in land”*] or trust personalty that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

(5) Life estate for the life of another.

If the estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

(6) Preadjudication rule.

(A) In general.

If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any State, with voluntary manslaughter or homicide in connection with a decedent's death, then any and all trust or restricted land or trust personalty that would otherwise pass to that person from the decedent's estate shall not pass or be distributed by the Secretary until the charges have been resolved in accordance with the provisions of this paragraph.

(B) Dismissal or withdrawal.

Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such land and personalty shall pass as if no charge had been filed or made.

(C) Conviction.

Upon conviction of such person, and the exhaustion of all appeals, if any, the trust and restricted land and trust personalty in the estate shall pass in accordance with this subsection.

(7) Broad construction; policy of subsection.

This subsection shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his own wrong, wherever committed.

(j) General rules governing probate.

(1) Scope.

Except as provided under applicable Federal law or a tribal probate code approved under section 2205, the provisions of this subsection shall govern the probate of estates containing trust and restricted interests in land or trust personalty.

(2) Pretermitted spouses and children.

(A) Spouses.

(i) In general.

Except as provided in clause (ii), if the surviving spouse of a testator married the testator after the testator executed the will of the testator, the surviving spouse shall receive the intestate share in the decedent's trust or restricted land and trust personalty that the spouse would have received if the testator had died intestate.

(ii) Exception.

Clause (i) shall not apply to a trust or restricted interest land [*sic – presumably should be “interest in land”*] where--

(I) the will of a testator is executed before the date that is 1 year after the date on which the Secretary publishes a notice of certification under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374);

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- (II)(aa) the spouse of a testator is a non-Indian; and
 - (bb) the testator devised the interests in trust or restricted land of the testator to 1 or more Indians;
- (III) it appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;
- (IV) the will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or
- (V)(aa) the testator provided for the spouse by a transfer of funds or property outside the will; and
 - (bb) an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

(iii) Spouses married at the time of the will.

Should the surviving spouse of the testator be omitted from the will of the testator, the surviving spouse shall be treated, for purposes of trust or restricted land or trust personalty in the testator's estate, in accordance with the provisions of subsection (a)(2)(A) of this section, as though there was no will but only if --

- (I) the testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;
- (II) the testator and surviving spouse have a surviving child who is the child of the testator;
- (III) the surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust or restricted land in such estate; or
- (IV) the surviving spouse is under a binding obligation to continue making loan payments for the trust or restricted land for a substantial period of time;

except that, if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of funds or property outside of the will, this clause shall not apply.

(B) Children.

(i) In general.

If a testator executed the will of the testator before the birth or adoption of 1 or more children of the testator, and the omission of the children from the will is a product of inadvertence rather than an intentional omission, the children shall share in the trust or restricted interests in land and trust personalty as if the decedent had died intestate.

(ii) Adopted heirs.

Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (25 U.S.C. 372a), shall be treated as the child of a decedent under this subsection.

(iii) Adopted-out children.

(I) In general.

For purposes of this Act, an adopted person shall not be considered the child or issue of his natural parents, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have

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married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

(II) Eligible heir pursuant to other federal law or tribal law.

Notwithstanding the provisions of subparagraph (B)(iii)(I), other Federal laws and laws of the Indian tribe with jurisdiction over the trust or restricted interest in land may otherwise define the inheritance rights of adopted-out children.

(3) Divorce.

(A) Surviving spouse.

(i) In general.

An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death of the decedent.

(ii) Separation.

A decree of separation that does not dissolve a marriage, and terminate the status of husband and wife, shall not be considered a divorce for the purpose of this subsection.

(iii) No effect on adjudications.

Nothing in clause (i) shall prevent the Secretary from giving effect to a property right settlement relating to a trust or restricted interest in land or an interest in trust personalty if 1 of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

(B) Effect of subsequent divorce on a will or devise.

(i) In general.

If, after executing a will, a testator is divorced or the marriage of the testator is annulled, as of the effective date of the divorce or annulment, any disposition of trust or restricted interests in land or of trust personalty made by the will to the former spouse of the testator shall be considered to be revoked unless the will expressly provides otherwise.

(ii) Property.

Property that is prevented from passing to a former spouse of a decedent under clause (i) shall pass as if the former spouse failed to survive the decedent.

(iii) Provisions of wills.

Any provision of a will that is considered to be revoked solely by operation of this subparagraph shall be revived by the remarriage of a testator to the former spouse of the testator.

(4) After-born heirs.

A child in gestation at the time of decedent's death will be treated as having survived the decedent if the child lives at least 120 hours after its birth.

(5) Advancements of trust personalty during lifetime; effect on distribution of estate.

(A) The trust personalty of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent's lifetime to a person eligible to be an heir of the decedent under subsection (b)(2)(B), shall be treated as an advancement against the heir's inheritance, but only if the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift is an advancement or is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(B) For the purposes of this section, trust personalty advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the

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property or as of the time of the decedent's death, whichever occurs first.

(C) If the recipient of the trust personalty predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's intestate estate unless the decedent's contemporaneous writing provides otherwise.

(6) Heirs related to decedent through 2 lines; single share.

A person who is related to the decedent through 2 lines of relationship is entitled to only a single share of the trust or restricted land or trust personalty in the decedent's estate based on the relationship that would entitle such person to the larger share.

(7) Notice.

(A) In general.

To the maximum extent practicable, the Secretary shall notify each owner of trust and restricted land of the provisions of this Act.

(B) Combined notices.

The notice under subparagraph (A) may, at the discretion of the Secretary, be provided with the notice required under subsection (a) of section 8 of the American Indian Probate Reform Act of 2004.

(8) Renunciation or disclaimer of interests.

(A) In general.

Any person 18 years of age or older may renounce or disclaim an inheritance of a trust or restricted interest in land or in trust personalty through intestate succession or devise, either in full or subject to the reservation of a life estate (where the interest is an interest in land), in accordance with subparagraph (B), by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir or devisee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

(B) Eligible recipients of renounced or disclaimed interests; notice to recipients.

(i) Interests in land.

A trust or restricted interest in land may be renounced or disclaimed only in favor of--

(I) an eligible heir;

(II) any person who would have been eligible to be a devisee of the interest in question pursuant to subsection (b)(1)(A) (but only in cases where the renouncing person is a devisee of the interest under a valid will); or

(III) the Indian tribe with jurisdiction over the interest in question;

and the interest so renounced shall pass to its recipient in trust or restricted status.

(ii) Trust personalty.

An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a devisee of such an interest under subsection (b)(3) and shall pass to the recipient in accordance with the provisions of that subsection.

(iii) Unauthorized renunciations and disclaimers.

Unless renounced or disclaimed in favor of a person or Indian tribe eligible to receive the interest in accordance with the provisions of this subparagraph, a renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.

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(C) Acceptance of interest.

A renunciation or disclaimer of an interest filed in accordance with this paragraph shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest. All disclaimers and renunciations filed and implemented in probate orders made effective prior to the date of enactment of the American Indian Probate Reform Act of 2004 are hereby ratified.

(D) Rule of construction.

Nothing in this paragraph shall be construed to allow the renunciation of an interest that is subject to the provisions of subsection (a)(2)(D) in favor of more than 1 person.

(9) Consolidation agreements.

(A) In general.

During the pendency of probate, the decisionmaker is authorized to approve written consolidation agreements effecting exchanges or gifts voluntarily entered into between the decedent's eligible heirs or devisees, to consolidate interests in any tract of land included in the decedent's trust inventory. Such agreements may provide for the conveyance of interests already owned by such heirs or devisees in such tracts, without having to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed of trust or restricted interests in land.

(B) Effective.

An agreement approved under subparagraph (A) shall be considered final when implemented in an order by a decisionmaker. The final probate order shall direct any changes necessary to the Secretary's land records, to reflect and implement the terms of the approved agreement.

(C) Effect on purchase option at probate.

Any interest in trust or restricted land that is subject to a consolidation agreement under this paragraph or section 2206(e) shall not be available for purchase under section 2206~~(p)~~(o) unless the decisionmaker determines that the agreement should not be approved.

(k) Notification to landowners.

After receiving written request [*sic – presumably should be "a written request"*] by any owner of a trust or restricted interest in land, the Secretary shall provide to such landowner the following information with respect to each tract of trust or restricted land in which the landowner has an interest:

- (1) The location of the tract of land involved.
- (2) The identity of each other co-owner of interests in the parcel of land.
- (3) The percentage of ownership of each owner of an interest in the tract.

(l) Pilot project for the management of trust assets of Indian families and relatives.

(1) Development pilot project.

The Secretary shall consult with tribes, individual landowner organizations, Indian advocacy organizations, and other interested parties to--

- (A) develop a pilot project for the creation of legal entities such as private or family trusts, partnerships corporations, [*sic – presumably should be "partnerships, corporations,"*] or other organizations to improve, facilitate, and assist in the efficient management of interests in trust or restricted lands or funds owned by Indian family members and relatives; and

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(B) develop proposed rules, regulations, and guidelines to implement the pilot project, including--

- (i) the criteria for establishing such legal entities;
- (ii) reporting and other requirements that the Secretary determines to be appropriate for administering such entities; and
- (iii) provisions for suspending or revoking the authority of an entity to engage in activities relating to the management of trust or restricted assets under the pilot project in order to protect the interests of the beneficial owners of such assets.

(2) Primary purposes; limitation; approval of transactions; payments by secretary.

(A) Purposes.

The primary purpose of any entity organized under the pilot project shall be to improve, facilitate, and assist in the management of interests in trust or restricted land, held by 1 or more persons, in furtherance of the purposes of this Act.

(B) Limitation.

The organization or activities of any entity under the pilot project shall not be construed to impair, impede, replace, abrogate, or modify in any respect the trust duties or responsibilities of the Secretary, nor shall anything in this subsection or in any rules, regulations, or guidelines developed under this subsection enable any private or family trustee of trust or restricted interests in land to exercise any powers over such interests greater than that held by the Secretary with respect to such interests.

(C) Secretarial approval of transactions.

Any transaction involving the lease, use, mortgage or other disposition of trust or restricted land or other trust assets administered by or through an entity under the pilot project shall be subject to approval by the Secretary in accordance with applicable Federal law.

(D) Payments.

The Secretary shall have the authority to make payments of income and revenues derived from trust or restricted land or other trust assets administered by or through an entity participating in the pilot project directly to the entity, in accordance with requirements of the regulations adopted pursuant to this subsection.

(3) Limitations on pilot project.

(A) Number of organizations.

The number of entities established under the pilot project authorized by this subsection shall not exceed 30.

(B) Regulations required.

No entity shall commence activities under the pilot project authorized by this subsection until the Secretary has adopted final rules and regulations under paragraph (1)(B).

(4) Report to congress.

Prior to the expiration of the pilot project provided for under this subsection, the Secretary shall submit a report to Congress stating--

- (A) a description of the Secretary's consultation with Indian tribes, individual landowner associations, Indian advocacy organizations, and other parties consulted with regarding the development of rules and regulations for the creation and management of interests in trust and restricted lands under the pilot project;
- (B) the feasibility of accurately monitoring the performance of legal entities such as those involved in the pilot project, and the effectiveness of such entities as mechanisms to manage and protect trust assets;
- (C) the impact that the use of entities such as those in the pilot project may have with respect to the accomplishment of the goals of the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.); and

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(D) any recommendations that the Secretary may have regarding whether to adopt a permanent program as a management and consolidation measure for interests in trust or restricted lands.

(m) Notice to heirs.

Prior to holding a hearing to determine the heirs to trust or restricted property, or making a decision determining such heirs, the Secretary shall seek to provide actual written notice of the proceedings to all heirs. Such efforts shall include--

- (1) a search of publicly available records and Federal records, including telephone and address directories and including electronic search services or directories;
- (2) an inquiry with family members and co-heirs of the property;
- (3) an inquiry with the tribal government of which the owner is a member, and the tribal government with jurisdiction over the property, if any; and
- (4) if the property is of a value greater than \$2,000, engaging the services of an independent firm to conduct a missing persons search.

(n) Missing heirs.

- (1) For purposes of this subsection and subsection (m) [*sic – presumably should be “subsection (n)”*], an heir may be presumed missing if--
 - (A) such heir’s whereabouts remain unknown 60 days after completion of notice efforts under subsection (m) [*sic – presumably should be “subsection (n)”*]; and
 - (B) in the proceeding to determine a decedent’s heirs, the Secretary finds that the heir has had no contact with other heirs of the decedent, if any, or with the Department relating to trust or restricted land or other trust assets at any time during the 6-year period preceding the hearing to determine heirs.
- (2) Before the date for declaring an heir missing, any person may request an extension of time to locate such heir. The Secretary shall grant a reasonable extension of time for good cause.
- (3) An heir shall be declared missing only after a review of the efforts made in the heirship proceeding and a finding has been made that this subsection has been complied with.
- (4) An heir determined to be missing pursuant to this subsection shall be deemed to have predeceased the decedent for purposes of descent and devise of trust or restricted land and trust personalty within that decedent’s estate.

(o) Purchase option at probate.

(1) In general.

The trust or restricted interests in a parcel of land in the decedent’s estate may be purchased at probate in accordance with the provisions of this subsection.

(2) Sale of interest at fair market value.

Subject to paragraph (3), the Secretary is authorized to sell trust or restricted interests in land subject to this subsection, including the interest that a surviving spouse would otherwise receive under subparagraph (A) or (D) of subsection (a)(2), at no less than fair market value, as determined in accordance with the provisions of this Act, to any of the following eligible purchasers:

- (A) Any other eligible heir taking an interest in the same parcel of land by intestate succession or the decedent’s other devisees of interests in the same parcel who are eligible to receive a devise under section subsection (b)(1)(A).
- (B) All persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding.
- (C) The Indian tribe with jurisdiction over the interest, or the Secretary on behalf of such Indian tribe.

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(3) Request to purchase; auction; consent requirements.

No sale of an interest in probate shall occur under this subsection unless--

(A) an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and

(B) except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate under section 2206(a)(2) (A) or (D) subparagraph (A) or (D) of subsection (a)(2) consent to the sale.

If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as determined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.

(4) Appraisal and notice.

Prior to the sale of an interest pursuant to this subsection, the Secretary shall--

(A) appraise the interest at its fair market value in accordance with this Act; **and**

(B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection; ~~and~~.

(C) if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold--

(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; and

(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing.

(5) Small undivided interests in Indian lands.--

(A) In general.

Subject to subparagraph (B), the consent of a person who is an heir otherwise required under paragraph (3)(B) shall not be required for the sale of an interest at probate under this subsection if--

(i) the interest is passing by intestate succession;

(ii) prior to the auction the Secretary determines in the probate proceeding that the interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary's records as of the time the determination is made; and

(iii)(I) the Secretary is purchasing the interest as part of the program authorized under section 213(a)(1); or

(II) after receiving notice under paragraph (4)(B), the Indian tribe with jurisdiction over the interest is proposing to purchase the interest from an heir that is not a member, and is not eligible to become a member, of that Indian tribe.

(B) Exception.

(i) Exception. - Notwithstanding subparagraph (A), the consent of such heir shall be required for the sale at probate of the heir's interest if, at the time of the decedent's death, the heir was residing on the parcel of land of which the interest to be sold was a part.

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(6) Distribution of proceeds.

(A) IN GENERAL.--Proceeds from the sale of interests under this subsection shall be distributed to the heirs, devisees, or spouse whose interest was sold in accordance with the values of their respective interests.

(B) HOLDING IN TRUST.--Proceeds described in subparagraph (A) shall be deposited and held in an account as trust personalty if the interest sold would otherwise pass to--

"(i) the heir, by intestate succession under subsection (a); or

"(ii) the devisee in trust or restricted status under subsection (b)(1).

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.

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.

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.

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.

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.

Sec. 2212. Fractional interest acquisition program

(a) Acquisition by Secretary

(1) In general

The Secretary may acquire, at the discretion of the Secretary and with the consent of the owner or from an heir during probate in accordance with section 2206(p) this should be 2206(o) but not in PL109-157, and at fair market value, any fractional interest in trust or restricted lands.

(2) Authority of Secretary

The Secretary shall submit the report required under section 2217 of this title concerning how the fractional interest acquisition program should be enhanced to increase the resources made available to Indian tribes and individual Indian landowners.

(3) Interests held in trust

Subject to section 2213 of this title, the Secretary shall immediately hold interests acquired under this chapter in trust for the recognized tribal government that exercises jurisdiction over the land involved.

(b) Requirements

In implementing subsection (a) of this section, the Secretary--

- (1) shall promote the policies provided for in section 102 of the Indian Land Consolidation Act Amendments of 2000;
- (2) may give priority to the acquisition of fractional interests representing 2 percent or less of a parcel of trust or restricted land, especially those interests that would have escheated to a tribe but for the Supreme Court's decision in *Babbitt v. Youpee* (117 S.[.] Ct. 727 (1997));
- (3) to the extent practicable--
 - (A) shall consult with the tribal government that exercises jurisdiction over the land involved in determining which tracts to acquire on a reservation;
 - (B) shall coordinate the acquisition activities with the acquisition program of the tribal government that exercises jurisdiction over the land involved, including a tribal land consolidation plan approved pursuant to section 2203 of this title; and
 - (C) may enter into agreements (such agreements will not be subject to the provisions of the Indian Self-Determination and Education Assistance Act of 1974 [25 U.S.C. 450 et seq.]) with the tribal government that exercises jurisdiction over the land involved or a subordinate entity of the tribal government to carry out some or all of the Secretary's land acquisition program; and
- (4) shall minimize the administrative costs associated with the land acquisition program through the use of policies and procedures designed to accommodate the voluntary sale of interests under this section, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation, through the elimination of duplicate--
 - (A) conveyance documents;
 - (B) administrative proceedings; and
 - (C) transactions.

(c) Sale of interest to Indian landowners

(1) Conveyance at request

(A) In general

At the request of any Indian who owns an undivided interest in a parcel of trust or restricted land, the Secretary shall convey an interest in such parcel acquired under this section to the Indian landowner--

- (i) on payment by the Indian landowner of the amount paid for the interest by the Secretary; or
- (ii) if--

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(I) the Indian referred to in this subparagraph provides assurances that the purchase price will be paid by pledging revenue from any source, including trust resources; and

(II) the Secretary determines that the purchase price will be paid in a timely and efficient manner.

(B) Limitation

With respect to a conveyance under this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest unless the interest is subject to a foreclosure of a mortgage in accordance with the Act of March 29, 1956 (25 U.S.C. 483a).

(2) Multiple owners

If more than one Indian owner requests an interest under paragraph (1), the Secretary shall convey the interest to the Indian owner who owns the largest percentage of the undivided interest in the parcel of trust or restricted land involved.

(3) Limitation

If an Indian tribe that has jurisdiction over a parcel of trust or restricted land owns an undivided interest in a parcel of such land, such interest may only be acquired under paragraph (1) with the consent of such Indian tribe.

(d) Authorization of appropriations.

There is authorized to be appropriated to carry out this section \$75,000,000 for fiscal year 2005, \$95,000,000 for fiscal year 2006, and \$145,000,000 for each of fiscal years 2007 through 2010.

Sec. 2213. Administration of acquired fractional interests; disposition of proceeds

(a) In general

Subject to the conditions described in subsection (b)(1) of this section, an Indian tribe receiving a fractional interest under section 2212 of this title may, as a tenant in common with the other owners of the trust or restricted lands, lease the interest, sell the resources, consent to the granting of rights-of-way, or engage in any other transaction affecting the trust or restricted land authorized by law.

(b) Application of revenue from acquired interests to land consolidation program.

(1) In general.

The Secretary shall have a lien on any revenue accruing to an interest described in subsection (a) until the Secretary provides for the removal of the lien under paragraph (3), (4), or (5).

(2) Requirements.

(A) In general.

Until the Secretary removes a lien from an interest in land under paragraph (1)--

(i) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary; and

(ii) any revenue derived from any interest acquired by the Secretary in accordance with section 2212 shall be deposited in the fund created under section 2215.

(B) Approval of transactions.

Notwithstanding section 16 of the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (25 U.S.C. 476), or any other provision of law, until the Secretary removes a lien from an interest in land under paragraph (1), the Secretary may approve a transaction covered under this section on behalf of an Indian tribe.

Sec. 2213(b)

(3) Removal of liens after findings.

The Secretary may remove a lien referred to in paragraph (1) if the Secretary makes a finding that--

- (A) the costs of administering the interest from which revenue accrues under the lien will equal or exceed the projected revenues for the parcel of land involved;
- (B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or
- (C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

(4) Removal of liens upon payment into the acquisition fund.

The Secretary shall remove a lien referred to in paragraph (1) upon payment of an amount equal to the purchase price of that interest in land into the Acquisition Fund created under section 2215 of this title, except where the tribe with jurisdiction over such interest in land authorizes the Secretary to continue the lien in order to generate additional acquisition funds.

(5) Other removal of liens.

The Secretary may, in consultation with tribal governments and other entities described in section 2212(b)(3), periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.

(c) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity

(1) In general

Paragraph (2) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(2) Application of lease

The lease or agreement described in paragraph (1) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

Sec. 2214. Establishing fair market value

For purposes of this chapter, the Secretary may develop a system for establishing the fair market value of various types of lands and improvements. Such a system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such system may govern the amounts offered for the purchase of interests in trust or restricted lands under this Act.

Sec. 2215. Acquisition Fund

(a) In general

The Secretary shall establish an Acquisition Fund to--

- (1) disburse appropriations authorized to accomplish the purposes of section 2212 of this title; and
- (2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 2212 or paid by Indian landowners under section 2212.

Sec. 2215

(b) Deposits; use

(1) In general

All proceeds from leases, permits, or resource sales derived from an interest in trust or restricted lands described in subsection (a)(2) of this section shall--

- (A) be deposited in the Acquisition Fund;
- (B) as specified in advance in appropriations Acts, be available for the purpose of acquiring additional fractional interests in trust or restricted lands; and
- (C) be used to acquire undivided interests on the reservation from which the income was derived.

(2) Use of funds.

The Secretary may use the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land in accordance with section 2204.

Sec. 2216. Trust and restricted land transactions

(a) Policy

It is the policy of the United States to encourage and assist the consolidation of land ownership through transactions--

- (1) involving individual Indians;
 - (2) between Indians and the tribal government that exercises jurisdiction over the land; or
 - (3) between individuals who own an interest in trust and restricted land who wish to convey that interest to an Indian or the tribal government that exercises jurisdiction over the parcel of land involved;
- in a manner consistent with the policy of maintaining the trust status of allotted lands. Nothing in this section shall be construed to apply to or to authorize the sale of trust or restricted lands to a person who is not an Indian.

(b) Sales, exchanges and gift deeds between Indians and between Indians and Indian tribes

(1) In general

(A) Estimate of value

Notwithstanding any other provision of law and only after the Indian selling, exchanging, or conveying by gift deed for no or nominal consideration an interest in land, has been provided with an estimate of the value of the interest of the Indian pursuant to this section--

- (i) the sale or exchange or conveyance of an interest in trust or restricted land may be made for an amount that is less than the fair market value of that interest; and
- (ii) the approval of a transaction that is in compliance with this section shall not constitute a breach of trust by the Secretary.

(B) Waiver of requirement.

The requirement for an estimate of value under subparagraph (A) may be waived in writing by an owner of a trust or restricted interest in land either selling, exchanging, or conveying by gift deed for no or nominal consideration such interest--

- (i) to an Indian person who is the owner's spouse, brother, sister, lineal ancestor, lineal descendant, or collateral heir; or
- (ii) to an Indian co-owner or to the tribe with jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents 5 percent or less of the parcel.

Sec. 2216(b)

(2) Limitation

For a period of 5 years after the Secretary approves a conveyance pursuant to this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

(c) Acquisition of interest by Secretary

An Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000, and located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.

(d) Status of lands

The sale, exchange, or conveyance by gift deed for no or nominal consideration of an interest in trust or restricted land under this section shall not affect the status of that land as trust or restricted land.

(e) Land ownership information

Notwithstanding any other provision of law, the names and mailing addresses of the owners of any interest in trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual shall, upon written request, be made available to--

- (1) other owners of interests in trust or restricted lands within the same reservation;
- (2) the tribe that exercises jurisdiction over the land where the parcel is located or any person who is eligible for membership in that tribe; and
- (3) any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate such trust or restricted land or the interest in trust or restricted lands.

(f) Purchase of land by Indian tribe.

(1) In general.

Except as provided in paragraph (2), before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of, or interest in, trust or restricted land, the Indian tribe with jurisdiction over the parcel shall have the opportunity--

- (A) to match any offer contained in the application; or
- (B) in a case in which there is no purchase price offered, to acquire the interest in the parcel by paying the fair market value of the interest.

(2) Exception for family farms.

(A) In general.

Paragraph (1) shall not apply to a parcel of, or interest in, trust or restricted land that is part of a family farm that is conveyed to a member of the family of a landowner (as defined in section 2205(c)(2)(A)(iv)) if the conveyance requires that in the event that the parcel or interest is offered for sale to an entity or person that is not a member of the family of the landowner, the Indian tribe with jurisdiction over the land shall be afforded the opportunity to purchase the interest pursuant to paragraph (1).

(B) Applicability of other provision.

Section 2205(c)(2)(A) shall apply with respect to the recording and mortgaging of any trust or restricted land referred to in subparagraph (A).

Sec. 2217. Reports to Congress

(a) In general

Prior to expiration of the authority provided for in section 2212(a)(2)(A) of this title, the Secretary, after consultation with Indian tribes and other interested parties, shall submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that indicates, for the period covered by the report--

- (1) the number of fractional interests in trust or restricted lands acquired; and
- (2) the impact of the resulting reduction in the number of such fractional interests on the financial and realty recordkeeping systems of the Bureau of Indian Affairs.

(b) Report

The reports described in subsection (a) of this section and section 2212(a) of this title shall contain findings as to whether the program under this chapter to acquire fractional interests in trust or restricted lands should be extended and whether such program should be altered to make resources available to Indian tribes and individual Indian landowners.

Sec. 2218. Approval of leases, rights-of-way, and sales of natural resources

(a) Approval by the Secretary

(1) In general

Notwithstanding any other provision of law, the Secretary may approve any lease or agreement that affects individually owned allotted land or any other land held in trust or restricted status by the Secretary on behalf of an Indian, if--

- (A) the owners of not less than the applicable percentage (determined under subsection (b) of this section) of the undivided interest in the allotted land that is covered by the lease or agreement consent in writing to the lease or agreement; and
- (B) the Secretary determines that approving the lease or agreement is in the best interest of the owners of the undivided interest in the allotted land.

(2) Rule of construction

Nothing in this section shall be construed to apply to leases involving coal or uranium.

(3) Definition

In this section, the term "allotted land" includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians.

(b) Applicable percentage

(1) Percentage interest

The applicable percentage referred to in subsection (a)(1) of this section shall be determined as follows:

- (A) If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent.
- (B) If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent.
- (C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent.
- (D) If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land.

(2) Determination of owners

(A) In general

For purposes of this subsection, in determining the number of owners of, and their interests in, the undivided interest in the allotted land with respect to a lease or

Sec. 2218(b)(2)(A)

agreement, the Secretary shall make such determination based on the records of the Department of the Interior that identify the owners of such lands and their interests and the number of owners of such land on the date on which the lease or agreement involved is submitted to the Secretary under this section.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to authorize the Secretary to treat an Indian tribe as the owner of an interest in allotted land that did not escheat to the tribe pursuant to section 2206 of this title as a result of the Supreme Court's decision in *Babbitt v. Youpee* (117 S[.] Ct. 727 (1997)).

(c) Authority of Secretary to sign lease or agreement on behalf of certain owners

The Secretary may give written consent to a lease or agreement under subsection (a) of this section--

- (1) on behalf of the individual Indian owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or
- (2) on behalf of any heir or devisee referred to in paragraph (1) if the heir or devisee has been determined but cannot be located[.]

(d) Effect of approval

(1) Application to all parties

(A) In general

Subject to paragraph (2), a lease or agreement approved by the Secretary under subsection (a) of this section shall be binding on the parties described in subparagraph (B), to the same extent as if all of the owners of the undivided interest in allotted land covered under the lease or agreement consented to the lease or agreement.

(B) Description of parties

The parties referred to in subparagraph (A) are--

- (i) the owners of the undivided interest in the allotted land covered under the lease or agreement referred to in such subparagraph; and
- (ii) all other parties to the lease or agreement.

(2) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity

(A) In general

Subparagraph (B) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(B) Application of lease

The lease or agreement described in subparagraph (A) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

(e) Distribution of proceeds

(1) In general

The proceeds derived from a lease or agreement that is approved by the Secretary under subsection (a) of this section shall be distributed to all owners of undivided interest in the allotted land covered under the lease or agreement.

(2) Determination of amounts distributed

The amount of the proceeds under paragraph (1) that are distributed to each owner under that paragraph shall be determined in accordance with the portion of the undivided interest in the allotted land covered under the lease or agreement that is owned by that owner.

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(f) Rule of construction

Nothing in this section shall be construed to amend or modify the provisions of Public Law 105-188 (25 U.S.C. 396 note), the American Indian Agricultural Resources Management Act (25 U.S.C. 3701 et seq.), title II of the Indian Land Consolidation Act Amendments of 2000, or any other Act that provides specific standards for the percentage of ownership interest that must approve a lease or agreement on a specified reservation.

(g) Other laws.

Nothing in this Act shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land.

Sec. 2219. Application to Alaska

(a) Findings

Congress finds that--

- (1) numerous academic and governmental organizations have studied the nature and extent of fractionated ownership of Indian land outside of Alaska and have proposed solutions to this problem; and
- (2) despite these studies, there has not been a comparable effort to analyze the problem, if any, of fractionated ownership in Alaska.

(b) Application of chapter to Alaska

Except as provided in this section, this chapter shall not apply to land located within Alaska.

(c) Rule of construction

Nothing in this section shall be construed to constitute a ratification of any determination by any agency, instrumentality, or court of the United States that may support the assertion of tribal jurisdiction over allotment lands or interests in such land in Alaska.

Sec. 2220. Owner-managed interests.

(a) Purpose.

The purpose of this section is to provide a means for the co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

(b) Mineral interests.

Nothing in this section shall be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land.

Sec. 2220

(c) Owner management.

(1) In general.

Notwithstanding any provision of Federal law requiring the Secretary to approve individual Indian leases of individual Indian trust or restricted land, where the owners of all of the undivided trust or restricted interests in a parcel of land have submitted applications to the Secretary pursuant to subsection (a), and the Secretary has approved such applications under subsection (d), such owners may, without further approval by the Secretary, enter into a lease of the parcel for agricultural purposes for a term not to exceed 10 years.

(2) Rule of construction.

No such lease shall be effective until it has been executed by the owners of all undivided trust or restricted interests in the parcel.

(d) Approval of applications for owner management.

(1) In general.

Subject to the provisions of paragraph (2), the Secretary shall approve an application for owner management submitted by a qualified applicant pursuant to this section unless the Secretary has reason to believe that the applicant is submitting the application as the result of fraud or undue influence. No such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(2) Commencement of owner-managed status.

Notwithstanding the approval of 1 or more applications pursuant to paragraph (1), no trust or restricted interest in a parcel of land shall acquire owner-managed status until applications for all of the trust or restricted interests in such parcel of land have been submitted to and approved by the Secretary pursuant to this section.

(e) Validity of leases.

No lease of trust or restricted interests in a parcel of land that is owner-managed under this section shall be valid or enforceable against the owners of such interests, or against the land, the interest or the United States, unless such lease--

- (1) is consistent with, and entered into in accordance with, the requirements of this section; or
- (2) has been approved by the Secretary in accordance with other Federal laws applicable to the leasing of trust or restricted land.

(f) Lease revenues.

The Secretary shall not be responsible for the collection of, or accounting for, any lease revenues accruing to any interests under a lease authorized by subsection (e), so long as such interest is in owner-managed status under the provisions of this section.

(g) Jurisdiction.

(1) Jurisdiction unaffected by status.

The Indian tribe with jurisdiction over an interest in trust or restricted land that becomes owner-managed pursuant to this section shall continue to have jurisdiction over the interest to the same extent and in all respects that such tribe had prior to the interest acquiring owner-managed status.

(2) Persons using land.

Any person holding, leasing, or otherwise using such interest in land shall be considered to consent to the jurisdiction of the Indian tribe referred to in paragraph (1), including such tribe's laws and regulations, if any, relating to the use, and any effects associated with the use, of the interest.

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(h) Continuation of owner-managed status; revocation.

(1) In general.

Subject to the provisions of paragraph (2), after the applications of the owners of all of the trust or restricted interests in a parcel of land have been approved by the Secretary pursuant to subsection (d), each such interest shall continue in owner-managed status under this section notwithstanding any subsequent conveyance of the interest in trust or restricted status to another person or the subsequent descent of the interest in trust or restricted status by testate or intestate succession to 1 or more heirs.

(2) Revocation.

Owner-managed status of an interest may be revoked upon written request of the owners (including the parents or legal guardians of minors or incompetent owners) of all trust or restricted interests in the parcel, submitted to the Secretary in accordance with regulations adopted under subsection (1). The revocation shall become effective as of the date on which the last of all such requests has been delivered to the Secretary.

(3) Effect of revocation.

Revocation of owner-managed status under paragraph (2) shall not affect the validity of any lease made in accordance with the provisions of this section prior to the effective date of the revocation, provided that, after such revocation becomes effective, the Secretary shall be responsible for the collection of, and accounting for, all future lease revenues accruing to the trust or restricted interests in the parcel from and after such effective date.

(i) Defined terms.

(1) For purposes of subsection (d)(1), the term “qualified applicant” means--

- (A) a person over the age of 18 who owns a trust or restricted interest in a parcel of land; and
- (B) the parent or legal guardian of a minor or incompetent person who owns a trust or restricted interest in a parcel of land.

(2) For purposes of this section, the term “owner-managed status” means, with respect to a trust or restricted interest, that--

- (A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d);
- (B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and
- (C) no revocation has occurred under subsection (h)(2).

(j) Secretarial approval of other transactions.

Except with respect to the specific lease transaction described in paragraph (1) of subsection (c), interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all

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Federal laws requiring the Secretary to approve transactions involving trust or restricted land (including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

(k) Effect of section.

Subject to subsections (c), (f), and (h), nothing in this section diminishes or otherwise affects any authority or responsibility of the Secretary with respect to an interest in trust or restricted land.

Sec. 2221. Annual notice and filing; current whereabouts of interest owners

On at least an annual basis, the Secretary shall include along with other regular reports to owners of trust or restricted interests in land and individual Indian money account owners a change of name and address form by means of which the owner may confirm or update the owner's name and address. The change of name and address form shall include a section in which the owner may confirm and update the owner's name and address.

AIRPA Sec. 6. Additional amendments

(c) Issuance of patents.

Section 5 of the Act of February 8, 1887 (25 U.S.C. 348), is amended by striking the second proviso and inserting the following: "Provided, That 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:".

(d) Transfers of restricted Indian land.

Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by--

- (1) striking ", in accordance with" and all that follows through "or in which the subject matter of the corporation is located,";
- (2) striking ", except as provided by the Indian Land Consolidation Act" and all that follows through the colon; and
- (3) inserting "in accordance with 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):".

AIPRA Sec. 8. Notice; effective date

(a) Notice.

(1) In general.

Not later than 180 days after the date of enactment of this Act, the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by this Act.

(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 Act and the amendments made by this Act, with emphasis on the effect of the provisions of this Act and the amendments made by this Act, on the testate disposition and intestate descent of their interests in trust or restricted land;
- (B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;
- (C) the use of negotiated sales, gift deeds, land exchanges, and other transactions for consolidating the ownership of land; and
- (D) a toll-free telephone number to be used for obtaining information regarding the provisions of this Act and any trust assets of such owners.

(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--

- (A) certify that the requirements of this subsection have been met; and
- (B) publish notice of that certification in the Federal Register.

(b) EFFECTIVE DATES.--

"(1) IN GENERAL.--Except as provided in paragraph (2), the amendments made by this Act apply on and after the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).

"(2) EXCEPTIONS.--The following provisions of law apply as of the date of enactment of this Act:

"(A) Subsections (e) and (f) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by this Act).

"(B) Subsection (g) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as in effect on March 1, 2006).

"(C) The amendments made by section 4, section 5, paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), and (11) of section 6(a), section 6(b)(3), and section 7 of this Act."

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CONTACTS, RESOURCES AND SUGGESTED READING

When setting up appointments with clients, it is often useful and convenient for everyone involved to meet at the Reservation's local Bureau of Indian Affairs Office. The following is a list of the local offices and the people to contact to reserve a space. You can also use these offices to obtain ITI reports from Fiduciary Trust Officers (FTO).

Billings Regional Office

Bureau of Indian Affairs
316 N. 26th Street
Billings, MT 59101
P: 406/247-7343
F: 406/247-7976

The Billings BIA office is located on the 4th floor of the Federal Building. The receptionist can assist you in obtaining an ITI report.

Blackfeet

Bureau of Indian Affairs
Blackfeet Agency
531 S E. Boundary Street
P.O. Box 880
Browning, MT 59417
P: 406/338-7226
F: 406/338-7716

Lisa Bullshoe (338-4358) is the FTO. Mary Aimsback (338-7544) will reserve one of the conference rooms for you for an appointment. The Agency is located directly on the highway to the left when you enter town from the southeast.

Crow

Bureau of Indian Affairs
BIA Building 2, Weaver Drive
Crow Agency, MT 59022
P: 406/638-2672
F: 406/638-2380

For setting up appointments and obtaining ITI reports, contact Theresa Glinski, FTO, at 638-4405.

In addition to the Crow Agency BIA office, Montana Legal Services maintains a small office space where the tribal courtrooms are located. You can call our Crow Advocate, Leslie PlainFeather at 638-4050 to let her know you would like to use our office.

Fort Belknap Agency

Bureau of Indian Affairs
100 BIA Road
P.O. Box 98
Harlem, MT 59526
P: 406/353-2901
F: 406/353-2886

For setting up appointments and requesting ITI reports, contact Kurt Kauffman, Fiduciary Trust Officer, at 353-2281.

Fort Peck Agency

Bureau of Indian Affairs
500 Medicine Bear Road, P.O. Box 637
Poplar, MT 59255
P: 406/768-5312
F: 406/768-3405

For setting up appointments and requesting ITI reports, contact Charles Knowlton, Fiduciary Trust Officer, at 768-3288.

Northern Cheyenne Agency

Bureau of Indian Affairs
BIA Building, Hwy 39 North Lame Deer, MT 59043
P: 406/477-8242
F: 406/477-6636

For setting up appointments and obtaining ITI reports, contact Lynette Verlanic, Fiduciary Trust Officer, at 477-8289.

Rocky Boy's Agency Representative

Bureau of Indian Affairs
Box Elder, MT 59521
P: 406/395-4476
F: 406/395-4382
James Montes, Field Representative

Resources:

Institute for Indian Estate Planning and Probate
Seattle University School of Law
901 12th Avenue
Seattle, WA 98122
<http://indianwills.org/>
Douglas R. Nash, Director
dnash@seattleu.edu
(206) 398-4276

The following link contains charts and links to further reading on AIPRA and Indian Wills:

http://www.law.seattleu.edu/Centers_and_Institutes/Indian_Institute/Attorney_Information.xml

Indian Land Working Group
2401 12th Street NW #206N
Albuquerque, NM 87752
(505) 247-9561
www.ilwg.org

The Montana Law Help website also lists resources available.

Click on the link below and go to American Indian Issues:

<http://www.montanalawhelp.org/MT/index.cfm>

Montana State University
PO Box 172800
Bozeman, MT 59717
Marsha A. Goetting, Ph.D.
(406) 994-5695
getting@montana.edu
Indian Land Fact Sheets from MSU
<http://www.montana.edu/indianland/factsheets.html>

Suggested Reading:

Douglas R. Nash & Cecelia E. Burke, *The Changing Landscape of Indian Estate Planning and Probate: The American Indian Probate Reform Act*, 5 SEATTLE J. SOC. JUST. 121 (2006).

Resources:

Institute for Indian Estate Planning and Probate at Seattle University School of Law

901 12th Avenue P.O. Box 222000 Seattle, WA 98122-1090
office phone: (206) 398-4284 / fax: (206) 398-4036

The Indian Land Tenure Foundation created The Institute for Indian Estate Planning and Probate in May of 2005. The Institute opened its doors at Seattle University School of Law on August 1, 2005, with a mission of providing training on the American Indian Probate Reform Act and estate planning services to Indian Country. The Institute currently oversees estate planning projects in eight states, including law school externship projects funded by the ILTF, and estate planning legal service projects in the Northwest, Midwest and Great Plains regions funded in part by grants from the Paul Allen Foundation and the Bush Foundation.

The Institute offers a plethora of resources, including articles, access to regulations and forms that can be easily located at their website:

<http://www.indianwills.org/>

Indian Land Working Group

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Tel/Fax: (505) 247-9561

www.ilwg.org

The ILWG is comprised of a 13 member Board of Tribal representatives, individual Indian landowners, and representatives of intertribal and national Indian organizations. The ILWG's goals are achieved through a network consisting of the ILWG Board, tribal employees, individual landowners, and land restoration, realty, and probate trainers that exists throughout Indian Country. Our annual land symposium, land policy reform initiatives, trainings, development of land related training tools, and production of the "Indigenous Lands Reporter"- the ILWG's quarterly publication all work together in achieving our organizational goals.

Additionally, the formation of the ILWG Fee To Trust, Rights Of Way, and Estate Planning and Probate Committees comprised of community based native specialists in these issue areas, has strengthened our efforts in achieving native land policy reform.

Montana State University Extension

MSU Extension as part of a Community Outreach and Assistance Partnership Program created a series of factsheets titled Planning for the Passing of Reservation Lands to Future Generations. These useful and informative fact sheets that cover everything from intestate to testamentary rules of AIPRA can be accessed at:

www.montana.edu/indianland/factsheets.html

Montana Law Help

The Montana Law Help website has several resources and links to additional information regarding AIPRA and Indian will drafting at:

www.montanalawhelp.org/MT/index.cfm

Suggested Reading

Douglas R. Nash & Cecelia E. Burke, *The Changing Landscape of Indian Estate Planning and Probate: The American Indian Probate Reform Act*, 5 Seattle J. Soc. Just. 121 (2006).

Passing Title to Tribal Lands and the Federal Probate of Native American Estates (pdf) Douglas R. Nash and Cecelia E. Burke. This article provides a brief historical primer on trust lands and an overview of the American Indian Probate Reform Act's key provisions for the estate planning attorney.

Events Leading to the American Indian Probate Reform Act (pdf) A history of federal laws and policies leading to the creation of AIPRA by John C. Sledd, Attorney, Kanji & Katzen, PLLC

- These articles can be easily accessed via a resource page on the Institute for Indian Estate Planning and Probate Website at: <http://www.indianwills.org/Attorney.html#LegalArticlesonAIPRA>

On December 2, 2008, a third technical amendment to AIPRA was signed into law by the President.

Highlights of changes:

2201(7) - land has been redefined, removing permanent improvements from its definition. Homes built on trust lands where the owner has an underlying interest are now covered in 2006(a) intestate and 2206(h) testamentary.

2206(b)(2)(B) now provides IRA tribes the authority to enact resolutions, codes or laws to permit the devise of trust property out of trust status and into fee status to a non-Indian devisee. Without tribal resolution or enactment, the Act itself prohibits devises of IRA lands in fee to non-Indians.

2206(o) removes provisions for auction of trust lands at probate and provides for sales only. If there are multiple purchasers, the heir will choose who buys the interest.
2206(o)(3)(B). Adds required consent of surviving spouse as well as heirs.

2206(o)(5) now measures the interest of the decedent, not the interest that the heirs were to receive. This eliminates the potential forced sale of interests greater than 5% at probate.

2206(o)(5)(iii) forced sales at probate - limits purchasers at probate for sales without consent of heirs only to tribe with jurisdiction or Secretary, and only if the heir or surviving spouse is 1. not residing on that parcel at time of decedent's death, or 2. is not a member of the tribe, or 3. is not eligible for enrollment with the tribe where the land is located.

**INDIAN WILL UNDER THE ACT OF JUNE 25, 1910 (36 STAT. 855-856)
AS AMENDED BY THE ACT OF FEBRUARY 14, 1913 (37 STAT 678)**

**LAST WILL AND TESTAMENT
OF**

**B.I.A. Identification Number No.
Born**

I _____, of the _____ Tribe, State of Montana, being of sound and disposing mind, realizing the uncertainty of human life, and not acting under any duress, menace, fraud, or undue influence, do hereby make, publish, and declare this to be my Last Will and Testament as follows:

**Article I
REVOCATION OF ALL PRIOR WILLS**

I hereby revoke any and all Wills and Codicils previously made by me.

**Article II
IDENTIFICATION OF FAMILY**

I am single.

I am married to _____, born _____, _____ an enrolled member of the _____ Tribe, ID No. _____, and all references to "my spouse" in this Will are to _____.

I am divorced from _____.

I am divorced from _____ and remarried to _____ and all references to "my spouse" in this Will are to her/him.

I am a widow, my spouse's full name was _____, born _____, died _____, _____ Tribe.

The names and birthdates of my children are as follows:

My _____, _____, born _____, an enrolled member of _____ Tribe, ID No. _____; and

My _____, _____, born _____, an enrolled member of _____ Tribe, ID No. _____.

-or-

My _____, _____, born _____, an eligible, but un-enrolled member of _____ Tribe.

-or-

My _____, _____, born _____, not eligible to be an enrolled member of any Tribe.

All of my children listed in this Article (Article II) are now living. I have no deceased children.

I have _____ predeceased child(ren). The name(s), birth date(s) and date of death of my predeceased child(ren) is/are as follows:

_____, born _____, died _____, _____ Tribe.

I also consider _____, born _____, _____ Tribe, ID No. _____ to be my child, although not my natural or adopted child.

I am the legal guardian of _____, born _____, _____ Tribe, ID No. _____, and I consider him/her to be part of my immediate family.

I have raised _____, born _____, _____ Tribe, ID No. _____, and consider him/her to be my child, although not my natural or adopted child.

The names and birthdates of my grandchildren taking under this, my Last Will and Testament are as follows:

_____, born _____, an enrolled member of _____ Tribe, ID no. _____.

-or-

_____, born _____, an eligible, but un-enrolled member of _____ Tribe,

-or-

_____, born _____, not eligible to be an enrolled member of any Tribe.

All of my grandchildren listed in this Article (Article II) are now living.

Except as provided below, I make no provisions in this, my Last Will and Testament, for any of my children hereafter born to or adopted by me who survive me, nor for the issue of any child who does not survive me.

**Article III
PERSONAL REPRESENTATIVE**

I hereby nominate and appoint _____ to serve as sole Personal Representative of this, my Last Will and Testament. In the event that _____ fails to qualify or is unable or unwilling to so act, or fails to survive me, then and in that event, I appoint _____ as an alternate or successor Personal Representative.

This Will shall be a non-intervention Will to the extent allowable by Federal and State Law. I further direct that my Personal Representative shall act without bond and without intervention of any court, insofar as possible, and shall have the power, whether or not necessary for the administration of my estate, to sell, exchange, lease, mortgage, pledge, trade and otherwise deal with or dispose of the whole or any part of my estate.

Let it be known that the Personal Representative I have nominated in this Article (Article III) will not have the power to sell, dispose of or distribute any of my Indian trust assets, whether real or personal.

I authorize my Personal Representative to pay all just debts for which proper claims are filed against my estate, the expenses of my last illness and funeral, and the expenses incurred in the administration of my estate to be paid by my Personal Representative as soon after my death as is practicable; provided, however, that this direction shall not authorize any creditor to require payment of any debt or obligation prior to its normal maturity in due course. The above payments shall be made from the residue of my estate.

I give to my Personal Representative, in the event any devise is made in this, my Last Will and Testament, to any person who is at the time of my death under a legal disability, the sole authority and discretion to:

- A. Deliver all or any part of the property to such person;
- B. Place any property in safekeeping for such person and pay any fees incurred which fees shall be paid from my estate as an administrative expense;
- C. Sell all or any part of such property and distribute the proceeds to such person or add them to any trust fund established for such person's benefit; or
- D. Deliver all or any part of such property to the guardian of such person and the receipt by such person's guardian shall be a complete discharge of my Personal Representative for the property delivered.

Article IV TRUST OR RESTRICTED LAND BEQUESTS

Single beneficiary:

I hereby give, devise and bequeath unto my _____, _____, provided said person shall survive me by at least 120 hours any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, including, but not limited to the following: (or "I hereby give, devise . . . any and all of my interests in the following specific Trust or Restricted land:")

1. ; and
2. ; and
3. ; and
4. .

In the event that predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath to [if more than one person named here, the user will have to leave to them as either “joint tenants with right of survivor,” or as “tenants in common.”] any and all of my interests in Trust or Restricted land, including but not limited to the following [or “ any and all of my interests in the following specific Trust or Restricted land”]:

1. ; and
2. ; and
3. ; and
4. .

Multiple beneficiaries:

Joint Tenants with the Right of Survivorship:

I hereby give, devise and bequeath unto my children, and , as joint tenants with the right of survivorship, any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, including, but not limited to the following::

1. ; and
2. ; and
3. ; and
4. .

Tenants in Common:

I hereby give, devise and bequeath unto my children, and , as tenants in common, any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, including, but not limited to the following::

1. ; and
2. ; and
3. ; and
4. .

 shall take their interest as tenants in common in equal shares, one share for each who survives me and one share for each who predeceases me leaving descendants who survive me, such descendants shall take by right of representation. In the event that any of my children predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased child’s share of the property described in this Article (Article IV) unto my remaining children who are alive at the time of my death.

Article V
TRUST PERSONALTY BEQUESTS

I hereby give, devise and bequeath unto _____, any and all funds contained within my Individual Indian Money (IIM) Account at the time of my passing. In the event that _____ predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto _____ any and all funds contained within my IIM account at the time of my passing.

Article VI
NON-TRUST PROPERTY BEQUESTS BY SEPARATE WRITING

I hereby give, devise and bequeath such items of tangible (touchable) personal property not otherwise specifically disposed of by this Will to such person or persons as may be indicated by separate writing. If I decide to have such a separate writing, it will be located with my Will. Such writing will be dated and signed by me but may be replaced by a subsequent writing dated and signed by me.

Such tangible property will at most include only items within the following categories: Articles of personal or household uses or ornament, furniture, furnishings, automobiles, boats, jewelry and precious metals in tangible form, such as coins. Such tangible personal property will not include any trust or restricted lands, trust personalty, real property or interests in lands, mobile home, money that is normal currency or legal tender, evidences of indebtedness, bank accounts, monetary deposits, and documents of title or securities. If any such separate writing through inadvertence includes non-qualifying property, it is my intent that the separate writing be given effect to the extent of the qualifying property only.

If no separate writing is found following my death, then any and all property not otherwise specifically provided for shall pass into the residue of this Will.

Article VII
OTHER SPECIFIC BEQUESTS OF NON-TRUST PROPERTY

I hereby give, devise and bequeath unto _____ the following non-trust real property

List the non-trust real property to be given away, make sure to include a legal description of the property.

If _____ should predecease me or not survive me by at least 120 hours, then I give, devise and bequeath unto _____ [description of non-trust real property]

I hereby give, devise and bequeath unto _____ the following non-trust personal property:

List the non-trust personal property to be given away, make sure to include a description of each piece of property so that the item can be easily identified.

If _____ should predecease me or not survive me by at least 120 hours, then I give, devise and bequeath unto _____ [description of non-trust personal property].

**Article VIII
RESIDUE FOR TRUST OR RESTRICTED LAND
AND TRUST PERSONALTY**

Single beneficiary

I hereby give, devise, and bequeath unto _____, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that _____ predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto _____, all of the rest, residue and remainder of my trust or restricted property not otherwise validly devised by this instrument.

Multiple beneficiaries

Joint Tenants with Right of Survivorship

I hereby give, devise, and bequeath unto _____, _____ and _____, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument or separate writing. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

_____, _____ and _____ shall take any trust or restricted land passing hereunder as joint tenants with the right of survivorship. Further, _____, _____ and _____ shall take any trust or restricted personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that _____, _____ or _____ predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article VIII) unto those remaining individuals named in this Article (Article VIII) who are alive at the time of my passing. **OR** 2) Should _____, _____ or _____ predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article VIII) who are alive at the time of my passing.

Tenants in Common:

I hereby give, devise, and bequeath unto _____, _____ and _____, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument or

separate writing. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

, and shall take any trust or restricted land passing hereunder as Tenants in Common in equal shares. Further, , and shall take any trust or restricted personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that , or predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article VIII) unto those remaining individuals named in this Article (Article VIII) who are alive at the time of my passing. **OR** 2) Should , or predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article VIII) who are alive at the time of my passing.

Article IX RESIDUE FOR NON-TRUST PROPERTY

Single beneficiary

I hereby give, devise, and bequeath unto , all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto , all of the rest, residue and remainder of my non-trust property not otherwise validly devised by this instrument.

Multiple beneficiaries

Joint Tenants with Right of Survivorship

I hereby give, devise, and bequeath unto , and , all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

, and shall take any non-trust real property passing hereunder as joint tenants with the right of survivorship. Further, , and shall take any non-trust personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that , or predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article IX) unto those remaining individuals named in this Article (Article IX) who are alive at the time of my passing. **OR** 2) Should , or predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article IX) who are alive at the time of my passing.

Tenants in Common:

I hereby give, devise, and bequeath unto _____, _____ and _____, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

_____, _____ and _____ shall take any non-trust real property passing hereunder as Tenants in Common in equal shares. Further, _____, _____ and _____ shall take any non-trust personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that _____, _____ or _____ predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article IX) unto those remaining individuals named in this Article (Article IX) who are alive at the time of my passing. OR 2) Should _____, _____ or _____ predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article IX) who are alive at the time of my passing.

**Article X
GUARDIAN**

Should it ever be appropriate to nominate a guardian for _____, I hereby nominate the following persons in the order shown as guardian of the person and estate of such child, each to serve without bond.

1. _____ ; or if she/he is unable or unwilling to serve,
2. _____

**Article XI
BURIAL**

Insert any special request for burial and funeral arrangements in this article.

**Article XII
INVALIDITY CLAUSE**

If any provisions of this, my Last Will and Testament, or if any codicil to it should be invalid, it is my intention that all of the remaining provisions shall continue to be fully effective.

IN WITNESS WHEREOF, I, _____ the Testator/Testatrix, sign my name to this instrument this _____ day of _____, 20_____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament.

[_____ name of testator/testatrix]
Testator/Testatrix

Attestation & Declaration of Witnesses

We, the witnesses, sign our names to this instrument and do hereby declare that:

1. I am of legal age and competent to be a witness to a Will.
2. The Testator/Testatrix appears to me to be of legal age and sound mind and not acting under any duress, menace, fraud or undue influence.
3. On the date shown immediately above, in my presence and in the presence of the other witness, the Testator/Testatrix declared this document to be his/her Will, requested the other witness and myself to act as witnesses to his/her signing of the Will, and then signed the Will.
4. Immediately thereafter and at the Testator's/Testatrix's request, I and the other witness signed the Will as witnesses in the presence of the Testator/Testatrix and each other, on the date shown immediately above the Testator's/Testatrix's signature.

WITNESSES

Signature of Witness #1

Signature of Witness #2

Print Name of Witness #1

Print Name of Witness #2

Residing at:

Residing at:

STATE OF Montana :)
) SS AFFIDAVIT TO ACCOMPANY INDIAN WILL
County of _____ :)

I, _____ being first duly sworn, on oath depose and say: That I am an enrolled member of the Tribe of Indians in the State of Montana; that on the _____ day of _____, 20____, that I requested _____ and _____ to act as witnesses thereto; that the said witnesses heard me publish and declare the same to be my last Will and Testament; that I signed said Will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; and that said Will was read and explained to me (or read by me), after being prepared and before I signed it; and it clearly and accurately expresses my wishes; and I further state that I am 18 years of age or older, and no person has influenced me to make the disposition of any part of my property in any other manner than I myself of my own free will desire and wish to dispose of it, and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

[name of testator/testatrix]
BIA ID No.

We, _____ and _____ each being duly sworn, on oath depose and state; That on the _____ day of _____, 20____, _____, a member of the _____ Tribe of Indians of the State of Montana published and declared the attached instrument to be his/her last Will and Testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that to the best of our knowledge the testator/testatrix is 18 years of age or older, that said testator/testatrix was not acting under duress, menace, fraud or undue influence of any person, so far as we could ascertain and in our opinion was mentally capable of disposing of all his/her estate by Will; and that neither of us is named as a beneficiary in said Will or are in any wise interested in the distribution of the estate of said testator/testatrix.

Signature of Witness #1

Signature of Witness #2

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____, by _____ testator/testatrix, and _____ and _____, attesting witnesses.

Notary Public State of Montana
Printed name: _____
Residing in _____
My commission expires: _____



With Montana AAA Legal Services

Present

Indian Wills

Handouts

Judge Albert C. Jones

May 26th, 2015

Missoula, MT

PROBATE
REGULATIONS
HIGHLIGHTS



REGULATIONS
HIGHLIGHTS

NOTICE!

Material based on published
regulations effective on
December 15, 2008



REGULATIONS

Death Certificate
(25 C.F.R. § 15.104)

Certified copy
BIA may make copy of it
Other info if no DC



3

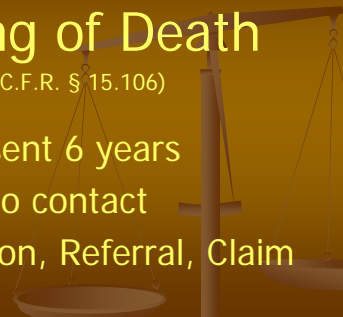
REGULATIONS

Finding of Death

(25 C.F.R. § 15.106)

Absent 6 years
No contact

Investigation, Referral, Claim



REGULATIONS

Claims

(25 C.F.R. § 15.302-305)

Filed at BIA or OHA
Before End of First Hearing

Itemized Statement
Documents



REGULATIONS

43 C.F.R. Part 30



43 C.F.R. Part 30

Indian Probate Adjudication Procedures

Previously in 43 C.F.R.
Part 4, Subpart D

The Probate File – § 30.112

Refer to 25 C.F.R. §§ 15.105, 15.202

- Evidence of Death
- OHA-7; Tribe; ID #; SS#
- Names, addresses of potential heirs/devisees
- Whether potential heirs are Indian/Eligible
- Certified Inventory of Trust Lands, including
 - Description of land and improvements*, if any
 - Identification of <5% interests
- IIM DOD balance and source of funds
- IIM receipts and disbursements since DOD

The Probate File – § 30.112 Cont'd

Refer to 25 C.F.R. §§ 15.105, 15.202

- Wills, Codicils, Revocations & Related Info
- Renunciations and Recipient Identification
- Creditor claims with supporting documents
- Documents concerning—
 - Marriages and Divorces
 - Adoptions/Paternity/Child Support Orders
- Other Documents Provided
- Requests for Purchase of Interests
- Consolidation Requests

Summary Probate – Subpart I

No formal probate hearing

- ALJ, IPJ, ADM, Master
- Personal property (cash) only
- Not more than \$5,000.00 on DOD

Interested party may request formal probate hearing anytime (§ 30.203)

Party dissatisfied may seek de novo review within 30 days (§ 30.204-205)

Formal Probate – Subpart J

All cases may be formal

Notice (§ 30.210)

- First class mail
- At least 21 days before hearing
- Notice presumed unless returned
- Posting 5 conspicuous places near hearing
- Posting at each BIA agency where land

Notice may be published if judge deems appropriate (§ 30.211)

Notice of Hearings (§ 30.114)

Potential Heirs and Devisees

Creditors who have filed claims

Other Interested Parties

Notice to Tribes (§ 30.213)

If DOD on or after June 20, 2006

- Notify Tribe(s) with jurisdiction of trust land
- Notice by first class mail

Contents of Notice (§ 30.214)

Notice of hearing must:

- Name Decedent and case caption
- State Date, Time, Place of hearing
- Name(s) of known potential heirs/devisees
- Cite authority for proceeding (43 C.F.R. Part 30 is the authority)
- Advise all interested parties of right to appear and possible consequences of failure

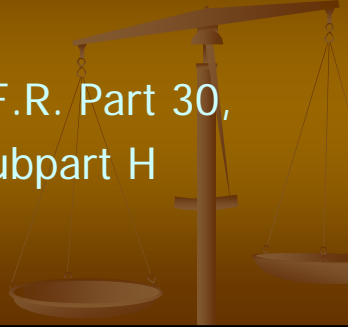
Contents of Notice (Continued)

Notice of hearing must also:

- Include notice of opportunity for consolidation
- Include notice of purchase option if DOD after June 20, 2006
- State that hearing may be continued

Renunciation

43 C.F.R. Part 30,
Subpart H

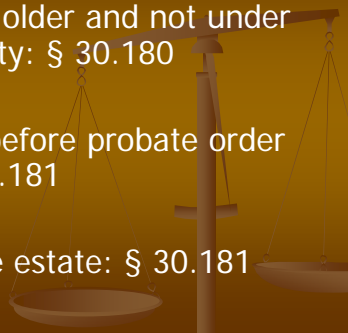


Renunciation —

Anyone 18 or older and not under legal disability: § 30.180

Writing filed before probate order issued: § 30.181

May retain life estate: § 30.181



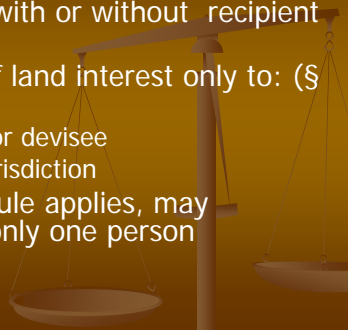
Renunciation —

May renounce with or without recipient (§ 30.181)

Renunciation of land interest only to: (§ 30.182)

- Eligible heir or devisee
- Tribe with jurisdiction

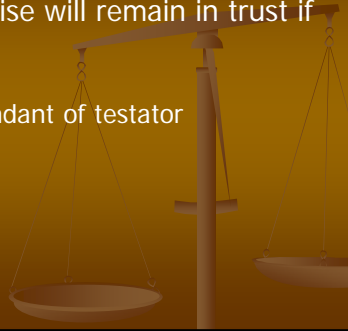
If Single Heir Rule applies, may renounce to only one person (§ 30.183)



Renunciation —

Renounced devise will remain in trust if (§ 30.184(b))

- Lineal descendant of testator
- An Indian
- A Tribe

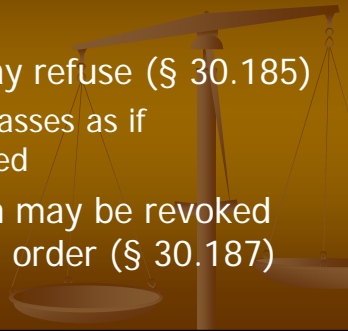


Renunciation —

Recipient may refuse (§ 30.185)

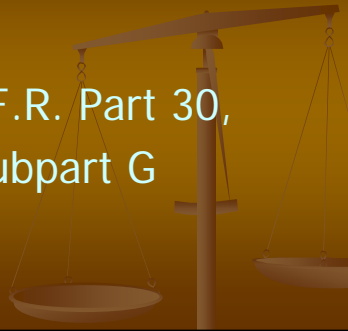
- Property passes as if predeceased

Renunciation may be revoked before final order (§ 30.187)



Purchase at Probate

43 C.F.R. Part 30,
Subpart G



Purchase –

What may be purchased? (§ 30.160)

- Any interest in Trust real property if DOD on/after 6/20/06

Consent of heir/devisee required if:
(§ 30.163)

- Interest 5% or more of whole tract
- Heir/Devisee living on tract
- Interest passing by will
- Interest included in consolidation agreement

Purchase –

Who may purchase? (§ 30.161)

- Any devisee or eligible heir of same tract
- Any co-owner of same tract
- Tribe with jurisdiction
- Secretary of the Interior

Purchase –

How is purchase initiated? (§ 30.164)

- Written request to OHA

When must purchase be initiated?

(§ 30.164)

- Before final decision issued

Purchase –

Notice when request to purchase received (§ 30.165)

- First Class Mail to:
 - All heirs and devisees
 - Tribe with jurisdiction over interest
 - BIA agency with jurisdiction over interest
- Posting Notice
 - All other eligible purchasers
 - 5 places near hearing site
 - At Agency with jurisdiction over interest (1)

Purchase –

Appraisal (§ 30.167)

- Required if purchase requested
- BIA to obtain (through OST OAS)
- USPAP (Uniform Standards for Professional Appraisal Practice) OR Alternative method under 25 U.S.C. § 2214 (none yet)
- Appraisal sets minimum sale price

Purchase –

Notice of Request to Purchase (§ 30.166)

- Type of sale (AIPRA amendment provides that heir/devisee determines buyer if multiple requests)
- Date, time, place of sale* (next slide)
- Description of interest(s) to be sold
- Appraised value of tract, allocated value of interest to be sold

Purchase –

Hearing (see formal process at subpart J)

After notice judge holds hearing to receive bids

Judge determines if sale can be approved

Judge may consider appraisal issues if any

Judge will approve or disapprove sale

Purchase –

Objections to appraisal (§ 30.169)

- Heir or potential purchaser may object
- Written objection within 30 days of notice
- Supporting documents within 15 days

Judge must rule on objections

- Determine market value of interest
- Interlocutory appeal (§ 30.170) to IBIA

Purchase –

If purchase approved (§ 30.171)

Judge will notify all bidders, OST, home agency, agency with jurisdiction -- by first class mail

- Identify estate
- Identify land interest(s) sold
- Identify successful bidder(s)
- Sale price of each (amount of chosen bid)

Purchase –

Payment (§ 30.172)

Purchaser must pay

- To OST by cashier's check, money order, EFT within 30 days of notice of approved bid

Failure to pay (§ 30.174)

- No sale
- No extension of time to pay

Purchase –

Completion of sale upon payment
(§ 30.173)

- OST notifies OHA of receipt of payment
- Judge issues order approving sale
- Order vests title in purchaser on date of payment
- OST deposits money in estate IIM

Purchase –

Allocation of sale proceeds (§ 30.168)

Based on fractional ownership of interests sold

For valuation of life estates sold, see
25 C.F.R. § 179.102 to allocate among
LE holder and remainder holders



Consolidation Agreements

43 C.F.R. Part 30, Subpart F

Consolidation Simple Example

Decedent's Heirs:	Decedent's Land:
■ Andy	■ Allotment 1
■ Barry	■ Allotment 2
■ Calvin	■ Allotment 3
■ Delbert	■ Allotment 4

Assume Equal Values

Consolidation Simple Example

Without Consolidation: With Consolidation:

Andy—1/4 All

Andy—All of 1

Barry—1/4 All

Barry—All of 2

Calvin—1/4 All

Calvin—All of 3

Delbert—1/4 All

Delbert—All of 4

Fractionation

No Fractionation

Consolidation –

By devisees or eligible heirs (§ 30.151)

- May include other trust land owned
 - Must provide evidence of ownership
- Written agreement
- Appraisals not required (§ 30.152)
- Judge must approve agreement
- Order will distribute property

Consolidation –

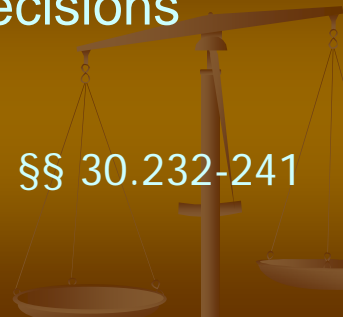
Requirements for approval (§ 30.150)

- Voluntary
- Parties know the facts
- Parties understand agreement and their rights
- Agreement accomplishes consolidation

Consolidation prevents sale without consent: 25 U.S.C. § 2206(j)(9)(C)

Records and Decisions

43 C.F.R. §§ 30.232-241



Official Record –

The official case record contains (§ 30.232)

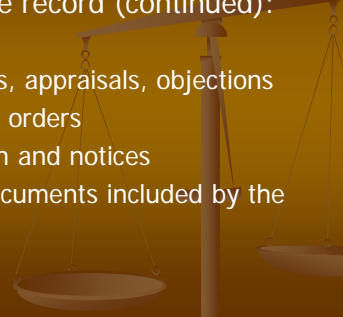
- All notices
- Record of evidence received
- Claims records
- Wills, codicils, revocations
- Inventories and valuations
- Pleadings
- Settlement/consolidation agreements, renunciations/acceptances



Official Record –

The official case record (continued):

- Sales, notices, appraisals, objections
- Interlocutory orders
- Final Decision and notices
- Any other documents included by the judge



Decisions –

All Decisions must (§ 30.235(a))

- Determine all issues in case
- Contain name, birthdates and relationship of all heirs/devisees
- State if heirs/devisees are Indian
- State if heirs/devisees are eligible
- Cite law of descent (unless a will is approved that disposes of all property)

Decisions –

All Decisions must (continued):

- Identify persons/entities, interests in:
 - Settlement agreements
 - Consolidation agreements
 - Sales
 - Renunciations
- Approve/disapprove above
- Approve/disapprove claims
- State if heirs/devisees are eligible

Decisions –

All Decisions must (continued):

- Include case number
- Make other necessary findings of fact and conclusions of law
- Include judge's signature
- Include date of decision

Decisions –

Will case decisions must also
(§ 30.235(b))

- Approve/Disapprove will
- Interpret will as necessary
- Describe shares of devisees under approved will, with encumbrances

Notice of Decision (§ 30.236)

Notice mailed with Decision

Decision final 30 days after mailing
unless rehearing requested

Rehearings (§ 30.237)

Filed within 30 days of Decision mailing

If new evidence, requires affidavit

Must explain why new evidence not
presented at hearing

Must state grounds for request

**Judge mails notice to agency
(ASAP) No distribution while
pending**

Rehearings (cont'd)

No multiple rehearing requests
(§ 30.240)

Decision on rehearing with notice of
decision and appeal rights

30 days to file appeal with IBIA (see 43
C.F.R. § 4.320)

New Deadlines

30 Days

Instead of 60 days for
Requests for Rehearings
Appeals to IBIA

Other Matters

Masters (§ 30.121)

Appointed by ALJ or IPJ
Authority limited by appointment
Hearings on the record
Findings, Conclusions, Recommend
Decision
Master Report to all Interested
Parties

Masters Reports (§ 30.122)

Objections within 30 days
Responses within 15 days
ALJ/IPJ will review record
ALJ/IPJ may—

- Adopt recommended decision
- Remand to Master
- Hold additional hearing
- Enter new decision

Finding of Death (§ 30.124)

As to Heir/Devisee or other person
Upon determination by appropriate court
Upon clear and convincing evidence
Rebuttable Presumptions:

- Presumed alive if any contact within 6 years
- Presumed dead if no contact with prior or probable contacts for 6 or more years

Reopening Cases (§ 30.242)

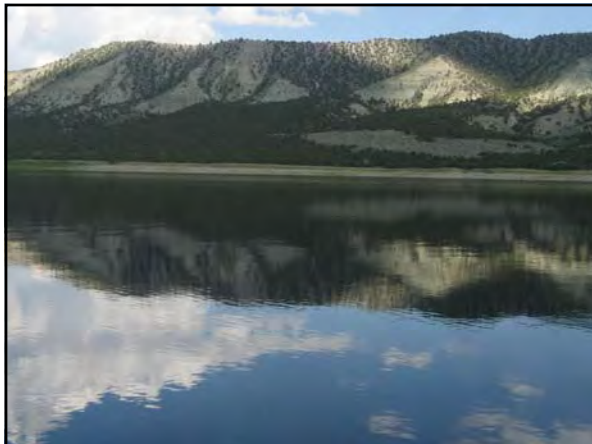
Closed probate case may be reopened

- Within 3 years to correct error of fact or law
 Within 1 year of discovery by interested party
- After 3 years:
 - Upon petition by agency or by judge to prevent manifest injustice
 - Within 1 year of discovery by interested party only to prevent manifest injustice if party had notice

Reopening Cases (§ 30.242)

Overrules *Estate of Reginald Dennis Birthmark Owens* (June 2007) (See *Estate of Benson Potter* 49 IBIA 37 (March 2009))

- Notice to agency (superintendent) no longer bar to request to reopen after 3 years
- Others must still file request within 1 year of discovery of error



Thank You

QUESTIONS??





A decorative background featuring several colorful feathers in shades of green, blue, and orange, arranged vertically.

- **ALBERT C. JONES**
- INDIAN PROBATE JUDGE
- OFFICE OF HEARINGS AND APPEALS
- DEPARTMENT OF INTERIOR
- BILLINGS, MONTANA

A decorative background featuring several colorful feathers in shades of green, blue, and orange, arranged vertically.

Dawes Act

If I stand alone in the senate, I want to put upon the record my feelings on this matter, that when 30 or 40 years shall have passed, and these Indians shall have parted with their title, they will curse the hand that was raised in their defense.

If the people who are clamoring for the passage of this legislation understood Indian people, Indian religion, Indian culture, they would not be clamoring for it now."

Rep. _____ (on passage of the General Allotment Act)



Representative Nick Rahall

“To be frank, slogging through the bill pending before us today is a tedious chore...” “This is a bill only a probate lawyer and the green-eyeshade folks can love.....” What is not a chore, however, is looking into the faces of Indian Country whose very family and tribal traditions depend on how we respond to the land crisis this bill seeks to address.”



AMERICAN INDIAN PROBATE REFORM ACT

- 25 U.S.C. §§ 2201, 2206



AIPRA – Purposes/Policies

- Establish a Federal Indian Probate Code
 - Replaces application of State Probate laws
 - Tribes may develop their own probate codes:
- Limit Fractionation (land Inv. as <5% and >5% interest)
- Prevent Loss of Trust Land
- Promote Land Consolidation
- Allow Owner Management
- Purchase at probate



What Does AIPRA DO?

- Federal Probate Code
- Tribal Probate Codes
- Restricts Inheritance
- **Trust or Restricted Property****



EXCEPTIONS

AIPRA DOES NOT APPLY TO LANDS OF:

- Five Civilized Tribes of Oklahoma
- Osage Tribe of Oklahoma
- Alaska tribes or communities

Applies to other reservations and public domain lands.



IMPORTANT DATES

October 27, 2004
AIPRA signed into law

June 20, 2006
AIPRA became effective

December 15, 2008
Regulations became effective

Definitions

- **“Indian”** - § 2201(2)
 1. Enrolled Member
 2. Eligible to Become a Member
 3. Owner of Trust Land as of 10/27/2004
 4. “Indian” under the Indian Reorganization Act (IRA)
 - Enrolled in an IRA Tribe
 - Aggregate of ½ Indian blood (from any tribe)
 - A descendant of a member of an IRA Tribe who was living on the reservation in 1934
 5. Owner of Trust Land in California

10

Definitions

“Indian” (continued) 25 U.S.C. § 2201(2)

California ...
any above...
or acquired trust property in California
after 10/27/2004
(latter only to inherit other California property)

11

Definitions

“Eligible Heirs” 25 U.S.C. § 2201(9)

Decedent’s ...

- Children
- Grandchildren
- Great Grandchildren
- Siblings (full and half by blood)
- Parents

who are ...

12

Definitions

“Eligible Heirs” (continued) 25 U.S.C. § 2201(9) ...

- (A) Indian; or
- (B) Lineal descendants within 2 degrees of consanguinity of any Indian; or
- (C) Co-owners in parcel where they would inherit from the Decedent (but only as to that parcel)

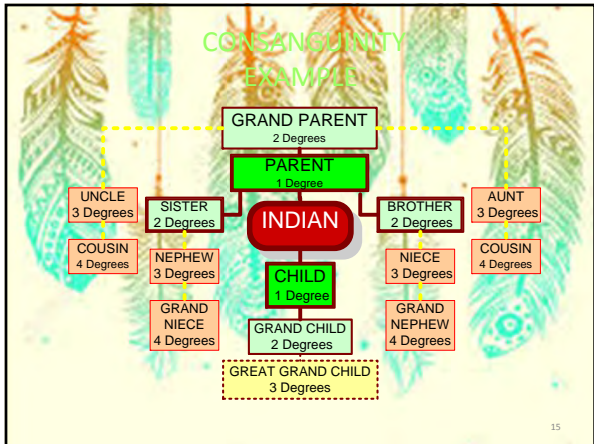
13

Consanguinity

“Relationship by descent from a common ancestor”

Degrees are how one is related between people

14



Con't.

Key to look beyond ...

Determine Lineal descendant within
2 degrees of consanguinity
of any Indian




16

Con't.

Indian Decedent (enrolled -1/8 blood)
Married a non-Indian spouse and they have a
Child (not enrolled) (1 Degree from Decedent)
Who marries a non-Indian spouse and they have a
Child (not enrolled, Grandchild of Decedent)
(2 Degrees from Decedent)


Who marries an **Indian (enrolled)** spouse and they have a ...



17

ID numbers

- 201A..... Allotted
- 201U..... Unallotted
- 201N..... Nonenrolled
- 201B..... Non-Indian (Life Estate)
- 201X..... Non-Indian (Canadian National)





NO WILL
(INTESTACY)

25 U.S.C. § 2206(a) ...

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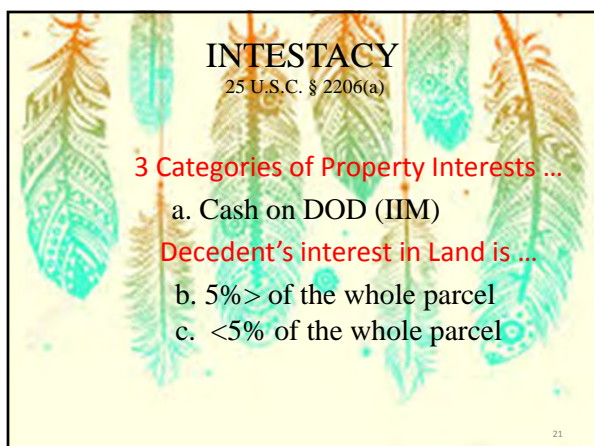


AIPRA applies

Grandparents
Aunts and Uncles
Cousins

DO NOT INHERIT

20



INTESTACY
25 U.S.C. § 2206(a)

3 Categories of Property Interests ...

a. Cash on DOD (IIM)

Decedent's interest in Land is ...

b. 5% > of the whole parcel
c. <5% of the whole parcel

21

Con't. 25 U.S.C. § 2206(a)

CASH


IIM balance and funds due and owing on DOD



22

Con't. 25 U.S.C. § 2206(a)

Surviving Spouse gets 1/3
Remainder (2/3 or all if no SS) to, in order:
Children,
Grandchildren (by representation), or
Surviving great grandchildren, or
Surviving parent or parents, or
Surviving Siblings, or
Tribe



23

Con't. 25 U.S.C. § 2206(a)

LAND

5% or More




24

Con't 25 U.S.C. § 2206(a)

Life Estate (WRTW) to Surviving Spouse
Remainder (or all if no SS) to, in order:

- . Children,
- . Grandchildren (by representation), or
- . Surviving great grandchildren
- . Surviving parent or parents
- . Surviving Siblings

Tribe (subject to purchase)



25

NO WILL (INTESTACY)
25 U.S.C. § 2206(a)

LAND
Less than 5%



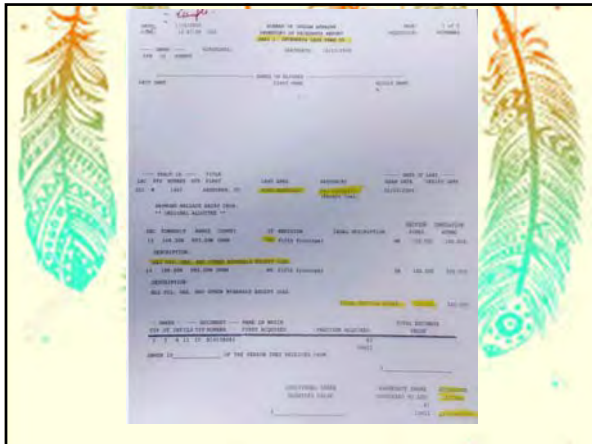
26

NO WILL (INTESTACY)
25 U.S.C. § 2206(a)

Single
Heir Rule



27





Con't. 25 U.S.C. § 2206(a)

Less than 5% ... §2206(a)(2)(D)

- (ii) **Surviving spouse:** Life Estate (only if living on parcel when Decedent died)
- (iii) **Remainder** (all if no SS) **to oldest surviving**
 - 1) child or 2) grandchild or 3) great grandchild or
- (iv) If none of above to tribe with jurisdiction (subject to co-owner purchase per § 2206(o)). **Consent?**
Parents and siblings do not inherit.

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TECHNICAL AMENDMENTS
(Public Law 110-453)

Passed Congress 11/20/08; signed by President on 12/2/08

- 25 U.S.C. 2201(7) (amended) the term “land”; means any real property (formerly included improvements permanently affixed to real property)

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TECHNICAL AMENDMENTS
(Public Law 110-453)

Permanent improvements on land descend to heirs/devisees who receive land

- If improvement and land included in estate
- If improvement and land owned by Decedent
- Does not affect trust/non-trust status of improvement (Yes, we may probate non-trust property OR NOT!*)

32

When improvement is NOT included in estate

Examples:

- Joint tenancy (belongs to survivor)
- Improvement on tribal or fee land
- Title by other governing document provides for succession: IHA
- ???

33

OTHER THINGS TO KNOW

Divorce ...

“Ex” does not inherit
 Divorce revokes devise to “ex”
Separation is not divorce

34

OTHER THINGS TO KNOW

Adoptions ...

Within adopted family only

Exception for relatives (other than parents) who maintain relationship with adopted child

Exception for natural parent in stepparent adoptions

35

OTHER THINGS TO KNOW

Renunciations / Disclaimer § 2206(k)(8)

- Can now renounce/disclaim in favor of a specific person (*i.e.*, an Eligible Heir or Devisee) or the Tribe

Purchase Option at Probate § 2206(p)

- Eligible Purchasers include: (1) Eligible Heir or Devisee; (2) Co-Owner in the same parcel; *and* (3) the Tribe with jurisdiction over the land (or the Secretary on behalf of Tribe)
- **Consent** of affected heir/devisee **required unless**: (1) the interest is passing by *intestate succession*; and (2) the *interest of the Decedent is less than 5 percent* of the entire parcel (*i.e.*, forced sale if <5%) non-member
- **Notice and Appraisal Requirements** (purchase price

36

Con't

CONSENT:

- If the share that the Decedent owns is less than 5% of the total interest in a tract of land, then the heir's interest can be purchased **without** his or her consent if not a member of the tribe. (by Tribe)
- If the share that the Decedent owns is greater than 5% of the total interest in a tract of land, the heir's consent **is** required for purchase.
- If the heir is living on the tract of land, then his or her consent **is** required for purchase of that tract.
- Any interest passing under a will always requires the consent of the **devisee** before purchase.

37

Con't

How would an eligible purchaser purchase an interest at probate?

- The eligible purchaser must submit a written request prior to distribution of Decedent's estate. (while estate is pending)
- **Judge issues letter seeking consent.** Judge issues Order for Appraisal to OST. OST to complete appraisal for OHA. Notice of appraisal mailed to parties.
- If there is more than one bidder, purchase by sealed bid, and will sell to the highest bidder, but not for less than FMV.
- Life estate recipients are protected in that the life estate holder must consent to the sale unless the life estate interest they are to receive is through intestacy and it is less than 5%.
- See § 2206(p)(4) for the appraisal and notice provisions.

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Settlement Agreements

- Includes all interested parties in a case
- Involves trust land in a case
- All parties are advised of material facts
- All parties understand the effect of the agreement on their rights; and
- It is in the best interest of the parties to settle
- Once signed, judge incorporates into decision

39

CONSOLIDATION AGREEMENTS

§ 2206(e) and § 2206(k)(9)

Can now include non-probate interest (e.g., interests already owned by the heirs or devisees)

- Allows exchange of lands at probate
- Can be used to block the purchase option at probate described above
- Effective immediately (i.e., no 1-year waiting period)
- Decreases fractionation



QUESTIONS???

TITLE IX

PROBATE CODE

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TITLE IX

PROBATE CODE

I. LEGISLATIVE FINDINGS AND PURPOSE

This Code shall be known as the "Northern Cheyenne Probate Code."

9-1-1. Legislative Findings.

The Tribe finds and declares that:

- A. It is of paramount importance to encourage the preparation of wills or other estate plans for the transfer of property upon death, to carry out the intent of the decedent, and to provide a speedy, efficient and user-friendly system for the administration of all aspects of decedent estates, including all types of real and personal property;
- B. It is also important to provide the opportunity to prepare for catastrophic and end of life events by creating health care directives and durable powers of attorney;
- C. Preservation of the land base of the Tribe is critical to the vitality of the sovereignty, environment, and economy of the Tribe;
- D. It is of paramount importance to encourage and consolidate Tribal and Tribal member ownership of lands on the Reservation;
- E. Because of the federal allotment policy that began in the late nineteenth century and the subsequent transfers of allotted lands, a significant portion of the Reservation is fractionated or owned by non-members;
- F. The transfer or devise of interests in Reservation trust land upon the death of any individual owner could lead to further fractionation or non-member ownership of Reservation land; and
- G. By establishing a probate code that covers all types of real estate and personal property, including trust and restricted land and personalty, and making estate planning forms available, the Tribe intends to foster a uniform system to facilitate the probate process in a cost efficient manner and to maintain and enhance its self-sufficiency, self-determination, and sovereignty.

II. DEFINITIONS

9-2-1. Definitions.

When used in this Title, unless otherwise required from the context:

- A. "Child" and "Children" mean the lineal descendants of the decedent including all lawfully adopted children, as provided in Sections 9-5-5 and 9-8-3, and all children born after death of decedent, as provided in Sections 9-5-6 and 9-8-4.
- B. "Codicil" means a will that modifies or partially revokes an existing earlier will.
- C. "Common law marriage" means (1) the parties are competent to enter into the marriage; (2) the parties entered into the marital arrangement by mutual consent; and (3) the parties confirmed their marriage by cohabitation of at least 6 months and present themselves as husband and wife openly and conspicuously.
- D. "Court" means the Northern Cheyenne Tribal Court.
- E. "Decedent" means a deceased person.
- F. "Estate" means all of the assets and liabilities of a deceased person.
- G. "Heirs" means those persons who are entitled by a will or under the rules of intestate succession to the real or personal property or trust land of a decedent.
- H. "Indian" means:
 - 1. Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of trust land;
 - 2. Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. § 479) and the regulations promulgated thereunder; or
 - 3. With respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to 25 U.S.C. § 2206, any person described in subparagraph (1) or (2) or any person who owns trust land in that State.
- I. "Intestate" means that a person has died without making a valid will as to some or all of the estate assets. Such property will pass to other persons under the intestate succession rules of this Title.
- J. "Land" means any real property.
- K. "Lawfully adopted child" means a child adopted lawfully in accordance with 25 U.S.C. § 372a.

- L. "Letters of Administration" means the document referred to in Section 9-10-9.
- M. "Net estate" means the real and personal property of a decedent except exempt property, non-probate assets, and allowable claims against and debts of the decedent or the estate.
- N. "Parent" means the biological or lawful adoptive mother or father of a child, as defined by Subsection 9-2-1(J). It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
- O. "Personal property" means any property that is not included in the definition of real property.
- P. "Personal representative" means that person appointed by the court to carry out the powers and duties conferred by this Title on behalf of the estate.
- Q. "Real property" means all interests and estates in land, including leasehold interests and improvements to land, such as houses or other buildings, which have been affixed to the land. A mobile or modular home located on individual trust property and subject to a security interest, mortgage, promissory note, or other financing agreement or which is located on tribal fee or trust property shall be considered personal property for purposes of this Title. All other mobile and modular homes shall be considered real property for purposes of this Title.
- R. "Reservation" means the Northern Cheyenne Indian Reservation.
- S. "Shall" means an act that is required and is not permissive.
- T. "Special administrator" means that person appointed by the court to administer decedent's estate when it is necessary to probate or preserve the estate.
- U. "Spouse" means a party to a marriage recognized by any jurisdiction or a party to a common law marriage.
- V. "Testator" means a person who has created a valid will.
- W. "Title" means this Title and includes all amendments hereafter made to this Title.
- X. "Tribal Court" means the court of the Northern Cheyenne Tribe.
- Y. "Tribe" means the Northern Cheyenne Indian Tribe.

- Z. "Trust land" means any real property, title to which is held in trust or restricted fee status by the United States for the benefit of the Tribe, a member of a federally-recognized tribe, or a person eligible to be a member of a federally-recognized tribe. Improvements attached to trust land are not trust land or trust personalty.
- AA. "Trust Personalty" shall mean all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.
- BB. "Will" means an instrument validly executed as required by this Title that disposes of all or part of an individual's estate at death.
- CC. "Without regard to waste" means, with respect to a life estate interest in trust land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

III. PERSONS AND PROPERTY SUBJECT TO TITLE

9-3-1. Persons and Property Subject to Title — Domicile Presumed.

- A. This Title applies to enrolled members of the Tribe, all enrolled members of a federally recognized Indian tribe, and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of "Indian" under this Title, who have an interest in real or personal property or trust land subject to this Title.
- B. For purposes of this Section, an enrolled member of the Tribe shall be presumed to be domiciled within the Reservation in absence of proof of domicile in another location.
- C. Except to the extent the descent and distribution of real or personal property is governed by federal law, this Title governs the descent and distribution of real property that is within the Reservation and personal property of any person domiciled on the Reservation.

9-3-2. Jurisdiction of Tribal Court – Non-Trust Property.

- A. The Tribal Court shall have all authority necessary to take evidence and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent's estate under this Title. The court shall have the broadest possible authority to execute its duties and responsibilities under this Title. It shall have authority to probate all estate interests subject to this Title which do not come within the exclusive jurisdiction of the United States,

including over all real or personal property except trust and restricted land and trust personalty.

- B. Unless the American Indian Probate Reform Act is amended to allow Tribes to carry out probate of trust and restricted land and trust personalty, the United States shall carry out the probate of such property, as currently set forth in 25 CFR 15 and other applicable law.

9-3-3. Application to Probate of Trust and Restricted Property by the United States Department of the Interior.

United States Department of the Interior Administrative Law Judges or other Department of the Interior probate tribunals of trust and restricted property shall apply the provisions of this Title to the maximum extent permitted by law.

9-3-4. Indian Custom and Tradition — Distribution of Cultural Patrimony.

- A. Notwithstanding the provisions of this Title relating to descent and distribution, Cultural Patrimony possessed by the decedent shall be distributed in accordance with the customs and traditions of the Tribe.
- B. "Cultural Patrimony" means an object that, according to the customs and traditions of the Tribe, has (1) historical, traditional, or cultural importance central to the Tribe, and (2) cannot be owned, conveyed, or appropriated by any individual.

9-3-5. Non-Probate Assets.

- A. Non-Probate Assets are not covered by this Title.
- B. "Non-Probate Assets" means those rights or interests of a person having beneficial ownership of an asset that passes on the person's death under a written instrument or arrangement existing at the time of decedent's death other than the person's will or by descent and distribution under this Title. "Non-Probate Asset" includes, without limitation, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death bank account, transfer on death security or security account, a conveyance that has been postponed until the death of the person, or a trust that becomes effective or irrevocable only upon the person's death.

IV. TRUST PROPERTY

9-4-1. Applicability.

Chapters V, VI and VII, IX, XII, XIII apply to trust or restricted land within the Reservation and trust personalty. The United States Department of the Interior Office of

Hearings and Appeals shall follow these rules when exercising jurisdiction over estates that include such land and personalty.

V. INTESTATE SUCCESSION OF TRUST PROPERTY

9-5-1. Intestate Succession of Interests in Trust Land of 5% or Greater.

- A. **Surviving Spouse.** If the decedent owns 5% or more in any parcel of trust land and leaves a surviving spouse, the surviving spouse shall receive a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir listed in Subsection 9-5-1(B) below.
- B. **No Surviving Spouse.** If the decedent leaves no surviving spouse, all parcels of trust land described in Subsection 9-5-1(A) are transferred to one or more eligible heirs in the following order:
 - 1. Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - 2. Grandchildren, in equal shares;
 - 3. Great-grandchildren, in equal shares;
 - 4. Parents, in equal shares;
 - 5. Siblings, in equal shares;
 - 6. Tribe, provided an Indian co-owner of a parcel of trust land may acquire an interest that would otherwise descend to the Tribe by paying into the estate of the decedent, before the close of the probate estate, the fair market value of the interest in land; if more than one Indian (including the Tribe) offers to pay for such interest, the highest bidder shall acquire such interest.
- C. **Eligible Heir.** To be eligible to receive trust land, an heir must qualify as one or more of the following:
 - 1. A member of a federally-recognized tribe;
 - 2. A person eligible to become a member of a federally-recognized tribe;
 - 3. A person meeting the definition of "Indian" under the American Indian Probate Reform Act, as amended;
 - 4. A person who owned trust land as of October 27, 2004;

5. A person who co-owns the trust land subject to probate; or
6. A lineal descendant within two generations of decedent.

9-5-2. Intestate Succession of Interests in Trust Land of Less Than 5%.

- A. **Surviving Spouses.** If the decedent owns less than 5% in any parcel of trust land and leaves a surviving spouse who was residing on the property at the time of decedent's death, the surviving spouse receives a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir listed in Subsection 9-5-2(B) below.
- B. **No Residing Surviving Spouse.** If there is no surviving spouse residing on the property at the time of decedent's death, all parcels of trust land in which the decedent owned less a 5% interest are transferred to an eligible heir in the following order:
 1. Oldest surviving child;
 2. Oldest surviving grandchild;
 3. Oldest surviving great-grandchild;
 4. Tribe.
- C. **Renunciation of Rights.** An heir of a trust land interest of less than 5% may agree to renounce that interest so that it instead goes to one of the following:
 1. Any other eligible heir or Indian related to the heir by blood;
 2. A co-owner of the land; or
 3. The Tribe.

9-5-3. Permanent Improvements on Trust Land.

- A. A permanent improvement on trust land shall descend to either:
 1. The eligible heirs who inherit the trust land; or
 2. A person or the Tribe who received the trust land pursuant to a renunciation.

- B. This provision applies even though the permanent improvement is not held in trust.
- C. This provision does not alter or otherwise affect the non-trust status of such improvement.

9-5-4. Trust Personalty.

Trust Personalty shall be distributed in accordance with the American Indian Probate Reform Act, as amended.¹

9-5-5. Inheritance by Adopted Child.

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not

¹ As of July 30, 2014, the American Indian Probate Reform Act provides:

- A. If the decedent leaves a surviving spouse and no eligible heirs, the surviving spouse receives all of the trust personalty.
- B. If the decedent leaves a surviving spouse and one or more eligible heirs, the surviving spouse receives one-third of the trust personalty and the eligible heirs two-thirds of the trust personalty.
- C. If there is no surviving spouse, the trust personalty is transferred in the following order, so long as the recipient is an eligible heir:
 - 1. Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - 2. Grandchildren, in equal shares;
 - 3. Great-grandchildren, in equal shares;
 - 4. Parents, in equal shares;
 - 5. Siblings, in equal shares;
 - 6. Tribe.
- D. If the surviving spouse or heir is an Indian, any trust personalty passing to a surviving spouse is maintained in an Individual Indian Money account by the Secretary. If not Indian, the trust personalty is distributed to the proper recipient.

prevent a biological family from giving or devising property or trust land to his or her biological child who has been adopted out of the family by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

9-5-6. Child Born After Death of Decedent.

A child of decedent born after the death of decedent is considered living at the time of death of decedent.

VI. DISTRIBUTION OF TRUST PROPERTY BY WILL

9-6-1. Distribution of Trust Land By Will.

A. An owner of an interest in trust land may devise trust land to any of the following:

1. Any lineal descendant;
2. Any person who owns an interest in the same parcel;
3. The Tribe; or
4. Any Indian, as defined by the American Indian Probate Reform Act, as amended.

B. The land shall remain in trust status.

C. If the land is devised to a person not eligible under Subsection 9-5-1(C) to hold the land in trust, that person shall hold a life estate without regard to waste and the remainder shall go to the first surviving person or entity on the following list that is an eligible heir as defined by Subsection 9-5-1(C), in the following order:

1. Spouse;
2. Children, in equal shares;
3. Grandchildren, in equal shares;
4. Great-grandchildren, in equal shares;
5. Parents, in equal shares;
6. Siblings, in equal shares;
7. Tribe.

9-6-2. Distribution of Trust Personalty By Will.

- A. Trust personalty may be devised to any person or entity in accordance with the American Indian Probate Reform Act, as amended.
- B. If devised to a Tribe or Indian, the trust personalty shall be managed by the Secretary of the Interior.
- C. If devised to any other person or entity, the trust personalty shall be distributed to that person or entity.

9-6-3. Joint Tenancy Right of Survivorship.

If a testator devises an interest in the same parcel of trust land to more than one person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests devised.

VII. OTHER TRUST PROPERTY RULES

9-7-1. Renunciation or Disclaimer of Interests.

- A. Any person 18 years of age or older may renounce or disclaim an inheritance of trust land or personalty, either in full or subject to the reservation of a life estate interest in land, in accordance with this Section 9-7-1, by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir, devisee or legatee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.
- B. Interests in Land. A trust or restricted interest in land may be renounced or disclaimed only if the interest passes in trust status in favor of:

1. An eligible heir; or
2. The Tribe;

and the interest so renounced shall pass to its recipient in trust or restricted status.

- C. Trust Personalty. An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a receiver of such an interest.

D. Unauthorized Renunciations and Disclaimers. If a renouncement or disclaimer is not made in compliance with this Section 9-7-1, the renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.

E. Acceptance of Interest. A renunciation or disclaimer of an interest filed in accordance with this Section 9-7-1 shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest.

F. A renunciation or disclaimer of an interest that is subject to the rules for intestate succession trust land interests of less than 5% may not be in favor of more than one person.

9-7-2. Right to Purchase Trust Land During Probate.

A. The following may purchase trust land during probate for fair market value:

1. Eligible heirs, as defined in Subsection 9-5-1(C);
2. Any person who owns an interest in the land; or
3. The Tribe, or the Secretary of the Interior on behalf of the Tribe.

B. Prior to any purchase, there shall be:

1. A bona fide appraisal of the trust land to determine fair market value;
2. Reasonable advance written notice by first class mail of the proposed purchase to the United States Office of Hearings and Appeals, the Tribal President, and any eligible heir or purchaser, stating that the land is available for purchase;
3. Written consent to the purchase from the surviving spouse and any heir who resides on the land;
4. Written consent to the purchase from the surviving spouse and any eligible heir who does not reside on the land if the decedent's ownership interest in the land is 5% or more, there is a valid will addressing disposition of that land, and either the Tribe is the purchaser from a non-Tribal member or the Secretary is the purchaser; and

5. A written request by the purchaser prior to distribution of the interest in land stating the results of the appraisal and providing proof of any required notice and consent.

C. If more than one party requests to purchase the same interest in land, the land shall be sold by public auction or sealed bid after reasonable notice to the Tribal President and all eligible purchasers at no less than fair market value to the purchaser with the highest bid.

D. Proceeds from the sale of interests under this Section 9-7-2 shall be distributed to the devisee, surviving spouse, or eligible heir whose interest was sold in accordance with the amount of their respective interests. The proceeds may be deposited or held in an account as trust personalty if the interest sold would otherwise pass to:

1. The heir, by intestate succession; or
2. The devisee in trust or restricted status.

9-7-3. Tribal Purchase of Trust Land Intended for Non-Indian.

A. Trust land may not be devised to a person who is not a member of a federally-recognized Indian tribe or eligible to be such a member.

B. The Tribe shall acquire the land by paying fair market value for the land to the Secretary of the Interior before the close of the probate proceedings and the Secretary shall transfer the payment to the person or persons who would have received an interest in the land if the interest had not been acquired by the Tribe.

C. Fair market value shall be determined by bona fide appraisal.

D. This Section 9-7-3 shall not apply in the event the non-Indian devisee renounces the trust land interest in favor of an Indian.

E. A person who would have received the interest in the land may retain a life estate in the land without regard to waste.

9-7-4. Consolidation and Partition.

Nothing in this Title shall diminish the rights to enter into consolidation agreements or partition trust property as provided by federal law.

VIII. INTESTATE SUCCESSION OF NON-TRUST PROPERTY

9-8-1. Intestate Succession Rules.

Subject to the provisions of this Title, the portion of the estate of a person dying intestate not covered by Chapter 9-5 shall descend and be distributed as follows:

- A. If the decedent leaves a surviving spouse, the surviving spouse shall receive the entire net estate.
- B. If the decedent leaves children and no surviving spouse, the children shall each take an equal share of the entire net estate. If descendants of a deceased child survive the decedent, the share of that deceased child shall go to his or her descendants by representation.
- C. If the decedent leaves no surviving spouse or children, the entire net estate shall go to the first surviving relative(s) on the following list, in order of priority:
 - 1. Grandchildren, in equal shares;
 - 2. Great-grandchildren, in equal shares;
 - 3. Parents, in equal shares;
 - 4. Siblings, in equal shares;
 - 5. Grandparents, in equal shares;
 - 6. Children of the grandparents, in equal shares.
- D. If the decedent leaves no surviving relatives identified in Subsection 9-8-1(C), the entire net estate shall go to the Tribe.

9-8-2. Inheritance by Child.

For the purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

9-8-3. Inheritance by Adopted Child.

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property to his or her adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

9-8-4. Child Born After Death of Decedent.

A child born after the death of decedent is considered as living at time of the death of decedent. 120 100.

9-8-5. "By Representation".

Distribution "by representation" in this Title shall be accomplished as follows:

- A. Determine the sum of the children of the decedent who (a) survived the decedent and (b) did not survive the decedent but had descendants who survived decedent;
- B. Divide the estate into equal shares by the sum derived in Subsection 9-8-5(A) above;
- C. The children of the decedent who survived decedent each take the share derived in Subsection 9-8-5(B) above;
- D. The children of the non-surviving child share take equal shares of the non-surviving child's portion of the estate.

IX. WILLS (TRUST AND NON-TRUST PROPERTY)

9-9-1. Who May Make A Will.

Any person of sound mind who is eighteen years of age or older may make a will.

9-9-2. Requirements of Wills.

- A. To be valid and effective, a will must be in writing, dated, and signed by the testator or some other person under the testator's authority and direction in the presence of the testator. The will shall be attested by two or more adult competent witnesses, not having an interest in the testator's estate or in the will, signing their names to the will in the presence of the testator by the testator's direction or request; provided, that a will executed outside the Reservation, in the mode prescribed by applicable law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Tribe.
- B. A will created prior to the date of adoption of this Section 9-9-2 shall not be declared invalid if one or more of the witnesses to the will have an interest in the testator's estate or in the will.

9-9-3. Self-Proven Will At Time of Execution and After Execution.

- A. A will may be simultaneously executed, attested, and made self-proved by acknowledgment by the testator and affidavits of the witnesses, each made

before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal in substantially the following form:

I, _____, swear or affirm under penalty of perjury that, on the ___ day of _____, 20___, I requested _____ and _____ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator

We, _____ and _____, swear or affirm under penalty of perjury that on the ___ day of _____, 20___, _____ of the State of _____, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses; this _____ day of _____, 20___.

(SEAL)

(Signed) _____
(Official capacity of officer)

- B. An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the jurisdiction in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

NORTHERN CHEYENNE INDIAN RESERVATION

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare that _____ requested _____ and _____ act as witnesses to testator's will; that testator declared to them that the document was testator's last will; that testator signed the will in the presence of both witnesses; that they signed the will as witnesses in testator's presence and in the presence of each other; that the will was read and explained to testator (or read by testator), after being prepared and before testator signed it, and it clearly and accurately expresses testator's wishes; and that testator willingly made and executed the will as testator's free and voluntary act for the purposes expressed in the will.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 20__.

(SEAL)

(Signed) _____
(Official capacity of officer)

9-9-4. Holographic Will.

A will which does not comply with Section 9-9-2 is valid as a holographic will if:

- A. The testator was 18 years or older and of sound mind at the time of the will's creation;
- B. The material provisions are in the handwriting of the testator;
- C. The will is signed by the testator; and
- D. The testator intended that the document will dispose of his or her property after death.

9-9-5. Codicil.

- A. A codicil may replace, in whole or in part, a prior will.
- B. A codicil need not refer to or be attached to the prior will.

9-9-6. Revocation of Will.

A will, or any part thereof, shall be revoked and of no effect by:

- A. A subsequent valid will that revokes the previous will, or part of that will, expressly or by inconsistency; or
- B. Destruction of the will with the intent of revoking the will, by the testator or by anyone in the presence and by the direction of the testator.

9-9-7. Subsequent Divorce of Testator.

Unless a will specifically provides otherwise, a lawful divorce, subsequent to the making of a will, shall render the will revoked as to the divorced spouse.

9-9-8. Spouse After Will Created.

- A. If the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in the testator's estate that the spouse would have received if the testator had died intestate unless:
 - 1. It appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;
 - 2. The will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or
 - 3. The testator provided for the spouse by a transfer of funds or property outside the will and an intent that the transfer be in lieu of a testamentary

provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

- B. This Section 9-9-8 shall not apply to an interest in trust land where the spouse of a testator is not an Indian as defined by 25 U.S.C. § 2201(2).

9-9-9. Omitted Spouse.

- A. If the surviving spouse is omitted from the will of the testator, the surviving spouse shall receive the intestate share in the testator's estate that the spouse would have received if the testator had died intestate if:

1. The testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;
2. The testator and surviving spouse have a surviving child who is the child of the testator;
3. The surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust land in such estate; or
4. The surviving spouse is under a binding obligation to continue making loan payments for the trust land for a substantial period of time.

- B. This Section 9-9-9 shall not apply if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of share of the estate outside of the will.

9-9-10. Death of Related Devisee or Legatee Before Testator.

Unless a will specifically provides otherwise, if an heir that is related to the testator is named in a will but predeceases the testator, then the descendants of that heir take that heir's interest by representation.

9-9-11. Omitted Children.

- A. Unless a will specifically provides otherwise, any children of the testator born or lawfully adopted after the execution of the will not named specifically or by reference to a class described as the children, descendants, or issue of the decedent or words of similar import, are referred to in this Section 9-9-11 as an "omitted child," and shall receive a share of the estate as provided in this Section 9-9-11 so long as such child lives 120 hours after its birth.
- B. If the testator had no living child when the testator executed the will, an omitted child shall receive a share of the estate equal to the value of the share

of the estate the omitted child would have received had the testator died intestate.

- C. If the testator had one or more children living when the testator executed the will and the will devised property to one or more of the then-living children, an omitted child is entitled to a share of equal value to the shares received by the children to whom devises were made under the will unless the testator provided for the omitted child by transfer outside the will and the testator's intent to omit the child is established by statements of the testator, based on the amount transferred to the omitted child, or other evidence.

9-9-12. Rules for Interpretation of Wills.

Unless there is clear evidence of contrary intent, wills shall be construed as follows:

- A. A will shall apply to all real and personal property and trust land which the testator owned at death;
- B. A transfer by will of a trust interest in land shall be presumed to include the interest of testator in any permanent improvements attached to that land;
- C. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships;
- D. A transfer by will of a trust interest in land or an interest in trust personalty to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family" shall mean those persons, including the spouse, who would be entitled to take under the provisions of this Title for non-testamentary disposition as of the date of the testator's death;
- E. If a family cemetery plot owned by the testator in trust or restricted status at his or her death is not mentioned in the decedent's will, the ownership of the plot shall descend to his or her heirs as if he or she had died intestate.

9-9-13. Duty to Present Will for Probate.

A custodian of a will shall deliver the will to the Tribal Court within 30 days after receipt of information that the maker thereof is deceased. The custodian shall also deliver the will to the Northern Cheyenne Agency of the Bureau of Indian Affairs.

X. TRIBAL COURT PROBATE PROCEEDINGS (NON-TRUST PROPERTY)

9-10-1. Intent of Testator Controlling.

- A. During probate proceedings, the Tribal Court shall give effect to the intent of the testator as expressed in the will or other admissible evidence in all matters unless prohibited by law.
- B. Notwithstanding Subsection 9-10-1(A), a person who is related to the decedent through two lines of relationship is entitled to only a single share in the decedent's estate based on the relationship that would entitle such person to the larger share.

9-10-2. Initiation of Probate Proceedings — Personal Representative.

At any time after the death of a person subject to this Title, any person may initiate the probate of the decedent's estate by filing a petition for probate with the Tribal Court containing:

- A. The name of the decedent;
- B. The decedent's enrollment status with the Tribe or other tribe;
- C. The decedent's date of death;
- D. A certified copy of the decedent's death certificate;
- E. The names and addresses of the decedent's surviving family to the extent such information is known to the petitioner;
- F. The original or a true and correct copy of any will found or document alleged to be the last will of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence;
- G. If the decedent left a will, the names and addresses of the beneficiaries under the will;
- H. A general description of the decedent's estate subject to probate in Tribal Court, and a general description of those portions of the decedent's estate, if any, not subject to probate in the court, including, but not limited to any interests in trust or restricted property;
- I. Proof of service of the petition on the Tribal President;
- J. Any other information about the estate or other relevant information that may be necessary to establish that the court has jurisdiction over the probate proceedings;
- K. A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and case number of the other proceedings.

and the name and address of the personal representative or similar person appointed in such proceedings;

- L. A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative including, without limitation, relation to the decedent;
- M. If the will is available, a request for approval of the will of the decedent;
- N. If a will is not available, a request that the court find that the decedent died without a valid will; and
- O. A verification signed under penalty of perjury by the petitioner that the contents of the petition are true and correct.

Items D and F above may be provided at the time of filing the petition or as soon as practicable thereafter.

9-10-3. Purpose and Qualifications of Personal Representative and Special Administrator.

- A. The purpose of a personal representative is to vest one or more persons with the responsibility and authority to settle the decedent's estate in accord with the decedent's will, if any, and applicable law. In the event a personal representative is not available and the decedent's estate must be administered to avoid loss, waste, or depreciation of property of the decedent's estate, a special administrator may be appointed by the court.
- B. A personal representative must be at least 18 years old and legally competent. Persons who have been convicted of any felony or of a misdemeanor involving moral turpitude may not serve as personal representative or special administrator. A special administrator may not be an heir or named beneficiary of decedent's estate. More than one person may serve jointly as personal representative or special administrator.
- C. The provisions of this Title that apply to personal representatives apply equally to special administrators.

9-10-4. Appointment of Personal Representative.

- A. The personal representative shall be the person named to serve as personal representative in the decedent's will unless:
 - 1. The named person does not meet the requirements of Section 9-10-3; or
 - 2. The named person refuses to serve as personal representative.

B. If a personal representative is not qualified or not willing to serve as personal representative, then a personal representative should be appointed in the following order:

1. The surviving spouse of decedent or such person as the surviving spouse may request to be appointed;
2. A child or children of decedent;
3. A parent of decedent;
4. A sibling or siblings of decedent;
5. One or more of the beneficiaries or transferees of the decedent's probate or non-probate assets under the jurisdiction of the court or the United States Department of the Interior Office of Hearings and Appeals.

If none of the above is able or willing to serve as personal representative, the court shall appoint a person who meets the requirements of Section 9-10-3.

9-10-5. Removal After Appointment.

- A. If, at any time after the Letters of Administration have been issued, a personal representative does not meet the requirements of Section 9-10-3, the court shall revoke his or her Letters of Administration.
- B. The Letters of Administration may be revoked by the court for any good cause.

9-10-6. Powers and Duties of Personal Representative.

The personal representative shall have the following powers and duties:

- A. To act in a fiduciary capacity in the name of the estate, subject to applicable orders of the court, provide notice of creditors and settle any claim against the estate as provided in Chapter 9-11, collect any debts owed to the estate, initiate or defend any litigation involving the estate, and distribute the assets of the estate;
- B. To avoid any conflict of interest between the personal interests of the personal representative and the interests of the estate by always placing the interests of the estate ahead of such personal interests; provided, however, that no person shall be disqualified from serving as personal representative because the personal representative may be an heir or beneficiary of the estate;
- C. To take possession and control of all of decedent's assets subject to the probate jurisdiction of the court, and preserve such assets for the benefit of the estate;

- D. To give all notices to family members, heirs, beneficiaries, government agencies, or creditors as required or allowed by this Title;
- E. To request to receive reasonable compensation in an appropriate amount given the nature and amount of services required by the personal representative and size of the estate; and
- F. To exercise any power granted by the decedent's will or by order of the court.

9-10-7. Bond.

The personal representative shall serve without bond, unless a bond is required by the terms of decedent's will or the court. A bond shall be in the amount deemed reasonable by the court in relation to the value of the estate.

9-10-8. Initial Hearing; Order Initiating Probate; Appointment of Personal Representative and Letters of Administration.

- A. Within 30 days of the filing of a petition for probate, or as soon as practicable thereafter, the court shall hold a hearing to consider:
 - 1. Initiating probate proceedings;
 - 2. Appointing a personal representative;
 - 3. Issuing Letters of Administration; and
 - 4. Whether decedent left a valid will or died intestate.
- B. If the petition and other evidence before the court are sufficient to support the jurisdiction of the court, the court shall enter an order initiating probate of the decedent's estate. Such order shall either establish and initiate probate of decedent's will, or shall conclude that the decedent died intestate. In the absence of an original will, the court may permit a true and correct copy of a will to be probated if it finds that the will is valid by a preponderance of the evidence.
- C. Following the conclusion of the hearing and order initiating probate, the court shall issue Letters of Administration conferring the powers and duties of the personal representative on the petitioner or another person.

9-10-9. Form of Letters of Administration.

Letters of Administration shall be signed by the court under the seal of the court, and shall be substantially in the following form:

Whereas (name of decedent) of (address of decedent) died on or about the _____ day of _____, _____, leaving at the time of (his/her) death property in this jurisdiction subject to administration.

Now, therefore, this court hereby appoints _____ as personal representative of said estate, and whereas said personal representative is duly qualified, the court hereby authorizes the personal representative to administer the estate according to law. Witness my hand and the seal of said court this _____ day of _____ 20__.

Before Letters of Administration are issued, the appointed personal representative must take and subscribe an oath that the duties and responsibilities as personal representative will be performed according to law before a clerk of the court or some other person authorized to administer oaths.

9-10-10. Notice of Appointment as Personal Representative, Pendency of Probate — Proof by Affidavit.

- A. Within 20 days of appointment, the personal representative shall serve written notice of appointment and the pendency of probate proceedings to each heir, devisee, and legatee of the estate whose name and address are known to him or her. Such notice shall include a copy of the court's order determining whether the decedent died testate or intestate.
- B. Proof of such service shall be made by affidavit or declaration under penalty of perjury and filed with the court.

9-10-11. Inventory and Appraisalment.

- A. Within 90 days of appointment, the personal representative shall file with the court an inventory in the form of an affidavit listing all property of the estate passing under the will or by laws of intestacy which is in the possession or knowledge of the personal representative.
- B. The inventory shall provide the appraised value of each item as of the date of decedent's death, and all encumbrances, liens, or other secured charges against any item and all other debts. Such property and debts shall be classified as follows:
 - 1. Real property, by legal description;
 - 2. Leases, including without limitation leases of personal property on trust land not disposed of by the United States Department of the Interior Office of Hearings and Appeals;
 - 3. Stocks and bonds;

4. Bank accounts and money;
 5. Furniture and household goods;
 6. All other personal property, including without limitation the decedent's non-probate assets and any share in any business, but no inventory of the business property shall be required; and
 7. Mortgages, liens, notes, and other written evidences of debt, which shall be listed with the property the debt is associated with, and otherwise listed separately.
- C. The appraised value may be an estimated value so long as there is a rational basis. A formal appraisal is not required, but may be ordered by the court.
 - D. Notice of the filing of the inventory shall be served on each heir, devisee, legatee, creditor, and the Tribal President.
 - E. If the personal representative obtains knowledge of any additional property of the estate, the inventory shall be amended and the procedures in this Section 9-10-11 shall be completed within 30 days of acquiring such knowledge.

9-10-12. Summary Probate of Small Estates.

- A. An estate with an appraised value which does not exceed \$10,000 and which is to be inherited through the rules of intestacy or by devise exclusively by a surviving spouse and/or minor children of the decedent shall be exempt from the claims of all general creditors and the probate thereof may be expeditiously processed as provided in this Section 9-10-12.
- B. Upon petition of the personal representative, the court shall enter an order stating that it appears, from the inventory and appraisal filed with the court, that the value of the estate does not exceed \$10,000 and that such estate is to be inherited exclusively by the surviving spouse and/or minor children of the decedent, and shall set a hearing to allow interested persons, if any, to object to declaring the estate exempt from the claims of all general creditors and distributing the estate to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given by posting a true and correct copy of such order in the Northern Cheyenne Tribal Building, and by sending a true and correct copy of such order by certified mail to all persons the personal representative has reason to believe is an heir, devisee, or legatee of the decedent or creditor of the estate. Such notice shall be posted or mailed not less than 10 days before the time set for such hearing. On or before the time set for such hearing, the personal representative shall file his or her affidavit with the court indicating compliance with this notice requirement.
- C. If, upon such hearing, the court finds that such estate is an exempt estate, the court shall enter an order directing: (1) the personal representative to

distribute such estate to the surviving spouse and/or minor children of the decedent as set forth in the order; (2) that no further proceedings are necessary; and (3) that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the court, the estate shall be closed and the personal representative discharged.

9-10-13. Sale of Estate Property.

- A. No sale of any property of an estate is valid unless made pursuant to an order of the court.
- B. After filing the inventory and appraisal and before full distribution of the estate, the personal representative may petition the court for authority to sell property of the estate for purposes of paying the expenses of last illness and burial of decedent, estate administration, claims against the estate, distribution, or any lawful purpose in the best interest of the estate, heirs, devisees, or legatees. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.
- C. The personal representative shall comply with the requirements with respect to the sale of trust land set forth in Sections 9-7-2 and 9-7-3.

9-10-14. Interim Reports of Personal Representative.

- A. Within 180 days of appointment, and each 180 days thereafter, and more frequently if necessary or required by the court, the personal representative shall file with the court a report on the estate signed under penalty of perjury. Such report shall contain:
 - 1. The claimant, amount, and nature of any claims filed against the estate;
 - 2. Whether such claims have been allowed or rejected;
 - 3. Whether any property of the estate has been sold, mortgaged, leased, or exchanged, and the purpose of such action, such as to pay debts or settle obligations against the estate, pay expenses of administration, or an allowance to an heir, devisee, or legatee;
 - 4. A detailed statement of the amount of property, real and personal, of the estate;
 - 5. A detailed statement of all sums collected, and of all sums paid out, on behalf of the estate, including documentation to support all sums paid out; and
 - 6. Any other information necessary to fully show the condition and affairs of the estate.

- B. The personal representative shall serve the report on all heirs, devisees, and legatees of the estate.

9-10-15. Final Report and Petition.

When the affairs of an estate have been fully administered, the personal representative shall file a final report and petition with the court, signed under penalty of perjury, which states:

- A. The information listed in Section 9-10-14 not included in a prior interim report;
- B. That all claims against the estate have been paid; or that all such claims have been paid except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay all such remaining claims;
- C. The amount and recipients of funds expended, with documentation supporting each such payment;
- D. That there is nothing further to be done in the administration of the estate except as shown in the final report;
- E. The remaining assets of the estate, including unexpended and unappropriated funds, at the time of filing the final report;
- F. The proposed determination of heirs, devisees, and legatees, indicating the names, ages, addresses, and relationship to the decedent of each distributee and the proposed share and value thereof which each is to receive;
- G. A request for reasonable compensation to be paid to the personal representative, if any, as provided in Subsection 9-10-6(E); and
- H. A request that the court set a hearing to approve the final report, to determine the heirs, devisees, and legatees of the decedent and the share each is to receive, if any.

9-10-16. Order Setting Hearing to Approve Final Report and Determine Distribution of the Estate.

Upon filing the final report and petition, the court shall set a hearing for objections to the approval of the personal representative's final report.

9-10-17. Notice of Hearing Final Report and to Determine the Distribution of the Estate.

The personal representative shall serve a true and correct copy of the order setting hearing to approve the final report, the final report, and the petition on the Tribal President and on each heir, devisee, and legatee of the decedent at their last known

address. On or before the time set for such hearing, the administrator shall file a certificate of service with the court.

9-10-18. Hearing on Final Report and Determining the Distribution of Estate.

On or before the time set for such hearing, any heir, devisee, or legatee, or other person having an interest in the distribution of the estate, may file an objection to the final report, or to the proposed determination of the heirs, devisees, or legatees, or to the proposed share each is to receive, stating the objections with specificity. The court shall consider all evidence relevant to the objection and shall make a determination.

9-10-19. Order Allowing Final Report and Order of Distribution.

After the hearing upon the final report, the court shall enter an order:

- A. Allowing the final report, either in whole or in part, as may be just and proper; and directing the personal representative to appropriate and expend funds to pay unpaid claims, charges, or allowances against the estate as shown in the final report which have been approved;
- B. Determining the decedent's heirs, devisees, and legatees, indicating the names, ages, and addresses of each, and the share of the remaining estate which each is to receive; and
- C. Directing the personal representative to distribute such share or shares to the distributees entitled thereto.

9-10-20. Petition to Close Estate.

When the estate is ready to be closed, the personal representative shall petition the court for an order closing the estate, discharging the administrator, and discharging the bond, if any. Such petition shall be accompanied by documentation supporting any sums paid since the order approving the final report and shall include a signed receipt for distributive share from each of the distributees named in the order of distribution.

9-10-21. Order Closing Estate.

Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and discharging the administrator and the bondsman, if any.

XI. TRIBAL COURT CLAIMS AGAINST ESTATE (NON-TRUST PROPERTY)

9-11-1. Notice to Creditors.

- A. Unless it is determined by the court that the estate is exempt from the claims of creditors, the personal representative shall promptly give notice to the

public, the Tribal President, and any known creditors of decedent for presentation of their claims against the decedent's estate which states:

1. The name, date of death, and resident address of the decedent at the time of his or her death;
2. The dates upon which the first notice was published and posted;
3. That all persons having claims against the estate are required to present such claims to the personal representative of the estate, at a stated address, and file the claim with the court within 90 days after the first notice is given;
4. That a claim must include the name and address of the claimant, a statement of the facts or circumstances constituting the basis of the claim, any available documents evidencing the claim, and the amount of the claim; and
5. That, in the event no such claim is presented, it will be forever barred.

B. Such notice shall be given by:

1. Publishing the notice in two consecutive issues of a Tribal news publication, or if there is no Tribal news publication, a news publication of general circulation adjacent to the Reservation;
2. Posting the notice in the Northern Cheyenne Tribal Building and public places in three communities of the Reservation for a period of not less than 30 days; and
3. Delivering a copy of the notice to the Tribal President and any known creditor.

Each of the above notices must be initiated within 30 days of the appointment of the personal representative. Before the expiration of the 90-day period, the personal representative shall file with the court a declaration and the notice showing compliance with this Section 9-11-1.

9-11-2. Allowance or Rejection of Claims — Notice.

- A. The personal representative shall allow or reject, in whole or in part, all claims against the estate timely presented. Within 30 days of receipt of the claim, the personal representative shall provide notice to the claimant at the address stated on the claim setting forth whether the claim has been allowed or rejected.
- B. If the personal representative rejects the claim or fails to notify the claimant of the allowance or rejection of the claim within 30 days of the personal

representative's receipt of the claimant's notice, the claimant may petition the court as provided in Section 9-11-3.

- C. The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.
- D. Within 10 days of allowing or rejecting any claim, the personal representative shall file with the court and serve on any known heirs, devisees, legatees, and creditors a notice setting forth the claims allowed or rejected and stating that the claimant must bring a petition for allowance of the claim in the probate action within 30 days after notification of rejection or the claim will be forever barred.
- E. To the extent there are sufficient assets of the estate, allowed claims may be paid by the personal representative, without court order, in the order provided in Section 9-11-4 20 days after providing notice to any known heirs, devisees, legatees, and creditors, unless otherwise ordered by the court.

9-11-3. Challenging Rejection of Claims.

If the personal representative rejects a claim against the estate, in whole or in part, or fails to respond to a claim within 30 days of receipt of the claimant's notice, the claimant must bring a petition for allowance of the claim in the probate action within 30 days of notification of rejection or the claim is forever barred.

The court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected.

9-11-4. Order of Payment of Debts.

After payment of costs of estate administration, the claims against or debts of the estate shall be paid in the following order:

- A. Funeral expenses, including a reasonable amount for the cost of a monument;
- B. Claims of the Tribe; and
- C. All other claims.

9-11-5. Judgment Against Decedent — Execution Barred Upon Decedent's Death — Presentation.

If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a claim as provided in this Chapter 9-11.

9-11-6. Secured Claim — Creditor's Right.

If a creditor's claim is secured by any property of the decedent, the creditor may realize on the creditor's security; whether or not the creditor presented the claim as provided in this Chapter 9-11.

9-11-7. Miscellaneous Claim Provisions.

- A. The time limitations for presenting claims do not accrue to the benefit of any liability or casualty insurer.
- B. This Section 9-11-7 does not serve to extend any applicable statutes of limitations:

XII. HEIRSHIP BY KILLING (TRUST AND NON-TRUST PROPERTY)

9-12-1. No Acquisition of Property By Killing.

- A. An "heir by killing" means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.
- B. No heir by killing shall in any way acquire any interests in the decedent's property, but such property shall pass in accordance with this Chapter 9-12.
- C. The heir by killing shall be deemed to have predeceased the decedent as to the decedent's property which would have passed in any manner or form from the decedent or his or her estate to such heir.

9-12-2. Disposition of Joint Interests and Life Estates.

- A. Any property held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.
- B. Any property held jointly by 3 or more persons, including both the heir by killing and the decedent, and any income which would have accrued to the heir by killing as a result of the death of the decedent, shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants;
- C. Notwithstanding any other provision of this Section 9-12-2, the decedent's property that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his or her estate. The remainder of the

interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

- D. If decedent's estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

9-12-3. Preadjudication Rule.

- A. If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any state, with voluntary manslaughter or homicide in connection with a decedent's death, then any real or personal property or trust land that would otherwise pass to that person from the decedent's estate shall not pass or be distributed until the charges have been resolved in accordance with the provisions of this Section 9-12-3.
- B. Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such real or personal property or trust land shall pass as if no charge had been filed or made.
- C. Upon conviction of such person, and the exhaustion of all appeals, if any, such real and personal property and trust land shall pass in accordance with this Section 9-12-3.
- D. This Section 9-12-3 shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his or her own wrong.

XIII. GENERAL PROVISIONS

9-13-1. Effective Date.

This code will be effective the earlier of either: (A) 180 days after it is approved by the Secretary of the Interior; or (B) if the Secretary of the Interior fails to approve or disapprove this code within 180 days, 181 days after it was submitted for such approval.

9-13-2. Applicability.

This code only applies to the estate of a decedent who dies on or after the effective date of this code.

9-13-3. Appeals.

Appeals from any order of the Tribal Court issued under this Title shall be made in accordance with the Appellate Procedures of the Northern Cheyenne Tribe.

9-13-4. Repealing Prior Inconsistent Enactments.

Any prior enactment by the Northern Cheyenne Tribal Council which is found to be inconsistent with this Title is hereby repealed.

9-13-5. Severability.

If any provision of this Title or its application to any person or circumstances is held invalid, the remainder of this Title or the application of the provision to other persons or circumstances is not affected.

SUMMARY OF INTERIOR BOARD OF INDIAN APPEALS PROBATE CASES

[Includes cases from 42 IBIA 1, or 11/01/2005, to present]

Please note that cases may and often do appear under more than one subject matter heading.

DISCLAIMER: These cases may be organized in various ways, and like case law in general, these Board decisions can often be interpreted in different ways. These cases should be a starting point, and it is encouraged that you edit, annotate, reorganize, rewrite, question, challenge and improve upon this list. Of course, to read each of the cases listed and see what more you can learn from them in relation to the law of AIPRA may be the best approach.

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Jurisdiction – Authority to Conduct Indian probates

- *Bertha Skyman Eastman*, 50 IBIA 158 (2009) (Federal law governs the probate of Indian trust assets and jurisdiction rests with the Department)

Trust Responsibility of Probate Judges

- *Dominic Orin Stevens*, 55 IBIA 66 (2012) (Limitations on judge’s responsibility discussed at 66 note 16 – even where “a more active role is appropriate for the judge” parties are responsible for determining what evidence to produce; also at 63-64 note 13)
- *Theresa Underwood Dick*, 50 IBIA 279 (2009) (judges have a trust responsibility to develop the record and to ensure that “relevant facts are elicited in a probate proceeding” (293))

Jurisdiction – Type of Property

- *Samuel Sumner Davis*, 57 IBIA 258 (2013) (no jurisdiction over assets no longer held in trust – attempt to reopen a long-closed case where fee patents had been issued)
- *John Fredricks, Jr.*, 57 IBIA 204 (2013) (OHA probate jurisdiction does not extend to questions concerning distribution of estate or administration of associated leases)
- *James Byron Granbois*, 53 IBIA 252 (2011) (See cases cited at 254. Department has no jurisdiction where TSR shows trust land interest has been conveyed in fee – even where no fee patent has been issued; but see *Elizabeth Bernice Stamp Payton*, 9 IBIA 200 (1982) (relying on fact that fee patent had not issued to find continued jurisdiction))
- *Delma Kingbird*, 50 IBIA 167 (2009) (property transferred during decedent’s lifetime -- property not in the estate at the time of death is outside the probate judge’s jurisdiction and inventory issues are within the jurisdiction of the BIA)
- *Robert Henry Moran, Sr.*, 44 IBIA 245, 245 (2007) (no jurisdiction over “non-trust assets of Indian –owned businesses”)

Jurisdiction -- Permanent Improvements

- *John Fredricks, Jr.*, 57 IBIA 204 (2013) (not required to declare how permanent improvements descend where decedent died before December 2, 2008)
- *Anna Chapman Smartlowit*, 50 IBIA 98 (2009) (not a probate case. Discussion of factors for determining whether improvements are trust property – cites many cases where homes were found not to be trust property, but seems to indicate that they sometimes could be)

Non-Indian Heirs or Devisees

- *Alverda Beck*, 55 IBIA 93 (2012) (land interests inherited by non-Indian heir pass out of trust, even where descendants of non-Indian heir would take in trust)
- *Florence Ethel Boury Lane*, 46 IBIA 188 (2008) (property passing to a non-Indian passes out of trust “by operation of law”)

General Restriction on Authority – Bound to Follow Statutes and Regs

- *John Fredricks, Jr.*, 57 IBIA 204 (2013) (“Neither this Board nor the Department’s probate judges have authority to adjudicate the constitutionality of duly promulgated statutes and regulations or to declare them otherwise invalid.” (210))
- *Phillip Quaempts*, 54 IBIA 278 (2012) (bound to follow order of district court, where court had determined the marital status of the decedent)
- *Cyprian Buisson*, 53 IBIA 103 (2011) (“[W]e are bound to follow the laws set down by Congress. We may not substitute our judgment — or Appellant’s judgment — in place of Congress’.” (110))
- *Frances Marie Ortega*, 51 IBIA 29 (2009) (“But the Board is bound by duly promulgated regulations and lacks authority to declare such regulations invalid.” (29))
- *Darryl Edwin Rice*, 49 IBIA 16 (2009) (plain result of CA pre-1985 half-blood provisions followed regardless of what Board might consider most just outcome)
- *Lucille Kingbird Owens*, 46 IBIA 306 (2008) (no authority to waive or ignore regulation requiring two disinterested witnesses for a valid will)

Treatment of Post-Death Allotment Income

- *Estate of Samuel R. Boyd*, 43 IBIA 11 (2006) (this is a seminal case for determining distribution of post-death funds from an allotment, also a good case to cite for pre-AIPRA choice of law questions, e.g. state of domicile for trust personalty, and law at time of death controls)
- *Estate of John Fredricks*, 57 IBIA 204, 208 n. 11 (2013) (to the extent extracted minerals are considered trust personalty – “trust personalty that accrues after a decedent’s death is not trust personalty *belonging to the decedent*” (emphasis in original)).

Standing

- *Sandra Boedendick*, 55 IBIA 251 (2012) (co-owners did not have standing to object to an AIPRA purchase at probate by a tribe where they had not themselves made an offer to purchase; even sibling co-owners who were potential heirs lacked standing, where they had stated that they did not intend to contest the decedent’s will, which disinherited them)
- *Phillip Quaempts*, 54 IBIA 278 (2012) (Decedent’s ex-spouse did not have standing to challenge modification on reopening, where marital status had been determined at the district court level; appellant could not “rest her claim for relief upon the rights and interests of others” (280))
- *Clayton Donald Mountain Pocket*, 54 IBIA 236 (2012) (natural siblings of an adopted out sibling lacked standing to challenge the will of the adopted out sibling, where will left property to adoptive cousins)
- *Zane Jackson*, 46 IBIA 251 (2008) (a showing of injury is required for standing)
- *Irene C. Ramos*, 45 IBIA 306 (2007) (administratrix of subsequently deceased heir’s estate failed to establish standing where she failed to identify a substantive error in the final probate decision – appellant’s complaint was that the notice of hearing was not sent to all interested parties)

- *Donald E. Blevins*, 44 IBIA 33 (2006) (individual must be an interested party defined as “a probable or actual heir” otherwise lacks standing; where not adversely affected and does not stand to gain or lose by modifications to decisions, person lacks standing)
- *Eunice Martha Creek*, 44 IBIA 214 (2007) (under old regs, where individual had notice of original proceeding and chose to not participate, not entitled to reopening ; where Appellant fails to identify an injury, not entitled to reopening—an injury is required element for reopening)
- *Martha Marie Vielle Gallineaux, Thomas Pambrun Gallineaux*, 44 IBIA 230 (2007) (old reopening regs — Appellant lacked standing to request reopening where he had notice of original hearing and failed to submit any evidence or properly contest the original decision)

Collateral Estoppel and Res Judicata

- *Samuel Summer Davis*, 57 IBIA 258 (2013) (principal of res judicata would have barred reopening of case to address will contest, where the will contest had already been adjudicated and decided in a 1955 probate decision; res judicata applies not only to an original will contestant in this case, but also to those who inherit from that contestant)
- *Martha Marie Vielle Gallineaux, Thomas Pambrun Gallineaux*, 44 IBIA 230 (2007) (Appellant who was present at his father’s probate hearing, and failed to raise issue of his parents’ marital status there, was collaterally estopped from raising issue in his mother’s probate hearing – see note on 238 and discussion)

Procedure – Petitions for Rehearing

- *Sarah Stewart Sings Good*, 57 IBIA 65 (2013) (filing of original petition not required -- petition for rehearing timely where copy was mailed to IPJ by filing deadline)
- *Earl Sanford Howe Jr.*, 53 IBIA 3 (2011) (appeal dismissed by IBIA when appellants requested additional time to complete DNA testing from the Board. Not the function of the Board to provide parties with additional time to conduct discovery for a previously held probate)
- *Alfred Chalepah Jr.*, 51 IBIA 148 (2010) (Rehearing denial affirmed; probate appeals limited to what was presented to IPJ/ALJ; Board will not provide further opportunity to obtain evidence for use in a probate proceeding that has occurred)
- *Alice Grace Demontigny*, 50 IBIA 174 (2009) (Denial of Rehearing affirmed as untimely but matter remanded to IPJ to be addressed as a reopening, as Decision failed to consider a plausible interpretation of will language to avoid an irreconcilable conflict)
- *Isgrigg Towendolly*, 50 IBIA 206 (2009) (any procedural errors were cured; appellant failed to show that a rehearing might have a substantive bearing on the case)
- *Frederick Harry Jerred*, 49 IBIA 147 (2009) (affirming finding of will validity; contestants did not meet their burden of proof or adequately explain failure to present new evidence before the final decision was issued)
- *Florence Ethel Boury Lane*, 46 IBIA 188 (2008) (Failure to raise issues at original hearing can bar relief under a rehearing petition; where petitioner receive proper notice, petitioner lacks

standing to pursue rehearing; disagreement with the effect of a Decision does not rise to potential meritorious position to allow for rehearing)

- *Foster Gregorio Marruffo*, 45 IBIA 149 (2007) (untimely petition for rehearing must be denied)
- *Anthony Munks*, 42 IBIA 100 (2006) (error for ALJ to deny a petition for rehearing without reaching the merits, where Board had already directed ALJ to address the merits on remand)
- *Dennis Earlwind Sand*, 42 IBIA 83 (2005) (must show on rehearing that new evidence could not have been presented at the hearing; appellant did not on show why she failed to present evidence concerning marital status – challenging the claim of someone who claimed to be married to the decedent – when appellant had that information available at the hearing)

Procedure – Petitions for Reopening

- *George Umtuch, Jr.*, 58 IBIA 205 (2014) (reopening – affirming denial of reopening, and noting that it was not the ALJ's role to investigate a possible will, based on the Appellant's "bare assertions" that there was a will; instead, it is the Appellant's responsibility to "submit sufficient relevant evidence to the ALJ along with the petition for reopening")
- *Melissa Heminger*, 53 IBIA 241 (2011) (Reopening requirements and duties of Judge and BIA-- Where judge believes there is merit to reopen, must provide notice plus copies of petition and documents to parties. 43 CFR 30.243(b) but if judge denies petition, then must provide reasons and advise parties of right to appeal 43 CFR 30.243(a))
- *Kenneth Mark Booth*, 53 IBIA 228 (2011) (failure to respond to IPJ's order to show cause resulted in denial of reopening)
- *Marilyn Jane Samuels*, 52 IBIA 140 (2010) (Judge may open a case upon own motion after 3 years based upon manifest injustice; BIA may petition court for cases closed more than 3 years; the notice requirement was eliminated in new regulations passed in December 15, 2008)
- *Francis X. Davis*, 52 IBIA 69 (2010) (scope of decision on reopening may be limited to those allotment interests still owned by all heirs)
- *Dora Ann Varela*, 51 IBIA 24 (2009) (Reopening sought based upon an incomplete disclaimer which failed to address whether a life estate was being retained. Reopening denied by judge summarily. Case remanded to PHD, Board found that petition had sufficient merit and the ALJ was required to give Notice to all interested parties 40 CFR §30.240(b))
- *John Henry Nicolson*, 51 IBIA 126 (2010) (any party can move for reopening if believe error in decedent's inventory)
- *Evelyn F. Broadhead*, 51 IBIA 238 (2010) (Due diligence; reopening denial was affirmed; failure to use due diligence to pursue rights, in this case submission of a more recent will)
- *David Joseph Berger*, 50 IBIA 122 (2009) (Judge properly denied a reopening where a partition request was made following the issuance of the Decision)
- *Anna J. Rince Okitkun*, 50 IBIA 253 (2009) (reopening to correct manifest injustice; controversy over interpretation of will devise)
- *Benson Potter*, 49 IBIA 37 (2009) (procedural, reopening criteria in 2008 regs apply instead of earlier criteria)

- *Leonard Old Rock Martin Sr.*, 47 IBIA 250 (2008) (Reopening/Rehearing—Judge must issue a final order before the Board can review on appeal; a referral letter to the Board from a judge is insufficient)
- *Elmer Wilson Jr.*, 47 IBIA 1 (2008) (Reopening/IRA—reopening of an ADM’s decision)
- *Thomas Boe*, 47 IBIA 138 (2008) (where there appears to be some merit to a petition to reopen, specifically failure to provide notice to a party in the original proceedings, judge should provide a hearing)
- *Florence Wilson Rowland*, 47 IBIA 159 (2008) (Reopening denied; discussion of definition of manifest error)
- *Reginald Dennis Birthmark Owens*, 45 IBIA 74 (2007) (case concerns prior reopening regs and “lack of notice” requirement in those regs – that holding no longer relevant because current regs do not have that “lack of notice” requirement (See *Benson Potter*, 49 IBIA 37 – cited above); also discussion of “manifest injustice” requirement)
- *Richard Yellow Hammer*, 45 IBIA 34 (2007) (applies old reopening regs and “lack of notice” standard, not applicable to current reopening regs (See *Benson Potter*, 49 IBIA 37 – cited above))
- *Martha Marie Vielle Gallineaux, Thomas Pambrun Gallineaux*, 44 IBIA 230 (2007) (old reopening regs again—Appellant had notice of original hearing and failed to submit any evidence or properly contest the original decision;
- *Mary Anne Wesho Leonard Shegonee*, 43 IBIA 185 (2006) (applies old reopening regs, but also has a discussion of “due diligence” in filing a reopening petition, which is relevant to current “manifest injustice” language on reopening)

Procedure – Reopening Long Closed Cases

- *James Bongo Jr.*, 55 IBIA 227 (2012) (procedure – manifest injustice requirement for long closed cases, requirement for due diligence)
- *Carl Sotomish*, 52 IBIA 44 (2010) (Reopening—a reopening to add an omitted heir is denied as Appellant failed to exercise the requisite due diligence in pursuing his rights)
- *Albert Angus Sr., George Angus*, 46 IBIA 90 (2007) (Inventory—inventory dispute may be barred by passage of time and/or by lack of due diligence in pursuing claim to an ownership interest; need for finality for probate so that owners may exercise their rights and rely on their title)
- *Elijah Good Shield*, 42 IBIA 123 (2006) (discussion of the factors involved in reopening long closed probate cases where key witnesses have died)

Procedure – Burden of Proof for BIA as Reopening Petitioner

- *James Bongo Jr.*, 55 IBIA 227 (2012) (BIA’s has a burden to meet when it submits a request for reopening – where BIA submits its own request, “[i]t is incumbent upon BIA to fully justify its request and explain in clear and detailed terms why BIA believes that the standard in the regulations for reopening has been met; BIA request found wanting where it provided “no argument or other evidence for why reopening outweighs the interest in finality and no argument for why leaving the estate closed would result in manifest injustice” (231))

Procedure -- Mods

- *Selwyn Wade Drum*, 56 IBIA 50 (2012) (treatment of challenges to mods as potential reopening requests)
- *Shirley Rose Thayer*, 55 IBIA 237 (2012) (disagreement with original probate decision is outside the scope of a modification order)
- *Byron Keith Other Bull*, 55 IBIA 115 (2012) (error to issue a modification order without sufficient support for a request to remove interests from estate)
- *Nancy Marie Foundagun*, 54 IBIA 133 (2011) (scope of review for a mod)
- *Estate of Joseph Rivera*, 52 IBIA 324 (2010) (discusses preference for providing BIA with time to perfect deficiencies in modification requests in lieu of denying the modification summarily and thereby triggering appeal rights)
- *Clement Herman Beargrease*, 51 IBIA 312 (2010) (Appeal on a Modification Order to Add Property dismissed but the possibility of having erroneously omitted an heir is sufficient to stay distribution of any undistributed trust assets and to require a decision on whether to reopen an earlier heirship determination (rather than appealing the modification order) before newly inherited property is distributed)
- *Dennis John Lambie*, 49 IBIA 24 (2009) (remanded where mod order was issued without OTSC to heirs, N/I surviving spouse wanted to renounce but not given the chance)

Procedure – Inventory Disputes under 2008 Regs (43 C.F.R. § 30.128)

- *Zella S. Pugh*, 58 IBIA 218 (2014) (upholding denial of rehearing for lack of jurisdiction and referral of inventory dispute to BIA; heir’s concern was that his ancestor did not receive a promised allotment)
- *Marie Wilkie*, 56 IBIA 211 (2013), (inventory disputes-- referred to BIA)
- *Laura Iron Ring*, 54 IBIA 265 (2012) (inventory dispute referred to BIA)
- *George W. Mackey*, 54 IBIA 221 (2012) (inventory dispute case, remanded, check)
- *George Byron Nelson Sr.*, 53 IBIA 7 (2011) (reopening--inventory challenge; dispute over inventory must be referred to and addressed by BIA)
- *John Henry Nicolson*, 51 IBIA 126 (2010) (Must refer inventory disputes that arise during probate proceedings to the BIA for decision; any party can move for reopening if believe error in decedent’s inventory)
- *James Jones, Sr.*, 51 IBIA 132 (2010) (Ducheneaux Standing Order superseded by 43 CFR 30.128(a); See also Harrison H. Yazzie, 51 IBIA 307; Dominic Stevens, 51 IBIA 252; David Bravo, 51 IBIA 198; Violet Cobell, 51 IBIA 202)
- *Frances Marie Ortega*, 50 IBIA 322 (2009) (Inventory—conflicts over inventory to be referred to BIA who has jurisdiction pursuant to 43 CFR 30.128; also discusses Appeal time frames)

Procedure – Adequacy of Notice

- *Beverly Howard*, 55 IBIA 300 (2012), (OSC sent to address of record – presumption that notice sent to last known address and not returned has been received; failure to receive OSC still requires a showing of prejudice, it is not enough to show a violation of procedural rights without showing prejudice – e.g. proffer of evidence)
- *Edwin Melvin Long Solider*, 52 IBIA 239 (2010) (Lack of notice of hearing is not a procedural error if appellant can't show what evidence would have been presented had notice been received).
- *Beulah Delorme Jacobson*, 52 IBIA 52 (2010) (notice sent to party's last known address and not returned is presumed to have been received; presumption is rebuttal)
- *Delma Kindbird*, 50 IBIA 167 (2009) (Discusses constructive and actual notice – constructive notice from posting may be sufficient even where OHA fails to incorporate updated address)
- *Estate of David Joseph Berger*, 50 IBIA 122 (2009) (procedural injury alone not enough to justify reopening)
- *Elijah Good Shield*, 42 IBIA 123 (2006) (“a minor represented by a guardian is charged with notice sent to that guardian”)

Procedure – Deciding Only the Case Before Us

- *Vincent Duane Ducheneaux*, 48 IBIA 167 (2008) (cannot obtain a modification of a decedent's inheritance from an ancestor by challenging the decedent's own probate decision)

Procedure – Summary Probate Cases

- *Carol Leota Heard*, 55 IBIA 109 (2012) (summary probate procedures; discussion of separate notice before summary decision and/or need for second summary decision if claim is filed)
- *Doris Mae Wilkie Klatt*, 53 IBIA 223 (2011) (summary probate procedures—appeal to ALJ/IPJ de novo includes right to rehearing before an appeal to the Board)

Procedure – Due Process Requirements

- *Marie Wilkie*, 56 IBIA 211 (2013), (Appellant received adequate notice regarding property in decedent's estate where judge identified inventory and provided copies; Judge not required to include legal descriptions in Decision; but note case may stand for proposition that probate decisions must describe or reference specific property, as a matter of due process)
- *Amos Sidney Bearshield*, 55 IBIA 10 (2012) (procedure – due process requires notice and an opportunity to respond before relying on new evidence – in this case to deny rehearing)
- *George LaVerne Francis*, 54 IBIA 149 (2012) (notice and opportunity to respond is required before relying on newly presented evidence)

Procedure – Entitlement to Supplemental Hearing

- *Wilmore Whitebread*, 54 IBIA 292 (2012) (appellant did not show entitlement to a supplemental hearing)

Procedure – Sufficient Opportunity to Present Evidence

- *Rachel Nahdayaka Poco*, 54 IBIA 248 (2012) (how much opportunity should will contestant have to present evidence? – here it was enough)
- *Edwin Melvin Long Solider*, 52 IBIA 239 (2010) (Incarceration or limitations on ability to obtain information is not, in and of itself, a basis to require a judge to grant rehearing).

Procedure – Misc.

- *Cyprian Buisson*, 53 IBIA 103 (2011) (IPJ not required to record pre AIPRA informal probate proceedings; but parties must present any controverted evidence at informal hearing or up to time decision issued)
- *Estate of Arlen D. Houle*, 42 IBIA 253 (2006) (arguably stands for the proposition that an OHA field office is under no obligation to immediately forward an appeal to the Board, where that appeal is mistakenly filed with the field office instead of with the Board, and the Notice of Decision provided correct appeal instructions)

Evidence – General

- *Wilmore Whitebread*, 54 IBIA 292 (2012) (judge has discretion to rely on even unsworn evidence – here affidavit of paternity)
- *Estate of Melissa Heminger*, 53 IBIA 241 (2011) (discussion of requirements for affidavit – affidavit from BIA or anyone must be signed by affiant and not by someone else)
- *Margerate Arline Glenn*, 50 IBIA 5 (2009) (uses “ancient documents” rule to find that a BIA will that was at least 20 years old was entitled to a presumption of validity; fact that witnesses were unavailable did not mean that will could not survive a contest)
- *Martha Marie Vielle Gallineaux, Thomas Pambrun Gallineaux*, 44 IBIA 230 (2007) (Board discusses statute of frauds in footnote – agreements respecting land must be in writing)
- *Estate of Sandra Kay Bouttier LaBuff Heavy Gun*, 43 IBIA 143 (2006) (addresses a hearsay challenge under MT evidence rules, but under old reg that state evidentiary law applied. Now Fed Rules apply.)

Medical Records

- *Levi Junnile Smith*, 49 IBIA 275 (2009) (procedure concerning assistance in obtaining medical records, Board criticized judge’s rejection of a request for subpoena to obtain med. records)
- *Frederick Harry Jerred*, 49 IBIA 147 (2009) (judge not required to obtain medical records when parties did not specifically request such an order)

Choice of Law -- Temporal

- *Cyprian Buisson*, 53 IBIA 103 (2011) (applicability of state intestate laws pre-AIPRA “law in effect at the time of death must be applied” (110))
- *John Crow Jr.*, 52 IBIA 337 (2010) (AIPRA §2206(j)(8) -- right to renounce in favor of an individual/tribe -- applies to estates of decedents who died prior to June 20, 2006 where the estate has yet to be probated)
- *Marvin Lee Tissidimit*, 51 IBIA 211 (2010) (late 2008 claims regs applied, despite earlier date of death (June 2008) (retroactivity not specifically raised and addressed as an issue though))
- *Roy Phillip Watlamatt, Peter Smartlowit, Beverly Ann Tallman*, 46 IBIA 60 (2007) (Pre-2001 claims regulations applied, based on date of death)

AIPRA --General

- *William Keith Garson*, 57 IBIA 296 (2013) (Board lacks jurisdiction to consider constitutionality of statutes such as AIPRA; also AIPRA controls over state law or tribal law where decedent died in 2008)
- *John Fredricks, Jr.*, 57 IBIA 204 (2013) (AIPRA intestacy provisions apply to estates of decedent’s who died on or after June 20, 2006; AIPRA applies to mineral interests [dicta])
- *Estate of Roland Dean DeRoche*, 53 IBIA 114 (2011) (dismissing constitutional challenge to AIPRA’s “tribal heir rule”)

AIPRA – Tribe With Jurisdiction

- *Wallace J. Cook et al.*, 58 IBIA 87 (2013) (tribe with jurisdiction, not on reservation, factors; tribe had jurisdiction of allotment not on that tribe’s reservation, where original allottee was member of that tribe and BIA had recognized application of a tribal liquor ordinance on that allotment; **Note:** See also *Miami Tribe of Oklahoma*, 656 F.3d 1129 (2011) for discussion of tribal jurisdiction issues – tribe did not have jurisdiction where “property had originally been allotted to a non-member, and tribe had agreed to sell its land in Kansas and Congress expressly abrogated tribe’s jurisdiction over those Kansas lands over one century earlier”; *Also Williams v. Clark*, 742 F.2d 549 (1984), “tribe with jurisdiction” in IRA, seems to indicate that more than one tribe can have jurisdiction in a particular area)

AIPRA – Eligible Heir

- *Reginald Paul Walkingsky*, 52 IBIA 233 (2010) (Co-Owner—Being a co-owner does not, in and of itself, make a person an “eligible heir” under AIPRA – it’s a two-part definition)

AIPRA – Purchase at Probate

- *Sandra Boedendick*, 55 IBIA 251 (2012) (mostly a “standing” case, but includes a general discussion of the AIPRA purchase at probate process)

AIPRA – Tribal Purchase of Interests Devised to Non-Indian

- *Estate of Tyrell S. Wilcox*, 43 IBIA 197 (2006) (ILCA 2000 provision, at 25 U.S.C. § 2205(c), that allowed Tribe to buy interests being devised to a non-Indian could not be applied to the case of a decedent who died in 1999 – statute explicitly provided that its provisions would not apply to the estates of individuals who died before the date that was one year after Secretarial certification, and Secretary never certified ILCA 2000. Note that different “effective date” language now applies for AIPRA, leaving retroactive application of current 2205(c) an open question; See John Crow, 52 IBIA 337))

Adoptions Under AIPRA

- *William Keith Garson*, 57 IBIA 296 (2013) (interpretation of AIPRA’s adoption provisions, natural sibling could not inherit from adopted out decedent, and did not have standing)
- *Jerome Hummingbird*, 55 IBIA 210 (2012) (AIPRA adoption provisions – adopted child not heir, no tribal law that applies)
- *Clayton Donald Mountain Pocket*, 54 IBIA 236 (2012) (AIPRA adoption law as applied to siblings; natural siblings were not potential heirs of adopted out Decedent)

Adoption, general

- *Charles David Wood*, 58 IBIA 135 (2013) (Reliance on state court adoption order affirmed)
- *Martha Matilda Bordeaux*, 53 IBIA 53 (2011) (a finding of an adoption may be established by preponderance of the evidence where no formal adoption papers can be located)
- *Mary Josephine (Mosho) Estep*, 48 IBIA 176 (2008) (requirements for proof of adoption in Indian Probate proceeding, under 25 U.S.C. § 372a(2), where adoption occurred before 1941)
- *Mary Cecelia Red Bear*, 48 IBIA 122 (2008) (discussion of adoption provisions in South Dakota)
- *Lyle T. Callous Leg*, 46 IBIA 205 (2008) (Interpretation and application of Standing Rock statute – statute provides that where parental rights have been terminated; child may not inherit)
- *Frank Anasouk Topsekok*, 43 IBIA 236 (2006) (a person may be deemed an heir by virtue of adoption, under 25 U.S.C. § 372a, even if the adoption was not formalized before the person died; a posthumous adoption order from a tribal court, or posthumous recognition of the adoption by the tribal governing body, can suffice to meet the statutory requirements. Note procedural history of case – OHA Director’s decision overruling Topsekok (34 IBIA 30) was itself withdrawn by subsequent letter from Asst. Secretary, now attached to Board’s decision)
- *Richard Crawford*, 42 IBIA 64 (2005) (adoption pre-AIPRA; inheritance rights of adopted child determined by law of state where property is located; adoption law in South Dakota (changed in 1995), and temporal choice of law issue – law in effect at date of death used, not law at date of adoption)

Paternity

- *Thomas Jefferson Boe*, 56 IBIA 15 (2012), (presumption that husband is the father when wife is the mother may be rebutted when 1) biological unlikelihood of husband being father is shown (sterility, DNA) or 2) husband and wife did not have physical access to each other; Note: rebuttal of presumption of paternity does not require proof identifying actual father)
- *Wilmore Whitebread*, 54 IBIA 292 (2012) (reliance on affidavit of paternity upheld)
- *Gordon Lee Ward*, 51 IBIA 88 (2010) (burden on child claiming paternity at initial hearing; burden shifts at rehearing to appellant to show court reached decision in error; written acknowledgement of paternity especially those signed at a time contemporaneous to child's birth persuasive evidence and given greater weight than recollection of witnesses. See also *Charles Bird*, 24 IBIA 136 (1993))
- *Robert William Waln*, 50 IBIA 189 (2009) (discusses DNA testing; proffers of evidence after decision has been issued, without adhering to medical protocol, found insufficient to conclude any error had been committed in denying DNA evidence in a paternity controversy)
- *Levi Junnile Smith*, 49 IBIA 275 (2009) (we cannot order production of DNA evidence, but should consider such evidence if available)
- *Earl Cheyenne*, 48 IBIA 205 (2009) (cannot compel a party to comply with DNA testing; contemporaneous written acknowledgement of paternity given greater weight than subsequent testimony)
- *Thomas Boe*, 47 IBIA 138 (2008) (discusses presumption of paternity and shifting burden during hearing and reopening)
- *Foster Gregorio Marruffo*, 45 IBIA 149 (2007) (OHA cannot order DNA testing)
- *Anthony "Tony" Henry Ross*, 44 IBIA 113 (2007) (Board reversed ALJ order which did not find paternity based upon the facts; Board discusses the rebuttal presumption of paternity; standard of proof is preponderance of the evidence; federal not state law applies to paternity issues in probate proceedings)

Marital Status

- *Aloysius Plainfeather*, 56 IBIA 154 (2013) (claim on appeal that decedent was not married was unsubstantiated; copy of certificate in the record)
- *Phillip Quaempts*, 52 IBIA 348 (2010) (directing implementation of a District Court Order reversing a prior Board decision – district court in turn found that tribal custom prevailed over a tribal code with regard to whether a legal divorce occurred)
- *Elena Kate Belcourt*, 47 IBIA 235 (2008) (parties were not divorced by court of competent jurisdiction but had been separated; spouse is considered an heir; the judge rejected an argument by the family that the parties were divorced by tribal custom; Board upheld the judge's decision)
- *Dennis Earlwind Sand*, 42 IBIA 83 (2005) (presumption in favor of a second marriage when a bigamous marriage is alleged – presumption extensively discussed, and not overcome where first spouse told appellant she thought she had been divorced from decedent)

Wills -- General

- *Elizabeth Lewis a.k.a. Elizabeth Butterfly*, 56 IBIA 289 (2013) (mistake in affidavit does not equal mistake in will – affidavit has a separate purpose, Board declines to adopt a rule that pretermitted sibling heirs be given inheritance rights)
- *Nels John Johnson*, 55 IBIA 171 (2012) (federal law does not recognize oral wills)
- *Margerate Arline Glenn*, 50 IBIA 5 (2009) (Wills—discusses Anti Lapse, testamentary capacity, witness unavailability)
- *Drucilla W. Pickard*, 50 IBIA 82 (2009) (Will Contest—Discusses testamentary capacity, undue influence, confidential relationship; also discusses the requirements of revoking a will and the role of medical records)
- *Phillip Loring*, 50 IBIA 178 (2009) (Wills—extrinsic evidence discussion)
- *Lyman Z. Penn*, 46 IBIA 272 (2008) (Wills—discusses requirements of testamentary capacity and undue influence; mistakes in will does not render will invalid; presumption of self proved will that testator possessed testamentary capacity at time of execution; burden is on the will contestant to rebut the presumption by preponderance of the evidence; an addiction to alcohol alone insufficient to rebut presumption)
- *Lucille Kingbird Owens*, 46 IBIA 306 (2008) (Wills—execution and interpretation of wills disposing of Indian trust property controlled by federal law; a devisee cannot be a will witness and testator’s intent alone is insufficient to create, alter, or revoke an Indian will)
- *Verna Mae Pepion Hill Hamilton*, 45 IBIA 58 (2007) (will interpretation, upheld ALJ’s finding that will lacking both specific devises of trust property and an R&R clause did not apply to decedent’s trust land interests, and will’s language concerning “physical personal property” did not apply to IIM funds)
- *Edith Walker Brown*, 43 IBIA 221 (2006) (wills – affirming ALJ’s finding that a will was valid, despite some errors in land descriptions. Board appeared to endorse ALJ’s use of extrinsic evidence to discern testator’s intent. A good case for the “intent alone has never been enough to make, alter, or revoke a will” line)

Wills -- Testamentary Capacity

- *Dominic Orin Stevens*, 55 IBIA 53 (2012) (affirming finding of t.c. where undisputed that testator had dementia, Appellants did not show lack of t.c. on date of will execution, or that “it was more likely than not that Decedent lacked testamentary capacity on any given day” (71)).
- *Theresa Underwood Dick*, 50 IBIA 279 (2009), (the factors of testamentary capacity, Board would probably have found lack of t.c., but upheld on undue influence)

Wills – Undue Influence

- *Dominic Oric Stevens, Sr.*, 55 IBIA 53 (2012) (BOP to show U.I. is simple preponderance, not clear and convincing, relatively extensive discussion of four factors of U.I.)

- *Clayton Donald Mountain Pocket*, 54 IBIA 236 (2012) (presumption of undue influence, question of “primary beneficiary”)
- *Theresa Underwood Dick*, 50 IBIA 279 (2009), (confidential relationship -- the presumption of undue influence where there is a finding of a confidential relationship and active participation)

Wills – Copy vs. Original

- *Dennis Calf Looking*, 52 IBIA 1 (2010) (No original Will found but Board found evidence insufficient to trigger presumption of revocation by destruction; cannot apply the presumption where there is evidence that BIA retained original Wills: “[T]he presumption is only triggered when there is sufficient evidence that a testator took possession of the original will.” (4))

Wills -- Effect of Disinheritance Language in Will on Inheritance by Intestacy

- *Verna Mae Pepion Hill Hamilton*, 45 IBIA 58 (2007) (heir disinherited by a will may still inherit property that passes by intestacy)

Wills – IRA Restrictions

- *Elmer Wilson Jr.*, 47 IBIA 1 (2008) (IRA applies to the Quinault Reservation; cannot devise trust property to a group not recognized by the federal government as an Indian Tribe)

Wills – Anti-Lapse

- *Genevieve W. Pollak*, 47 IBIA 147(2008) (Wills—Anti lapse provision not applicable where devisee who predeceased did not share common grandparent and no contingent beneficiary named, the devise passes through rest and residue clause)

Wills – Revocation

- *Margerate Arline Glenn*, 50 IBIA 5 (2009) (factors involved in a will revocation, a document revoking a will must meet the same requirements as will itself – letter not enough)

Will -- Witnesses

- *Edward Kappairsruk Ramoth, Sr.*, 56 IBIA 271 (2013) (notary can be 2nd witness, “intent” not necessary – overruling prior language concerning “intent” of notary)
- *Lucille Kingbird Owens*, 46 IBIA 306 (2008) (two witnesses absolutely required; a devisee cannot be a disinterested will witness)

Will – AIPRA Statutory Will Provisions

- *Aloysius Plainfeather*, 56 IBIA 154 (2013) (spouse omitted from Will has right to distribution per AIPRA, where will was written during marriage; applying 2206(j)(2)(A)(iii).)

Claims

- *Bertha Mae Tabbytite*, 57 IBIA 80 (2013) (discussion of when “estate is closed”, applied to the old claims regs but potentially still relevant to “new” claims regs – see current 30.147 -- claims may be precluded on reopening if estate has been distributed; this case may also be relevant to question of retroactive application of “new” (2008) claims regs – it applied the old regs)
- *Marvin Lee Tissidimit*, 51 IBIA 211 (2010) (Only trust funds on hand or funds accrued on date of death can be used to pay claims; if no money in the IIM account at time of death then cannot pay claims; note decedent died on June 12, 2008, before new rules became effective)
- *Margerate Arline Glenn*, 50 IBIA 5 (2009) (claim for costs of administering estate different than a creditor claim; deadline is different, but request for administrative costs must be submitted no later than date of decision, and should be submitted or at least raised at the hearing)
- *Roy Phillip Watlamatt, Peter Smartlowit, Beverly Ann Tallman*, 46 IBIA 60, (2007) (Pre-2001 creditor regulations and its applicability to post death income where there was a BIA approved assignment of trust income)
- *Charmane Rosella Sanchez, Virginia Agnes Yelechchin, Diana Day Broncheau*, 46 IBIA 160 (2008) (Affirmed the denial of claims; claims were barred (2001-2008 regs); presumption that creditors have knowledge of applicable regs; Board does not have authority to waive or ignore applicable regs)
- *Zane Jackson*, 46 IBIA 251 (2008) (Creditor Claims—burden on creditor to prove his/her claim; must show decedent agreed to pay for services or creditor rendered such services with the expectation of payment)
- *Owen Snez*, 45 IBIA 28 (2007) (found claim untimely under prior claim regs)
- *Estate of Bertha Mae Tabbytite*, 45 IBIA 10 (2007) (this case was overruled in District Court, case concerned “60-day from notice of death” claim deadline under prior claims regulations)

Renunciations

- *Irene Parker*, 58 IBIA 61 (2013) (renunciation must be voluntarily, knowingly, and freely executed; error to interpret disclaimer based solely on its language, when other evidence indicated the person renouncing did not fully understand the effect of the renunciation)
- *John Crow Jr.*, 52 IBIA 337 (2010) (AIPRA right to renounce in favor of an individual/tribe applies to all pending cases, including those where decedent died before June 20, 2006)
- *Dora Ann Varela*, 51 IBIA 24 (2009) (Disclaimers/Reopening/Notice—Reopening sought based upon an incomplete disclaimer which failed to address whether a life estate was being retained. Reopening denied by judge summarily. Case remanded to PHD, Board found that petition had

sufficient merit and the ALJ was required to give Notice to all interested parties 40 CFR §30.240(b))

- *Florence Ethel Boury Lane*, 46 IBIA 188 (2008) (Board indicates it may be willing to consider renunciation on behalf of estate by personal representative (note on last page))

Settlement Agreements

- *Laberta Stewart*, 54 IBIA 198 (2012) (settlement agreement, standards for approving, requirement to ensure that parties are advised of facts and understand effect of agreement)
- *Francis X. Davis*, 52 IBIA 69 (2010) (approval of a settlement on reopening adding an heir; but Board limited application of agreement to those allotment interests still owned by all five heirs)
- *Marjorie Jean Rider Bull Bear*, 49 IBIA 1 (2009) (judge cannot require a party to settle)
- *Estate of Samuel Johnson (John) Aimsback (Aims Back)*, 45 IBIA 298 (2007) (affirming denial of a settlement agreement, where it appeared there was a substantial dispute as to the terms of the agreement)

Consolidation Agreements

- *Estate of David Joseph Berger*, 50 IBIA 122 (2009) (Board appears to question, but does not decide, whether an agreement to partition an allotment can be approved as a consolidation agreement)

Guardian ad litem

- *Elijah Good Shield*, 42 IBIA 123 (2006) (has discussion about what constitutes “adequate representation” by a guardian ad litem)

Tribal Probate Codes

- *Nels John Johnson*, 55 IBIA 171 (2012) (non-application of potential future tribal probate code upheld)
- *Sandra Lee Morrison*, 54 IBIA 67 (2011) (Umatilla Code, applicability of 1999 code, AIPRA applicability as it affects existing tribal codes)
- *Celestine S. White*, 47 IBIA 73 (2008) (discusses ILCA unconstitutional escheat provision §207 per Youpee; not applicable to the Umatilla’s Inheritance Ordinance which limits descent and distribution of tribal lands to any non Indian or members of another tribe and which was drafted in accordance with then §206)

Special Federal Statutes (Standing Rock, Sisseton-Wahpeton, etc.)

- *Kenneth Mark Booth*, 53 IBIA 228 (2011) (The Board did not address the issue of BIA's coding of non-enrolled Indian as an "N" to be Indians "otherwise recognized as Indians by the Secretary" within Standing Rock Heirship Act.)
- *Vincent Duane Ducheneaux*, 48 IBIA 167 (2008) (application of Sisseton-Wahpeton Act provisions; discusses unconstitutionality of one S-W provision as found in federal court)
- *Mary Cecelia Red Bear*, 48 IBIA 122 (2008) (Interpretation of Standing Rock Act – does not apply to DOD funds)
- *Edward Benedict Defender*, 47 IBIA 271 (2008) (Standing Rock Act/Rehearing—Successive petitions for rehearing not allowed; discusses Standing Rock Act and its applicability to non-Indians and the eligibility to inherit; in this case an ex-wife who was the sole devisee)
- *Lyle T. Callous Leg*, 46 IBIA 205 (2008) (Adoption--Interpretation of Standing Rock probate code regarding adoptions or where parental rights have been terminated; child may not inherit)

State Intestacy Law "Half-Blood" Statutes

- *Darryl Edwin Rice*, 49 IBIA 16 (2009) (CA law as it applies to out-of-wedlock children and half-siblings)
- *Anthony Munks*, 42 IBIA 100 (2006) (good case for application of state "half-blood" statutes that limit inheritance based on source of property at issue – such as current Washington law and pre-1985 CA law; (AIPRA, however, does not differentiate between siblings of the whole blood and siblings of the half-blood – see definition of "eligible heir" at 2201(9)))

State Intestacy Law – Spousal Minimum Provisions ("First \$100,000" e.g.)

- *Marjorie Jean Rider Bull Bear*, 49 IBIA 1 (2009) (application of state spousal "first \$100,000" provision when determining shares of spouse and other heirs)

State Intestacy Law – Restrictions On Inheritance By A Parent

- *Michael Wayne Shields*, 48 IBIA 147 (2008) (applying MT state law limitation on inheritance by parent from a deceased child, father could not inherit from his son when he had not openly treated the child as his own. [Note some other states have similar provisions, but AIPRA does not])

California – Status of Lands Under Court Ordered "Fee to Trust" Option

- *Isgrigg Towendolly*, 50 IBIA 206 (2009) (discusses the California Rancheria Act of 1958; and subsequent "Tillie Hardwick" litigation restoring some terminated Rancherias, owners of land that had become fee land due to improper termination were given the option of restoring land to trust, but this did not mean that OHA had jurisdiction over fee land subject to that option)



With Montana AAA Legal Services

Present

Indian Wills

Handouts

Deb DuMontier

Janice Doggett & Betsy Brandborg

May 26th, 2015

Missoula, MT

Indian Estate Planning and Probate Procedures

May 26, 2015

Presented By:

Deb DuMontier

Deputy Special Trustee

(406) 396-4289 (Cell)

debra_dumontier@ost.doi.gov



The American Indian Trust Fund Management Reform Act of 1994

- Established the Office of the Special Trustee for American Indians (OST)
- To improve the management and accountability of Indian trust funds held by the DOI
- OST manages financial trust assets for both Indian tribes and Individual Indian Money (IIM) account holders
- The role of OST has been evolving

Reengineering of the Indian Trust

Interior undertook a comprehensive reengineering effort with BIA, OST, BLM, MMS, OHA and tribal representatives.

The "As-Is" project provided a clear understanding of the way trust processes were being administered.

The "To-Be" project used the information from the "As-Is" study to redesign trust processes where appropriate.

What is TAAMS?

- TAAMS stands for: **Trust Asset and Accounting Management System.**
- TAAMS is a computer software system implemented in all BIA agencies by Sept. 30, 2007.
- TAAMS contains detailed information on the following:
 - **Ownership** of each tract of Indian Land (i.e., who, how much, and from whom it was conveyed).
 - This information is inputted by the BIA's *regional title plants*, called the *LTRO's*. (BIA has 9 regional LTROs.)
 - **Encumbrances (i.e. Leases, Permits, ROW, Mortgages etc.)** that impact the use of Indian trust lands.
 - This information is inputted by the local agency realty staff.
 - Lease **invoices** are generated from information contained in TAAMS.

What is Lockbox?

- Lockbox is a **business process for recording and depositing checks due on leases and permits.**
- Lessees (i.e., the renters) send their lease checks to a special address in Prescott, AR.
- Staff at the lockbox:
 - record information about the check (e.g., payor, amount) into a computer program
 - make a electronic copy of the check.
 - Deposit the check in the bank.
- Information on checks deposited to lockbox are daily transferred to TFAS.

What is TFAS?

- TFAS stands for **Trust Funds Accounting System**.
- TFAS is a computer software system used by OST to track the money that comes into and out of your **IIM account and to create your IIM Statement**.
- Nightly TFAS **receives** information from TAAMS concerning ownership and money due on leases.
- Nightly TFAS **receives** information from Lockbox on lease income collected.
- This Information received from TAAMS and Lockbox is used by TFAS to receipt money into IIM accounts.
- Nightly TFAS **sends** information to TAAMS about money distributed to landowners.

Trust Reform Accomplishments:

- **Trust Asset Accounting Management System (TAAMS)** for title and leasing information. One system, real time data, with information on asset owner interests, encumbrances, and tracts.
- **Trust Funds Accounting System (TFAS)** for management of Individual Indian and Tribal Accounts financial data.
- **Integration** between TAAMS and TFAS creates a nationwide system for data, automated billing and distribution of trust funds, creations of statements and tracking encumbrances

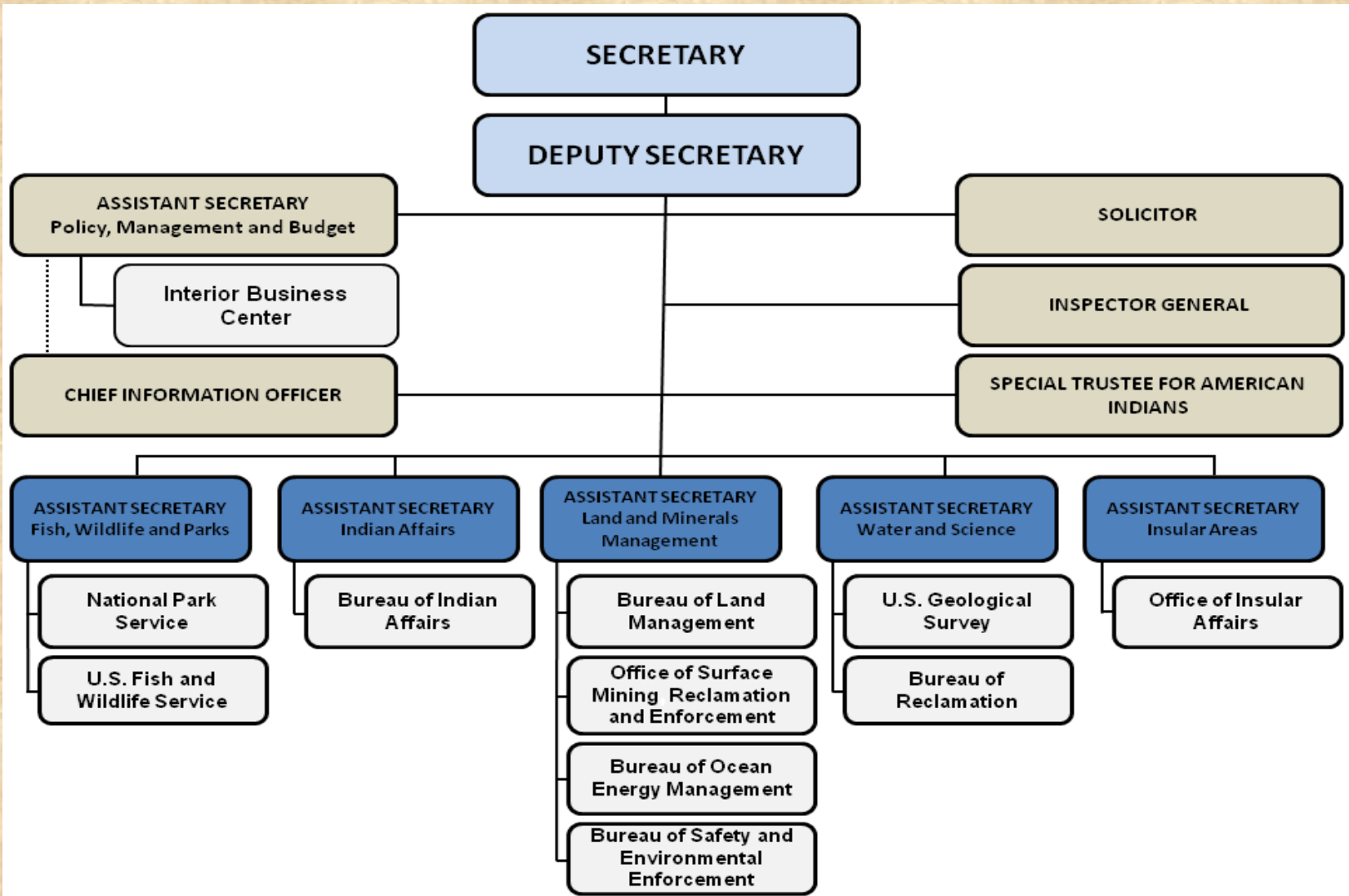
BIA and OST: The Dynamic Duo

- **BIA** does the following:
 - Manages the land and natural resources including: negotiates, writes and manages leases and permits affecting Indian lands.
 - encode lease and ownership information into TAAMS.
- **OST** does the following:
 - Manages the financial resources generated by Indian trust accounts, including: receipt/deposit of trust income, investments disbursements, account maintenance, appraisals, individual and tribal beneficiary services and outreach.
 - Prepares your IIM Statement based on information received from TAAMS and the Lockbox.
- **CSKT performs most of these federal functions.**

Fiduciary Trust Model

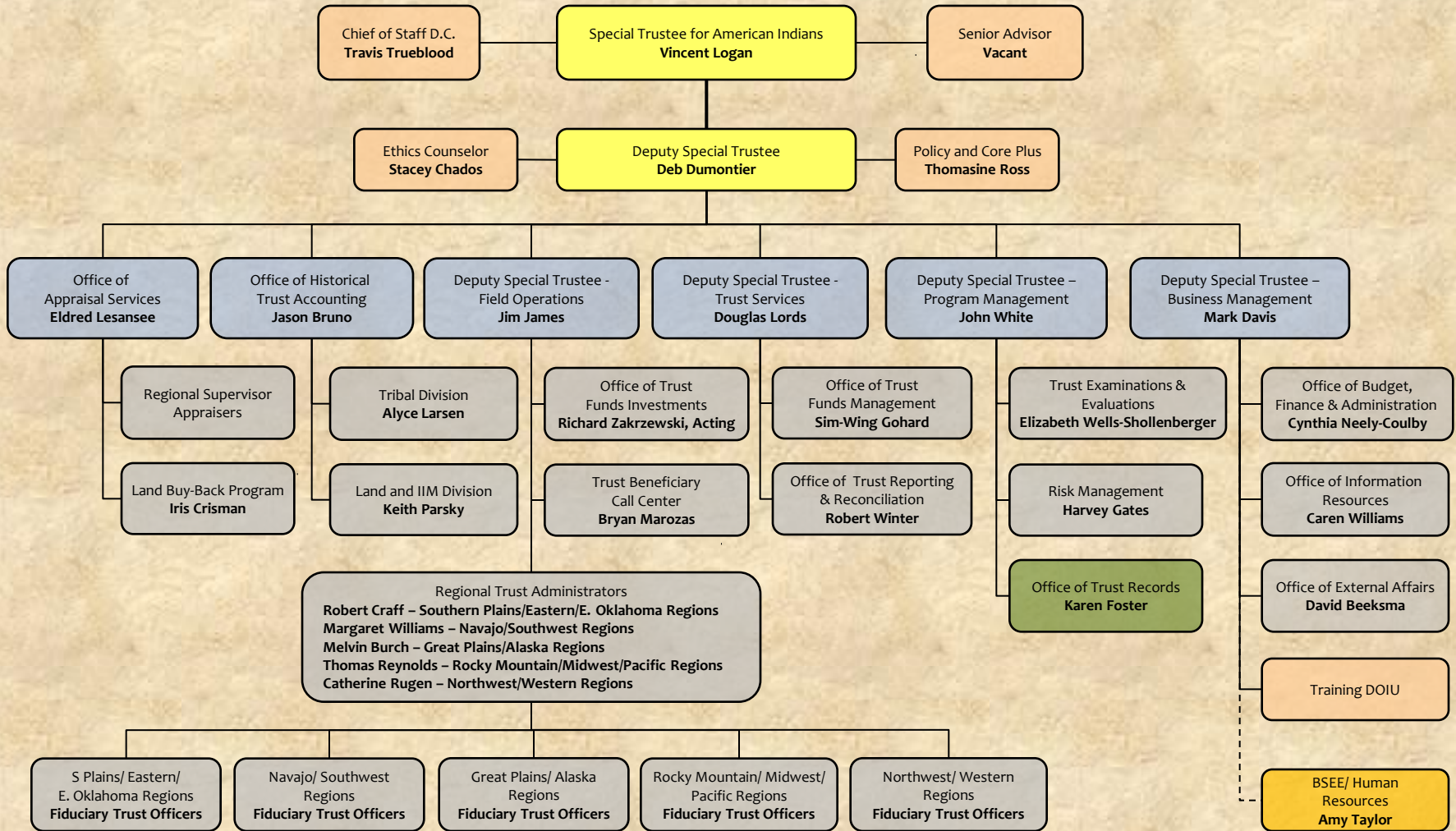


DOI Organizational Chart



U. S. DEPARTMENT OF THE INTERIOR

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS



* The Office of the Special Trustee for American Indians has an Independent Advisory Board



Fiduciary Role

- The Indian trust encompasses approximately 56 million acres of land and 57 million acres of subsurface mineral estates.
- Ten million acres belong to individual Indians.
- Forty-six million acres are held in trust for Indian tribes.
- Interior has a fiduciary responsibility to manage these trust lands and the income they generate on behalf of individual Indian and tribal beneficiaries.



Fiduciary Role

Interior is responsible for managing **400,000** Individual Indian Money (IIM) accounts and about **3,000** tribal accounts (for more than 250 federally recognized tribes). Assets held in trust for the benefit of Indian tribes and individuals include for example, land, timber, oil, gas, and mineral resources



Roles and Responsibilities

OST is responsible for the management of the financial resources generated by the Indian Trust.

BIA is responsible for the management of the natural resources of the Indian Trust, tracking the ownership of the resources, and preparing packages for probate.

The Office of Hearings and Appeals (**OHA**) is responsible for adjudicating probates of Indian trust assets.

Restricted

- OST does not have current address or contact information for approximately 45,000 beneficiaries.
- Referred to as “Whereabouts Unknown” or “WAU.”
- WAU accounts valued at over \$112 million.
- OST’s web site at ***www.ost.doi.gov***
(click “Locating IIM Account Holders”)

LIST OF REAL PROPERTY ASSETS

JOHN DOE
ACCOUNT NO. 123A456789

AS OF 06/30/06

PAGE X

TRUST LAND

<u>UNDIVIDED OWNERSHIP</u>	<u>TRACT ID TRACT DESCRIPTION</u>	<u>TRACT ACRES</u>	<u>LOCATION</u>	<u>OWNERSHIP CLASSIFICATION</u>
0.520000000000	^ 123 4567 WILLIAM	80.00	SOMEPLACE, ND	TITLE & BENEFICIAL
0.300000000000	^ 111 2222 SHERMAN	40.00	ANYWHERE, OR	TITLE
0.006000000000	^ 234 5678 LOUISE	160.00	HOMETOWN, SD	TITLE & BENEFICIAL

ENCUMBRANCES

<u>TRACT ID</u>	<u>DOCUMENT ID</u>	<u>ENCUMBRANCE TYPE</u>	<u>ENCUMBRANCE HOLDER</u>	<u>EFFECTIVE DATE</u>	<u>EXPIRATION DATE</u>
123 4567	234 567891011	OIL AND GAS LEASE	FAUX OIL COMPANY	01/01/2005	HBP
111 2222	123 123456789	AGRICULTURAL LEASE	FARMER MCDONALD	01/01/2002	12/31/2007
234 5678	789 101100000	TELEPHONE/TELEGRAPH RW	FICTITIOUS TELEPHONE CO.	01/01/2000	12/31/2020

LIST OF REAL PROPERTY ASSETS

JOHN DOE
ACCOUNT NO. 000X000000

AS OF 00/00/00

PAGE X

-----LEGEND TO REAL PROPERTY ASSET SCHEDULE-----

ACCOUNT NUMBER: THIS IS YOUR IIM ACCOUNT NUMBER AND LANDOWNER ID NUMBER.

UNDIVIDED OWNERSHIP: THIS IS THE UNDIVIDED OWNERSHIP INTEREST YOU OWN IN THE RESPECTIVE TRACT AND/OR ENCUMBRANCES; WHEN FOLLOWED BY A PLUS SIGN (+), THE OWNERSHIP INTEREST IS SMALLER THAN CAN BE REPRESENTED BY A DECIMAL AMOUNT.

TRACT ID: THIS IS THE UNIQUE BIA NUMBER ASSIGNED TO THE TRACT OF LAND; WHEN PRECEDED BY AN ASTERISK (*), THE TRACT IS ENCUMBERED.

OWNERSHIP CLASSIFICATION: THE FOLLOWING ARE THE DIFFERENT OWNERSHIP CLASSIFICATIONS THAT COULD BE LISTED ON YOUR STATEMENT:

'TITLE' ONLY - THE ACCOUNT HOLDER HAS TITLE, BUT NOT BENEFICIAL, OWNERSHIP TO THE LAND. A TITLE ONLY ACCOUNT HOLDER DOES NOT RECEIVE TRUST INCOME DERIVED FROM ENCUMBRANCE ACTIVITY.

'BENEFICIAL' ONLY - THE ACCOUNT HOLDER HAS BENEFICIAL, BUT NOT TITLE, OWNERSHIP TO THE LAND. A BENEFICIAL ONLY ACCOUNT HOLDER RECEIVES TRUST INCOME DERIVED FROM ENCUMBRANCE ACTIVITY. BENEFICIAL OWNERSHIP REVERTS TO THE TITLE OWNER/REMAINDERMAN UPON THE BENEFICIAL OWNER'S DEATH.

'TITLE & BENEFICIAL' - THE ACCOUNT HOLDER HAS BOTH TITLE AND BENEFICIAL OWNERSHIP TO THE LAND. A TITLE AND BENEFICIAL ACCOUNT HOLDER RECEIVES TRUST INCOME FROM ENCUMBRANCE ACTIVITY.

ENCUMBRANCE/ ENCUMBERED: ANY LEASE, RIGHT-OF-WAY, PERMIT OR ANY OTHER LEGAL INSTRUMENT WHICH AUTHORIZES USE OF THE PROPERTY.

DOCUMENT ID: BIA ASSIGNED NUMBER TO IDENTIFY THE ENCUMBRANCE DOCUMENT.

EFFECTIVE DATE: DATE THE ENCUMBRANCE STARTS.

EXPIRATION DATE: DATE THE ENCUMBRANCE ENDS, IF THERE IS AN END DATE, OR
HBP = HELD BY PRODUCTION (OIL AND GAS) OR
IP = IN PERPETUITY (THE ENCUMBRANCE DOES NOT HAVE AN EXPIRATION DATE).

NOTE: THIS ASSET STATEMENT CURRENTLY ONLY REFLECTS THOSE REAL PROPERTY ASSETS RECORDED AT THE BUREAU OF INDIAN AFFAIR'S OFFICIAL LAND TITLE AND RECORDS OFFICE FOR THE SOUTHERN PLAINS REGION, GREAT PLAINS REGION, ROCKY MOUNTAIN REGION, YAKAMA AGENCY, FORT HALL AGENCY AND THE MIAMI FIELD OFFICE. ASSETS RECORDED AT OTHER BIA AGENCIES WILL BE ADDED AT A LATER DATE. YOU WILL BE NOTIFIED AS EACH AGENCY IS ADDED TO THE STATEMENT.

Office of the Special Trustee

- TFAS - Trust Funds Accounting System
- TBCC - Trust Beneficiary Call Center
- TAAMS –Trust Assets Accounting Management Systems
- ITSQ- Indian Trust Systems Query
- AIRR- American Indian Records Repository

TFAS Trust Funds Accounting System

- Track real time information on any Individual or Tribal Trust Account
 - Name, address, Date of Birth, Date of Death, Social Security Numbers
- Tribal Trust Accounts instant information on all investments and holdings
 - Authorizations for disbursements and account access, investment authority

Trust Beneficiary Call Center

Began on December 3, 2004

- The Call Center is a nationwide network which allows beneficiaries to access information concerning their trust assets
- The Call Center is also a tool to document requests from beneficiaries (individuals and Tribes) and track resolution of these requests
- Over 1 million calls have been logged
- 94.9 % of all calls were handled and resolved at the Call Center
- 9 % referred to Field Agencies for further resolution

Trust Assets Accounting Management Systems

TAAMS

- Replaces the BIA's old MADD system, National conversion from 2004 till September 2007.
- Interfaces with TFAS
- Tracts landownership both historical and contemporary, payments received from contractors, creates invoices for contractors
- Access conveyance documents for each owner
- Ability to access reports for individual owners such as land inventory and income reports

DATE: 6/15/2010
 TIME: 16:19:24 CST

PAGE: 1
 REQUESTOR: JROUTZEN

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS
 LAND OWNER INCOME REPORT

(INFORMATION LIMITED TO RANGE, AGRICULTURE AND NON-PRODUCING OIL & GAS LEASES)

Landowner [Redacted]
 Name: JAMES AUBREY CORDRY
 Address: PO BOX 252
 MISSION, SD 57555

Land: 345

Allotment Tract ID	Total Tract Acres	Contract Type	Contract Number	Contracted Acres	Total Tract Rental	Contract Expire Date	Owner Interest	Amt Due	Payment Due Date
345 388 MONA MASSINGALE	320.000	GrazPerm	0001990616	320.000	\$3,066.73	11/30/2016	.0002182317	\$0.67	12/1/2010
Total Different Owners 253	Tract Totals =====>			320.000				\$0.67	
345 483 MICHAEL RICHARD	320.000	AGRIC	1617831015	320.000	\$4,604.72	2/28/2015	.0006546951	\$3.01	3/1/2011
Total Different Owners 127	Tract Totals =====>			320.000				\$3.01	
345 815 BEATRICE KIERSTEAD	320.000	GrazPerm	0002290616	317.150	\$2,270.56	11/30/2016	.0001893939	\$0.43	12/1/2010
Total Different Owners 581	Tract Totals =====>			317.150				\$0.43	
345 817 HOWARD SHERWOOD	320.000	AGRIC	1605840712	320.000	\$3,283.38	2/29/2012	.0001052189	\$0.35	3/1/2011
Total Different Owners 567	Tract Totals =====>			320.000				\$0.35	
	Land Area Totals =====>			1,277.150				\$4.46	
	Final Totals =====>			1,277.150				\$4.46	

*** End of Report ***

American Indian Records Repository

Office of Trust Records

American Indian Records Repository (AIRR)

Collected and indexed **288,000** boxes of Indian Affairs inactive records from various federal records centers, BIA storage facilities and other locations;

Stored information on the contents of each box in a searchable electronic database

Research is requested by local agencies for documents, usually has a 1 day turn around

American Indian Records Repository Lenexa, Kansas





Use of Landowner Income Reports in Financial Planning

**Gus Kerndt, Fiduciary Trust Officer
Office of the Special Trustee (OST)**

(208) 238-2310

September 15, 2010

Possible Uses of the Landowner Income Report

The Landowner Income Report can be used for the following purposes:

1. **Monitoring BIA Lease Collections:** To compare projected lease income on your land with what is actually collected and deposited to your IIM account.
2. **Loan Applications:** To support payback capacity for loan applications with Tribal Credit or other lenders.
3. **Estate Planning:** To assist in estate planning and the conveyance of your lands by will or gift deed.
4. **Budgeting:** To develop cash flow projections to assist in financial planning and creating a budget.

What is a Landowner Income Report?

Landowner Income Report:

- Replaces “lease cards” previously kept by BIA
- Generated automatically by the TAAMS program
- Provides detailed lease income for:
 - Agriculture leases
 - Grazing Permits
 - Non-Producing Oil and Gas Leases

Land Information on Landowner Income Reports

Provides lease information for each lessee or permittee broken down by:

1. Tribe's Land Area Code (LAC).
 - Shoshone-Bannock LAC: **180**
 - Northwestern Band Shoshone Nation: **195**
 - Wind River: **280, 281, or 282**
 - Yakama: **124**
 - Blackfeet: **201**
 - Western Shoshone: **641**
 - Navaho: **724**
2. Allotment Tract within each LAC

Landowner Income Report Data Provided in Each Column

Column 1: The following four items of information:

- ***Land:*** Tribal Land Area Code (ex., 180)
- ***Allotment Tract ID:*** (ex., **180 100**, where 180 is the LAC and 100 is the tract number)
- ***Name of Contractor*** (ex., ***Farmer John or Rancher Joe***)
- ***Total Different Owners on Tract***

Landowner Income Report

Data Provided in Each Column

Column 2: ***Total Tract Acres***--Total acres in allotment (ex. 160 ac.)

Column 3: ***Contract Type***--Type of contract (agricultural lease, grazing permit, etc.)

Column 4: ***Contract Number***-- A 10 digit lease number (0123456789).

Column 5: ***Contracted Acres***-- Acres on allotment under lease.

Landowner Income Report

Data Provided in Each Column

Column 6: ***Total Tract Rental Amount*** --The amount of rent on the contract assigned to the allotment.

Column 7: ***Contract expiration date***--***This*** is the date on which the lease will expire. Use this date to plan for renegotiation of lease terms.

Note: Lease payments are paid in advance for the coming year. A payment due 12/1/2010 is for the 2011 crop year.

Landowner Income Report

Data Provided in Each Column

Column 8: ***Owner Interest***—Landowner's ownership interest in allotment in decimal format (ex., 1.0000=100%; .2500=25%).

Column 9: ***Amt Due Owner***--Amount due Landowner on contract (i.e., your share of dollars on the tract).

(Column 6 x Column 8) = Column 9

(ex., \$17.07 x .2689754000 = \$4.59)

Column 10: ***Payment Due Date***--The date the payment on the contract is due.

Using Landowner Income Report to Monitor Lease Collections

Certain information found on the Landowner Income Report is also reported on your quarterly IIM Statement. This information includes:

1. Contractor name
2. Contract lease or permit number
3. Allotment tract number
4. Payment due date
5. Payment date and amount received

Using Landowner Income Report to Monitor Lease Collections

Compare the information on your IIM statement with the Landowner Income report to ask:

1. Did I get my lease payment due from a given tract?
2. Was the amount received correct? (Give or take a few pennies for rounding)
3. Did the contractor pay on time?

Using Landowner Income Report to Apply for a Loan

- Tribal Credit regularly uses the Landowner Income Report when reviewing loan applications.
- Typically they will make a loan to be paid back from lease income in an amount not to exceed 60% of your expected lease income in next year.
- Example: Lease income of \$10,000 will support a loan of \$6,000, provided prior borrowing history is good.
- Banks and Credit Unions use similar types of formulas.

Using Landowner Income Report in Estate Planning

- Two essential reports need to do estate planning are:
 - 1. Individual/Tribal Interest Report (ITI)**
 - provides a detailed listing of ALL Indian trust lands you own.
 - 2. Landowner Income Report**
 - Provides a detailed listing of those Indian trust lands that make you money.
- Take these reports with you when you visit your attorney who prepares your will.

Using Landowner Income Report in Estate Planning

- Shoshone-Bannock Tribes provides **free will preparation** to Tribal members with the Racine, Olson, Nye, Budge & Bailey Law Office.
- Location: 201 E. Center Ave, Pocatello, ID
- Phone: (208) 232-6101 for an appointment

Using Landowner Income Report in Estate Planning

- Two basic estate planning strategies commonly used:
 1. **Will:** Give your land away upon death with a will determining who gets what.
 2. **Gift Deed with Life Estate In Income Retained:** Give your land away prior to your death to family members, but retain the right to the income from that land until you die.

Using Landowner Income Report in Estate Planning

- The Landowner Income Report gives you critical information on what lands generate income.
- Lands generating income often are gift deeded to family members subject to a life estate.
 - These lands **avoid the BIA probate process**. Upon death, they automatically transfer to the grantee in the gift deed to whom you gave the land.
 - Landowner still gets the lease income during their life.

Using Landowner Income Report in Budgeting

- Landowner Income Report provides some of the information needed to prepare a family budget.
- Critical information for budgeting found in the Landowner Income report includes:
 - Payment Amt.
 - Payment Due date
 - Contract Expire Date
- See Sample Personal Budget Handout

Use of Landowner Income Reports in Financial Planning

- Request your Landowner Income Report from:
 - OST Field Office: (208) 238-2310, or
 - BIA Fort Hall Agency: (208) 238-2301, or
 - OST Trust Beneficiary Service Center:
1-800-562-8631
- Questions?

FREQUENTLY ASKED QUESTIONS FROM IIM BENEFICIARIES

What is the Office of the Special Trustee for American Indians (OST)?

In 1994, the American Indian Trust Fund Management Reform Act established the Office of the Special Trustee for American Indians to improve the management of the Indian fiduciary trust in the Department of the Interior. OST manages Indian beneficiaries' financial assets and is responsible for coordinating reform efforts to improve trust asset management and beneficiary services throughout Interior. OST is headquartered in Washington, DC, with financial management and other functions administered in Albuquerque, NM, and staff located throughout Indian Country.

What is the size of the Indian Trust?

The Department of the Interior manages the largest land trust in the United States. The Indian trust consists of approximately 56 million acres of land. Over 10 million acres belong to individual Indians and nearly 46 million acres are held in trust for Indian tribes. On these lands, Interior manages over 100,000 leases, permits and other encumbrances. Funds generated from leases, use permits, land sales, and interest earned on deposited funds, totaling approximately \$300 million, are collected for some 277,000 open Individual Indian Money accounts. About \$500 million was collected in FY 2005 for 1,450 tribal accounts for over 300 tribes. Additionally, the trust includes approximately \$3 billion in tribal funds and \$400 million in Individual Indian Money accounts.

Is OST a permanent office?

The 1994 American Indian Trust Fund Management Reform Act states that the Special Trustee—who heads OST—will ensure continuation of OST until all trust reforms have been implemented to his/her satisfaction. The Special Trustee may recommend the continuation, or the permanent establishment, of OST if he/she concludes that continuation or permanent establishment of OST is necessary for the efficient discharge of Interior's trust responsibility.

What are the roles of OST and the Bureau of Indian Affairs (BIA) in managing the Indian fiduciary trust?

OST is responsible for (1) financial management of the fiduciary trust—including collection of trust funds, accounting, investing and disbursing trust funds to individual and tribal beneficiaries; (2) appraisals of real property—providing impartial estimates of value for a variety of specific real property interests on land owned in trust or restricted status; and (3) services provided to trust beneficiaries—coordinating reform efforts to improve overall trust asset management and beneficiary services throughout Interior. BIA is responsible for resource management—including managing trust activities relating to property leases, permits, trespass, rights-of-way and land conservation and use. BIA also is responsible for recording title ownership, preparing probates for adjudication and managing supervised individual Indian trust accounts through its social services staff.

What is a Fiduciary Trust Officer (FTO)?

A Fiduciary Trust Officer is an OST employee who has extensive knowledge of fiduciary trust issues and works directly with Indian beneficiaries for whom the U.S. Government holds assets in trust. Because BIA has a wide range of responsibilities for Indian communities including the provision of social services, law enforcement and education, FTOs are located throughout Indian Country and are specifically dedicated to working with BIA and other federal employees to provide trust beneficiaries with information and assistance on all aspects of their trust assets.

What is an Individual Indian Money (IIM) account?

An IIM account is an interest-bearing account that is managed by Interior on behalf of a person who has money or other assets held for them in trust by the U.S. Government. An IIM account may also be established as a result of a court-ordered judgment or settlement award.

Where do the trust funds come from?

Money comes into the trust through a variety of sources including commercial, industrial, recreational, and agricultural leases. Money is also collected for rights-of-way uses, land sales, grazing and range permits, and court judgment or settlement awards for tribes and individuals (e.g. per capita payments).

Do the funds in an IIM account earn interest?

Yes. If funds are held in an account for more than one day, they are invested and earn interest. The rate of interest on trust accounts changes based on how the money is invested and how those investments perform.

What are unrestricted and restricted IIM accounts?

Unrestricted IIM accounts are those for which an Indian account holder determines the timing and amount of the disbursements from the account. Restricted IIM accounts must meet certain criteria before funds can be disbursed from them. Examples of restricted accounts include those for which OST does not have a current address on file for the beneficiary, those upon which a court order is imposed (e.g. for the payment of child support), or supervised accounts (e.g. when BIA Social Services is required to develop a distribution plan for how funds are authorized to be spent). Supervised accounts are most commonly created for adults in need of financial assistance or for minors until they reach 18 years old or the age of majority as determined by their tribe.

When are funds disbursed from an IIM account?

For unrestricted accounts, funds are automatically disbursed to the beneficiary when the account reaches \$15, unless the beneficiary requests otherwise. If an account balance is less than \$15, the funds remain invested until they reach the \$15 mark. Oil and gas payments are disbursed when their value is \$5 or more during any oil and gas payment cycle. A beneficiary may request payment of the balance in his/her account at any time. For restricted accounts, funds may be disbursed depending on the reason for the restriction on the account. For account holders who choose direct deposit, all money received, regardless of the amount, is automatically deposited into the account specified at their financial institution.

How are funds disbursed?

For unrestricted IIM accounts, beneficiaries may choose to receive their funds in check form or through an electronic fund transfer in accordance with OST's direct deposit program (see next question). For most restricted IIM accounts, funds are disbursed according to a distribution plan.

What is Direct Deposit?

Direct Deposit is a trust fund disbursement option that replaces checks and provides the automatic, electronic transfer of funds directly to a beneficiary's checking or savings account at his/her financial institution. With Direct Deposit, trust disbursements—regardless of the dollar value—are automatically and immediately deposited to a financial institution account. Unlike a check, there is no danger of funds being misplaced, stolen or lost in the mail. To enroll for Direct Deposit, beneficiaries may contact the Trust Beneficiary Call Center toll-free at (888) 678-6836 or their Fiduciary Trust Officer.

What is the process for receiving payments into the trust?

A commercial lockbox operation has been established to receive and process trust payments. Under the lockbox system, payments due to beneficiaries are centrally collected, deposited (to the U.S. Department of the Treasury), and distributed to trust accounts. The new lockbox process began implementation through a pilot program in Oklahoma on July 1, 2005, and now is in operation nationwide. Payments are no longer accepted at local BIA agencies.

Who is responsible for determining the value of trust land for a lease?

The Office of Appraisal Services, within OST, is responsible for Indian land valuations. These appraisals provide impartial estimates of market value for a variety of real property interests on land owned in trust or restricted status. Various Indian trust land transactions require valuations to ensure that fair and just compensation is received by the rightful owner(s). Appraisals establish the minimum value to be paid for a trust transaction, unless waived by the property owner. Higher prices can always be negotiated by the owner or BIA.

Why do trust beneficiaries have to share land ownership with others?

When trust asset owners die without a will, their heirs inherit portions of their trust assets. This practice has continued as land has passed from generation to generation, and more and more heirs have acquired interests in the land. Today, there are parcels of land in trust that have more than 1,000 owners. Tribes and Interior are working on solutions to this massive problem—called "fractionation." For example, the Indian Land Consolidation Program purchases small ownership shares in allotted lands from willing sellers. The purchase of these small fractional interests and transfer of the interests to the tribe increases the likelihood of more productive economic use of the land and decreases the number of interests subject to probate.

What is the American Indian Probate Reform Act of 2004 (AIPRA)? This Act creates a new Federal probate law that changes the way trust estates are distributed to heirs after a beneficiary's death. This increases the importance and benefits of estate planning so the beneficiary can determine who inherits his/her assets. The Act was signed into law on October 27, 2004; most provisions will go into effect on June 20, 2006.

What is the purpose of AIPRA? One of the main purposes of AIPRA is to preserve the trust status of Indian lands and to reduce the number of small fractionated interests. It offers an opportunity for individuals to determine how and when they want to distribute their trust assets. Through estate planning, individuals may wish to create a will or sell, transfer or otherwise consolidate their interests in trust or restricted land. If an individual does not have a will or estate plan, his/her assets will be distributed after death according to Federal or tribal laws.

Does a beneficiary need a will? Having a valid, written will gives a beneficiary the ability to distribute trust property to whomever he/she wants. If a beneficiary does not have a valid will, his/her trust estate will be subject to Federal or tribal laws and will pass to his/her heirs as required by law.

What should a beneficiary do when a relative—who is a trust beneficiary—dies?

The beneficiary should notify OST's Trust Beneficiary Call Center at (888) 678-6836 or his/her Fiduciary Trust Officer or the local BIA probate specialist. A copy of the death certificate will be required to initiate a probate proceeding. Individuals should not cash or deposit any checks belonging to a deceased person. Cashing them is a violation of Federal law and may delay the probate process.

What should a beneficiary do when he/she moves or has a name change?

The beneficiary should contact the toll-free Trust Beneficiary Call Center at (888) 678-6836 and advise us of any address or name changes. If there is a name change due to marriage, a copy of the marriage license will be requested. If a name change is the result of a divorce, adoption, or court order, the beneficiary is asked to provide a copy of the court order or decree.

Where can beneficiaries get additional information?

Beneficiaries can call the Trust Beneficiary Call Center at (888) 678-6836 or contact a Fiduciary Trust Officer at the following locations:

Southern Plains & Southwest Regions

Anadarko Agency, Anadarko, OK:	(405) 247-6677 x 518
Concho Field Office, El Reno, OK:	(405) 262-4857
Horton Agency, Horton, KS:	(785) 486-2161
Pawnee Agency, Pawnee, OK:	(918) 762-4473
Southern Plains Region, Anadarko, OK:	(405) 247-1504
Laguna Agency, Laguna, NM:	(505) 563-3564
Southern Ute Agency, Ignacio, CO:	(970) 563-1013

Navajo & Western Regions

Eastern Navajo Agency, Crownpoint, NM:	(505) 863-8463
Navajo Region, Gallup, NM:	(505) 863-8485
Colorado River Agency, Parker, AZ:	(928) 669-7130
Papago Agency (Tohono O'Odham), Sells, AZ:	(520) 383-1071
Pima Agency, Sacaton, AZ:	(520) 562-3608
Uintah & Ouray Agency, Fort Duchesne, UT:	(435) 722-4332
Western Nevada Agency, Carson City, NV:	(775) 887-3525 x 279

Great Plains & Eastern Regions

Fort Berthold, New Town, ND: (701) 627-4475
Great Plains Region, Aberdeen, SD: (605) 226-7361
Pine Ridge Agency, Pine Ridge, SD: (605) 867-5326
Rosebud Agency, Rosebud, SD: (605) 856-4965
Sisseton Agency, Agency Village, SD: (605) 698-4906
Standing Rock Agency, Fort Yates, ND: (701) 854-3419
Turtle Mountain Agency, Belcourt, ND: (701) 477-3828
Winnebago Agency, Winnebago, NE: (402) 878-2411
Eastern Region, Nashville, TN: (615) 564-6931
Rapid City, Rapid City, SD: (605) 341-4028

Eastern Oklahoma & Pacific Regions

Cherokee, Tahlequah, OK: (918) 453-5715
Chickasaw Agency, Ada, OK: (405) 257-2113
Eastern Oklahoma Region, Muskogee, OK: (918) 687-2317
Osage Agency, Pawhuska, OK: (918) 287-5790
Palm Springs Agency, Palm Springs, CA: (760) 416-4167 x 257
Pacific Region, Sacramento, CA: (916) 978-6047
Tulsa /Oklahoma City, Tulsa, OK: (918) 828-5684

Rocky Mountain & Midwest Regions

Great Lakes Agency, Ashland, WI: (715) 682-9788
Minnesota Agency, Bemidji, MN: (218) 751-4338
Blackfeet Agency, Browning, MT: (406) 338-4358
Crow Agency, Crow Agency, MT: (406) 638-4405
Fort Belknap Agency, Harlem, MT: (406) 353-2281
Fort Peck Agency, Poplar, MT: (406) 768-3288
Northern Cheyenne Agency, Lame Deer, MT: (406) 477-8289
Rocky Mountain Region, Billings, MT: (406) 657-6750
Wind River Agency, Fort Washakie, WY: (307) 332-3669 x 242

Northwest & Alaska Regions

Colville Agency, Nespalem, WA: (509) 634-2317
Flathead Field Office, Pablo, MT: (406) 275-2825
Fort Hall Agency, Fort Hall, ID: (208) 238-2310
Northern Idaho, Lapwai, ID: (208) 843-2300 x 2788
Northwest Region, Portland, OR: (503) 231-6732
Puget Sound Field Office, Everett, WA: (425) 339-5167
Taholah Field Office, Taholah, WA: (360) 276-8215
Umatilla Agency, Pendleton, OR: (541) 278-3786
Warm Springs Agency, Warm Springs, OR: (541) 553-2409
Yakama Agency, Toppenish, WA: (509) 865-2255
Seattle-Tacoma Agency, Seattle, WA: (206) 220-7830
Alaska Region, Anchorage, AK: (907) 271-1610

Limited Scope Representation (LSR)

Presented by Betsy Brandborg and Janice Frankino Doggett
 Created by Erin Farris-Olsen
 Equal Justice Coordinator, State Bar of Montana

Full Scope Representation
 Full scope representation for a fee will not end until the client chooses to end the representation or the case ends.

Pro Bono
 "Pro bono" is a term to describe legal assistance from a lawyer to a person in need otherwise unable to pay the regular fee. Montana Legal Services Association or a local pro bono program will screen for financial eligibility to receive these services. You may also try to find your own pro bono lawyer by requesting that a lawyer represent you without charging a fee.
 Contact a Self-Help Law Center or Montana Legal Services.

Reduced Fee
 A lawyer may be willing to represent you at a reduced fee. Often called "modest means," a lawyer may charge you less based on your financial situation. Some lawyers set up a "sliding scale" to determine, based on your income, what fee you will be charged. The State Bar Modest Means Program is a great way to find a modest means lawyer.
 Call Montana Legal Services Association or the Lawyer Referral Service for lawyers that provide "reduced fee" representation.

Standard Fee
 The three most common types of fee arrangements are: hourly billing, contingent fee (lawyer is not paid directly by client until after the case is successful), or flat fee. Lawyer fees are based on the area of law and experience and legal strategy. Most lawyers in Montana charge between \$100 and \$200 dollars per hour. A lawyer may charge an amount of money up front, called a "retainer." Contact the State Bar Lawyer Referral Service to find a lawyer.

Limited Scope Representation
 A lawyer assists with a specific task or tasks including: legal advice, document preparation or review, limited court appearances, or another part of your case. The client and lawyer agree upon and clearly define specific tasks to be performed by the lawyer and by the client.
 If you plan to handle most of your case on your own but need assistance only for legal advice, drafting your court appearance, or another part of your case, pro bono limited scope representation may be right for you. Montana Legal Services Association or a local pro bono program will screen you for financial eligibility to receive these services. You may also find a lawyer willing to help you on a limited scope basis for no fee.
 Contact a Self-Help Law Center or Montana Legal Services.
 Paying for only a certain amount of services may be an affordable way to hire a lawyer. Lawyers may already have a method to determine your eligibility for a reduced fee. Even if the hourly fee is the same, the overall cost may be less because you will handle some of your legal case on your own. The State Bar Modest Means Program is a great way to find a modest means lawyer.
 Call Montana Legal Services Association or the Lawyer Referral Service for lawyers that provide "reduced fee" representation.
 Lawyers may be willing to charge a standard hourly fee or flat fee for providing only a portion of legal services. You and the lawyer can have a binding written agreement that clearly outlines the legal services you will receive at a certain cost. If the hourly fee is standard, the overall cost to you may be less because you will handle the rest of your legal case on your own. Considerations to look for lawyer referral services to find a lawyer.

"Limited Scope Representation" (aka Unbundled Services, and Discrete Task Representation)

Limited Scope Representation was Specifically Ordered by the Montana Supreme Court

--March 15, 2011 (two separate orders)

Order AF 09-0688
 Amends Rules 1.2, 4.2 and 4.3 of the Montana Rules of Professional Conduct

Order AF 07-0157
 Creates New Rules 4.1, 4.2 and 11(e) to the Montana Rules of Civil Procedure

Rule 4.2 Limited Representation Permitted – Process.

- A. In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.
- B. Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).
- C. Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of appearance, except to the extent that a limited notice of appearance as provided for under Rule 4.3 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney appeared, including any hearing or trial at which the attorney appeared and any subsequent motions or presentation of orders.
- D. An attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

MRCP 4.2 Added

Rule 4.3. Notice of Limited Appearance and Withdrawal as Attorney.

- A. Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.
- B. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

MRCP 4.3 Added

Rule 11. Signing of Pleadings, Motions, and other Papers -- Sanctions

[A-D existing rule]

- E. An attorney may help to draft a pleading, motion, or document filed by the otherwise self-represented person, and the attorney need not sign that pleading motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

MRCP 11 Amended

Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer

[existing subsections A and B]

C. A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

1. The client's informed consent must be confirmed in writing unless:
 - l. the representation of the client consists solely of telephone consultation;
 - ll. the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or
 - lll. The court appoints the attorney for a limited purpose that is set forth in the appointment order.
2. If the client gives informed consent in writing signed by the client, there shall be a presumption that:
 - l. the representation is limited to the attorney and the services described in writing; and
 - ll. The attorney does not represent the client generally or in matters other than those identified in the writing.

MRPC 1.2 Amended

Rule 4.2 -- Communication with Person Represented by Counsel

A. [existing subsection]

B. An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

MRPC 4.2 Amended

Rule 4.3 -- Dealing with Unrepresented Person

[existing subsection A]

A. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

B. An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

MRPC 4.3 Amended
