

Calendar No. 515

108TH CONGRESS
2D SESSION**S. 1721****[Report No. 108–264]**

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 14, 2003

Mr. CAMPBELL (for himself and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

MAY 13, 2004

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Indian Pro-
5 bate Reform Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the Act of February 8, 1887 (commonly
4 known as the “Indian General Allotment Act”) (25
5 U.S.C. 331 et seq.), which authorized the allotment
6 of Indian reservations, did not permit Indian allot-
7 ment owners to provide for the testamentary disposi-
8 tion of the land that was allotted to them;

9 (2) that Act provided that allotments would de-
10 scend according to State law of intestate succession
11 based on the location of the allotment;

12 (3) the reliance of the Federal Government on
13 the State law of intestate succession with respect to
14 the descent of allotments has resulted in numerous
15 problems affecting Indian tribes, members of Indian
16 tribes, and the Federal Government, including

17 (A) the increasingly fractionated ownership
18 of trust and restricted land as that land is in-
19 herited by successive generations of owners as
20 tenants in common;

21 (B) the application of different rules of in-
22 testate succession to each interest of a decedent
23 in or to trust or restricted land if that land is
24 located within the boundaries of more than 1
25 State, which application—

1 (i) makes probate planning unneces-
 2 sarily difficult; and

3 (ii) impedes efforts to provide probate
 4 planning assistance or advice;

5 (C) the absence of a uniform general pro-
 6 bate code for trust and restricted land, which
 7 makes it difficult for Indian tribes to work co-
 8 operatively to develop tribal probate codes; and

9 (D) the failure of Federal law to address
 10 or provide for many of the essential elements of
 11 general probate law, either directly or by ref-
 12 erence; which—

13 (i) is unfair to the owners of trust and
 14 restricted land (and heirs and devisees of
 15 owners); and

16 (ii) makes probate planning more dif-
 17 ficult; and

18 (4) a uniform Federal probate code would like-
 19 ly—

20 (A) reduce the number of fractionated in-
 21 terests in trust or restricted land;

22 (B) facilitate efforts to provide probate
 23 planning assistance and advice;

24 (C) facilitate intertribal efforts to produce
 25 tribal probate codes in accordance with section

1 206 of the Indian Land Consolidation Act (25
2 U.S.C. 2205); and

3 (D) provide essential elements of general
4 probate law that are not applicable on the date
5 of enactment of this Act to interests in trust or
6 restricted land.

7 **SEC. 3. INDIAN PROBATE REFORM.**

8 (a) TESTAMENTARY DISPOSITION.—Section 207 of
9 the Indian Land Consolidation Act (25 U.S.C. 2206) is
10 amended by striking subsection (a) and inserting the fol-
11 lowing:

12 “(a) TESTAMENTARY DISPOSITION.—

13 “(1) GENERAL DEVISE OF AN INTEREST IN
14 TRUST OR RESTRICTED LAND.—

15 “(A) IN GENERAL.—Subject to any appli-
16 cable Federal law relating to the devise or de-
17 scend of trust or restricted land, or a tribal pro-
18 bate code approved by the Secretary in accord-
19 ance with section 206, the owner of an interest
20 in trust or restricted land may devise such an
21 interest to—

22 “(i) an Indian tribe with jurisdiction
23 over the land; or

24 “(ii) any Indian; or

1 “(iii) any lineal descendant of the tes-
2 tator; or

3 “(iv) any person who owns a pre-
4 existing undivided trust or restricted inter-
5 est in the same parcel of land;
6 in trust or restricted status.

7 “(B) RULE OF INTERPRETATION.—Any
8 devise of an interest in trust or restricted land
9 or personal property to a devisee listed in sub-
10 paragraph (A) shall be considered to be a devise
11 of the interest in trust or restricted status, un-
12 less—

13 “(i) language in the will clearly evi-
14 dences the testator’s intent that the inter-
15 est is to vest in the devisee as a fee inter-
16 est without restrictions; or

17 “(ii) the interest devised is a life es-
18 tate.

19 “(2) DEVISE OF TRUST OR RESTRICTED LAND
20 AS A LIFE ESTATE OR IN FEE.—

21 “(A) IN GENERAL.—Except as provided
22 under any applicable Federal law, any interest
23 in trust or restricted land that is not devised in
24 accordance with paragraph (1) may be devised
25 only—

1 “(i) as a life estate without regard to
 2 waste to any person, with the remainder
 3 being devised only in accordance with sub-
 4 paragraph (B) or paragraph (1); or

5 “(ii) except as provided in subpara-
 6 graph (B), in fee to any person.

7 “(B) LIMITATION.—Any interest in trust
 8 or restricted land that is subject to section 4 of
 9 the Act of June 18, 1934 (25 U.S.C. 464), may
 10 be devised only in accordance with—

11 “(i) that section;

12 “(ii) subparagraph (A)(i); or

13 “(iii) paragraph (1).

14 “(3) GENERAL DEVISE OF AN INTEREST IN
 15 TRUST OR RESTRICTED PERSONAL PROPERTY.—

16 “(A) TRUST OR RESTRICTED PERSONAL
 17 PROPERTY DEFINED.—The term ‘Trust or re-
 18 stricted personal property’ as used in this sec-
 19 tion includes—

20 “(i) all funds and securities of any
 21 kind which are held in trust in an indi-
 22 vidual Indian money account or otherwise
 23 supervised for the decedent by the Sec-
 24 retary; and

1 “(ii) absent clear evidence to the con-
2 trary, all personal property permanently
3 affixed to trust or restricted lands.

4 “(B) IN GENERAL.—Subject to any appli-
5 cable Federal law relating to the devise or de-
6 secent of such trust or restricted personal prop-
7 erty, or a tribal probate code approved by the
8 Secretary in accordance with section 206, the
9 owner of an interest in trust or restricted per-
10 sonal property may devise such an interest to
11 any person or entity.

12 “(C) MAINTENANCE AS TRUST OR RE-
13 STRICTED PERSONAL PROPERTY.—Except as
14 provided in paragraph (1)(B), where an interest
15 in trust or restricted personal property is de-
16 vised to a devisee listed in paragraph (1)(A),
17 the Secretary shall maintain and continue to
18 manage such interests as trust or restricted
19 personal property.

20 “(D) DIRECT DISBURSEMENT AND DIS-
21 TRIBUTION.—In the case of a devise of an in-
22 terest in trust or restricted personal property to
23 a devisee not listed in paragraph (1)(A), the
24 Secretary shall directly disburse and distribute
25 such personal property to the devisee.

1 “(4) INELIGIBLE DEVISEES OF TRUST OR RE-
 2 STRICTED INTEREST; INVALID WILLS.—Any interest
 3 in trust or restricted land or personal property that
 4 is devised as a trust or restricted interest to a devi-
 5 see not listed in subparagraph (A) of paragraph (1)
 6 shall descend to the devisee as a fee interest. Any in-
 7 terest in trust or restricted land or personal property
 8 that is not disposed of by a valid will shall descend
 9 in accordance with the applicable law of intestate
 10 succession as provided for in subsection (b).”.

11 (b) NONTESTAMENTARY DISPOSITION.—Section 207
 12 of the Indian Land Consolidation Act (25 U.S.C. 2206)
 13 is amended by striking subsection (b) and inserting the
 14 following:

15 “(b) NONTESTAMENTARY DISPOSITION.—

16 “(1) RULES OF DESCENT.—Subject to any ap-
 17 plicable Federal law relating to the devise or descent
 18 of trust or restricted property, any interest in trust
 19 or restricted property, including personal property,
 20 that is not disposed of by a valid will—

21 “(A) shall descend according to a tribal
 22 probate code that is approved in accordance
 23 with section 206; or

1 “(B) in the case of an interest in trust or
2 restricted property to which such a code does
3 not apply, shall descend in accordance with—

4 “(i) paragraphs (2) through (4); and

5 “(ii) other applicable Federal law.

6 “(2) RULES GOVERNING DESCENT OF ES-
7 TATE.—

8 “(A) SURVIVING SPOUSE.—If there is a
9 surviving spouse of the decedent, such spouse
10 shall receive trust and restricted property in the
11 estate as follows:

12 “(i) If the decedent is survived by an
13 heir described in subparagraph (B) (i), (ii),
14 (iii), or (iv), the surviving spouse shall re-
15 ceive $\frac{1}{3}$ of the trust or restricted personal
16 property of the decedent and a life estate
17 without regard to waste in the interests in
18 trust or restricted lands of the decedent.

19 “(ii) If there are no heirs described in
20 subparagraph (B) (i), (ii), (iii), or (iv), the
21 surviving spouse shall receive all of the
22 trust or restricted personal property of the
23 decedent and a life estate without regard
24 to waste in the trust or restricted lands.

1 “(iii) The remainder shall pass as set
2 forth in subparagraph (B).

3 “(B) INDIAN HEIRS.—Where there is no
4 surviving spouse of the decedent, or there is a
5 remainder pursuant to subparagraph (A), the
6 estate or remainder of the decedent shall, sub-
7 ject to subparagraph (A), pass as follows:

8 “(i) To the Indian children of the de-
9 cedent (or if 1 or more of those Indian
10 children do not survive the decedent, the
11 Indian children of the deceased child of the
12 decedent, by right of representation, if
13 such Indian children of the child survive
14 the decedent) in equal shares.

15 “(ii) If the property does not pass
16 under clause (i), to the surviving Indian
17 great-grandchildren of the decedent in
18 equal shares.

19 “(iii) If the property does not pass
20 under clause (i) or (ii), to the surviving In-
21 dian brothers and sisters who are full sib-
22 lings of the decedent or who are half-sib-
23 lings by blood and not by marriage, in
24 equal shares.

1 “(iv) If the property does not pass
2 under clause (i), (ii), or (iii), to the Indian
3 parent or parents of the decedent in equal
4 shares.

5 “(v) If the property does not pass
6 under clause (i), (ii), (iii), or (iv), to the
7 Indian tribe with jurisdiction over the in-
8 terests in trust or restricted lands;
9 except that notwithstanding clause (v), an In-
10 dian co-owner (including the Indian tribe re-
11 ferred to in clause (v)) of a parcel of trust or
12 restricted land may acquire an interest that
13 would otherwise descend under that clause by
14 paying into the estate of the decedent, before
15 the close of the probate of the estate, the fair
16 market value of the interest in the land; if more
17 than 1 Indian co-owner offers to pay for such
18 interest, the highest bidder shall acquire the in-
19 terest.

20 “(C) NO INDIAN TRIBE.—If there is no In-
21 dian tribe with jurisdiction over the interests in
22 trust or restricted lands that would otherwise
23 descend under subparagraph (B)(v), then such
24 interests shall be divided equally among co-own-
25 ers of trust or restricted interests in the parcel;

1 if there are no such co-owners, then the Sec-
 2 retary shall accumulate and hold such interests
 3 in trust or restricted status for the Indian tribe
 4 or tribes from which the decedent descended.

5 ~~“(3) RIGHT OF REPRESENTATION.—~~

6 ~~“(A) IN GENERAL.—Subject to subpara-~~
 7 ~~graph (B)—~~

8 ~~“(i) the interests passing to children~~
 9 ~~and grandchildren of a decedent under~~
 10 ~~paragraph (2) shall be divided into as~~
 11 ~~many equal shares as there are surviving~~
 12 ~~children of the decedent, deceased children~~
 13 ~~who have died before the decedent without~~
 14 ~~issue, and deceased children who have died~~
 15 ~~before the decedent and have left grand-~~
 16 ~~children who survive the decedent; and~~

17 ~~“(ii) 1 share shall pass to each sur-~~
 18 ~~viving child of the decedent and 1 share~~
 19 ~~shall pass equally divided among the sur-~~
 20 ~~viving children of a deceased child.~~

21 ~~“(B) EXCEPTION FOR HEIRS OF EQUAL~~
 22 ~~CONSANGUINITY.—Notwithstanding subpara-~~
 23 ~~graph (A), when the persons entitled to take~~
 24 ~~under subparagraph (B)(i) of paragraph (2) are~~

1 all in the same degree of consanguinity to the
 2 decedent, they shall take in equal shares.

3 ~~“(4) SPECIAL RULE RELATING TO SURVIVAL.—~~

4 In the case of intestate succession under this sub-
 5 section, if an individual fails to survive the decedent
 6 by at least 120 hours, as established by clear and
 7 convincing evidence—

8 “(A) the individual shall be deemed to have
 9 predeceased the decedent for the purpose of in-
 10 testate succession; and

11 “(B) the heirs of the decedent shall be de-
 12 termined in accordance with this section.

13 ~~“(5) STATUS OF INHERITED INTERESTS.—A~~
 14 trust or restricted interest in land or personal prop-
 15 erty that descends under the provisions of this sub-
 16 section (not including any interest in land or per-
 17 sonal property passing to a surviving spouse under
 18 paragraph (2)(A)) shall continue to have the same
 19 trust or restricted status in the hands of the heir as
 20 such interest had immediately prior to the dece-
 21 dent’s death.”.

22 (c) Section 207(c) of the Indian Land Consolidation
 23 Act (25 U.S.C. 2206 (c)) is amended by striking all that
 24 follows the heading, “JOINT TENANCY; RIGHT OF SURVI-
 25 VORSHIP”, and inserting the following: “If a testator de-

1 vises interests in the same parcel of trust or restricted
 2 lands to more than 1 person; in the absence of express
 3 language in the devise to the contrary, the devise shall
 4 be presumed to create joint tenancy with the right of sur-
 5 vivorship in the interests involved.”.

6 (d) RULE OF CONSTRUCTION.—Section 207 of the
 7 Indian Land Consolidation Act (25 U.S.C. 2206) is
 8 amended by adding at the end the following:

9 “(h) APPLICABLE FEDERAL LAW.—

10 “(1) IN GENERAL.—Any references in sub-
 11 sections (a) and (b) to applicable Federal law in-
 12 clude—

13 “(A) Public Law 91–627 (84 Stat. 1874);

14 “(B) Public Law 92–377 (86 Stat. 530);

15 “(C) Public Law 92–443 (86 Stat. 744);

16 “(D) Public Law 96–274 (94 Stat. 537);

17 and

18 “(E) Public Law 98–513 (98 Stat. 2411).

19 “(2) NO EFFECT ON LAWS.—Nothing in this
 20 section amends or otherwise affects the application
 21 of any law described in paragraph (1); or any other
 22 Federal law that provides for the devise and descent
 23 of any trust or restricted land located on a specific
 24 Indian reservation or for the devise and descent of

1 the allotted lands of a specific tribe or specific
2 tribes.

3 “(i) RULES OF INTERPRETATION.—In the absence of
4 a contrary intent, and except as otherwise provided under
5 this Act or a tribal probate code approved by the Secretary
6 pursuant to section 206, wills shall be construed as to
7 trust and restricted land and personal property in accord-
8 ance with the following rules:

9 “(1) CONSTRUCTION THAT WILL PASSES ALL
10 PROPERTY.—A will shall be construed to apply to all
11 trust and restricted land and personal property
12 which the testator owned at his death, including any
13 such land or property acquired after the execution of
14 his will.

15 “(2) CLASS GIFTS.—

16 “(A) Terms of relationship that do not dif-
17 ferentiate relationships by blood from those by
18 affinity, such as ‘uncles’, ‘aunts’, ‘nieces’ or
19 ‘nephews’, are construed to exclude relatives by
20 affinity. Terms of relationship that do not dif-
21 ferentiate relationships by the half blood from
22 those by the whole blood, such as ‘brothers’,
23 ‘sisters’, ‘nieces’, or ‘nephews’, are construed to
24 include both types of relationships.

1 “(B) MEANING OF ‘HEIRS’ AND ‘NEXT OF
 2 KIN,’ ETC; TIME OF ASCERTAINING CLASS.—A
 3 devise of trust or restricted land or trust funds
 4 to the testator’s or another designated person’s
 5 ‘heirs’, ‘next of kin’, ‘relatives’, or ‘family’ shall
 6 mean those persons, including the spouse, who
 7 would be entitled to take under the provisions
 8 of this Act for nontestamentary disposition. The
 9 class is to be ascertained as of the date of the
 10 testator’s death.

11 “(C) TIME FOR ASCERTAINING CLASS.—In
 12 construing a devise to a class other than a class
 13 described in subparagraph (B), the class shall
 14 be ascertained as of the time the devise is to
 15 take effect in enjoyment. The surviving issue of
 16 any member of the class who is then dead shall
 17 take by right of representation the share which
 18 their deceased ancestor would have taken.

19 “(3) MEANING OF ‘DIE WITHOUT ISSUE’ AND
 20 SIMILAR PHRASES.—In any devise under this chap-
 21 ter, the words ‘die without issue’, ‘die without leav-
 22 ing issue’, ‘have no issue’, or words of a similar im-
 23 port shall be construed to mean that an individual
 24 had no lineal descendants in his lifetime or at his

1 death, and not that there will be no lineal descend-
 2 ants at some future time.

3 “(4) PERSONS BORN OUT OF WEDLOCK.—In
 4 construing provisions of this chapter relating to
 5 lapsed and void devises, and in construing a devise
 6 to a person or persons described by relationship to
 7 the testator or to another, a person born out of wed-
 8 lock shall be considered the child of the natural
 9 mother and also of the natural father.

10 “(5) LAPSED AND VOID DEVISES AND LEG-
 11 ACIES; SHARES NOT IN RESIDUE.—Where a devise of
 12 property that is not part of the residuary estate fails
 13 or becomes void because—

14 “(A) the beneficiary has predeceased the
 15 testator;

16 “(B) the devise has been revoked by the
 17 testator; or

18 “(C) the devise has been disclaimed by the
 19 beneficiary;

20 the property shall, if not otherwise expressly pro-
 21 vided for under this Act or a tribal probate code,
 22 pass under the residuary clause, if any, contained in
 23 the will.

24 “(6) LAPSED AND VOID DEVISES AND LEG-
 25 ACIES; SHARES IN RESIDUE.—When a devise as de-

scribed in paragraph (7) shall be included in a residuary clause of the will and shall not be available to the issue of the devisee, and if the disposition shall not be otherwise expressly provided for by a tribal probate code, it shall pass 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.

“(8) 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.

“(9) ADVANCEMENTS OF TRUST OR RESTRICTED PERSONAL PROPERTY DURING LIFETIME; EFFECT ON DISTRIBUTION OF ESTATE.—

“(A) The trust or restricted personal property of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent’s lifetime to an heir of the decedent, 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 or restricted personal property advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever occurs first.

“(C) If the recipient of the property predeceases the decedent, the property is not 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.

“(10) 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 based on the relationship that would entitle the person to the larger share.

“(j) HEIRSHIP BY KILLING.—

1 “(1) ‘HEIR BY KILLING’ DEFINED.—As used in
 2 this subsection, ‘heir by killing’ means any person
 3 who participates, either as a principal or as an ac-
 4 cessory before the fact, in the willful and unlawful
 5 killing of the decedent.

6 “(2) NO ACQUISITION OF PROPERTY BY KILL-
 7 ING.—Subject to any applicable Federal law relating
 8 to the devise or descent of trust or restricted prop-
 9 erty, no heir by killing shall in any way acquire any
 10 interests in trust or restricted property as the result
 11 of the death of the decedent, but such property shall
 12 pass in accordance with this subsection.

13 “(3) DESCENT, DISTRIBUTION, AND RIGHT OF
 14 SURVIVORSHIP.—The heir by killing shall be deemed
 15 to have predeceased the decedent as to decedent’s in-
 16 terests in trust or restricted property which would
 17 have passed from the decedent or his estate to the
 18 heir by killing—

19 “(A) under intestate succession under this
 20 chapter;

21 “(B) under a tribal probate code, unless
 22 otherwise provided for;

23 “(C) as the surviving spouse;

24 “(D) by devise;

25 “(E) as a reversion or a vested remainder;

1 “(F) as a survivorship interest; and

2 “(G) as a contingent remainder or execu-
3 tory or other future interest.

4 “(4) JOINT TENANTS, JOINT OWNERS, AND
5 JOINT OBLIGEES.—

6 “(A) Any trust or restricted land or per-
7 sonal property held by only the heir by killing
8 and the decedent as joint tenants, joint owners,
9 or joint obligees shall pass upon the death of
10 the decedent to his or her estate, as if the heir
11 by killing had predeceased the decedent.

12 “(B) As to trust or restricted property
13 held jointly by 3 or more persons, including
14 both the heir by killing and the decedent, any
15 income which would have accrued to the heir by
16 killing as a result of the death of the decedent
17 shall pass to the estate of the decedent as if the
18 heir by killing had predeceased the decedent
19 and any surviving joint tenants.

20 “(C) Notwithstanding any other provision
21 of this subsection, the decedent’s interest in
22 trust or restricted property that is held in a
23 joint tenancy with the right of survivorship
24 shall be severed from the joint tenancy as
25 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 the life expectancy of the decedent.

~~“(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 personal property 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

1 a verdict of not guilty, such land and funds
 2 shall pass as if no charge had been filed or
 3 made.

4 “(C) CONVICTION.—Upon conviction of
 5 such person, the trust and restricted land and
 6 personal property in the estate shall pass in ac-
 7 cordance with this subsection.

8 “(7) BROAD CONSTRUCTION; POLICY OF SUB-
 9 SECTION.—This subsection shall not be considered
 10 penal in nature, but shall be construed broadly in
 11 order to effect the policy that no person shall be al-
 12 lowed to profit by his own wrong, wherever com-
 13 mitted.

14 “(k) GENERAL RULES GOVERNING PROBATE.—

15 “(1) SCOPE.—The provisions of this subsection
 16 shall apply only to estates that are subject to pro-
 17 bate under the provisions of subsections (a) and (b).

18 “(2) PRETERMITTED SPOUSES AND CHIL-
 19 DREN.—

20 “(A) SPOUSES.—

21 “(i) IN GENERAL.—Except as pro-
 22 vided in clause (ii), if the surviving spouse
 23 of a testator married the testator after the
 24 testator executed the will of the testator,
 25 the surviving spouse shall receive the intes-

1 tate share in trust or restricted land that
 2 the spouse would have received if the tes-
 3 tator had died intestate.

4 “(ii) EXCEPTION.—Clause (i) shall
 5 not apply to an interest in trust or re-
 6 stricted land where—

7 “(I) the will of a testator is exe-
 8 cuted before the date of enactment of
 9 this subparagraph;

10 “(H)(aa) the spouse of a testator
 11 is a non-Indian; and

12 “(bb) the testator devised the in-
 13 terests in trust or restricted land of
 14 the testator to 1 or more Indians;

15 “(III) it appears, based on an ex-
 16 amination of the will or other evi-
 17 dence, that the will was made in con-
 18 templation of the marriage of the tes-
 19 tator to the surviving spouse;

20 “(IV) the will expresses the in-
 21 tention that the will is to be effective
 22 notwithstanding any subsequent mar-
 23 riage; or

1 “(V)(aa) the testator provided for
2 the spouse by a transfer of funds or
3 property outside the will; and

4 “(bb) an intent that the transfer
5 be in lieu of a testamentary provision
6 is demonstrated by statements of the
7 testator or through a reasonable infer-
8 ence based on the amount of the
9 transfer or other evidence.

10 “(iii) SPOUSES MARRIED AT THE TIME
11 OF THE WILL.—Should the surviving
12 spouse of the testator be omitted from the
13 will of the testator, the surviving spouse
14 shall be treated, for purposes of trust or
15 restricted land or personal property in the
16 testator’s estate, as though there was no
17 will under the provisions of section
18 207(b)(2)(A) if—

19 “(I) the testator and surviving
20 spouse were continuously married
21 without legal separation for the 10-
22 year period preceding the decedent’s
23 death;

1 “(H) the testator and surviving
 2 spouse have a surviving child who is
 3 the child of the testator;

4 “(III) the surviving spouse has
 5 made substantial payments on or im-
 6 provements to the trust or restricted
 7 land in such estate; or

8 “(IV) the surviving spouse is
 9 under a binding obligation to continue
 10 making loan payments for the trust or
 11 restricted land for a substantial period
 12 of time;

13 except that if there is evidence that the
 14 testator adequately provided for the sur-
 15 viving spouse and any minor children by a
 16 transfer of funds or property outside of the
 17 will, this clause shall not apply.

18 “(iv) DEFINED TERMS.—The terms
 19 ‘substantial payments or improvements’
 20 and ‘substantial period of time’ as used in
 21 subparagraph (A)(iii) (III) and (IV) shall
 22 have the meanings given to them in the
 23 regulations adopted by the Secretary under
 24 the provisions of this Act.

25 “(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 intestate interests of the decedent in trust or restricted land 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 married the adopt-

ing 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 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,~~

1 and terminate the status of husband and
 2 wife, shall not be considered a divorcee for
 3 the purpose of this subsection.

4 “(iii) NO EFFECT ON ADJUDICA-
 5 TIONS.—Nothing in clause (i) prevents an
 6 entity responsible for adjudicating an in-
 7 terest in trust or restricted land from giv-
 8 ing effect to a property right settlement if
 9 1 of the parties to the settlement dies be-
 10 fore the issuance of a final decree dis-
 11 solving the marriage of the parties to the
 12 property settlement.

13 “(B) EFFECT OF SUBSEQUENT DIVORCE
 14 ON A WILL OR DEVISE.—

15 “(i) IN GENERAL.—If, after executing
 16 a will, a testator is divorced or the mar-
 17 riage of the testator is annulled, as of the
 18 effective date of the divorce or annulment,
 19 any disposition of interests in trust or re-
 20 stricted land made by the will to the
 21 former spouse of the testator shall be con-
 22 sidered to be revoked unless the will ex-
 23 pressly provides otherwise.

24 “(ii) PROPERTY.—Property that is
 25 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) 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 section 207(g).”.

SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.

Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) is amended by adding at the end the following:

“(e) PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.—

1 “(1) ~~APPLICABILITY.~~—This subsection shall be
 2 applicable only to parcels of land (including surface
 3 and subsurface interests, except with respect to a
 4 subsurface interest that has been severed from the
 5 surface interest, in which case this subsection shall
 6 apply only to the surface interest) which the Sec-
 7 retary has determined, pursuant to paragraph
 8 (2)(B), to be parcels of highly fractionated Indian
 9 land.

10 “(2) ~~REQUIREMENTS.~~—Subject to section 223
 11 of this Act, but notwithstanding any other provision
 12 of law, the Secretary shall ensure that each partition
 13 action meets the following requirements:

14 “(A) ~~REQUEST.~~—The Secretary shall com-
 15 mence a process for partitioning a parcel of
 16 land by sale in accordance with the provisions
 17 of this subsection upon receipt of an application
 18 by—

19 “(i) the Indian tribe with jurisdiction
 20 over the subject land that owns an undi-
 21 vided interest in the parcel of land; or

22 “(ii) any person owning an undivided
 23 trust or restricted interest in the parcel of
 24 land.

1 “(B) DETERMINATION.—Upon receipt of
 2 an application pursuant to subparagraph (A),
 3 the Secretary shall determine whether the sub-
 4 ject parcel meets the requirements set forth in
 5 section 202(6) (25 U.S.C. 2201(6)) to be classi-
 6 fied as a parcel of highly fractionated Indian
 7 land.

8 “(C) CONSENT REQUIREMENTS.—A parcel
 9 of land may be partitioned under this sub-
 10 section only with the written consent of—

11 “(i) the Indian tribe with jurisdiction
 12 over the subject land if such Indian tribe
 13 owns an undivided interest in the parcel;

14 “(ii) any owner who, for the 3-year
 15 period immediately preceding the date on
 16 which the Secretary receives the applica-
 17 tion, has—

18 “(I) continuously maintained a
 19 bona fide residence on the parcel; or

20 “(II) continuously operated a
 21 bona fide farm, ranch, or other busi-
 22 ness on the parcel; and

23 “(iii) the owners of at least 50 percent
 24 of the undivided interests in the parcel if,
 25 based on the final appraisal prepared pur-

1 suant to subparagraph (F), the Secretary
2 determines that any person's undivided
3 trust or restricted interest in the parcel
4 has a value in excess of \$1,000, except
5 that the Secretary may consent on behalf
6 of undetermined heirs, minors, and legal
7 incompetents having no legal guardian,
8 and missing owners or owners whose
9 whereabouts are unknown but only after a
10 search for such owners has been completed
11 in accordance with the provisions of this
12 subsection.

13 “(D) PRELIMINARY APPRAISAL.—After the
14 Secretary has determined that the subject par-
15 cel is a parcel of highly fractionated Indian land
16 pursuant to subparagraph (B), the Secretary
17 shall cause a preliminary appraisal of the sub-
18 ject parcel to be made.

19 “(E) NOTICE TO OWNERS ON COMPLETION
20 OF PRELIMINARY APPRAISAL.—Upon comple-
21 tion of the preliminary appraisal, the Secretary
22 shall give written notice of the requested parti-
23 tion and preliminary appraisal to all owners of
24 undivided interests in the parcel, in accordance
25 with the following requirements:

1 “(i) CONTENTS OF NOTICE.—The no-
2 tice required by this subsection shall
3 state—

4 “(I) that a proceeding to parti-
5 tion the parcel of land by sale has
6 been commenced;

7 “(II) the legal description of the
8 subject parcel;

9 “(III) the owner’s ownership in-
10 terest in the subject parcel;

11 “(IV) the results of the prelimi-
12 nary appraisal;

13 “(V) the owner’s right to request
14 a copy of the preliminary appraisal;

15 “(VI) the owner’s right to com-
16 ment on the proposed partition and
17 the preliminary appraisal;

18 “(VII) the date by which the
19 owner’s comments must be received;
20 which shall not be less than 60 days
21 after the date that the notice is
22 mailed or published under paragraph
23 (2); and

1 “(VIII) the address for request-
 2 ing copies of the preliminary appraisal
 3 and for submitting written comments.

4 “(ii) MANNER OF SERVICE.—

5 “(I) SERVICE BY MAIL.—The
 6 Secretary shall attempt to provide all
 7 owners of interests in the subject par-
 8 cel with actual notice of the partition
 9 proceeding by mailing a copy of the
 10 written notice described in clause (i)
 11 by first class mail to each such owner
 12 at the owner’s last known address. In
 13 the event the written notice to an
 14 owner is returned undelivered, the
 15 Secretary shall, in accordance with
 16 regulations adopted to implement the
 17 provisions of this section, attempt to
 18 obtain a current address for such
 19 owner by inquiring with—

20 “(aa) the owner’s relatives;
 21 if any are known;

22 “(bb) the Indian tribe of
 23 which the owner is a member;
 24 and

1 “(cc) the Indian tribe with
2 jurisdiction over the subject par-
3 cel.

4 “(H) SERVICE BY PUBLICA-
5 TION.—In the event that the Sec-
6 retary is unable to serve the notice by
7 mail pursuant to subclause (H), the
8 notice shall be served by publishing
9 the notice 2 times in a newspaper of
10 general circulation in the county or
11 counties where the subject parcel of
12 land is located.

13 “(F) FINAL APPRAISAL.—After reviewing
14 and considering comments or information sub-
15 mitted by any owner of an interest in the parcel
16 in response to the notice required under sub-
17 paragraph (E), the Secretary may—

18 “(i) modify the preliminary appraisal
19 and, as modified, determine it to be the
20 final appraisal for the parcel; or

21 “(ii) determine that preliminary ap-
22 praisal should be the final appraisal for the
23 parcel, without modifications.

24 “(G) NOTICE TO OWNERS ON DETERMINA-
25 TION OF FINAL APPRAISAL.—Upon making the

determination under subparagraph (F) the Secretary shall provide to each owner of the parcel of land and the Indian tribe with jurisdiction over the subject land, written notice served in accordance with subparagraph (E)(ii) stating—

“(i) the results of the final appraisal;

“(ii) the owner’s right to review a copy of the appraisal upon request; and

“(iii) that the land will be sold in accordance with subparagraph (G) for not less than the final appraised value subject to the consent requirements under paragraph (2)(C).

“(H) SALE.—Subject to the requirements of paragraph (2)(C), the Secretary shall—

“(i) provide every owner of the parcel of land and the Indian tribe with jurisdiction over the subject land with notice that—

“(I) the decision to partition by sale is final; and

“(H) each owner has the right to appeal the determination of the Secretary to partition the parcel of land

1 by sale, including the right to appeal
2 the final appraisal;

3 “(ii) after providing public notice of
4 the sale pursuant to regulations adopted
5 by the Secretary to implement this sub-
6 section; offer to sell the land by competi-
7 tive bid for not less than the final ap-
8 praised value to the highest bidder from
9 among the following eligible bidders:

10 “(I) any owner of a trust or re-
11 stricted interest in the parcel being
12 sold;

13 “(II) the Indian tribe, if any,
14 with jurisdiction over the parcel being
15 sold; and

16 “(III) any member of the Indian
17 tribe described in subclause (II); and

18 “(iii) if no bidder described in clause
19 (ii) presents a bid that equals or exceeds
20 the appraised value, provide notice to the
21 owners of the parcel of land and terminate
22 the partition process.

23 “(I) DECISION NOT TO SELL.—If the re-
24 quired owners do not consent to the partition
25 by sale of the parcel of land, in accordance with

1 paragraph (2)(C), by a date established by the
 2 Secretary, the Secretary shall provide each In-
 3 dian tribe with jurisdiction over the subject
 4 land and each owner notice of that fact.

5 ~~“(3) ENFORCEMENT.—~~

6 ~~“(A) IN GENERAL.—If a partition is ap-~~
 7 ~~proved under this subsection and an owner of~~
 8 ~~an interest in the parcel of land refuses to sur-~~
 9 ~~render possession in accordance with the parti-~~
 10 ~~tion decision, or refuses to execute any convey-~~
 11 ~~ance necessary to implement the partition, then~~
 12 ~~any affected owner or the United States may—~~

13 ~~“(i) commence a civil action in the~~
 14 ~~United States district court for the district~~
 15 ~~in which the parcel of land is located; and~~

16 ~~“(ii) request that the court issue an~~
 17 ~~appropriate order for the partition of the~~
 18 ~~land in kind or by sale.~~

19 ~~“(B) FEDERAL ROLE.—With respect to~~
 20 ~~any civil action brought under subparagraph~~
 21 ~~(A)—~~

22 ~~“(i) the United States—~~

23 ~~“(I) shall receive notice of the~~
 24 ~~civil action; and~~

1 “(H) may be a party to the civil
2 action; and

3 “(ii) the civil action shall not be dis-
4 missed; and no relief requested shall be de-
5 nied; on the ground that the civil action is
6 1 against the United States or that the
7 United States is an indispensable party.

8 “(4) REGULATIONS.—The Secretary is author-
9 ized to adopt such regulations as may be necessary
10 to implement the provisions of this subsection.”.

11 **SEC. 5. OWNER-MANAGED INTERESTS.**

12 The Indian Land Consolidation Act (25 U.S.C. 2201
13 et seq.) is amended by adding at the end the following:

14 **“SEC. 221. OWNER-MANAGED INTERESTS.**

15 “(a) PURPOSE.—The purpose of this section is to
16 provide a means for the co-owners of trust or restricted
17 interests in a parcel of land to enter into surface leases
18 of such parcel without approval of the Secretary.

19 “(b) MINERAL INTERESTS.—Nothing in this section
20 shall be construed to limit or otherwise affect the applica-
21 tion of any Federal law requiring the Secretary to approve
22 mineral leases or other agreements for the development
23 of the mineral interest in trust or restricted land.

24 “(c) OWNER MANAGEMENT.—

1 “(1) IN GENERAL.—Notwithstanding any provi-
 2 sion of Federal law requiring the Secretary to ap-
 3 prove individual Indian leases or mortgages of indi-
 4 vidual Indian trust or restricted land, where the
 5 owners of all of the undivided trust or restricted in-
 6 terests in a parcel of land have submitted applica-
 7 tions to the Secretary pursuant to subsection (a),
 8 and the Secretary has approved such applications
 9 under subsection (d), such owners may, without fur-
 10 ther approval by the Secretary, do either of the fol-
 11 lowing with respect to their interest in such parcel:

12 “(A) Enter into a lease of the parcel for
 13 any purpose authorized by section 1 of the Act
 14 of August 9, 1955 (25 U.S.C. 415(a)), for an
 15 initial term not to exceed 25 years.

16 “(B) Renew any lease described in para-
 17 graph (1) for 1 renewal term not to exceed 25
 18 years.

19 “(2) RULE OF CONSTRUCTION.—No such lease
 20 or renewal of a lease shall be effective until the own-
 21 ers of all undivided trust or restricted interests in
 22 the parcel have executed such lease or renewal.

23 “(d) APPROVAL OF APPLICATIONS FOR OWNER MAN-
 24 AGEMENT.—

1 “(1) IN GENERAL.—Subject to the provisions of
 2 paragraph (2), the Secretary shall approve an appli-
 3 cation for owner management submitted by a quali-
 4 fied applicant pursuant to this section unless the
 5 Secretary has reason to believe that the applicant is
 6 submitting the application as the result of fraud or
 7 undue influence.

8 “(2) COMMENCEMENT OF OWNER-MANAGEMENT
 9 STATUS.—Notwithstanding the approval of 1 or
 10 more applications pursuant to paragraph (1), no in-
 11 terest in a parcel of trust or restricted land shall
 12 have owner-management status until applications for
 13 all of the trust or restricted interests in such parcel
 14 have been submitted and approved by the Secretary
 15 pursuant to this section and in accordance with reg-
 16 ulations adopted pursuant to subsection (1).

17 “(e) VALIDITY OF LEASES.—A lease of trust or re-
 18 stricted interests in a parcel of land that is owner-man-
 19 aged under this section that violates any requirement or
 20 limitation set forth in subsection (e) shall be null and void
 21 and unenforceable against the owners of such interests,
 22 or against the land, the interest or the United States.

23 “(f) LEASE REVENUES.—The Secretary shall not be
 24 responsible for the collection of, or accounting for, any
 25 lease revenues accruing to any interests subject to this sec-

1 tion while such interest is in owner-management status
 2 under the provisions of this section.

3 ~~“(g) JURISDICTION.—~~

4 ~~“(1) JURISDICTION UNAFFECTED BY STATUS.—~~

5 The Indian tribe with jurisdiction over an interest in
 6 trust or restricted land that becomes owner-managed
 7 in accordance with this section shall continue to
 8 have jurisdiction over the interest in trust or re-
 9 stricted land to the same extent and in all respects
 10 the tribe had prior to the interest acquiring owner
 11 managed status.

12 ~~“(2) PERSONS USING LAND.—Any person hold-~~
 13 ~~ing, leasing, or otherwise using such interest in land~~
 14 ~~shall be considered to consent to the jurisdiction of~~
 15 ~~the Indian tribe with jurisdiction over the interest,~~
 16 ~~including such tribe’s laws and regulations, if any,~~
 17 ~~relating to the use, and any effects associated with~~
 18 ~~the use, of the interest.~~

19 ~~“(h) CONTINUATION OF OWNER-MANAGED STATUS;~~
 20 ~~REVOCATION.—~~

21 ~~“(1) IN GENERAL.—Subject to the provisions of~~
 22 ~~paragraph (2), after the applications of the owners~~
 23 ~~of all of the trust or restricted interests in a parcel~~
 24 ~~of land have been approved by the Secretary pursu-~~
 25 ~~ant to subsection (d), each such interest shall con-~~

1 tinue in owner-managed status under this section
2 notwithstanding any subsequent conveyance of the
3 interest in trust or restricted status to another per-
4 son or the subsequent descent of the interest in trust
5 or restricted status by testate or intestate succession
6 to 1 or more heirs.

7 “(2) REVOCATION.—Owner-managed status of
8 an interest may be revoked upon written request of
9 owners (including the parents or legal guardians of
10 minors or incompetent owners) of all trust or re-
11 stricted interests in the parcel, submitted to the Sec-
12 retary in accordance with regulations adopted under
13 subsection (1). The revocation shall become effective
14 as of the date on which the last of all such requests
15 have been delivered to the Secretary.

16 “(3) EFFECT OF REVOCATION.—Revocation of
17 owner-managed status under paragraph (2) shall not
18 affect the validity of any lease made in accordance
19 with the provisions of this section prior to the effec-
20 tive date of the revocation, provided that, after such
21 revocation becomes effective, the Secretary shall be
22 responsible for the collection of, and accounting for,
23 all future lease revenues accruing to the trust or re-
24 stricted interests in the parcel from and after such
25 effective date.

1 “(i) DEFINED TERMS.—

2 “(1) For purposes of subsection (d)(1), the
3 term ‘qualified applicant’ means—

4 “(A) a person over the age of 18 who owns
5 a trust or restricted interest in a parcel of land;
6 and

7 “(B) the parent or legal guardian of a
8 minor or incompetent person who owns a trust
9 or restricted interest in a parcel of land.

10 “(2) For purposes of this section, the term
11 ‘owner-managed status’ means, with respect to a
12 trust or restricted interest, that the interest—

13 “(A) is a trust or restricted interest in a
14 parcel of land for which applications covering
15 all trust or restricted interests in such parcel
16 have been submitted to and approved by the
17 Secretary pursuant to subsection (d);

18 “(B) may be leased without approval of the
19 Secretary pursuant to, and in a manner that is
20 consistent with the requirements of, this sec-
21 tion; and

22 “(C) no revocation has occurred under
23 subsection (h)(2).

24 “(j) SECRETARIAL APPROVAL OF OTHER TRANS-
25 ACTIONS.—Except with respect to the specific lease trans-

1 actions described in paragraphs (1) and (2) of subsection
 2 (e), interests held in owner-managed status under the pro-
 3 visions of this section shall continue to be subject to all
 4 Federal laws requiring the Secretary to approve trans-
 5 actions involving trust or restricted land that would other-
 6 wise apply to such interests.

7 “(k) EFFECT OF SECTION.—Subject to subsections
 8 (e), (f), and (h), nothing in this section limits or otherwise
 9 affects any authority or responsibility of the Secretary
 10 with respect to an interest in trust or restricted land.

11 “(l) REGULATIONS.—The Secretary shall promulgate
 12 such regulations as are necessary to carry out this sec-
 13 tion.”.

14 **SEC. 6. ADDITIONAL AMENDMENTS.**

15 (a) IN GENERAL.—The Indian Land Consolidation
 16 Act (25 U.S.C. 2201 et seq.) is amended—

17 (1) in the second sentence of section 205(a) (25
 18 U.S.C. 2204(a)), by striking “over 50 per centum of
 19 the undivided interests” and inserting “undivided in-
 20 terests equal to at least 50 percent of the undivided
 21 interest”;

22 (2) in section 205 (25 U.S.C. 2204), by adding
 23 subsection (e) as follows:

24 “(e) PURCHASE OPTION AT PROBATE.—

1 ~~“(1) IN GENERAL.—~~Subject to section
 2 207(b)(2)(A) of this Act (25 U.S.C. 2206(b)(2)(A)),
 3 interests in a parcel of trust or restricted land in the
 4 decedent’s estate may be purchased at probate in ac-
 5 cordance with the provisions of this subsection.

6 ~~“(2) SALE OF INTEREST AT MINIMUM FAIR~~
 7 ~~MARKET VALUE.—~~Subject to paragraph (3), the Sec-
 8 retary is authorized to sell trust or restricted inter-
 9 ests subject to this subsection at no less than fair
 10 market value to the highest bidder from among the
 11 following eligible bidders:

12 ~~“(A) The heirs taking by intestate succes-~~
 13 ~~sion or the devisees listed in section~~
 14 207(a)(1)(A).

15 ~~“(B) All persons who own undivided trust~~
 16 ~~or restricted interests in the same parcel of~~
 17 land involved in the probate proceeding.

18 ~~“(C) The Indian tribe with jurisdiction~~
 19 ~~over the interest, or the Secretary on behalf of~~
 20 such Indian tribe.

21 ~~“(3) REQUEST FOR AUCTION.—~~No auction and
 22 sale of an interest in probate shall occur under this
 23 subsection unless—

1 ~~“(A) except as provided in paragraph (6);~~
 2 the heirs or devisees of such interest consent to
 3 the sale; and

4 ~~“(B) a person or the Indian tribe eligible~~
 5 to bid on the interest under paragraph (2) sub-
 6 mits a request for the auction prior to the dis-
 7 tribution of the interest to heirs or devisees of
 8 the decedent and in accordance with any regu-
 9 lations of the Secretary.

10 ~~“(4) APPRAISAL AND NOTICE.—Prior to the~~
 11 sale of an interest pursuant to this subsection, the
 12 Secretary shall—

13 ~~“(A) appraise the interest; and~~

14 ~~“(B) publish notice of the time and place~~
 15 of the auction (or the time and place for sub-
 16 mitting sealed bids), a description, and the ap-
 17 praised value, of the interest to be sold.

18 ~~“(5) RIGHTS OF SURVIVING SPOUSE.—Nothing~~
 19 in this subsection shall be construed to diminish or
 20 otherwise affect the rights of a surviving spouse
 21 under section 207(b)(2)(A).

22 ~~“(6) HIGHLY FRACTIONATED INDIAN LANDS.—~~
 23 Notwithstanding paragraph (3)(A), the consent of
 24 an heir shall not be required for the auction and sale
 25 of an interest at probate under this subsection if—

1 “(A) the interest is passing by intestate
2 succession; and

3 “(B) prior to the auction the Secretary de-
4 termines that the interest involved is an interest
5 in a parcel of highly fractionated Indian land.

6 “(7) REGULATIONS.—The Secretary shall pro-
7 mulgate regulations to implement the provisions of
8 this subsection.”;

9 (3) in section 206 (25 U.S.C. 2205)—

10 (A) in subsection (a), by striking para-
11 graph (3) and inserting the following:

12 “(3) TRIBAL PROBATE CODES.—Except as pro-
13 vided in any applicable Federal law, the Secretary
14 shall not approve a tribal probate code, or an
15 amendment to such a code, that prohibits the devise
16 of an interest in trust or restricted land by—

17 “(A) an Indian lineal descendant of the
18 original allottee; or

19 “(B) an Indian who is not a member of the
20 Indian tribe with jurisdiction over such an in-
21 terest;

22 unless the code provides for—

23 “(i) the renouncing of interests to eligible devi-
24 sees in accordance with the code;

1 “(ii) the opportunity for a devisee who is the
2 spouse or lineal descendant of a testator to reserve
3 a life estate without regard to waste; and

4 “(iii) payment of fair market value in the man-
5 ner prescribed under subsection (c)(2).”; and

6 (B) in subsection (c)—

7 (i) in paragraph (1)—

8 (I) by striking the paragraph
9 heading and inserting the following:

10 “(1) AUTHORITY.—

11 “(A) IN GENERAL.—”;

12 (II) in the first sentence of sub-
13 paragraph (A) (as redesignated by
14 clause (i)), by striking “section
15 207(a)(6)(A) of this title” and insert-
16 ing “section 207(a)(2)(A)(ii) of this
17 title”; and

18 (III) by striking the last sentence
19 and inserting the following:

20 “(B) TRANSFER.—The Secretary shall
21 transfer payments received under subparagraph
22 (A) to any person or persons who would have
23 received an interest in land if the interest had
24 not been acquired by the Indian tribe in accord-
25 ance with this paragraph.”; and

1 (ii) in paragraph (2)—

2 (I) in subparagraph (A)—

3 (aa) by striking the subpara-
4 graph heading and all that fol-
5 lows through “Paragraph (1)
6 shall not apply” and inserting the
7 following:

8 “(A) INAPPLICABILITY TO CERTAIN INTER-
9 ESTS.—

10 “(i) IN GENERAL.—Paragraph (1)
11 shall not apply”;

12 (bb) in clause (i) (as redes-
13 ignated by item (aa)), by striking
14 “if, while” and inserting the fol-
15 lowing: “if—
16 “(I) while”;

17 (cc) by striking the period at
18 the end and inserting “; or”; and

19 (dd) by adding at the end
20 the following:

21 “(H)—

22 “(aa) the interest is part of
23 a family farm that is devised to
24 a member of the family of the de-
25 cedent; and

1 “(bb) the devisee agrees that
 2 the Indian tribe with jurisdiction
 3 over the land will have the oppor-
 4 tunity to acquire the interest for
 5 fair market value if the interest
 6 is offered for sale to an entity
 7 that is not a member of the fam-
 8 ily of the owner of the land.

9 “(ii) RECORDING OF INTEREST.—On
 10 request by an Indian tribe described in
 11 clause (i)(II)(bb), a restriction relating to
 12 the acquisition by the Indian tribe of an
 13 interest in a family farm involved shall be
 14 recorded as part of the deed relating to the
 15 interest involved.

16 “(iii) MORTGAGE AND FORE-
 17 CLOSURE.—Nothing in clause (i)(II) pre-
 18 vents or limits the ability of an owner of
 19 land to which that clause applies to mort-
 20 gage the land or limit the right of the enti-
 21 ty holding such a mortgage to foreclose or
 22 otherwise enforce such a mortgage agree-
 23 ment in accordance with applicable law.

24 “(iv) DEFINITION OF ‘MEMBER OF
 25 THE FAMILY’.—In this paragraph, the

1 term ‘member of the family’, with respect
 2 to a decedent or landowner, means—

3 “(I) a lineal descendant of a de-
 4 cedent or landowner;

5 “(II) a lineal descendant of the
 6 grandparent of a decedent or land-
 7 owner;

8 “(III) the spouse of a descendant
 9 or landowner described in subelause
 10 (I) or (II); and

11 “(IV) the spouse of a decedent or
 12 landowner.”;

13 (4) in subparagraph (B), by striking “subpara-
 14 graph (A)” and all that follows through
 15 “207(a)(6)(B) of this title” and inserting “para-
 16 graph (1)”;

17 (5) in section 207 (25 U.S.C. 2206), subsection
 18 (g)(5), by striking “this section” and inserting “sub-
 19 sections (a) and (b)”;

20 (6) in section 213 (25 U.S.C. 2212)—

21 (A) by striking the section heading and in-
 22 serting the following:

23 **“SEC. 2212. FRACTIONAL INTEREST ACQUISITION PRO-**
 24 **GRAM.”;**

25 (B) in subsection (a)—

1 (i) by striking “(2) AUTHORITY OF
2 SECRETARY.—” and all that follows
3 through “the Secretary shall submit” and
4 inserting the following:

5 “(2) AUTHORITY OF SECRETARY.—The Sec-
6 retary shall submit”; and

7 (ii) by striking “whether the program
8 to acquire fractional interests should be ex-
9 tended or altered to make resources” and
10 inserting “how the fractional interest ac-
11 quisition program should be enhanced to
12 increase the resources made”;

13 (C) in subsection (b), by striking para-
14 graph (4) and inserting the following:

15 “(4) shall minimize the administrative costs as-
16 sociated with the land acquisition program through
17 the use of policies and procedures designed to ac-
18 commodate the voluntary sale of interests under the
19 pilot program under this section, notwithstanding
20 the existence of any otherwise applicable policy, pro-
21 cedure, or regulation, through the elimination of du-
22 plicate—

23 “(A) conveyance documents;

24 “(B) administrative proceedings; and

25 “(C) transactions.”.

1 ~~(D)~~ in subsection (c)—

2 (i) in paragraph (1)—

3 ~~(I)~~ in subparagraph (A), by strik-
4 ing “at least 5 percent of the” and in-
5 serting in its place “an”;

6 ~~(II)~~ in subparagraph (A), by in-
7 serting “in such parcel” following
8 “the Secretary shall convey an inter-
9 est”;

10 ~~(III)~~ in subparagraph (A), by
11 striking “landowner upon payment”
12 and all that follows and inserting the
13 following: “landowner—

14 “(i) on payment by the Indian land-
15 owner of the amount paid for the interest
16 by the Secretary; or

17 “(ii) if—

18 “(I) the Indian referred to in this
19 subparagraph provides assurances
20 that the purchase price will be paid by
21 pledging revenue from any source, in-
22 cluding trust resources; and

23 “(II) the Secretary determines
24 that the purchase price will be paid in
25 a timely and efficient manner.”; and

1 (IV) in subparagraph (B), by in-
 2 serting before the period at the end
 3 the following: “unless the interest is
 4 subject to a foreclosure of a mortgage
 5 in accordance with the Act of March
 6 29, 1956 (25 U.S.C. 483a)”; and
 7 (ii) in paragraph (3), by striking “10
 8 percent or more of the undivided interests”
 9 and inserting “an undivided interest”;
 10 (7) in section 214 (25 U.S.C. 2213), by striking
 11 subsection (b) and inserting the following:
 12 “(b) APPLICATION OF REVENUE FROM ACQUIRED
 13 INTERESTS TO LAND CONSOLIDATION PROGRAM.—
 14 “(1) IN GENERAL.—The Secretary shall have a
 15 lien on any revenue accruing to an interest described
 16 in subsection (a) until the Secretary provides for the
 17 removal of the lien under paragraph (3), (4), or (5).
 18 “(2) REQUIREMENTS.—
 19 “(A) IN GENERAL.—Until the Secretary
 20 removes a lien from an interest in land under
 21 paragraph (1)—
 22 “(i) any lease, resource sale contract,
 23 right-of-way, or other document evidencing
 24 a transaction affecting the interest shall
 25 contain a clause providing that all revenue

1 derived from the interest shall be paid to
2 the Secretary; and

3 “(ii) any revenue derived from any in-
4 terest acquired by the Secretary in accord-
5 ance with section 213 shall be deposited in
6 the fund created under section 216.

7 “(B) APPROVAL OF TRANSACTIONS.—Not-
8 withstanding section 16 of the Act of June 18,
9 1934 (commonly known as the ‘Indian Reorga-
10 nization Act’) (25 U.S.C. 476), or any other
11 provision of law, until the Secretary removes a
12 lien from an interest in land under paragraph
13 (1), the Secretary may approve a transaction
14 covered under this section on behalf of an In-
15 dian tribe.

16 “(3) REMOVAL OF LIENS AFTER FINDINGS.—
17 The Secretary may remove a lien referred to in
18 paragraph (1) if the Secretary makes a finding
19 that—

20 “(A) the costs of administering the interest
21 from which revenue accrues under the lien will
22 equal or exceed the projected revenues for the
23 parcel of land involved;

24 “(B) in the discretion of the Secretary, it
25 will take an unreasonable period of time for the

1 parcel of land to generate revenue that equals
 2 the purchase price paid for the interest; or

3 ~~“(C) a subsequent decrease in the value of~~
 4 ~~land or commodities associated with the parcel~~
 5 ~~of land make it likely that the interest will be~~
 6 ~~unable to generate revenue that equals the pur-~~
 7 ~~chase price paid for the interest in a reasonable~~
 8 ~~time.~~

9 ~~“(4) REMOVAL OF LIENS UPON PAYMENT INTO~~
 10 ~~THE ACQUISITION FUND.—The Secretary shall re-~~
 11 ~~move a lien referred to in paragraph (1) upon pay-~~
 12 ~~ment of an amount equal to the purchase price of~~
 13 ~~that interest in land into the Acquisition Fund cre-~~
 14 ~~ated under section 2215 of this title, except where~~
 15 ~~the tribe with jurisdiction over such interest in land~~
 16 ~~authorizes the Secretary to continue the lien in order~~
 17 ~~to generate additional acquisition funds.~~

18 ~~“(5) OTHER REMOVAL OF LIENS.—In accord-~~
 19 ~~ance with regulations to be promulgated by the Sec-~~
 20 ~~retary, and in consultation with tribal governments~~
 21 ~~and other entities described in section 213(b)(3), the~~
 22 ~~Secretary shall periodically remove liens referred to~~
 23 ~~in paragraph (1) from interests in land acquired by~~
 24 ~~the Secretary.”;~~

25 ~~(8) in section 216 (25 U.S.C. 2215)—~~

1 (A) in subsection (a), by striking para-
2 graph (2) and inserting the following:

3 “(2) collect all revenues received from the lease,
4 permit, or sale of resources from interests acquired
5 under section 213 or paid by Indian landowners
6 under section 213.”; and

7 (B) in subsection (b)—

8 (i) in paragraph (1)—

9 (I) in the matter preceding sub-
10 paragraph (A), by striking “Subject
11 to paragraph (2), all” and inserting
12 “All”;

13 (II) in subparagraph (A), by
14 striking “and” at the end;

15 (III) in subparagraph (B), by
16 striking the period at the end and in-
17 serting “; and”; and

18 (IV) by adding at the end the fol-
19 lowing:

20 “(C) be used to acquire undivided interests
21 on the reservation from which the income was
22 derived.”; and

23 (ii) by striking paragraph (2) and in-
24 serting the following:

1 ~~“(2) USE OF FUNDS.—~~The Secretary may use
 2 the revenue deposited in the Acquisition Fund under
 3 paragraph ~~(1)~~ to acquire some or all of the undi-
 4 vided interests in any parcels of land in accordance
 5 with section 205.”;

6 ~~(9)~~ in section 217 ~~(25 U.S.C. 2216)—~~

7 ~~(A)~~ in subsection ~~(b)(1)~~ by striking sub-
 8 paragraph ~~(B)~~ and inserting a new subpara-
 9 graph ~~(B)~~ as follows—

10 ~~“(B) WAIVER OF REQUIREMENT.—~~The re-
 11 quirement for an estimate of value under sub-
 12 paragraph ~~(A)~~ may be waived in writing by an
 13 owner of an interest in trust or restricted land
 14 either selling, exchanging, or conveying by gift
 15 deed for no or nominal consideration such inter-
 16 est—

17 ~~“(i) to an Indian person who is the~~
 18 owner’s spouse, brother, sister, lineal an-
 19 cestor, lineal descendant, or collateral heir;
 20 or

21 ~~“(ii) to an Indian co-owner or to a~~
 22 tribe with jurisdiction over the subject par-
 23 cel of land, where the grantor owns a frac-
 24 tional interest that represents 5 percent or
 25 less of the parcel.”.

(B) in subsection (e), by striking the matter preceding paragraph (1), and inserting “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—”;

(C) in subsection (e)(1), by striking “Indian”;

(D) in subsection (e)(3), by striking “prospective applicants for the leasing, use, or consolidation of” and insert “any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate,”; and

(E) by striking subsection (f) and inserting the following:

“(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 trust or restricted land, the Indian tribe with jurisdiction over the parcel shall have the opportunity—

1 “(A) to match any offer contained in the
2 application; or

3 “(B) in a case in which there is no pur-
4 chase price offered; to acquire the interest in
5 the parcel by paying the fair market value of
6 the interest.

7 “(2) EXCEPTION FOR FAMILY FARMS.—

8 “(A) IN GENERAL.—Paragraph (1) shall
9 not apply to a parcel of trust or restricted land
10 that is part of a family farm that is conveyed
11 to a member of the family of a landowner (as
12 defined in section 206(c)(2)(A)(iv)) if the con-
13 veyance requires that in the event that the in-
14 terest is offered for sale to an entity that is not
15 a member of the family of the landowner, the
16 Indian tribe with jurisdiction over the land shall
17 be afforded the opportunity to purchase the in-
18 terest pursuant to paragraph (1).

19 “(B) APPLICABILITY OF OTHER PROVI-
20 SION.—Section 206(c)(2)(A) shall apply with
21 respect to the recording and mortgaging of any
22 trust or restricted land referred to in subpara-
23 graph (A).”; and

1 ~~(10)~~ in section ~~219(b)(1)(A)~~ ~~(25 U.S.C.~~
 2 ~~2218(b)(1)(A))~~, by striking “100” and inserting
 3 “90”.

4 (b) DEFINITIONS.—Section 202 of the Indian Land
 5 Consolidation Act ~~(25 U.S.C. 2201)~~ is amended—

6 ~~(1)~~ by striking paragraph ~~(2)~~ and inserting the
 7 following:

8 “~~(2)~~ ‘Indian’ means—

9 “~~(A)~~ any person who is a member of any
 10 Indian tribe, is eligible to become a member of
 11 any Indian tribe, or is an owner (as of the date
 12 of enactment of the American Indian Probate
 13 Reform Act of 2003) of an interest in trust or
 14 restricted land;

15 “~~(B)~~ any person meeting the definition of
 16 Indian under the Indian Reorganization Act ~~(25~~
 17 ~~U.S.C. 479)~~ and the regulations promulgated
 18 thereunder;

19 “~~(C)~~ any person not included in subpara-
 20 graph ~~(A)~~ or ~~(B)~~ who is a lineal descendant
 21 within 3 degrees of a person described in sub-
 22 paragraph ~~(A)~~;

23 “~~(D)~~ an owner of a trust or restricted in-
 24 terest in a parcel of land for purposes of inher-

1 iting another trust or restricted interest in such
2 parcel; and

3 “(E) with respect to the ownership, devise,
4 or descent of trust or restricted land in the
5 State of California, any person who meets the
6 definition of ‘Indians of California’ contained in
7 the first section of the Act of May 18, 1928 (25
8 U.S.C. 651), until otherwise provided by Con-
9 gress in accordance with section 809(b) of the
10 Indian Health Care Improvement Act (25
11 U.S.C. 1679)(b)).”;

12 (2) by adding at the end the following:

13 “(6) ‘Parcel of highly fractionated Indian land’
14 means a parcel of land that the Secretary, pursuant
15 to authority under a provision of this Act, deter-
16 mines to have at the time of the determination—

17 “(A)(i) 100 or more but less than 200 co-
18 owners of undivided trust or restricted inter-
19 ests; and

20 “(ii) no undivided trust or restricted inter-
21 est owned by any 1 person which represents
22 more than 2 percent of the total undivided own-
23 ership of the parcel; or

1 “(B)(i) 200 or more but less than 350 co-
 2 owners of undivided trust or restricted inter-
 3 ests; and

4 “(ii) no undivided trust or restricted inter-
 5 est owned by any 1 person which represents
 6 more than 5 percent of the total undivided own-
 7 ership of the parcel; or

8 “(C) 350 or more co-owners of undivided
 9 trust or restricted interests.

10 “(7) ‘Person’ means a natural person.”.

11 (c) ISSUANCE OF PATENTS.—Section 5 of the Act of
 12 February 8, 1887 (25 U.S.C. 348), is amended by striking
 13 the second proviso and inserting the following: *‘Provided,*
 14 That the rules of intestate succession under the Indian
 15 Land Consolidation Act (25 U.S.C. 2201 et seq.) (includ-
 16 ing a tribal probate code approved under that Act or regu-
 17 lations promulgated under that Act) shall apply to that
 18 land for which patents have been executed and delivered.”.

19 (d) TRANSFERS OF RESTRICTED INDIAN LAND.—
 20 Section 4 of the Act of June 18, 1934 (25 U.S.C. 464),
 21 is amended in the first proviso by—

22 (1) striking “, in accordance with” and all that
 23 follows through “or in which the subject matter of
 24 the corporation is located,”;

1 (2) striking “, except as provided by the Indian
2 Land Consolidation Act” and all that follows
3 through the colon; and

4 (3) inserting “in accordance with the Indian
5 Land Consolidation Act (25 U.S.C. 2201 et seq.)
6 (including a tribal probate code approved under that
7 Act or regulations promulgated under that Act).”.

8 (e) ESTATE PLANNING.—

9 (1) CONDUCT OF ACTIVITIES.—Section
10 207(f)(1) of the Indian Land Consolidation Act (25
11 U.S.C. 2206) is amended by striking paragraph (1)
12 and inserting the following—

13 “(1) IN GENERAL.—

14 “(A) The activities conducted under this
15 subsection shall be conducted in accordance
16 with any applicable—

17 “(i) tribal probate code; or

18 “(ii) tribal land consolidation plan.

19 “(B) The Secretary shall provide estate
20 planning assistance in accordance with this sub-
21 section, to the extent amounts are appropriated
22 for such purpose.”.

23 (2) REQUIREMENTS.—Section 207(f) of the In-
24 dian Land Consolidation Act (25 U.S.C. 2206(f)) is
25 amended by striking “and” at the end of subpara-

graph (A), redesignating subparagraph (B) as subparagraph (D), and adding the following—

“(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”;

(3) by striking “(3) CONTRACTS.—” and inserting the following—

“(3) INDIAN CIVIL LEGAL ASSISTANCE GRANTS.—In carrying out this section, the Secretary shall award grants to nonprofit entities, as defined under section 501(c)(3) of the Internal Revenue Code of 1986, which provide legal assistance services for Indian tribes, individual owners of interests in trust or restricted lands, or Indian organizations pursuant to Federal poverty guidelines which submit an application to the Secretary, in such form and manner as the Secretary may prescribe, for the provision of civil legal assistance to such Indian tribes, individual owners, and Indian organizations for the development of tribal probate codes, for estate plan-

ning services or for other purposes consistent with the services they provide to Indians and Indian tribes.”; and

(4) by adding at the end of section 207 (25 U.S.C. 2206) the following:

“(k) NOTIFICATION TO LANDOWNERS.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall provide to each Indian landowner a report that lists, with respect to each tract of trust or restricted land in which the Indian landowner has an interest—

“(A) the location of the tract of land involved;

“(B) the identity of each other co-owner of interests in the parcel of land; and

“(C) the percentage of ownership of each owner of an interest in the tract.

“(2) STATUTORY CONSTRUCTION.—Nothing in this subsection shall preclude any individual Indian from obtaining from the Secretary, upon the request of that individual, any information specified in paragraph (1) before the expiration of the 2-year period specified in paragraph (1).

1 ~~“(3) REQUIREMENTS FOR NOTIFICATION.—~~

2 Each notification made under paragraph (1) shall
3 include information concerning estate planning and
4 land consolidation options under the provisions of
5 this Act and other applicable Federal law, including
6 information concerning—

7 ~~“(A) the preparation and execution of~~
8 ~~wills;~~

9 ~~“(B) negotiated sales;~~

10 ~~“(C) gift deeds;~~

11 ~~“(D) exchanges; and~~

12 ~~“(E) life estates without regard to waste.~~

13 ~~“(4) PROHIBITION.—~~No individual Indian may
14 be denied access to information relating to land in
15 which that individual has an interest described in
16 this section on the basis of section 552a of title 5,
17 United States Code (commonly referred to as the
18 ‘Privacy Act’).

19 ~~“(1) PRIVATE AND FAMILY TRUSTS PILOT~~
20 ~~PROJECT.—~~

21 ~~“(1) DEVELOPMENT PILOT PROJECT.—~~

22 ~~“(A) The Secretary shall consult with~~
23 ~~tribes, individual landowner organizations, In-~~
24 ~~dian advocacy organizations, and other inter-~~
25 ~~ested parties to—~~

1 “(i) develop a pilot project for the cre-
 2 ation and management of private and fam-
 3 ily trusts for interests in trust or restricted
 4 lands; and

5 “(ii) develop proposed rules, regula-
 6 tions, and guidelines to implement the pilot
 7 project.

8 “(B) The pilot project shall commence on
 9 the date of enactment of the American Indian
 10 Probate Reform Act of 2003 and shall continue
 11 for 3 years after the date of enactment of this
 12 subsection.

13 “(2) CHARACTERISTICS OF PRIVATE AND FAM-
 14 ILY TRUSTS.—For purposes of this subsection and
 15 any proposed rules, regulations, or guidelines devel-
 16 oped under this subsection—

17 “(A) the terms ‘private trust’ and ‘family
 18 trust’ shall both mean trusts created pursuant
 19 to this subsection for the management and ad-
 20 ministration of interests in trust or restricted
 21 land, held by 1 or more persons, which com-
 22 prise the corpus of a trust, by a private trustee
 23 subject to the approval of the Secretary;

24 “(B) private and family trusts shall be cre-
 25 ated and managed in furtherance of the pur-

poses of the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.); and

~~“(C) private and family trusts 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 interests in trust or restricted lands to exercise any powers over such interests greater than that held by the Secretary with respect to such interests.~~

~~“(3) 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, regulations, and/or guidelines for the creation and management of private and family trusts over interests in trust and restricted lands;~~

1 “(B) the feasibility of accurately tracking
2 such private and family trusts;

3 “(C) the impact that private and family
4 trusts would have with respect to the accom-
5 plishment of the goals of the Indian Land Con-
6 solidation Act (25 U.S.C. 2201 et seq.); and

7 “(D) a final recommendation regarding
8 whether to adopt the creation of a permanent
9 private and family trust program as a manage-
10 ment and consolidation measure for interests in
11 trust or restricted lands.”.

12 **SEC. 7. UNCLAIMED AND ABANDONED PROPERTY.**

13 The Indian Land Consolidation Act (25 U.S.C. 2201
14 et seq.) (as amended by section 5) is amended by adding
15 at the end the following:

16 **“SEC. 222. UNCLAIMED AND ABANDONED PROPERTY.**

17 “(a) INTERESTS PRESUMED ABANDONED.—An undi-
18 vided trust or restricted interest in a parcel of land owned
19 by a person shall be presumed abandoned and subject to
20 the provisions of this section if the Secretary makes a de-
21 termination that—

22 “(1) a period of 6 consecutive years next pre-
23 ceding such determination has passed during which
24 the person owning such interest has not made any

1 indication or expression of interest in the trust or
2 restricted interest as set forth in subsection (b);

3 ~~“(2) the person owning the trust or restricted~~
4 ~~interest was, at all times during the 6-year period~~
5 ~~described in paragraph (1), over the age of 18; and~~

6 ~~“(3) as of the expiration of the 6-year period~~
7 ~~described in paragraph (1), such parcel was a parcel~~
8 ~~of highly fractionated Indian land.~~

9 ~~“(b) INDICATORS OF OWNER INTEREST.—For pur-~~
10 ~~poses of subsection (a), an indication or expression of an~~
11 ~~owner’s interest in the property shall mean the owner or~~
12 ~~any person acting on behalf of the owner—~~

13 ~~“(1) making a deposit to, withdrawal from, or~~
14 ~~inquiry into an individual Indian money account as-~~
15 ~~sociated with such interest;~~

16 ~~“(2) negotiating a Treasury check derived from~~
17 ~~such interest or account;~~

18 ~~“(3) providing the Secretary with a valid ad-~~
19 ~~dress; or~~

20 ~~“(4) communicating with the Secretary regard-~~
21 ~~ing such interest or account.~~

22 ~~“(c) RELATED PROPERTY.—At the time that prop-~~
23 ~~erty is presumed to be abandoned under this section, any~~
24 ~~other property right accrued or accruing to the owner as~~
25 ~~a result of the interest, including funds in an associated~~

1 individual Indian money account, that has not previously
 2 been presumed abandoned under this section, also shall
 3 be presumed abandoned.

4 “(d) ANNUAL LIST OF PROPERTY; NOTICE TO OWN-
 5 ERS.—No later than the first day of November of each
 6 year, the Secretary shall prepare and distribute a list of
 7 names of persons owning property presumed abandoned
 8 under this section during the preceding fiscal year and
 9 provide notice to such persons in accordance with the fol-
 10 lowing requirements:

11 “(1) CONTENTS OF ANNUAL LIST.—The list
 12 shall set forth—

13 “(A) the names of all persons owning in-
 14 terests in land and property presumed to be
 15 abandoned under this section;

16 “(B) with respect to each person named on
 17 the list, the reservation, if any, and the county
 18 and State in which the person’s interest in land
 19 is located;

20 “(C) the reservation, if any, the city or
 21 town, county and State of the person’s last
 22 known address; and

23 “(D) the name, address, and telephone
 24 number of the official or officials within the De-
 25 partment of the Interior to contact for purposes

1 of identifying persons or lands included on the
2 list.

3 ~~“(2) DISTRIBUTION OF LIST.—~~The list shall be
4 distributed to all regional offices and agencies of the
5 Bureau of Indian Affairs and to all reservations
6 where land described on this list is located and shall
7 cause the list to be published in the Federal Register
8 within 15 days after the list is prepared.

9 ~~“(3) NOTICE BY MAIL.—~~In addition to pub-
10 lishing and distributing the list described in para-
11 graph (1), the Secretary shall attempt to provide the
12 persons owning such trust or restricted interests
13 with actual written notice that the interest and any
14 associated funds or property is presumed abandoned
15 under the provisions of this section. Such notice
16 shall be sent by first class mail to the owner at the
17 owner’s last known address and shall include the fol-
18 lowing:

19 ~~“(A) A legal description of the parcel of~~
20 ~~which the interest is a part.~~

21 ~~“(B) A description of the owner’s interest.~~

22 ~~“(C) A statement that the owner has not~~
23 ~~indicated or expressed an interest in the trust~~
24 ~~or restricted interest for a period of 6 consec-~~
25 ~~utive years and that such interest, and any funds~~

1 in an associated individual Indian money ac-
 2 count, is presumed abandoned.

3 “(D) A statement that the interest will be
 4 appraised and sold for its appraised value un-
 5 less the owner responds to the notice within 60
 6 days after the notice is mailed or published.

7 “(E) A statement that in the event the
 8 owner fails to respond and the notice and the
 9 property is sold, the proceeds of such sale and
 10 any funds in any associated individual Indian
 11 money account will be deposited in an un-
 12 claimed property account.

13 “(4) SEARCH FOR WHEREABOUTS OF OWNER.—
 14 If the notice described in paragraph (3) is returned
 15 undelivered, the Secretary shall attempt to locate the
 16 owner by—

17 “(A) searching publicly available records
 18 and Federal records, including telephone and
 19 address directories and using electronic search
 20 methods;

21 “(B) inquiring with—

22 “(i) the owner’s relatives, if any are
 23 known;

24 “(ii) any Indian tribe of which the
 25 owner is a member; and

1 “(iii) the Indian tribe, if any, with ju-
2 risdiction over the interest; and

3 “(C) if the value of the interest and any
4 funds in an associated individual Indian money
5 account exceeds \$1,000, engaging an inde-
6 pendent search firm to perform a missing per-
7 son search.

8 “(5) NOTICE BY PUBLICATION.—In the event
9 that the Secretary is unable to locate the owner pur-
10 suant to paragraph (4), the Secretary shall publish
11 a notice not later than November 30 following the
12 fiscal year in which the property was presumed to be
13 abandoned under this section. The notice shall in-
14 clude the same information required for the notice
15 described in paragraph (3) and shall be—

16 “(A) published in a newspaper of general
17 circulation on or near the apparent owner’s
18 home reservation and near the last known ad-
19 dress of the owner; and

20 “(B) in a form that is likely to attract the
21 attention of the apparent owner of the property.

22 “(e) CONVERSION OF ABANDONED INTERESTS.—If,
23 after 2 years from the date the notice is published under
24 subsection (d)(3), any such real property or interest there-
25 in remains unclaimed, the Secretary shall appraise such

1 property in a manner consistent with section 215 of the
 2 Indian Land Consolidation Act (25 U.S.C. 2214) and shall
 3 purchase the property at its appraised value, or sell the
 4 property to an Indian tribe with jurisdiction over such
 5 property or a person who owns an undivided trust or re-
 6 stricted interest in such property, by competitive bid for
 7 not less than the appraised value. The Secretary shall then
 8 transfer any monetary interest that the Secretary holds
 9 for the previous apparent owner to the unclaimed property
 10 account described in subsection (f).

11 “(f) UNCLAIMED PROPERTY ACCOUNT.—

12 “(1) Except as otherwise provided by this sec-
 13 tion, the Secretary shall promptly deposit in a spe-
 14 cial unclaimed property account all funds received
 15 under this section. The Secretary shall pay all claims
 16 under subsection (g) from this account. The Sec-
 17 retary shall record the name and last known address
 18 of each person appearing to be entitled to the prop-
 19 erty.

20 “(2) The Secretary is authorized to use interest
 21 earned on the special unclaimed property account to
 22 pay—

23 “(A) the administrative costs of conversion
 24 of real property under subsection (g); and

1 ~~“(B) costs of mailing and publication in~~
 2 ~~connection with abandoned property.~~

3 ~~“(3) The Secretary shall retain a sufficient bal-~~
 4 ~~ance in the account at all times from which to pay~~
 5 ~~claims duly allowed. All other funds shall be avail-~~
 6 ~~able to the Secretary to use for the purposes of land~~
 7 ~~consolidation pursuant to 25 U.S.C. 2212.~~

8 ~~“(g) CLAIMS.—~~

9 ~~“(1) FILING OF CLAIM.—An individual, or the~~
 10 ~~heirs of an individual, may file a claim to recover~~
 11 ~~property or the proceeds of the conversion of the~~
 12 ~~property on a form prescribed by the Secretary.~~

13 ~~“(2) ALLOWANCE OR DENIAL OF CLAIM.—Not~~
 14 ~~more than 180 days after a claim is filed, the Sec-~~
 15 ~~retary shall allow or deny the claim and give written~~
 16 ~~notice of the decision to the claimant. If the claim~~
 17 ~~is denied, the Secretary shall inform the claimant of~~
 18 ~~the reasons for the denial and specify what addi-~~
 19 ~~tional evidence is required before the claim will be~~
 20 ~~allowed. The claimant may then file a new claim~~
 21 ~~with the Secretary or maintain an action under this~~
 22 ~~subsection.~~

23 ~~“(3) PAYMENT OF ALLOWED CLAIM.—Not more~~
 24 ~~than 60 days after a claim is allowed, the property~~
 25 ~~or the net proceeds of the conversion of the property~~

1 shall be delivered or paid by the Secretary to the
 2 claimant, together with any interest, or other incre-
 3 ment to which the claimant is entitled under this
 4 section.

5 “(4) JUDICIAL REVIEW.—An individual ag-
 6 grieved by a decision of the Secretary under this
 7 subsection or whose claim has not been acted upon
 8 within 180 days may, after exhausting administra-
 9 tive remedies, seek—

10 “(A) judicial review or other appropriate
 11 relief against the Secretary in a United States
 12 district court, which may include an order
 13 quieting beneficial title in the name of peti-
 14 tioner whose property was sold by the Secretary
 15 in violation of this section; and

16 “(B) recover reasonable attorneys fees if
 17 he is the prevailing party.

18 “(h) VOLUNTARY ABANDONMENT.—Any person who
 19 is an owner of an interest subject to this section may, with
 20 the Secretary’s approval, voluntarily abandon that interest
 21 to the benefit of the tribe with jurisdiction over the parcel
 22 of land or a co-owner of a trust or restricted interest in
 23 the same parcel of land in accordance with regulations
 24 adopted pursuant to subsection (j).

1 “(i) TRANSFER OF ABANDONED INTERESTS IN
2 LAND.—

3 “(1) Any interest in land acquired under sub-
4 section (e) or (h) over which an Indian tribe has ju-
5 risdiction shall be held in trust by the Secretary for
6 the benefit of that tribe, provided that the tribe may
7 decline any such property in its discretion, and pro-
8 vided that if the tribe declines or does not currently
9 own any interest within that parcel a co-owner with
10 a majority interest shall have the first right of pur-
11 chase of the property at the appraised price.

12 “(2) Any interest in real property acquired
13 under subsection (e) or (h) that is not subject to the
14 jurisdiction of an Indian tribe shall be held in trust
15 by the Secretary for all of the other co-owners of un-
16 divided trust or restricted interests in the parcel in
17 proportion to their respective interests in the prop-
18 erty, provided that any owner may decline to accept
19 such interest, in which case that interest shall be al-
20 located proportionately among such other co-owners
21 who do not decline.

22 “(3) The Indian tribe or other subsequent
23 owner described in paragraph (2) takes such interest
24 free of all claims by the owner who abandoned the

1 interest and of all persons claiming through or
2 under such owner.

3 ~~“(j) REGULATIONS.—The Secretary is authorized to~~
4 ~~adopt such regulations as may be necessary to implement~~
5 ~~the provisions of this section.”.~~

6 **SEC. 8. MISSING HEIRS.**

7 Section 207 of the Indian Land Consolidation Act
8 (25 U.S.C. 2206) is amended by adding the following:

9 ~~“(m) NOTICE.—Prior to holding a hearing to deter-~~
10 ~~mine the heirs to trust or restricted property, or making~~
11 ~~a decision determining such heirs, the Secretary shall seek~~
12 ~~to provide actual written notice of the proceedings to all~~
13 ~~heirs, including notice of the provisions of this subsection~~
14 ~~and of section 207(n) of this Act. Such efforts shall in-~~
15 ~~clude—~~

16 ~~“(1) a search of publicly available records and~~
17 ~~Federal records, including telephone and address di-~~
18 ~~rectories and including electronic search methods;~~

19 ~~“(2) an inquiry with family members and co-~~
20 ~~heirs of the property;~~

21 ~~“(3) an inquiry with the tribal government of~~
22 ~~which the owner is a member, and the tribal govern-~~
23 ~~ment with jurisdiction over the property, if any, and~~

1 “(4) if the property is of a value greater than
2 \$1,000, an independent firm shall be contracted to
3 conduct a missing persons search.

4 “(n) MISSING HEIRS.—

5 “(1) For purposes of this subsection and sub-
6 section (m), an heir will be presumed missing if his
7 whereabouts remain unknown 60 days after comple-
8 tion of notice efforts under subsection (m) and they
9 have had no contact with other heirs or the Depart-
10 ment for 6 years prior to a hearing or decision to
11 ascertain heirs.

12 “(2) Before the date for declaring an heir miss-
13 ing, any person may request an extension of time to
14 locate an heir. An extension may be granted for
15 good cause.

16 “(3) An heir shall be declared missing only
17 after a review of the efforts made and a finding that
18 this section has been complied with.

19 “(4) A missing heir shall be presumed to have
20 predeceased the decedent for purposes of descent
21 and devise.”.

1 **SEC. 9. ANNUAL NOTICE AND FILING REQUIREMENT FOR**
 2 **OWNERS OF INTERESTS IN TRUST OR RE-**
 3 **STRICTED LANDS.**

4 The Indian Land Consolidation Act (25 U.S.C. 2201
 5 et seq.) (as amended by section 7) is amended by adding
 6 at the end the following:

7 **“SEC. 222. ANNUAL NOTICE AND FILING; CURRENT WHERE-**
 8 **ABOUTS OF INTEREST OWNERS.**

9 “(a) **IN GENERAL.**—On an annual basis, the Sec-
 10 retary shall send a notice, response form, and a change
 11 of name and address form to each owner of an interest
 12 in trust or restricted land. The notice shall inform owners
 13 of their interest and obligation to provide the Secretary
 14 with a notice of any change in their name or address im-
 15 mediately upon such change. The response form should
 16 include a section in which the owner may confirm or up-
 17 date his name and address. The change of name and ad-
 18 dress form may be used by the owner at any time when
 19 his name or address changes subsequent to his annual fil-
 20 ing of the response form.

21 “(b) **OWNER RESPONSE.**—The owner of an interest
 22 in trust or restricted land shall file the response form upon
 23 receipt to confirm or update his name and address on an
 24 annual basis.

25 “(c) **NO RESPONSE; INITIATION OF SEARCH.**—In the
 26 event that an owner does not file the response form or

1 provide the Secretary with a confirmation or update of his
 2 name and address through other means; the Secretary
 3 shall initiate a search in order to ascertain the where-
 4 abouts and status of the owner.”.

5 **SEC. 10. EFFECTIVE DATE.**

6 The amendments made by this Act shall not apply
 7 to the estate of an individual who dies before the later
 8 of—

9 (1) the date that is 1 year after the date of en-
 10 actment of this Act; or

11 (2) the date specified in section 207(g)(5) of
 12 the Indian Land Consolidation Act (25 U.S.C.
 13 2206(g)(5)).

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the “American Indian Pro-*
 16 *bate Reform Act of 2004”.*

17 **SEC. 2. FINDINGS.**

18 *Congress finds that—*

19 (1) *the Act of February 8, 1887 (commonly*
 20 *known as the “Indian General Allotment Act”) (25*
 21 *U.S.C. 331 et seq.), which authorized the allotment of*
 22 *Indian reservations, did not permit Indian allotment*
 23 *owners to provide for the testamentary disposition of*
 24 *the land that was allotted to them;*

1 (2) *that Act provided that allotments would de-*
 2 *scend according to State law of intestate succession*
 3 *based on the location of the allotment;*

4 (3) *the reliance of the Federal Government on the*
 5 *State law of intestate succession with respect to the*
 6 *descent of allotments has resulted in numerous prob-*
 7 *lems affecting Indian tribes, members of Indian*
 8 *tribes, and the Federal Government, including—*

9 (A) *the increasingly fractionated ownership*
 10 *of trust and restricted land as that land is inher-*
 11 *ited by successive generations of owners as ten-*
 12 *ants in common;*

13 (B) *the application of different rules of in-*
 14 *testate succession to each interest of a decedent*
 15 *in or to trust or restricted land if that land is*
 16 *located within the boundaries of more than 1*
 17 *State, which application—*

18 (i) *makes probate planning unneces-*
 19 *sarily difficult; and*

20 (ii) *impedes efforts to provide probate*
 21 *planning assistance or advice;*

22 (C) *the absence of a uniform general pro-*
 23 *bate code for trust and restricted land, which*
 24 *makes it difficult for Indian tribes to work coop-*
 25 *eratively to develop tribal probate codes; and*

1 (D) the failure of Federal law to address or
 2 provide for many of the essential elements of gen-
 3 eral probate law, either directly or by reference,
 4 which—

5 (i) is unfair to the owners of trust and
 6 restricted land (and heirs and devisees of
 7 owners); and

8 (ii) makes probate planning more dif-
 9 ficult;

10 (4) a uniform Federal probate code would like-
 11 ly—

12 (A) reduce the number of fractionated inter-
 13 ests in trust or restricted land;

14 (B) facilitate efforts to provide probate
 15 planning assistance and advice and create incen-
 16 tives for owners of trust and restricted land to
 17 engage in estate planning;

18 (C) facilitate intertribal efforts to produce
 19 tribal probate codes in accordance with section
 20 206 of the Indian Land Consolidation Act (25
 21 U.S.C. 2205); and

22 (D) provide essential elements of general
 23 probate law that are not applicable on the date
 24 of enactment of this Act to interests in trust or
 25 restricted land; and

1 (5) *the provisions of a uniform Federal probate*
 2 *code and other forth in this Act should operate to fur-*
 3 *ther the policy of the United States as stated in the*
 4 *Indian Land Consolidated Act Amendments of 2000,*
 5 *Public Law 106–462, 102, November 7, 2000, 114*
 6 *Stat. 1992.*

7 **SEC. 3. INDIAN PROBATE REFORM.**

8 (a) *NONTESTAMENTARY DISPOSITION.*—*Section 207 of*
 9 *the Indian Land Consolidation Act (25 U.S.C. 2206) is*
 10 *amended by striking subsection (a) and inserting the fol-*
 11 *lowing:*

12 “(a) *NONTESTAMENTARY DISPOSITION.*—

13 “(1) *RULES OF DESCENT.*—*Subject to any appli-*
 14 *cable Federal law relating to the devise or descent of*
 15 *trust or restricted property, any trust or restricted in-*
 16 *terest in land or interest in trust personalty that is*
 17 *not disposed of by a valid will—*

18 “(A) *shall descend according to an applica-*
 19 *ble tribal probate code approved in accordance*
 20 *with section 206; or*

21 “(B) *in the case of a trust or restricted in-*
 22 *terest in land or interest in trust personalty to*
 23 *which a tribal probate code does not apply, shall*
 24 *descend in accordance with—*

25 “(i) *paragraphs (2) through (5); and*

1 “(ii) other applicable Federal law.

2 “(2) *RULES GOVERNING DESCENT OF ESTATE.*—

3 “(A) *SURVIVING SPOUSE.*—If there is a sur-
 4 viving spouse of the decedent, such spouse shall
 5 receive trust and restricted land and trust per-
 6 sonalty in the estate as follows:

7 “(i) If the decedent is survived by 1 or
 8 more eligible heirs described in subpara-
 9 graph (B) (i), (ii), (iii), or (iv), the sur-
 10 viving spouse shall receive $\frac{1}{3}$ of the trust
 11 personalty of the decedent and a life estate
 12 without regard to waste in the interests in
 13 trust or restricted lands of the decedent.

14 “(ii) If there are no eligible heirs de-
 15 scribed in subparagraph (B) (i), (ii), (iii),
 16 or (iv), the surviving spouse shall receive all
 17 of the trust personalty of the decedent and
 18 a life estate without regard to waste in the
 19 trust or restricted lands of the decedent.

20 “(iii) The remainder shall pass as set
 21 forth in subparagraph (B).

22 “(iv) Trust personalty passing to a
 23 surviving spouse under the provisions of
 24 this subparagraph shall be maintained by

1 *the Secretary in an account as trust person-*
2 *alty, but only if such spouse is Indian.*

3 “(B) *INDIVIDUAL AND TRIBAL HEIRS.—*

4 *Where there is no surviving spouse of the dece-*
5 *dent, or there is a remainder interest pursuant*
6 *to subparagraph (A), the trust or restricted es-*
7 *tate or such remainder shall, subject to subpara-*
8 *graphs (A) and (D), pass as follows:*

9 “(i) *To those of the decedent’s children*
10 *who are eligible heirs (or if 1 or more of*
11 *such children do not survive the decedent,*
12 *the children of any such deceased child who*
13 *are eligible heirs, by right of representation,*
14 *but only if such children of the deceased*
15 *child survive the decedent) in equal shares.*

16 “(ii) *If the property does not pass*
17 *under clause (i), to those of the decedent’s*
18 *surviving great-grandchildren who are eligi-*
19 *ble heirs, in equal shares.*

20 “(iii) *If the property does not pass*
21 *under clause (i) or (ii), to the decedent’s*
22 *surviving parent who is an eligible heir,*
23 *and if both parents survive the decedent and*
24 *are both eligible heirs, to both parents in*
25 *equal shares.*

1 “(iv) If the property does not pass
 2 under clause (i), (ii), or (iii), to those of the
 3 decedent’s surviving siblings who are eligi-
 4 ble heirs, in equal shares.

5 “(v) If the property does not pass
 6 under clause (i), (ii), (iii), or (iv), to the
 7 Indian tribe with jurisdiction over the in-
 8 terests in trust or restricted lands;
 9 except that notwithstanding clause (v), an In-
 10 dian co-owner (including the Indian tribe re-
 11 ferred to in clause (v)) of a parcel of trust or re-
 12 stricted land may acquire an interest that would
 13 otherwise descend under that clause by paying
 14 into the estate of the decedent, before the close of
 15 the probate of the estate, the fair market value of
 16 the interest in the land; if more than 1 Indian
 17 co-owner offers to pay for such interest, the high-
 18 est bidder shall acquire the interest.

19 “(C) NO INDIAN TRIBE.—

20 “(i) IN GENERAL.—If there is no In-
 21 dian tribe with jurisdiction over the inter-
 22 ests in trust or restricted lands that would
 23 otherwise descend under subparagraph
 24 (B)(v), then such interests shall be divided
 25 equally among co-owners of trust or re-

1 *stricted interests in the parcel; if there are*
 2 *no such co-owners, then to the United*
 3 *States, provided that any such interests in*
 4 *land passing to the United States under*
 5 *this subparagraph shall be sold by the Sec-*
 6 *retary and the proceeds from such sale de-*
 7 *posited into the land acquisition fund estab-*
 8 *lished under section 216 (25 U.S.C. 2215)*
 9 *and used for the purposes described in sub-*
 10 *section (b) of that section.*

11 “(ii) *CONTIGUOUS PARCEL.*—*If the in-*
 12 *terests passing to the United States under*
 13 *this subparagraph are in a parcel of land*
 14 *that is contiguous to another parcel of trust*
 15 *or restricted land, the Secretary shall give*
 16 *the owner or owners of the trust or re-*
 17 *stricted interest in the contiguous parcel the*
 18 *first opportunity to purchase the interest at*
 19 *not less than fair market value determined*
 20 *in accordance with this Act. If more than 1*
 21 *such owner in the contiguous parcel request*
 22 *to purchase the parcel, the Secretary shall*
 23 *sell the parcel by public auction or sealed*
 24 *bid (as determined by the Secretary) at not*
 25 *less than fair market value to the owner of*

1 *a trust or restricted interest in the contig-*
 2 *uous parcel submitting the highest bid.*

3 “(D) *INTESTATE DESCENT OF SMALL FRAC-*
 4 *TIONAL INTERESTS IN LAND.*—

5 “(i) *GENERAL RULE.*—*Notwith-*
 6 *standing subparagraphs (A) and (B), and*
 7 *subject to any applicable Federal law, any*
 8 *trust or restricted interest in land in the de-*
 9 *cedent’s estate that is not disposed of by a*
 10 *valid will and represents less than 5 percent*
 11 *of the entire undivided ownership of the*
 12 *parcel of land of which such interest is a*
 13 *part, as evidenced by the decedent’s estate*
 14 *inventory at the time of the heirship deter-*
 15 *mination, shall descend in accordance with*
 16 *clauses (ii) through (iv).*

17 “(ii) *SURVIVING SPOUSE.*—*If there is a*
 18 *surviving spouse, and such spouse was re-*
 19 *siding on a parcel of land described in*
 20 *clause (i) at the time of the decedent’s death,*
 21 *the spouse shall receive a life estate without*
 22 *regard to waste in the decedent’s trust or re-*
 23 *stricted interest in only such parcel, and the*
 24 *remainder interest in that parcel shall pass*
 25 *in accordance with clause (iii).*

1 “(iii) *SINGLE HEIR RULE.*—Where
 2 *there is no life estate created under clause*
 3 *(ii) or there is a remainder interest under*
 4 *that clause, the trust or restricted interest or*
 5 *remainder interest that is subject to this*
 6 *subparagraph shall descend, in trust or re-*
 7 *stricted status, to—*

8 “(I) *the decedent’s surviving child,*
 9 *but only if such child is an eligible*
 10 *heir; and if 2 or more surviving chil-*
 11 *dren are eligible heirs, then to the old-*
 12 *est of such children;*

13 “(II) *if the interest does not pass*
 14 *under subclause (I), the decedent’s sur-*
 15 *ving grandchild, but only if such*
 16 *grandchild is an eligible heir; and if 2*
 17 *or more surviving grandchildren are*
 18 *eligible heirs, then to the oldest of such*
 19 *grandchildren;*

20 “(III) *if the interest does not pass*
 21 *under subclause (I) or (II), the dece-*
 22 *dent’s surviving great grandchild, but*
 23 *only if such great grandchild is an eli-*
 24 *gible heir; and if 2 or more surviving*
 25 *great grandchildren are eligible heirs,*

1 *then to the oldest of such great grand-*
 2 *children;*

3 “(IV) *if the interest does not pass*
 4 *under subclause (I), (II), or (III), the*
 5 *Indian tribe with jurisdiction over the*
 6 *interest; or*

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

18 *The determination of which person is the oldest*
 19 *eligible heir for inheritance purposes under this*
 20 *clause shall be made by the Secretary in the de-*
 21 *cedent’s probate proceeding and shall be con-*
 22 *sistent with the provisions of this Act.*

23 “(iv) *EXCEPTIONS.—Notwithstanding*
 24 *clause (iii)—*

1 “(I)(aa) *the heir of an interest*
 2 *under clause (iii), unless the heir is a*
 3 *minor or incompetent person, may*
 4 *agree in writing entered into the record*
 5 *of the decedent’s probate proceeding to*
 6 *renounce such interest, in trust or re-*
 7 *stricted status, in favor of—*

8 “(AA) *any other eligible heir*
 9 *or Indian person related to the*
 10 *heir by blood, but in any case*
 11 *never in favor of more than 1*
 12 *such heir or person;*

13 “(BB) *any co-owner of an-*
 14 *other trust or restricted interest in*
 15 *such parcel of land; or*

16 “(CC) *the Indian tribe with*
 17 *jurisdiction over the interest, if*
 18 *any; and*

19 “(bb) *the Secretary shall give ef-*
 20 *fect to such agreement in the distribu-*
 21 *tion of the interest in the probate pro-*
 22 *ceeding; and*

23 “(II) *the governing body of the In-*
 24 *dian tribe with jurisdiction over an in-*
 25 *terest in trust or restricted land that is*

1 *subject to the provisions of this sub-*
2 *paragraph may adopt a rule of intes-*
3 *tate descent applicable to such interest*
4 *that differs from the order of decedent*
5 *set forth in clause (iii). The Secretary*
6 *shall apply such rule to the interest in*
7 *distributing the decedent's estate, but*
8 *only if—*

9 *“(aa) a copy of the tribal*
10 *rule is delivered to the official des-*
11 *ignated by the Secretary to receive*
12 *copies of tribal rules for the pur-*
13 *poses of this clause;*

14 *“(bb) the tribal rule provides*
15 *for the intestate inheritance of*
16 *such interest by no more than 1*
17 *heir, so that the interest does not*
18 *further fractionate;*

19 *“(cc) the tribal rule does not*
20 *apply to any interest disposed of*
21 *by a valid will;*

22 *“(dd) the decedent died on or*
23 *after the date described in sub-*
24 *section (b) of section 8 of the*
25 *American Indian Probate Act of*

1 2004, or on or after the date on
 2 which a copy of the tribal rule
 3 was delivered to the Secretary
 4 pursuant to item (aa), whichever
 5 is later; and

6 “(ee) the Secretary does not
 7 make a determination within 90
 8 days after a copy of the tribal rule
 9 is delivered pursuant to item (aa)
 10 that the rule would be unreason-
 11 ably difficult to administer or
 12 does not conform with the require-
 13 ments in item (bb) or (cc).

14 “(v) *RULE OF CONSTRUCTION.*—This
 15 subparagraph shall not be construed to
 16 limit a person’s right to devise any trust or
 17 restricted interest by way of a valid will in
 18 accordance with subsection (b).

19 “(3) *RIGHT OF REPRESENTATION.*—If, under
 20 this subsection, all or any part of the estate of a dece-
 21 dent is to pass to children of a deceased child by right
 22 of representation, that part is to be divided into as
 23 many equal shares as there are living children of the
 24 decedent and pre-deceased children who left issue who
 25 survive the decedent. Each living child of the dece-

1 *dent, if any, shall receive 1 share, and the share of*
 2 *each pre-deceased child shall be divided equally*
 3 *among the pre-deceased child's children.*

4 *“(4) SPECIAL RULE RELATING TO SURVIVAL.—In*
 5 *the case of intestate succession under this subsection,*
 6 *if an individual fails to survive the decedent by at*
 7 *least 120 hours, as established by clear and con-*
 8 *vincing evidence—*

9 *“(A) the individual shall be deemed to have*
 10 *predeceased the decedent for the purpose of intes-*
 11 *tate succession; and*

12 *“(B) the heirs of the decedent shall be deter-*
 13 *mined in accordance with this section.*

14 *“(5) STATUS OF INHERITED INTERESTS.—Ex-*
 15 *cept as provided in paragraphs (2) (A) and (D) re-*
 16 *garding the life estate of a surviving spouse, a trust*
 17 *or restricted interest in land or trust personalty that*
 18 *descends under the provisions of this subsection shall*
 19 *vest in the heir in the same trust or restricted status*
 20 *as such interest was held immediately prior to the de-*
 21 *cedent's death.”.*

22 *(b) TESTAMENTARY DISPOSITION.—Section 207 of the*
 23 *Indian Land Consolidation Act (25 U.S.C. 2206) is amend-*
 24 *ed by striking subsection (b) and inserting the following:*

25 *“(b) TESTAMENTARY DISPOSITION.—*

1 “(1) *GENERAL DEVISE OF AN INTEREST IN*
2 *TRUST OR RESTRICTED LAND.*—

3 “(A) *IN GENERAL.*—*Subject to any applica-*
4 *ble Federal law relating to the devise or descent*
5 *of trust or restricted land, or a tribal probate*
6 *code approved by the Secretary in accordance*
7 *with section 206, the owner of a trust or re-*
8 *stricted interest in land may devise such interest*
9 *to—*

10 “(i) *any lineal descendant of the tes-*
11 *tator;*

12 “(ii) *any person who owns a pre-*
13 *existing undivided trust or restricted inter-*
14 *est in the same parcel of land;*

15 “(iii) *the Indian tribe with jurisdic-*
16 *tion over the interest in land; or*

17 “(iv) *any Indian;*
18 *in trust or restricted status.*

19 “(B) *RULES OF INTERPRETATION.*—*Any de-*
20 *vises of a trust or restricted interest in land pur-*
21 *suant to subparagraph (A) to an Indian or the*
22 *Indian tribe with jurisdiction over the interest*
23 *shall be deemed to be a devise of the interest in*
24 *trust or restricted status. Any devise of a trust*
25 *or restricted interest in land to a person who is*

1 *only eligible to be a devisee under clause (i) or*
 2 *(ii) of subparagraph (A) shall be presumed to be*
 3 *a devise of the interest in trust or restricted sta-*
 4 *tus unless language in such devise clearly evi-*
 5 *dences an intent on the part of the testator that*
 6 *the interest is to pass as a life estate or fee inter-*
 7 *est in accordance with paragraph (2)(A).*

8 “(2) *DEVISE OF TRUST OR RESTRICTED LAND AS*
 9 *A LIFE ESTATE OR IN FEE.—*

10 “(A) *IN GENERAL.—Except as provided*
 11 *under any applicable Federal law, any trust or*
 12 *restricted interest in land that is not devised in*
 13 *accordance with paragraph (1)(A) may be de-*
 14 *vised only—*

15 “(i) *as a life estate to any person, with*
 16 *the remainder being devised only in accord-*
 17 *ance with subparagraph (B) or paragraph*
 18 *(1); or*

19 “(ii) *except as provided in subpara-*
 20 *graph (B), as a fee interest without Federal*
 21 *restrictions against alienation to any per-*
 22 *son who is not eligible to be a devisee under*
 23 *clause (iv) of paragraph (1)(A).*

24 “(B) *INDIAN REORGANIZATION ACT*
 25 *LANDS.—Any interest in trust or restricted land*

1 *that is subject to section 4 of the Act of June*
 2 *18, 1934 (25 U.S.C. 464), may be devised only*
 3 *in accordance with—*

4 “(i) *that section;*

5 “(ii) *subparagraph (A)(i); or*

6 “(iii) *paragraph (1)(A);*

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

13 “(3) *GENERAL DEVISE OF AN INTEREST IN*
 14 *TRUST PERSONALTY.—*

15 “(A) *TRUST PERSONALITY DEFINED.—The*
 16 *term ‘trust personalty’ as used in this section in-*
 17 *cludes all funds and securities of any kind which*
 18 *are held in trust in an individual Indian money*
 19 *account or otherwise supervised by the Secretary.*

20 “(B) *IN GENERAL.—Subject to any applica-*
 21 *ble Federal law relating to the devise or descent*
 22 *of such trust personalty, or a tribal probate code*
 23 *approved by the Secretary in accordance with*
 24 *section 206, the owner of an interest in trust per-*

1 *sonalty may devise such an interest to any per-*
 2 *son or entity.*

3 “(C) *MAINTENANCE AS TRUST PERSON-*
 4 *ALTY.—In the case of a devise of an interest in*
 5 *trust personalty to a person or Indian tribe eli-*
 6 *gible to be a devisee under paragraph (1)(A), the*
 7 *Secretary shall maintain and continue to man-*
 8 *age such interests as trust personalty.*

9 “(D) *DIRECT DISBURSEMENT AND DIS-*
 10 *TRIBUTION.—In the case of a devise of an inter-*
 11 *est in trust personalty to a person or Indian*
 12 *tribe not eligible to be a devisee under paragraph*
 13 *(1)(A), the Secretary shall directly disburse and*
 14 *distribute such personalty to the devisee.*

15 “(4) *INVALID DEVISES AND WILLS.—*

16 “(A) *LAND.—Any trust or restricted inter-*
 17 *est in land that is not devised in accordance*
 18 *with paragraph (1) or (2) or that is not disposed*
 19 *of by a valid will shall descend in accordance*
 20 *with the applicable law of intestate succession as*
 21 *provided for in subsection (a).*

22 “(B) *PERSONALTY.—Any trust personalty*
 23 *that is not disposed of by a valid will shall de-*
 24 *scend in accordance with the applicable law of*

1 *intestate succession as provided for in subsection*
 2 *(a).”.*

3 *(c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.—Sec-*
 4 *tion 207(c) of the Indian Land Consolidation Act (25*
 5 *U.S.C. 2206(c)) is amended by striking all that follows the*
 6 *heading, “Joint Tenancy; Right of Survivorship”, and in-*
 7 *serting the following:*

8 *“(1) PRESUMPTION OF JOINT TENANCY.—If a*
 9 *testator devises trust or restricted interests in the*
 10 *same parcel of land to more than 1 person, in the ab-*
 11 *sence of clear and express language in the devise stat-*
 12 *ing that the interest is to pass to the devisees as ten-*
 13 *ants in common, the devise shall be presumed to cre-*
 14 *ate a joint tenancy with the right of survivorship in*
 15 *the interests involved.*

16 *“(2) EXCEPTION.—Paragraph (1) shall not*
 17 *apply to any devise of an interest in trust or re-*
 18 *stricted land where the will in which such devise is*
 19 *made was executed prior to the date that is 1 year*
 20 *after the date on which the Secretary publishes the*
 21 *certification required by section 8(a)(4) of the Amer-*
 22 *ican Indian Probate Reform Act of 2004.”.*

23 *(d) RULE OF CONSTRUCTION.—Section 207 of the In-*
 24 *dian Land Consolidation Act (25 U.S.C. 2206) is amended*
 25 *by adding at the end the following:*

1 “(h) *APPLICABLE FEDERAL LAW.*—

2 “(1) *IN GENERAL.*—Any references in subsections
3 (a) and (b) to applicable Federal law include—

4 “(A) *Public Law 91–627 (84 Stat. 1874);*

5 “(B) *Public Law 92–377 (86 Stat. 530);*

6 “(C) *Public Law 92–443 (86 Stat. 744);*

7 “(D) *Public Law 96–274 (94 Stat. 537);*

8 *and*

9 “(E) *Public Law 98–513 (98 Stat. 2411).*

10 “(2) *NO EFFECT ON LAWS.*—Nothing in this Act
11 amends or otherwise affects the application of any
12 law described in paragraph (1), or any other Federal
13 law that pertains to—

14 “(A) *trust or restricted land located on 1 or*
15 *more specific Indian reservations that are ex-*
16 *pressly identified in such law; or*

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

20 “(i) *RULES OF INTERPRETATION.*—In the absence of
21 a contrary intent, and except as otherwise provided under
22 this Act, applicable Federal law, or a tribal probate code
23 approved by the Secretary pursuant to section 206, wills
24 shall be construed as to trust and restricted land and trust
25 personalty in accordance with the following rules:

1 “(1) CONSTRUCTION THAT WILL PASSES ALL
 2 PROPERTY.—A will shall be construed to apply to all
 3 trust and restricted land and trust personalty which
 4 the testator owned at his death, including any such
 5 land or personalty acquired after the execution of his
 6 will.

7 “(2) CLASS GIFTS.—

8 “(A) NO DIFFERENTIATION BETWEEN RELA-
 9 TIONSHIP BY BLOOD AND RELATIONSHIP BY AF-
 10 FINITY.—Terms of relationship that do not dif-
 11 ferentiate relationships by blood from those by
 12 affinity, such as ‘uncles’, ‘aunts’, ‘nieces’, or
 13 ‘nephews’, are construed to exclude relatives by
 14 affinity. Terms of relationship that do not dif-
 15 ferentiate relationships by the half blood from
 16 those by the whole blood, such as ‘brothers’, ‘sis-
 17 ters’, ‘nieces’, or ‘nephews’, are construed to in-
 18 clude both types of relationships.

19 “(B) MEANING OF ‘HEIRS’ AND ‘NEXT OF
 20 KIN’, ETC.; TIME OF ASCERTAINING CLASS.—A
 21 devise of trust or restricted interest in land or an
 22 interest in trust personalty to the testator’s or
 23 another designated person’s ‘heirs’, ‘next of kin’,
 24 ‘relatives’, or ‘family’ shall mean those persons,
 25 including the spouse, who would be entitled to

1 *take under the provisions of this Act for non-*
 2 *testamentary disposition. The class is to be*
 3 *ascertained as of the date of the testator's death.*

4 *“(C) TIME FOR ASCERTAINING CLASS.—In*
 5 *construing a devise to a class other than a class*
 6 *described in subparagraph (B), the class shall be*
 7 *ascertained as of the time the devise is to take*
 8 *effect in enjoyment. The surviving issue of any*
 9 *member of the class who is then dead shall take*
 10 *by right of representation the share which their*
 11 *deceased ancestor would have taken.*

12 *“(3) MEANING OF ‘DIE WITHOUT ISSUE’ AND*
 13 *SIMILAR PHRASES.—In any devise under this chapter,*
 14 *the words ‘die without issue’, ‘die without leaving*
 15 *issue’, ‘have no issue’, or words of a similar import*
 16 *shall be construed to mean that an individual had no*
 17 *lineal descendants in his lifetime or at his death, and*
 18 *not that there will be no lineal descendants at some*
 19 *future time.*

20 *“(4) PERSONS BORN OUT OF WEDLOCK.—In con-*
 21 *struing provisions of this chapter relating to lapsed*
 22 *and void devises, and in construing a devise to a per-*
 23 *son or persons described by relationship to the testator*
 24 *or to another, a person born out of wedlock shall be*

1 *considered the child of the natural mother and also of*
 2 *the natural father.*

3 “(5) *LAPSED DEVISES.*—Subject to the provi-
 4 *sions of subsection (b), where the testator devises or*
 5 *bequeaths a trust or restricted interest in land or*
 6 *trust personalty to the testator’s grandparents or to*
 7 *the lineal descendent of a grandparent, and the devi-*
 8 *see or legatee dies before the testator leaving lineal de-*
 9 *scendents, such descendents shall take the interest so*
 10 *devised or bequeathed per stirpes.*

11 “(6) *VOID DEVISES.*—Except as provided in
 12 *paragraph (5), and if the disposition shall not be oth-*
 13 *erwise expressly provided for by a tribal probate code*
 14 *approved under section 206 (25 U.S.C. 2205), if a de-*
 15 *viser other than a residuary devise of a trust or re-*
 16 *stricted interest in land or trust personalty fails for*
 17 *any reason, such interest shall become part of the res-*
 18 *idue and pass, subject to the provisions of subsection*
 19 *(b), to the other residuary devisees, if any, in propor-*
 20 *tion to their respective shares or interests in the res-*
 21 *idue.*

22 “(7) *FAMILY CEMETERY PLOT.*—If a family cem-
 23 *etery plot owned by the testator at his decease is not*
 24 *mentioned in the decedent’s will, the ownership of the*

1 *plot shall descend to his heirs as if he had died intes-*
 2 *tate.*

3 “(j) *HEIRSHIP BY KILLING.*—

4 “(1) *HEIR BY KILLING DEFINED.*—As used in
 5 *this subsection, ‘heir by killing’ means any person*
 6 *who knowingly participates, either as a principal or*
 7 *as an accessory before the fact, in the willful and un-*
 8 *lawful killing of the decedent.*

9 “(2) *NO ACQUISITION OF PROPERTY BY KILL-*
 10 *ING.*—Subject to any applicable Federal law relating
 11 *to the devise or descent of trust or restricted land, no*
 12 *heir by killing shall in any way acquire any trust or*
 13 *restricted interests in land or interests in trust per-*
 14 *sonalty as the result of the death of the decedent, but*
 15 *such property shall pass in accordance with this sub-*
 16 *section.*

17 “(3) *DESCENT, DISTRIBUTION, AND RIGHT OF*
 18 *SURVIVORSHIP.*—The heir by killing shall be deemed
 19 *to have predeceased the decedent as to decedent’s trust*
 20 *or restricted interests in land or trust personalty*
 21 *which would have passed from the decedent or his es-*
 22 *tate to such heir—*

23 “(A) *under intestate succession under this*
 24 *section;*

1 “(B) under a tribal probate code, unless
2 otherwise provided for;

3 “(C) as the surviving spouse;

4 “(D) by devise;

5 “(E) as a reversion or a vested remainder;

6 “(F) as a survivorship interest; and

7 “(G) as a contingent remainder or execu-
8 tory or other future interest.

9 “(4) JOINT TENANTS, JOINT OWNERS, AND JOINT
10 OBLIGEES.—

11 “(A) Any trust or restricted land or trust
12 personalty held by only the heir by killing and
13 the decedent as joint tenants, joint owners, or
14 joint obligees shall pass upon the death of the de-
15 cedent to his or her estate, as if the heir by kill-
16 ing had predeceased the decedent.

17 “(B) As to trust or restricted land or trust
18 personalty held jointly by 3 or more persons, in-
19 cluding both the heir by killing and the decedent,
20 any income which would have accrued to the heir
21 by killing as a result of the death of the decedent
22 shall pass to the estate of the decedent as if the
23 heir by killing had predeceased the decedent and
24 any surviving joint tenants.

1 “(C) *Notwithstanding any other provision*
 2 *of this subsection, the decedent’s trust or re-*
 3 *stricted interest land or trust personalty that is*
 4 *held in a joint tenancy with the right of survi-*
 5 *vorship shall be severed from the joint tenancy as*
 6 *though the property held in the joint tenancy*
 7 *were to be severed and distributed equally among*
 8 *the joint tenants and the decedent’s interest shall*
 9 *pass to his estate; the remainder of the interests*
 10 *shall remain in joint tenancy with right of sur-*
 11 *vivorship among the surviving joint tenants.*

12 “(5) *LIFE ESTATE FOR THE LIFE OF AN-*
 13 *OTHER.—If the estate is held by a third person whose*
 14 *possession expires upon the death of the decedent, it*
 15 *shall remain in such person’s hands for the period of*
 16 *time following the decedent’s death equal to the life*
 17 *expectancy of the decedent but for the killing.*

18 “(6) *PREADJUDICATION RULE.—*

19 “(A) *IN GENERAL.—If a person has been*
 20 *charged, whether by indictment, information, or*
 21 *otherwise by the United States, a tribe, or any*
 22 *State, with voluntary manslaughter or homicide*
 23 *in connection with a decedent’s death, then any*
 24 *and all trust or restricted land or trust person-*
 25 *alty that would otherwise pass to that person*

1 *from the decedent's estate shall not pass or be*
 2 *distributed by the Secretary until the charges*
 3 *have been resolved in accordance with the provi-*
 4 *sions of this paragraph.*

5 “(B) *DISMISSAL OR WITHDRAWAL.*—*Upon*
 6 *dismissal or withdrawal of the charge, or upon*
 7 *a verdict of not guilty, such land and personalty*
 8 *shall pass as if no charge had been filed or made.*

9 “(C) *CONVICTION.*—*Upon conviction of such*
 10 *person, and the exhaustion of all appeals, if any,*
 11 *the trust and restricted land and trust person-*
 12 *alty in the estate shall pass in accordance with*
 13 *this subsection.*

14 “(7) *BROAD CONSTRUCTION; POLICY OF SUB-*
 15 *SECTION.*—*This subsection shall not be considered*
 16 *penal in nature, but shall be construed broadly in*
 17 *order to effect the policy that no person shall be al-*
 18 *lowed to profit by his own wrong, wherever com-*
 19 *mitted.*

20 “(k) *GENERAL RULES GOVERNING PROBATE.*—

21 “(1) *SCOPE.*—*Except as provided under applica-*
 22 *ble Federal law or a tribal probate code approved*
 23 *under section 206, the provisions of this subsection*
 24 *shall govern the probate of estates containing trust*
 25 *and restricted interests in land or trust personalty.*

1 “(2) *PRETERMITTED SPOUSES AND CHILDREN.*—

2 “(A) *SPOUSES.*—

3 “(i) *IN GENERAL.*—*Except as provided*
 4 *in clause (ii), if the surviving spouse of a*
 5 *testator married the testator after the tes-*
 6 *tator executed the will of the testator, the*
 7 *surviving spouse shall receive the intestate*
 8 *share in the decedent’s trust or restricted*
 9 *land and trust personalty that the spouse*
 10 *would have received if the testator had died*
 11 *intestate.*

12 “(ii) *EXCEPTION.*—*Clause (i) shall not*
 13 *apply to a trust or restricted interest land*
 14 *where—*

15 “(I) *the will of a testator is exe-*
 16 *cuted before the date of enactment of*
 17 *this subparagraph;*

18 “(II)(aa) *the spouse of a testator*
 19 *is a non-Indian; and*

20 “(bb) *the testator devised the in-*
 21 *terests in trust or restricted land of the*
 22 *testator to 1 or more Indians;*

23 “(III) *it appears, based on an ex-*
 24 *amination of the will or other evidence,*
 25 *that the will was made in contempla-*

1 *tion of the marriage of the testator to*
 2 *the surviving spouse;*

3 *“(IV) the will expresses the inten-*
 4 *tion that the will is to be effective not-*
 5 *withstanding any subsequent marriage;*
 6 *or*

7 *“(V)(aa) the testator provided for*
 8 *the spouse by a transfer of funds or*
 9 *property outside the will; and*

10 *“(bb) an intent that the transfer*
 11 *be in lieu of a testamentary provision*
 12 *is demonstrated by statements of the*
 13 *testator or through a reasonable infer-*
 14 *ence based on the amount of the trans-*
 15 *fer or other evidence.*

16 *“(iii) SPOUSES MARRIED AT THE TIME*
 17 *OF THE WILL.—Should the surviving spouse*
 18 *of the testator be omitted from the will of*
 19 *the testator, the surviving spouse shall be*
 20 *treated, for purposes of trust or restricted*
 21 *land or trust personalty in the testator’s es-*
 22 *tate, in accordance with the provisions of*
 23 *section 207(a)(2)(A), as though there was no*
 24 *will but only if—*

1 “(I) the testator and surviving
 2 spouse were continuously married
 3 without legal separation for the 5-year
 4 period preceding the decedent’s death;

5 “(II) the testator and surviving
 6 spouse have a surviving child who is
 7 the child of the testator;

8 “(III) the surviving spouse has
 9 made substantial payments toward the
 10 purchase of, or improvements to, the
 11 trust or restricted land in such estate;
 12 or

13 “(IV) the surviving spouse is
 14 under a binding obligation to continue
 15 making loan payments for the trust or
 16 restricted land for a substantial period
 17 of time;

18 except that, if there is evidence that the tes-
 19 tator adequately provided for the surviving
 20 spouse and any minor children by a trans-
 21 fer of funds or property outside of the will,
 22 this clause shall not apply.

23 “(B) CHILDREN.—

24 “(i) IN GENERAL.—If a testator exe-
 25 cuted the will of the testator before the birth

1 *or adoption of 1 or more children of the tes-*
 2 *tator, and the omission of the children from*
 3 *the will is a product of inadvertence rather*
 4 *than an intentional omission, the children*
 5 *shall share in the trust or restricted inter-*
 6 *ests in land and trust personalty as if the*
 7 *decedent had died intestate.*

8 “(ii) *ADOPTED HEIRS.*—*Any person*
 9 *recognized as an heir by virtue of adoption*
 10 *under the Act of July 8, 1940 (25 U.S.C.*
 11 *372a), shall be treated as the child of a de-*
 12 *cedent under this subsection.*

13 “(iii) *ADOPTED-OUT CHILDREN.*—

14 “(I) *IN GENERAL.*—*For purposes*
 15 *of this Act, an adopted person shall not*
 16 *be considered the child or issue of his*
 17 *natural parents, except in distributing*
 18 *the estate of a natural kin, other than*
 19 *the natural parent, who has main-*
 20 *tained a family relationship with the*
 21 *adopted person. If a natural parent*
 22 *shall have married the adopting par-*
 23 *ent, the adopted person for purposes of*
 24 *inheritance by, from and through him*

1 *shall also be considered the issue of*
 2 *such natural parent.*

3 “(II) *ELIGIBLE HEIR PURSUANT*
 4 *TO OTHER FEDERAL LAW OR TRIBAL*
 5 *LAW.—Notwithstanding the provisions*
 6 *of subparagraph (B)(iii)(I), other Fed-*
 7 *eral laws and laws of the Indian tribe*
 8 *with jurisdiction over the trust or re-*
 9 *stricted interest in land may otherwise*
 10 *define the inheritance rights of adopt-*
 11 *ed-out children.*

12 “(3) *DIVORCE.—*

13 “(A) *SURVIVING SPOUSE.—*

14 “(i) *IN GENERAL.—An individual who*
 15 *is divorced from a decedent, or whose mar-*
 16 *riage to the decedent has been annulled,*
 17 *shall not be considered to be a surviving*
 18 *spouse unless, by virtue of a subsequent*
 19 *marriage, the individual is married to the*
 20 *decedent at the time of death of the dece-*
 21 *dent.*

22 “(ii) *SEPARATION.—A decree of sepa-*
 23 *ration that does not dissolve a marriage,*
 24 *and terminate the status of husband and*

1 *wife, shall not be considered a divorce for*
 2 *the purpose of this subsection.*

3 “(iii) *NO EFFECT ON ADJUDICA-*
 4 *TIONS.—Nothing in clause (i) shall prevent*
 5 *the Secretary from giving effect to a prop-*
 6 *erty right settlement relating to a trust or*
 7 *restricted interest in land or an interest in*
 8 *trust personalty if 1 of the parties to the*
 9 *settlement dies before the issuance of a final*
 10 *decree dissolving the marriage of the parties*
 11 *to the property settlement.*

12 “(B) *EFFECT OF SUBSEQUENT DIVORCE ON*
 13 *A WILL OR DEVISE.—*

14 “(i) *IN GENERAL.—If, after executing a*
 15 *will, a testator is divorced or the marriage*
 16 *of the testator is annulled, as of the effective*
 17 *date of the divorce or annulment, any dis-*
 18 *position of trust or restricted interests in*
 19 *land or of trust personalty made by the will*
 20 *to the former spouse of the testator shall be*
 21 *considered to be revoked unless the will ex-*
 22 *pressly provides otherwise.*

23 “(ii) *PROPERTY.—Property that is*
 24 *prevented from passing to a former spouse*
 25 *of a decedent under clause (i) shall pass as*

1 *if the former spouse failed to survive the de-*
 2 *cedent.*

3 “(iii) *PROVISIONS OF WILLS.—Any*
 4 *provision of a will that is considered to be*
 5 *revoked solely by operation of this subpara-*
 6 *graph shall be revived by the remarriage of*
 7 *a testator to the former spouse of the tes-*
 8 *tator.*

9 “(4) *AFTER-BORN HEIRS.—A child in gestation*
 10 *at the time of decedent’s death will be treated as hav-*
 11 *ing survived the decedent if the child lives at least 120*
 12 *hours after its birth.*

13 “(5) *ADVANCEMENTS OF TRUST PERSONALTY*
 14 *DURING LIFETIME; EFFECT ON DISTRIBUTION OF ES-*
 15 *TATE.—*

16 “(A) *The trust personalty of a decedent who*
 17 *dies intestate as to all or a portion of his or her*
 18 *estate, given during the decedent’s lifetime to a*
 19 *person eligible to be an heir of the decedent*
 20 *under subsection (b)(2)(B), shall be treated as an*
 21 *advancement against the heir’s inheritance, but*
 22 *only if the decedent declared in a contempora-*
 23 *neous writing, or the heir acknowledged in writ-*
 24 *ing, that the gift is an advancement or is to be*

1 *taken into account in computing the division*
 2 *and distribution of the decedent's intestate estate.*

3 “(B) *For the purposes of this section, trust*
 4 *personalty advanced during the decedent's life-*
 5 *time is valued as of the time the heir came into*
 6 *possession or enjoyment of the property or as of*
 7 *the time of the decedent's death, whichever occurs*
 8 *first.*

9 “(C) *If the recipient of the trust personalty*
 10 *predeceases the decedent, the property shall not*
 11 *be treated as an advancement or taken into ac-*
 12 *count in computing the division and distribution*
 13 *of the decedent's intestate estate unless the dece-*
 14 *dent's contemporaneous writing provides other-*
 15 *wise.*

16 “(6) *HEIRS RELATED TO DECEDENT THROUGH 2*
 17 *LINES; SINGLE SHARE.—A person who is related to*
 18 *the decedent through 2 lines of relationship is entitled*
 19 *to only a single share of the trust or restricted land*
 20 *or trust personalty in the decedent's estate based on*
 21 *the relationship that would entitle such person to the*
 22 *larger share.*

23 “(7) *NOTICE.—*

24 “(A) *IN GENERAL.—To the maximum ex-*
 25 *tent practicable, the Secretary shall notify each*

1 owner of trust and restricted land of the provi-
2 sions of this Act.

3 “(B) COMBINED NOTICES.—The notice
4 under subparagraph (A) may, at the discretion
5 of the Secretary, be provided with the notice re-
6 quired under subsection (a) of section 8 of the
7 American Indian Probate Reform Act of 2004.

8 “(8) RENUNCIATION OR DISCLAIMER OF INTER-
9 ESTS.—

10 “(A) IN GENERAL.—Any person 18 years of
11 age or older may renounce or disclaim an inher-
12 itance of a trust or restricted interest in land or
13 in trust personalty through intestate succession
14 or devise, either in full or subject to the reserva-
15 tion of a life estate (where the interest is an in-
16 terest in land), in accordance with subparagraph
17 (B), by filing a signed and acknowledged dec-
18 laration with the probate decisionmaker prior to
19 entry of a final probate order. No interest so re-
20 nounced or disclaimed shall be considered to
21 have vested in the renouncing or disclaiming
22 heir or devisee, and the renunciation or dis-
23 claimer shall not be considered to be a transfer
24 or gift of the renounced or disclaimed interest.

1 “(B) *ELIGIBLE RECIPIENTS OF RENOUNCED*
 2 *OR DISCLAIMED INTERESTS; NOTICE TO RECIPI-*
 3 *ENTS.—*

4 “(i) *INTERESTS IN LAND.—A trust or*
 5 *restricted interest in land may be renounced*
 6 *or disclaimed only in favor of—*

7 “(I) *an eligible heir;*

8 “(II) *any person who would have*
 9 *been eligible to be a devisee of the in-*
 10 *terest in question pursuant to sub-*
 11 *section (b)(1)(A) (but only in cases*
 12 *where the renouncing person is a devi-*
 13 *see of the interest under a valid will);*
 14 *or*

15 “(III) *the Indian tribe with juris-*
 16 *diction over the interest in question;*
 17 *and the interest so renounced shall pass to*
 18 *its recipient in trust or restricted status.*

19 “(ii) *TRUST PERSONALTY.—An interest*
 20 *in trust personalty may be renounced or*
 21 *disclaimed in favor of any person who*
 22 *would be eligible to be a devisee of such an*
 23 *interest under subsection (b)(3) and shall*
 24 *pass to the recipient in accordance with the*
 25 *provisions of that subsection.*

1 “(iii) *UNAUTHORIZED RENUNCIATIONS*
2 *AND DISCLAIMERS.*—*Unless renounced or*
3 *disclaimed in favor of a person or Indian*
4 *tribe eligible to receive the interest in ac-*
5 *cordance with the provisions of this sub-*
6 *paragraph, a renounced or disclaimed in-*
7 *terest shall pass as if the renunciation or*
8 *disclaimer had not been made.*

9 “(C) *ACCEPTANCE OF INTEREST.*—*A renun-*
10 *ciation or disclaimer of an interest filed in ac-*
11 *cordance with this paragraph shall be considered*
12 *accepted when implemented in a final order by*
13 *a decisionmaker, and shall thereafter be irrev-*
14 *ocable. No renunciation or disclaimer of an in-*
15 *terest shall be included in such order unless the*
16 *recipient of the interest has been given notice of*
17 *the renunciation or disclaimer and has not re-*
18 *fused to accept the interest. All disclaimers and*
19 *renunciations filed and implemented in probate*
20 *orders made effective prior to the date of enact-*
21 *ment of the American Indian Probate Reform*
22 *Act of 2004 are hereby ratified.*

23 “(D) *RULE OF CONSTRUCTION.*—*Nothing in*
24 *this paragraph shall be construed to allow the re-*
25 *nunciation of an interest that is subject to the*

1 *provisions of section 207(a)(2)(D) (25 U.S.C.*
 2 *2206(a)(2)(D)) in favor of more than 1 person.*

3 *“(9) CONSOLIDATION AGREEMENTS.—*

4 *“(A) IN GENERAL.—During the pendency of*
 5 *probate, the decisionmaker is authorized to ap-*
 6 *prove written consolidation agreements effecting*
 7 *exchanges or gifts voluntarily entered into be-*
 8 *tween the decedent’s eligible heirs or devisees, to*
 9 *consolidate interests in any tract of land in-*
 10 *cluded in the decedent’s trust inventory. Such*
 11 *agreements may provide for the conveyance of*
 12 *interests already owned by such heirs or devisees*
 13 *in such tracts, without having to comply with*
 14 *the Secretary’s rules and requirements otherwise*
 15 *applicable to conveyances by deed of trust or re-*
 16 *stricted interests in land.*

17 *“(B) EFFECTIVE.—An agreement approved*
 18 *under subparagraph (A) shall be considered final*
 19 *when implemented in an order by a decision-*
 20 *maker. The final probate order shall direct any*
 21 *changes necessary to the Secretary’s land records,*
 22 *to reflect and implement the terms of the ap-*
 23 *proved agreement.*

24 *“(C) EFFECT ON PURCHASE OPTION AT*
 25 *PROBATE.—Any interest in trust or restricted*

1 *land that is subject to a consolidation agreement*
 2 *under this paragraph or section 207(e) (25*
 3 *U.S.C. 2206(e)) shall not be available for pur-*
 4 *chase under section 207(p) (25 U.S.C. 2206(p))*
 5 *unless the decisionmaker determines that the*
 6 *agreement should not be approved.”.*

7 **SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN**
 8 **LANDS.**

9 *Section 205 of the Indian Land Consolidation Act (25*
 10 *U.S.C. 2204) (as amended by section 6(a)(2)) is amended*
 11 *by adding at the end the following:*

12 “(d) *PARTITION OF HIGHLY FRACTIONATED INDIAN*
 13 *LANDS.—*

14 “(1) *APPLICABILITY.—This subsection shall be*
 15 *applicable only to parcels of land (including surface*
 16 *and subsurface interests, except with respect to a sub-*
 17 *surface interest that has been severed from the surface*
 18 *interest, in which case this subsection shall apply*
 19 *only to the surface interest) which the Secretary has*
 20 *determined, pursuant to paragraph (2)(B), to be par-*
 21 *cels of highly fractionated Indian land.*

22 “(2) *REQUIREMENTS.—Each partition action*
 23 *under this subsection shall be conducted by the Sec-*
 24 *retary in accordance with the following requirements:*

1 “(A) *APPLICATION*.—Upon receipt of any
 2 payment or bond required under subparagraph
 3 (B), the Secretary shall commence a process for
 4 partitioning a parcel of land by sale in accord-
 5 ance with the provisions of this subsection upon
 6 receipt of an application by—

7 “(i) the Indian tribe with jurisdiction
 8 over the subject land that owns an undi-
 9 vided interest in the parcel of land; or

10 “(ii) any person owning an undivided
 11 interest in the parcel of land who is eligible
 12 to bid at the sale of the parcel pursuant to
 13 subclause (II), (III), or (IV) of subpara-
 14 graph (I)(i);

15 provided that no such application shall be valid
 16 or considered if it is received by the Secretary
 17 prior to the date that is 1 year after the date on
 18 which notice is published pursuant to section
 19 8(a)(4) of the American Indian Probate Reform
 20 Act of 2004.

21 “(B) *COSTS OF SERVING NOTICE AND PUB-*
 22 *LICATION*.—The costs of serving and publishing
 23 notice under subparagraph (F) shall be borne by
 24 the applicant. Upon receiving written notice
 25 from the Secretary, the applicant must pay to

1 *the Secretary an amount determined by the Sec-*
 2 *retary to be the estimated costs of such service of*
 3 *notice and publication, or furnish a sufficient*
 4 *bond for such estimated costs within the time*
 5 *stated in the notice, failing which, unless an ex-*
 6 *tension is granted by the Secretary, the Sec-*
 7 *retary shall not be required to commence the*
 8 *partition process under subparagraph (A) and*
 9 *may deny the application. The Secretary shall*
 10 *have the discretion and authority in any case to*
 11 *waive either the payment or the bond (or any*
 12 *portion of such payment or bond) otherwise re-*
 13 *quired by this subparagraph, upon making a de-*
 14 *termination that such waiver will further the*
 15 *policies of this Act.*

16 *“(C) DETERMINATION.—Upon receipt of an*
 17 *application pursuant to subparagraph (A), the*
 18 *Secretary shall determine whether the subject*
 19 *parcel meets the requirements set forth in section*
 20 *202(6) (25 U.S.C. 2201(6)) to be classified as a*
 21 *parcel of highly fractionated Indian land.*

22 *“(D) CONSENT REQUIREMENTS.—*

23 *“(i) IN GENERAL.—A parcel of land*
 24 *may be partitioned under this subsection*

1 *only if the applicant obtains the written*
2 *consent of—*

3 “(I) *the Indian tribe with juris-*
4 *isdiction over the subject land if such In-*
5 *dian tribe owns an undivided interest*
6 *in the parcel;*

7 “(II) *any owner who, for the 3-*
8 *year period immediately preceding the*
9 *date on which the Secretary receives*
10 *the application, has*

11 “(aa) *continuously main-*
12 *tained a bona fide residence on*
13 *the parcel; or*

14 “(bb) *operated a bona fide*
15 *farm, ranch, or other business on*
16 *the parcel; and*

17 “(III) *the owners (including par-*
18 *ents of minor owners and legal guard-*
19 *ians of incompetent owners) of at least*
20 *50 percent of the undivided interests in*
21 *the parcel, but only in cases where the*
22 *Secretary determines that, based on the*
23 *final appraisal prepared pursuant to*
24 *subparagraph (F), any 1 owner’s total*
25 *undivided interest in the parcel (not*

1 *including the interest of an Indian*
 2 *tribe or that of the owner requesting*
 3 *the partition) has a value in excess of*
 4 *\$1,500.*

5 *Any consent required by this clause must be*
 6 *in writing and acknowledged before a no-*
 7 *tary public (or other official authorized to*
 8 *make acknowledgments), and shall be ap-*
 9 *proved by Secretary unless the Secretary*
 10 *has reason to believe that the consent was*
 11 *obtained as a result of fraud or undue in-*
 12 *fluence.*

13 “(ii) *CONSENT BY THE SECRETARY ON*
 14 *BEHALF OF CERTAIN INDIVIDUALS.—For the*
 15 *purposes of clause (i)(III), the Secretary*
 16 *may consent on behalf of—*

17 “(I) *undetermined heirs of trust*
 18 *or restricted interests and owners of*
 19 *such interests who are minors and*
 20 *legal incompetents having no parents*
 21 *or legal guardian; and*

22 “(II) *missing owners or owners of*
 23 *trust or restricted interests whose*
 24 *whereabouts are unknown, but only*
 25 *after a search for such owners has been*

1 *completed in accordance with the pro-*
2 *visions of this subsection.*

3 “(E) APPRAISAL.—*After the Secretary has*
4 *determined that the subject parcel is a parcel of*
5 *highly fractionated Indian land pursuant to sub-*
6 *paragraph (C), the Secretary shall cause to be*
7 *made, in accordance with the provisions of this*
8 *Act for establishing fair market value, an ap-*
9 *praisal of the fair market value of the subject*
10 *parcel.*

11 “(F) NOTICE TO OWNERS ON COMPLETION
12 OF APPRAISAL.—*Upon completion of the ap-*
13 *praisal, the Secretary shall give notice of the re-*
14 *quested partition and appraisal to all owners of*
15 *undivided interests in the parcel, in accordance*
16 *with principles of due process. Such notice shall*
17 *include the following requirements:*

18 “(i) WRITTEN NOTICE.—*The Secretary*
19 *shall attempt to give each owner written no-*
20 *tice of the partition action stating the fol-*
21 *lowing:*

22 “(I) *That a proceeding to parti-*
23 *tion the parcel of land by sale has been*
24 *commenced.*

1 “(II) *The legal description of the*
2 *subject parcel.*

3 “(III) *The owner’s ownership in-*
4 *terest in the subject parcel as evidenced*
5 *by the Secretary’s records as of the*
6 *date that owners are determined in ac-*
7 *cordance with clause (ii).*

8 “(IV) *The results of the appraisal.*

9 “(V) *The owner’s right to receive*
10 *a copy of the appraisal upon written*
11 *request.*

12 “(VI) *The owner’s right to com-*
13 *ment on or object to the proposed par-*
14 *tition and the appraisal.*

15 “(VII) *That the owner must time-*
16 *ly comment on or object in writing to*
17 *the proposed partition or the ap-*
18 *praisal, in order to receive notice of*
19 *approval of the appraisal and right to*
20 *appeal.*

21 “(VIII) *The date by which the*
22 *owner’s written comments or objections*
23 *must be received, which shall not be*
24 *less than 90 days after the date that*

1 *the notice is mailed under this clause*
 2 *or last published under clause (ii)(II).*

3 “(IX) *The address for requesting*
 4 *copies of the appraisal and for submit-*
 5 *ting written comments or objections.*

6 “(X) *The name and telephone*
 7 *number of the official to be contacted*
 8 *for purposes of obtaining information*
 9 *regarding the proceeding, including the*
 10 *time and date of the auction of the*
 11 *land or the date for submitting sealed*
 12 *bids.*

13 “(XI) *Any other information the*
 14 *Secretary deems to be appropriate.*

15 “(ii) *MANNER OF SERVICE.—*

16 “(I) *SERVICE BY CERTIFIED*
 17 *MAIL.—The Secretary shall use due*
 18 *diligence to provide all owners of inter-*
 19 *ests in the subject parcel, as evidenced*
 20 *by the Secretary’s records at the time*
 21 *of the determination under subpara-*
 22 *graph (C), with actual notice of the*
 23 *partition proceedings by mailing a*
 24 *copy of the written notice described in*
 25 *clause (i) by certified mail, restricted*

1 *delivery, to each such owner at the*
2 *owner's last known address. For pur-*
3 *poses of this subsection, owners shall be*
4 *determined from the Secretary's land*
5 *title records as of the date of the deter-*
6 *mination under subparagraph (C) or a*
7 *date that is not more than 90 days*
8 *prior to the date of mailing under this*
9 *clause, whichever is later. In the event*
10 *the written notice to an owner is re-*
11 *turned undelivered, the Secretary shall*
12 *attempt to obtain a current address for*
13 *such owner by conducting a reasonable*
14 *search (including a reasonable search*
15 *of records maintained by local, state,*
16 *Federal and tribal governments and*
17 *agencies) and by inquiring with the*
18 *Indian tribe with jurisdiction over the*
19 *subject parcel, and, if different from*
20 *that tribe, the Indian tribe of which*
21 *the owner is a member, and, if success-*
22 *ful in locating any such owner, send*
23 *written notice by certified mail in ac-*
24 *cordance 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

1 *building determined by the Sec-*
 2 *retary to be most appropriate for*
 3 *giving public notice) of the Indian*
 4 *tribe with jurisdiction over the*
 5 *parcel of land, if any; and*

6 *“(cc) in addition to the fore-*
 7 *going, in the Secretary’s discre-*
 8 *tion, publishing notice in any*
 9 *other place or means that the Sec-*
 10 *retary determines to be appro-*
 11 *priate.*

12 *“(G) REVIEW OF COMMENTS ON AP-*
 13 *PRAISAL.—*

14 *“(i) IN GENERAL.—After reviewing*
 15 *and considering comments or information*
 16 *timely submitted by any owner of an inter-*
 17 *est in the parcel in response to the notice re-*
 18 *quired under subparagraph (F), the Sec-*
 19 *retary may, consistent with the provisions*
 20 *of this Act for establishing fair market*
 21 *value—*

22 *“(I) order a new appraisal; or*

23 *“(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).

“(ii) NOTICE.—Notice shall be given—

“(I) in accordance with subparagraph (H), where the new appraisal results in a higher valuation of the land; 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;

1 “(iii) that the land will be sold for not
2 less than the appraised value, subject to the
3 consent requirements under paragraph
4 (2)(D);

5 “(iv) the time of the sale or for submit-
6 ting bids under subparagraph (I);

7 “(v) that the owner has the right,
8 under the Secretary’s regulations governing
9 administrative appeals, to pursue an ad-
10 ministrative appeal from—

11 “(I) the determination that the
12 land may be partitioned by sale under
13 the provisions of this section; and

14 “(II) the Secretary’s order ap-
15 proving the appraisal;

16 “(vi) the date by which an administra-
17 tive appeal must be taken, a citation to the
18 provisions of the Secretary’s regulations
19 that will govern the owner’s appeal, and
20 any other information required by such reg-
21 ulations to be given to parties affected by
22 adverse decisions of the Secretary;

23 “(vii) in cases where the Secretary de-
24 termines that any person’s undivided trust
25 or restricted interest in the parcel exceeds

1 \$1,500 pursuant to paragraph (2)(D)(iii),
 2 that the Secretary has authority to consent
 3 to the partition on behalf of undetermined
 4 heirs of trust or restricted interests in the
 5 parcel and owners of such interests whose
 6 whereabouts are unknown; and

7 “(viii) any other information the Sec-
 8 retary deems to be appropriate.

9 “(I) SALE TO ELIGIBLE PURCHASER.—

10 “(i) IN GENERAL.—Subject to clauses
 11 (ii) and (iii) and the consent requirements
 12 of paragraph (2)(D), the Secretary shall,
 13 after providing notice to owners under sub-
 14 paragraph (H), including the time and
 15 place of sale or for receiving sealed bids, at
 16 public auction or by sealed bid (whichever
 17 of such methods of sale the Secretary deter-
 18 mines to be more appropriate under the cir-
 19 cumstances) sell the parcel of land by com-
 20 petitive bid for not less than the final ap-
 21 praised fair market value to the highest bid-
 22 der from among the following eligible bid-
 23 ders:

24 “(I) The Indian tribe, if any,
 25 with jurisdiction over the trust or re-

1 *stricted interests in the parcel being*
2 *sold.*

3 *“(II) Any person who is a mem-*
4 *ber, or is eligible to be a member, of the*
5 *Indian tribe described in subclause (I).*

6 *“(III) Any person who is a mem-*
7 *ber, or is eligible to be a member, of an*
8 *Indian tribe but not of the tribe de-*
9 *scribed in subclause (I), but only if*
10 *such person already owns an undi-*
11 *vided interest in the parcel at the time*
12 *of sale.*

13 *“(IV) Any lineal descendent of the*
14 *original allottee of the parcel who is a*
15 *member or is eligible to be a member*
16 *of an Indian tribe or, with respect to*
17 *a parcel located in the State of Cali-*
18 *fornia that is not within an Indian*
19 *tribe’s reservation or not otherwise sub-*
20 *ject to the jurisdiction of an Indian*
21 *tribe, who is a member, or eligible to*
22 *be a member, of an Indian tribe or*
23 *owns a trust or restricted interest in*
24 *the parcel.*

1 “(ii) *RIGHT TO MATCH HIGHEST*
 2 *BID.*—*If the highest bidder is a person who*
 3 *is only eligible to bid under clause (i)(III),*
 4 *the Indian tribe that has jurisdiction over*
 5 *the parcel, if any, shall have the right to*
 6 *match the highest bid and acquire the par-*
 7 *cel, but only if—*

8 “(I) *prior to the date of the sale,*
 9 *the governing body of such tribe has*
 10 *adopted a tribal law or resolution re-*
 11 *serving its right to match the bids of*
 12 *such nonmember bidders in partition*
 13 *sales under this subsection and deliv-*
 14 *ered a copy of such law or resolution*
 15 *to the Secretary; and*

16 “(II) *the parcel is not acquired*
 17 *under clause (iii).*

18 “(iii) *RIGHT TO PURCHASE.*—*Any per-*
 19 *son who is a member, or eligible to be a*
 20 *member, of the Indian tribe with jurisdic-*
 21 *tion over the trust or restricted interests in*
 22 *the parcel being sold and is, as of the time*
 23 *of sale under this subparagraph, the owner*
 24 *of the largest undivided interest in the par-*
 25 *cel shall have a right to purchase the parcel*

1 *by tendering to the Secretary an amount*
2 *equal to the highest sufficient bid submitted*
3 *at the sale, less that amount of the bid at-*
4 *tributable to such owner's share, but only*
5 *if—*

6 *“(I) the owner submitted a suffi-*
7 *cient bid at the sale;*

8 *“(II) the owner's total undivided*
9 *interest in the parcel immediately*
10 *prior to the sale was—*

11 *“(aa) greater than the undi-*
12 *vided interest held by any other*
13 *co-owners, except where there are*
14 *2 or more co-owners whose inter-*
15 *ests are of equal size but larger*
16 *than the interests of all other co-*
17 *owners and such owners of the*
18 *largest interests have agreed in*
19 *writing that 1 of them may exer-*
20 *cise the right of purchase under*
21 *this clause; and*

22 *“(bb) equal to or greater than*
23 *20 percent of the entire undivided*
24 *ownership of the parcel;*

1 “(III) within 3 days following the
 2 date of the auction or for receiving
 3 sealed bids, and in accordance with the
 4 regulations adopted to implement this
 5 section, the owner delivers to the Sec-
 6 retary a written notice of intent to ex-
 7 ercise the owner’s rights under this
 8 clause; and

9 “(IV) such owner tenders the
 10 amount of the purchase price required
 11 under this clause—

12 “(aa) not less than 30 days
 13 after the date of the auction or
 14 time for receiving sealed bids; and

15 “(bb) in accordance with any
 16 requirements of the regulations
 17 promulgated to implement this
 18 section.

19 “(iv) *INTEREST ACQUIRED*.—A pur-
 20 chaser of a parcel of land under this sub-
 21 paragraph shall acquire title to the parcel
 22 in trust or restricted status, free and clear
 23 of any and all claims of title or ownership
 24 of all persons or entities (not including the
 25 United States) owning or claiming to own

1 *an interest in such parcel prior to the time*
 2 *of sale.*

3 “(J) *PROCEEDS OF SALE.*—

4 “(i) *Subject to clauses (ii) and (iii),*
 5 *the Secretary shall distribute the proceeds of*
 6 *sale of a parcel of land under the provisions*
 7 *of this section to the owners of interests in*
 8 *such parcel in proportion to their respective*
 9 *ownership interests.*

10 “(ii) *Proceeds attributable to the sale*
 11 *of trust or restricted interests shall be main-*
 12 *tained in accounts as trust personalty.*

13 “(iii) *Proceeds attributable to the sale*
 14 *of interests of owners whose whereabouts are*
 15 *unknown, of undetermined heirs, and of*
 16 *other persons whose ownership interests*
 17 *have not been recorded shall be held by the*
 18 *Secretary until such owners, heirs, or other*
 19 *persons have been determined, at which*
 20 *time such proceeds shall be distributed in*
 21 *accordance with clauses (i) and (ii).*

22 “(K) *LACK OF BIDS OR CONSENT.*—

23 “(i) *LACK OF BIDS.*—*If no bidder de-*
 24 *scribed in subparagraph (I) presents a bid*

1 *that equals or exceeds the final appraised*
2 *value, the Secretary may either—*

3 “(I) *purchase the parcel of land*
4 *for its appraised fair market value on*
5 *behalf of the Indian tribe with jurisdic-*
6 *tion over the land, subject to the lien*
7 *and procedures provided under section*
8 *214(b) (25 U.S.C. 2213(b)); or*

9 “(II) *terminate the partition*
10 *process.*

11 “(ii) *LACK OF CONSENT.—If an appli-*
12 *cant fails to obtain any applicable consent*
13 *required under the provisions of subpara-*
14 *graph (D) by the date established by the*
15 *Secretary prior to the proposed sale, the*
16 *Secretary may either extend the time for ob-*
17 *taining any such consent or deny the re-*
18 *quest for partition.*

19 “(3) *ENFORCEMENT.—*

20 “(A) *IN GENERAL.—If a partition is ap-*
21 *proved under this subsection and an owner of an*
22 *interest in the parcel of land refuses to surrender*
23 *possession in accordance with the partition deci-*
24 *sion, or refuses to execute any conveyance nec-*

1 *essary to implement the partition, then any af-*
 2 *ected owner or the United States may—*

3 “(i) *commence a civil action in the*
 4 *United States district court for the district*
 5 *in which the parcel of land is located; and*

6 “(ii) *request that the court issue an*
 7 *order for ejectment or any other appropriate*
 8 *remedy necessary for the partition of the*
 9 *land by sale.*

10 “(B) *FEDERAL ROLE.—With respect to any*
 11 *civil action brought under subparagraph (A)—*

12 “(i) *the United States—*

13 “(I) *shall receive notice of the*
 14 *civil action; and*

15 “(II) *may be a party to the civil*
 16 *action; and*

17 “(ii) *the civil action shall not be dis-*
 18 *missed, and no relief requested shall be de-*
 19 *nied, on the ground that the civil action is*
 20 *against the United States or that the*
 21 *United States is a necessary and indispen-*
 22 *sable party.*

23 “(4) *GRANTS AND LOANS.—The Secretary may*
 24 *provide grants and low interest loans to successful*

1 *bidders at sales authorized by this subsection, pro-*
 2 *vided that—*

3 *“(A) the total amount of such assistance in*
 4 *any such sale shall not exceed 20 percent of the*
 5 *appraised value of the parcel of land sold; and*

6 *“(B) the grant or loan funds provided shall*
 7 *only be applied toward the purchase price of the*
 8 *parcel of land sold.*

9 *“(5) REGULATIONS.—The Secretary is author-*
 10 *ized to adopt such regulations as may be necessary to*
 11 *implement the provisions of this subsection. Such reg-*
 12 *ulations shall include provisions for giving notice of*
 13 *sales to prospective purchasers eligible to submit bids*
 14 *at sales conducted under paragraph (2)(I).”.*

15 **SEC. 5. OWNER-MANAGED INTERESTS.**

16 *The Indian Land Consolidation Act (25 U.S.C. 2201*
 17 *et seq.) is amended by adding at the end the following:*

18 **“SEC. 221. OWNER-MANAGED INTERESTS.**

19 *“(a) PURPOSE.—The purpose of this section is to pro-*
 20 *vide a means for the co-owners of trust or restricted interests*
 21 *in a parcel of land to enter into surface leases of such parcel*
 22 *for certain purposes without approval of the Secretary.*

23 *“(b) MINERAL INTERESTS.—Nothing in this section*
 24 *shall be construed to limit or otherwise affect the applica-*
 25 *tion of any Federal law requiring the Secretary to approve*

1 *mineral leases or other agreements for the development of*
 2 *the mineral interest in trust or restricted land.*

3 “(c) *OWNER MANAGEMENT.*—

4 “(1) *IN GENERAL.*—Notwithstanding any provi-
 5 *sion of Federal law requiring the Secretary to ap-*
 6 *prove individual Indian leases of individual Indian*
 7 *trust or restricted land, where the owners of all of the*
 8 *undivided trust or restricted interests in a parcel of*
 9 *land have submitted applications to the Secretary*
 10 *pursuant to subsection (a), and the Secretary has ap-*
 11 *proved such applications under subsection (d), such*
 12 *owners may, without further approval by the Sec-*
 13 *retary, enter into a lease of the parcel for agricultural*
 14 *purposes for a term not to exceed 10 years.*

15 “(2) *RULE OF CONSTRUCTION.*—No such lease
 16 *shall be effective until it has been executed by the*
 17 *owners of all undivided trust or restricted interests in*
 18 *the parcel.*

19 “(d) *APPROVAL OF APPLICATIONS FOR OWNER MAN-*
 20 *AGEMENT.*—

21 “(1) *IN GENERAL.*—Subject to the provisions of
 22 *paragraph (2), the Secretary shall approve an appli-*
 23 *cation for owner management submitted by a quali-*
 24 *fied applicant pursuant to this section unless the Sec-*
 25 *retary has reason to believe that the applicant is sub-*

1 *mitting the application as the result of fraud or*
 2 *undue influence. No such application shall be valid or*
 3 *considered if it is received by the Secretary prior to*
 4 *the date that is 1 year after the date on which notice*
 5 *is published pursuant to section 8(a)(4) of the Amer-*
 6 *ican Indian Probate Reform Act of 2004.*

7 *“(2) COMMENCEMENT OF OWNER-MANAGED STA-*
 8 *TUS.—Notwithstanding the approval of 1 or more ap-*
 9 *plications pursuant to paragraph (1), no trust or re-*
 10 *stricted interest in a parcel of land shall acquire*
 11 *owner-managed status until applications for all of the*
 12 *trust or restricted interests in such parcel of land*
 13 *have been submitted to and approved by the Secretary*
 14 *pursuant to this section.*

15 *“(e) VALIDITY OF LEASES.—No lease of trust or re-*
 16 *stricted interests in a parcel of land that is owner-managed*
 17 *under this section shall be valid or enforceable against the*
 18 *owners of such interests, or against the land, the interest*
 19 *or the United States, unless such lease—*

20 *“(1) is consistent with, and entered into in ac-*
 21 *cordance with, the requirements of this section; or*

22 *“(2) has been approved by the Secretary in ac-*
 23 *cordance with other Federal laws applicable to the*
 24 *leasing of trust or restricted land.*

1 “(f) *LEASE REVENUES.*—*The Secretary shall not be re-*
 2 *sponsible for the collection of, or accounting for, any lease*
 3 *revenues accruing to any interests under a lease authorized*
 4 *by subsection (e), so long as such interest is in owner-man-*
 5 *aged status under the provisions of this section.*

6 “(g) *JURISDICTION.*—

7 “(1) *JURISDICTION UNAFFECTED BY STATUS.*—
 8 *The Indian tribe with jurisdiction over an interest in*
 9 *trust or restricted land that becomes owner-managed*
 10 *pursuant to this section shall continue to have juris-*
 11 *isdiction over the interest to the same extent and in all*
 12 *respects that such tribe had prior to the interest ac-*
 13 *quiring owner-managed status.*

14 “(2) *PERSONS USING LAND.*—*Any person hold-*
 15 *ing, leasing, or otherwise using such interest in land*
 16 *shall be considered to consent to the jurisdiction of the*
 17 *Indian tribe referred to in paragraph (1), including*
 18 *such tribe’s laws and regulations, if any, relating to*
 19 *the use, and any effects associated with the use, of the*
 20 *interest.*

21 “(h) *CONTINUATION OF OWNER-MANAGED STATUS;*
 22 *REVOCATION.*—

23 “(1) *IN GENERAL.*—*Subject to the provisions of*
 24 *paragraph (2), after the applications of the owners of*
 25 *all of the trust or restricted interests in a parcel of*

1 *land have been approved by the Secretary pursuant*
2 *to subsection (d), each such interest shall continue in*
3 *owner-managed status under this section notwith-*
4 *standing any subsequent conveyance of the interest in*
5 *trust or restricted status to another person or the sub-*
6 *sequent descent of the interest in trust or restricted*
7 *status by testate or intestate succession to 1 or more*
8 *heirs.*

9 “(2) *REVOCATION.*—*Owner-managed status of an*
10 *interest may be revoked upon written request of the*
11 *owners (including the parents or legal guardians of*
12 *minors or incompetent owners) of all trust or re-*
13 *stricted interests in the parcel, submitted to the Sec-*
14 *retary in accordance with regulations adopted under*
15 *subsection (l). The revocation shall become effective as*
16 *of the date on which the last of all such requests has*
17 *been delivered to the Secretary.*

18 “(3) *EFFECT OF REVOCATION.*—*Revocation of*
19 *owner-managed status under paragraph (2) shall not*
20 *affect the validity of any lease made in accordance*
21 *with the provisions of this section prior to the effective*
22 *date of the revocation, provided that, after such rev-*
23 *ocation becomes effective, the Secretary shall be re-*
24 *sponsible for the collection of, and accounting for, all*
25 *future lease revenues accruing to the trust or re-*

1 *stricted interests in the parcel from and after such ef-*
 2 *fective date.*

3 “(i) *DEFINED TERMS.*—

4 “(1) *For purposes of subsection (d)(1), the term*
 5 *‘qualified applicant’ means—*

6 “(A) *a person over the age of 18 who owns*
 7 *a trust or restricted interest in a parcel of land;*
 8 *and*

9 “(B) *the parent or legal guardian of a*
 10 *minor or incompetent person who owns a trust*
 11 *or restricted interest in a parcel of land.*

12 “(2) *For purposes of this section, the term*
 13 *‘owner-managed status’ means, with respect to a trust*
 14 *or restricted interest, that—*

15 “(A) *the interest is a trust or restricted in-*
 16 *terest in a parcel of land for which applications*
 17 *covering all trust or restricted interests in such*
 18 *parcel have been submitted to and approved by*
 19 *the Secretary pursuant to subsection (d);*

20 “(B) *the interest may be leased without ap-*
 21 *proval of the Secretary pursuant to, and in a*
 22 *manner that is consistent with, the requirements*
 23 *of this section; and*

24 “(C) *no revocation has occurred under sub-*
 25 *section (h)(2).*

1 “(j) *SECRETARIAL APPROVAL OF OTHER TRANS-*
 2 *ACTIONS.*—*Except with respect to the specific lease trans-*
 3 *action described in paragraph (1) of subsection (c), interests*
 4 *that acquire owner-managed status under the provisions of*
 5 *this section shall continue to be subject to all Federal laws*
 6 *requiring the Secretary to approve transactions involving*
 7 *trust or restricted land (including leases with terms of a*
 8 *duration in excess of 10 years) that would otherwise apply*
 9 *to such interests if the interests had not acquired owner-*
 10 *managed status under this section.*

11 “(k) *EFFECT OF SECTION.*—*Subject to subsections (c),*
 12 *(f), and (h), nothing in this section diminishes or otherwise*
 13 *affects any authority or responsibility of the Secretary with*
 14 *respect to an interest in trust or restricted land.”.*

15 **SEC. 6. ADDITIONAL AMENDMENTS.**

16 (a) *IN GENERAL.*—*The Indian Land Consolidation*
 17 *Act (25 U.S.C. 2201 et seq.) is amended—*

18 (1) *in the second sentence of section 205(a) (25*
 19 *U.S.C. 2204(a)), by striking “over 50 per centum of*
 20 *the undivided interests” and inserting “undivided in-*
 21 *terests equal to at least 50 percent of the undivided*
 22 *interest”;*

23 (2) *in section 207 (25 U.S.C. 2206), by adding*
 24 *a subsection at the end as follows:*

25 “(p) *PURCHASE OPTION AT PROBATE.*—

1 “(1) *IN GENERAL.*—*The trust or restricted inter-*
 2 *ests in a parcel of land in the decedent’s estate may*
 3 *be purchased at probate in accordance with the provi-*
 4 *sions of this subsection.*

5 “(2) *SALE OF INTEREST AT FAIR MARKET*
 6 *VALUE.*—*Subject to paragraph (3), the Secretary is*
 7 *authorized to sell trust or restricted interests in land*
 8 *subject to this subsection, including the interest that*
 9 *a surviving spouse would otherwise receive under sec-*
 10 *tion 207(a)(2) (A) or (D), at no less than fair market*
 11 *value, as determined in accordance with the provi-*
 12 *sions of this Act, to any of the following eligible pur-*
 13 *chasers:*

14 “(A) *Any other eligible heir taking an inter-*
 15 *est in the same parcel of land by intestate succes-*
 16 *sion or the decedent’s other devisees of interests*
 17 *in the same parcel who are eligible to receive a*
 18 *devise under section 207(b)(1)(A).*

19 “(B) *All persons who own undivided trust*
 20 *or restricted interests in the same parcel of land*
 21 *involved in the probate proceeding.*

22 “(C) *The Indian tribe with jurisdiction over*
 23 *the interest, or the Secretary on behalf of such*
 24 *Indian tribe.*

1 “(3) *REQUEST TO PURCHASE; AUCTION; CONSENT*
 2 *REQUIREMENTS.*—No sale of an interest in probate
 3 shall occur under this subsection unless—

4 “(A) an eligible purchaser described in
 5 paragraph (2) submits a written request to pur-
 6 chase prior to the distribution of the interest to
 7 heirs or devisees of the decedent and in accord-
 8 ance with any regulations of the Secretary; and

9 “(B) except as provided in paragraph (5),
 10 the heirs or devisees of such interest, and the de-
 11 cedent’s surviving spouse, if any, receiving a life
 12 estate under section 207(a)(2) (A) or (D) consent
 13 to the sale.

14 If the Secretary receives more than 1 request to pur-
 15 chase the same interest, the Secretary shall sell the in-
 16 terest by public auction or sealed bid (as determined
 17 by the Secretary) at not less than the appraised fair
 18 market value to the eligible purchaser submitting the
 19 highest bid.

20 “(4) *APPRAISAL AND NOTICE.*—Prior to the sale
 21 of an interest pursuant to this subsection, the Sec-
 22 retary shall—

23 “(A) appraise the interest at its fair market
 24 value in accordance with this Act;

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

6 “(C) if the Secretary receives more than 1
 7 request to purchase the interest by a person de-
 8 scribed in subparagraph (B), provide notice of
 9 the manner (auction or sealed bid), time and
 10 place of the sale, a description, and the ap-
 11 praised fair market value, of the interest to be
 12 sold—

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

16 “(ii) to all other eligible purchasers, by
 17 posting written notice in at least 5 con-
 18 spicuous places in the vicinity of the place
 19 of hearing.

20 “(5) SMALL UNDIVIDED INTERESTS IN INDIAN
 21 LANDS.—

22 “(A) IN GENERAL.—Subject to subpara-
 23 graph (B), the consent of a person who is an heir
 24 otherwise required under paragraph (3)(B) shall

1 *not be required for the auction and sale of an in-*
 2 *terest at probate under this subsection if—*

3 “(i) *the interest is passing by intestate*
 4 *succession; and*

5 “(ii) *prior to the auction the Secretary*
 6 *determines in the probate proceeding that*
 7 *the interest passing to such heir represents*
 8 *less than 5 percent of the entire undivided*
 9 *ownership of the parcel of land as evidenced*
 10 *by the Secretary’s records as of the time the*
 11 *determination is made.*

12 “(B) *EXCEPTION.—Notwithstanding sub-*
 13 *paragraph (A), the consent of such heir shall be*
 14 *required for the sale at probate of the heir’s in-*
 15 *terest if, at the time of the decedent’s death, the*
 16 *heir was residing on the parcel of land of which*
 17 *the interest to be sold was a part.*

18 “(6) *DISTRIBUTION OF PROCEEDS.—Proceeds*
 19 *from the sale of interests under this subsection shall*
 20 *be distributed to the heirs, devisees, or spouse whose*
 21 *interest was sold in accordance with the values of*
 22 *their respective interests. The proceeds attributable to*
 23 *an heir or devisee shall be held in an account as trust*
 24 *personalty if the interest sold would have otherwise*

1 *passed to the heir or devisee in trust or restricted sta-*
 2 *tus.”;*

3 *(3) in section 206 (25 U.S.C. 2205)—*

4 *(A) in subsection (a), by striking paragraph*
 5 *(3) and inserting the following:*

6 “(3) *TRIBAL PROBATE CODES.—Except as pro-*
 7 *vided in any applicable Federal law, the Secretary*
 8 *shall not approve a tribal probate code, or an amend-*
 9 *ment to such a code, that prohibits the devise of an*
 10 *interest in trust or restricted land to—*

11 “(A) *an Indian lineal descendant of the*
 12 *original allottee; or*

13 “(B) *an Indian who is not a member of the*
 14 *Indian tribe with jurisdiction over such an in-*
 15 *terest;*

16 *unless the code provides for—*

17 “(i) *the renouncing of interests to eligi-*
 18 *ble devisees in accordance with the code;*

19 “(ii) *the opportunity for a devisee who*
 20 *is the spouse or lineal descendant of a tes-*
 21 *tator to reserve a life estate without regard*
 22 *to waste; and*

23 “(iii) *payment of fair market value in*
 24 *the manner prescribed under subsection*
 25 *(c)(2).”; and*

1 *(B) in subsection (c)—*

2 *(i) in paragraph (1)—*

3 *(I) by striking the paragraph*
 4 *heading and inserting the following:*

5 *“(1) AUTHORITY.—*

6 *“(A) IN GENERAL.—”;*

7 *(II) in the first sentence of sub-*
 8 *paragraph (A) (as redesignated by*
 9 *clause (i)), by striking “section*
 10 *207(a)(6)(A) of this title” and insert-*
 11 *ing “section 207(b)(2)(A)(ii) of this*
 12 *title”; and*

13 *(III) by striking the last sentence*
 14 *and inserting the following:*

15 *“(B) TRANSFER.—The Secretary shall*
 16 *transfer payments received under subparagraph*
 17 *(A) to any person or persons who would have re-*
 18 *ceived an interest in land if the interest had not*
 19 *been acquired by the Indian tribe in accordance*
 20 *with this paragraph.”; and*

21 *(ii) in paragraph (2)—*

22 *(I) in subparagraph (A)—*

23 *(aa) by striking the subpara-*
 24 *graph heading and all that follows*
 25 *through “Paragraph (1) shall not*

1 *apply” and inserting the fol-*
 2 *lowing:*

3 *“(A) INAPPLICABILITY TO CERTAIN INTER-*
 4 *ESTS.—*

5 *“(i) IN GENERAL.—Paragraph (1)*
 6 *shall not apply”;*

7 *(bb) in clause (i) (as redesign-*
 8 *ated by item (aa)), by striking*
 9 *“if, while” and inserting the fol-*
 10 *lowing: “if—*

11 *“(I) while”;*

12 *(cc) by striking the period at*
 13 *the end and inserting “; or”; and*

14 *(dd) by adding at the end the*
 15 *following:*

16 *“(II)(aa) the interest is part of a*
 17 *family farm that is devised to a mem-*
 18 *ber of the family of the decedent; and*

19 *“(bb) the devisee agrees that the*
 20 *Indian tribe with jurisdiction over the*
 21 *land will have the opportunity to ac-*
 22 *quire the interest for fair market value*
 23 *if the interest is offered for sale to a*
 24 *person or entity that is not a member*
 25 *of the family of the owner of the land.*

1 “(ii) *RECORDING OF INTEREST.*—On
 2 request by the Indian tribe described in
 3 clause (i)(II)(bb), a restriction relating to
 4 the acquisition by the Indian tribe of an in-
 5 terest in a family farm involved shall be re-
 6 corded as part of the deed relating to the in-
 7 terest involved.

8 “(iii) *MORTGAGE AND FORE-*
 9 *CLOSURE.*—Nothing in clause (i)(II) lim-
 10 its—

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

14 “(II) the right of the entity hold-
 15 ing such a mortgage to foreclose or oth-
 16 erwise enforce such a mortgage agree-
 17 ment in accordance with applicable
 18 law.

19 “(iv) *DEFINITION OF ‘MEMBER OF THE*
 20 *FAMILY’.*—In this paragraph, the term
 21 ‘member of the family’, with respect to a de-
 22 cedent or landowner, means—

23 “(I) a lineal descendant of a dece-
 24 dent or landowner;

1 “(II) a lineal descendant of the
2 grandparent of a decedent or land-
3 owner;

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

7 “(IV) the spouse of a decedent or
8 landowner.”; and

9 (II) in subparagraph (B), by
10 striking “subparagraph (A)” and all
11 that follows through “207(a)(6)(B) of
12 this title” and inserting “paragraph
13 (1)”;

14 (4) in section 207 (25 U.S.C. 2206), by striking
15 subsection (g);

16 (5) in section 213 (25 U.S.C. 2212)—

17 (A) by striking the section heading and in-
18 serting the following:

19 **“SEC. 2212. FRACTIONAL INTEREST ACQUISITION PRO-**
20 **GRAM.”;**

21 (B) in subsection (a), by—

22 (i) adding in paragraph (1) “or from
23 an heir during probate in accordance with
24 section 207(p) (25 U.S.C. 2206(p))” after
25 “owner,”; and

1 (ii) striking “(2) *AUTHORITY OF SEC-*
 2 *RETARY.—*” and all that follows through
 3 “the Secretary shall submit” and inserting
 4 the following:

5 “(2) *AUTHORITY OF SECRETARY.—The Secretary*
 6 *shall submit*”; and

7 (iii) by striking “whether the program
 8 to acquire fractional interests should be ex-
 9 tended or altered to make resources” and in-
 10 serting “how the fractional interest acqui-
 11 sition program should be enhanced to in-
 12 crease the resources made”;

13 (C) in subsection (b), by striking paragraph
 14 (4) and inserting the following:

15 “(4) shall minimize the administrative costs as-
 16 sociated with the land acquisition program through
 17 the use of policies and procedures designed to accom-
 18 modate the voluntary sale of interests under this sec-
 19 tion, notwithstanding the existence of any otherwise
 20 applicable policy, procedure, or regulation, through
 21 the elimination of duplicate—

22 “(A) conveyance documents;

23 “(B) administrative proceedings; and

24 “(C) transactions.”;

25 (D) in subsection (c)—

1 *(i) in paragraph (1)—*

2 *(I) in subparagraph (A), by strik-*
3 *ing “at least 5 percent of the” and in-*
4 *serting in its place “an”;*

5 *(II) in subparagraph (A), by in-*
6 *serting “in such parcel” following “the*
7 *Secretary shall convey an interest”;*

8 *(III) in subparagraph (A), by*
9 *striking “landowner upon payment”*
10 *and all that follows and inserting the*
11 *following: “landowner—*

12 *“(i) on payment by the Indian land-*
13 *owner of the amount paid for the interest by*
14 *the Secretary; or*

15 *“(ii) if—*

16 *“(I) the Indian referred to in this*
17 *subparagraph provides assurances that*
18 *the purchase price will be paid by*
19 *pledging revenue from any source, in-*
20 *cluding trust resources; and*

21 *“(II) the Secretary determines*
22 *that the purchase price will be paid in*
23 *a timely and efficient manner.”; and*

24 *(IV) in subparagraph (B), by in-*
25 *serting before the period at the end the*

1 following: “unless the interest is subject
 2 to a foreclosure of a mortgage in ac-
 3 cordance with the Act of March 29,
 4 1956 (25 U.S.C. 483a)”;

5 (ii) in paragraph (3), by striking “10
 6 percent or more of the undivided interests”
 7 and inserting “an undivided interest”; and
 8 (E) by adding at the end of the section:

9 “(d) *AUTHORIZATION OF APPROPRIATIONS.—There is*
 10 *authorized to be appropriated to carry out this section*
 11 *\$75,000,000 for fiscal year 2005, \$95,000,000 for fiscal year*
 12 *2006, and \$145,000,000 for each of fiscal years 2007*
 13 *through 2010.”;*

14 (6) in section 214 (25 U.S.C. 2213), by striking
 15 subsection (b) and inserting the following:

16 “(b) *APPLICATION OF REVENUE FROM ACQUIRED IN-*
 17 *TERESTS TO LAND CONSOLIDATION PROGRAM.—*

18 “(1) *IN GENERAL.—The Secretary shall have a*
 19 *lien on any revenue accruing to an interest described*
 20 *in subsection (a) until the Secretary provides for the*
 21 *removal of the lien under paragraph (3), (4), or (5).*

22 “(2) *REQUIREMENTS.—*

23 “(A) *IN GENERAL.—Until the Secretary re-*
 24 *moves a lien from an interest in land under*
 25 *paragraph (1)—*

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

7 “(ii) any revenue derived from any in-
 8 terest acquired by the Secretary in accord-
 9 ance with section 213 shall be deposited in
 10 the fund created under section 216.

11 “(B) APPROVAL OF TRANSACTIONS.—Not-
 12 withstanding section 16 of the Act of June 18,
 13 1934 (commonly known as the ‘Indian Reorga-
 14 nization Act’) (25 U.S.C. 476), or any other pro-
 15 vision of law, until the Secretary removes a lien
 16 from an interest in land under paragraph (1),
 17 the Secretary may approve a transaction covered
 18 under this section on behalf of an Indian tribe.

19 “(3) REMOVAL OF LIENS AFTER FINDINGS.—The
 20 Secretary may remove a lien referred to in paragraph
 21 (1) if the Secretary makes a finding that—

22 “(A) the costs of administering the interest
 23 from which revenue accrues under the lien will
 24 equal or exceed the projected revenues for the
 25 parcel of land involved;

1 “(B) in the discretion of the Secretary, it
 2 will take an unreasonable period of time for the
 3 parcel of land to generate revenue that equals the
 4 purchase price paid for the interest; or

5 “(C) a subsequent decrease in the value of
 6 land or commodities associated with the parcel of
 7 land make it likely that the interest will be un-
 8 able to generate revenue that equals the purchase
 9 price paid for the interest in a reasonable time.

10 “(4) REMOVAL OF LIENS UPON PAYMENT INTO
 11 THE ACQUISITION FUND.—The Secretary shall remove
 12 a lien referred to in paragraph (1) upon payment of
 13 an amount equal to the purchase price of that interest
 14 in land into the Acquisition Fund created under sec-
 15 tion 2215 of this title, except where the tribe with ju-
 16 risdiction over such interest in land authorizes the
 17 Secretary to continue the lien in order to generate ad-
 18 ditional acquisition funds.

19 “(5) OTHER REMOVAL OF LIENS.—The Secretary
 20 may, in consultation with tribal governments and
 21 other entities described in section 213(b)(3), periodi-
 22 cally remove liens referred to in paragraph (1) from
 23 interests in land acquired by the Secretary.”;

1 (7) *in section 215 (25 U.S.C. 2214), in the last*
 2 *sentence, by striking “section 2212 of this title” and*
 3 *inserting “this Act”;*

4 (8) *in section 216 (25 U.S.C. 2215)—*

5 *(A) in subsection (a), by striking paragraph*
 6 *(2) and inserting the following:*

7 *“(2) collect all revenues received from the lease,*
 8 *permit, or sale of resources from interests acquired*
 9 *under section 213 or paid by Indian landowners*
 10 *under section 213.”; and*

11 *(B) in subsection (b)—*

12 *(i) in paragraph (1)—*

13 *(I) in the matter preceding sub-*
 14 *paragraph (A), by striking “Subject to*
 15 *paragraph (2), all” and inserting*
 16 *“All”;*

17 *(II) in subparagraph (A), by*
 18 *striking “and” at the end;*

19 *(III) in subparagraph (B), by*
 20 *striking the period at the end and in-*
 21 *serting “; and”; and*

22 *(IV) by adding at the end the fol-*
 23 *lowing:*

1 “(C) *be used to acquire undivided interests*
 2 *on the reservation from which the income was*
 3 *derived.*”; and

4 (ii) *by striking paragraph (2) and in-*
 5 *serting the following:*

6 “(2) *USE OF FUNDS.—The Secretary may use*
 7 *the revenue deposited in the Acquisition Fund under*
 8 *paragraph (1) to acquire some or all of the undivided*
 9 *interests in any parcels of land in accordance with*
 10 *section 205.*”;

11 (9) *in section 217 (25 U.S.C. 2216)—*

12 (A) *in subsection (b)(1), by striking sub-*
 13 *paragraph (B) and inserting a new subpara-*
 14 *graph (B) as follows:*

15 “(B) *WAIVER OF REQUIREMENT.—The re-*
 16 *quirement for an estimate of value under sub-*
 17 *paragraph (A) may be waived in writing by an*
 18 *owner of a trust or restricted interest in land ei-*
 19 *ther selling, exchanging, or conveying by gift*
 20 *deed for no or nominal consideration such inter-*
 21 *est—*

22 “(i) *to an Indian person who is the*
 23 *owner’s spouse, brother, sister, lineal ances-*
 24 *tor, lineal descendant, or collateral heir; or*

1 “(ii) to an Indian co-owner or to the
 2 tribe with jurisdiction over the subject par-
 3 cel of land, where the grantor owns a frac-
 4 tional interest that represents 5 percent or
 5 less of the parcel.”;

6 (B) in subsection (e), by striking the matter
 7 preceding paragraph (1), and inserting “Not-
 8 withstanding any other provision of law, the
 9 names and mailing addresses of the owners of
 10 any interest in trust or restricted lands, and in-
 11 formation on the location of the parcel and the
 12 percentage of undivided interest owned by each
 13 individual shall, upon written request, be made
 14 available to”;

15 (C) in subsection (e)(1), by striking “In-
 16 dian”;

17 (D) in subsection (e)(3), by striking “pro-
 18 spective applicants for the leasing, use, or con-
 19 solidation of” and inserting “any person that is
 20 leasing, using, or consolidating, or is applying to
 21 lease, use, or consolidate,”; and

22 (E) by striking subsection (f) and inserting
 23 the following:

24 “(f) *PURCHASE OF LAND BY INDIAN TRIBE.*—

1 “(1) *IN GENERAL.*—*Except as provided in para-*
 2 *graph (2), before the Secretary approves an applica-*
 3 *tion to terminate the trust status or remove the re-*
 4 *strictions on alienation from a parcel of, or interest*
 5 *in, trust or restricted land, the Indian tribe with ju-*
 6 *risdiction over the parcel shall have the oppor-*
 7 *tunity—*

8 “(A) *to match any offer contained in the*
 9 *application; or*

10 “(B) *in a case in which there is no pur-*
 11 *chase price offered, to acquire the interest in the*
 12 *parcel by paying the fair market value of the in-*
 13 *terest.*

14 “(2) *EXCEPTION FOR FAMILY FARMS.*—

15 “(A) *IN GENERAL.*—*Paragraph (1) shall*
 16 *not apply to a parcel of, or interest in, trust or*
 17 *restricted land that is part of a family farm that*
 18 *is conveyed to a member of the family of a land-*
 19 *owner (as defined in section 206(c)(2)(A)(iv)) if*
 20 *the conveyance requires that in the event that the*
 21 *parcel or interest is offered for sale to an entity*
 22 *or person that is not a member of the family of*
 23 *the landowner, the Indian tribe with jurisdiction*
 24 *over the land shall be afforded the opportunity to*
 25 *purchase the interest pursuant to paragraph (1).*

1 “(B) *APPLICABILITY OF OTHER PROVI-*
 2 *SION.—Section 206(c)(2)(A) shall apply with re-*
 3 *spect to the recording and mortgaging of any*
 4 *trust or restricted land referred to in subpara-*
 5 *graph (A).”;*

6 (10) *in section 219(b)(1)(A) (25 U.S.C.*
 7 *2218(b)(1)(A)), by striking “100” and inserting “90”;*
 8 *and*

9 (11) *in section 219, by adding at the end of the*
 10 *section:*

11 “(g) *OTHER LAWS.—Nothing in this Act shall be con-*
 12 *strued to supersede, repeal, or modify any general or spe-*
 13 *cific statute authorizing the grant or approval of any type*
 14 *of land use transaction involving fractional interests in*
 15 *trust or restricted land.”.*

16 (b) *DEFINITIONS.—Section 202 of the Indian Land*
 17 *Consolidation Act (25 U.S.C. 2201) is amended—*

18 (1) *by striking paragraph (2) and inserting the*
 19 *following:*

20 “(2) *‘Indian’ means—*

21 “(A) *any person who is a member of any*
 22 *Indian tribe, is eligible to become a member of*
 23 *any Indian tribe, or is an owner (as of the date*
 24 *of enactment of the American Indian Probate*

1 *Reform Act of 2004) of a trust or restricted in-*
 2 *terest in land;*

3 *“(B) any person meeting the definition of*
 4 *Indian under the Indian Reorganization Act (25*
 5 *U.S.C. 479) and the regulations promulgated*
 6 *thereunder; and*

7 *“(C) with respect to the inheritance and*
 8 *ownership of trust or restricted land in the State*
 9 *of California pursuant to section 207, any per-*
 10 *son described in subparagraph (A) or (B) or any*
 11 *person who owns a trust or restricted interest in*
 12 *a parcel of such land in that State.”;*

13 *(2) by striking paragraph (4) and inserting the*
 14 *following:*

15 *“(4) ‘trust or restricted lands’ means lands, title*
 16 *to which is held by the United States in trust for an*
 17 *Indian tribe or individual, or which is held by an In-*
 18 *dian tribe or individual subject to a restriction by the*
 19 *United States against alienation; and ‘trust or re-*
 20 *stricted interest in land’ or ‘trust or restricted interest*
 21 *in a parcel of land’ means an interest in land, title*
 22 *to which is held in trust by the United States for an*
 23 *Indian tribe or individual, or which is held by an In-*
 24 *dian tribe or individual subject to a restriction by the*
 25 *United States against alienation.”; and*

1 (3) *by adding at the end the following:*

2 “(6) ‘parcel of highly fractionated Indian land’
3 *means a parcel of land that the Secretary, pursuant*
4 *to authority under a provision of this Act, determines*
5 *to have, as evidenced by the Secretary’s records at the*
6 *time of the determination—*

7 “(A) *50 or more but less than 100 co-owners*
8 *of undivided trust or restricted interests, and no*
9 *1 of such co-owners holds a total undivided trust*
10 *or restricted interest in the parcel that is greater*
11 *than 10 percent of the entire undivided owner-*
12 *ship of the parcel; or*

13 “(B) *100 or more co-owners of undivided*
14 *trust or restricted interests;*

15 “(7) ‘land’ *means any real property, and in-*
16 *cludes within its meaning for purposes of this Act im-*
17 *provements permanently affixed to real property;*

18 “(8) ‘person’ or ‘individual’ *means a natural*
19 *person;*

20 “(9) ‘eligible heirs’ *means, for purposes of section*
21 *207 (25 U.S.C. 2206), any of a decedent’s children,*
22 *grandchildren, great grandchildren, full siblings, half*
23 *siblings by blood, and parents who are—*

24 “(A) *Indian; or*

1 “(B) *lineal descendants within 2 degrees of*
2 *consanguinity of an Indian; or*

3 “(C) *owners of a trust or restricted interest*
4 *in a parcel of land for purposes of inheriting by*
5 *descent, renunciation, or consolidation agreement*
6 *under section 207 (25 U.S.C. 2206), another*
7 *trust or restricted interest in such parcel from*
8 *the decedent; and*

9 “(10) *‘without regard to waste’ means, with re-*
10 *spect to a life estate interest in land, that the holder*
11 *of such estate is entitled to the receipt of all income,*
12 *including bonuses and royalties, from such land to the*
13 *exclusion of the remaindermen.”.*

14 (c) *ISSUANCE OF PATENTS.*—Section 5 of the Act of
15 February 8, 1887 (25 U.S.C. 348), is amended by striking
16 the second proviso and inserting the following: “Provided,
17 That the rules of intestate succession under the Indian Land
18 Consolidation Act (25 U.S.C. 2201 *et seq.*) (including a
19 tribal probate code approved under that Act or regulations
20 promulgated under that Act) shall apply to that land for
21 which patents have been executed and delivered.”.

22 (d) *TRANSFERS OF RESTRICTED INDIAN LAND.*—Sec-
23 tion 4 of the Act of June 18, 1934 (25 U.S.C. 464), is
24 amended in the first proviso by—

1 (1) striking “, in accordance with” and all that
 2 follows through “or in which the subject matter of the
 3 corporation is located,”;

4 (2) striking “, except as provided by the Indian
 5 Land Consolidation Act” and all that follows through
 6 the colon; and

7 (3) inserting “in accordance with the Indian
 8 Land Consolidation Act (25 U.S.C. 2201 et seq.) (in-
 9 cluding a tribal probate code approved under that Act
 10 or regulations promulgated under that Act):”.

11 (e) ESTATE PLANNING.—

12 (1) CONDUCT OF ACTIVITIES.—Section 207(f)(1)
 13 of the Indian Land Consolidation Act (25 U.S.C.
 14 2206) is amended by striking paragraph (1) and in-
 15 serting the following:

16 “(1) IN GENERAL.—

17 “(A) The activities conducted under this
 18 subsection shall be conducted in accordance with
 19 any applicable—

20 “(i) tribal probate code; or

21 “(ii) tribal land consolidation plan.

22 “(B) The Secretary shall provide estate
 23 planning assistance in accordance with this sub-
 24 section, to the extent amounts are appropriated
 25 for such purpose.”.

1 (2) *REQUIREMENTS.*—Section 207(f)(2) of the
 2 *Indian Land Consolidation Act* (25 U.S.C.
 3 2206(f)(2)) is amended by striking “and” at the end
 4 of subparagraph (A), redesignating subparagraph (B)
 5 as subparagraph (D), and adding the following:

6 “(B) dramatically increase the use of wills
 7 and other methods of devise among Indian land-
 8 owners;

9 “(C) substantially reduce the quantity and
 10 complexity of Indian estates that pass intestate
 11 through the probate process, while protecting the
 12 rights and interests of Indian landowners; and”.

13 (3) *PROBATE CODE DEVELOPMENT AND LEGAL*
 14 *ASSISTANCE GRANTS.*—Section 207(f)(3) of the *Indian*
 15 *Land Consolidation Act* (25 U.S.C. 2206(f)(3)) is
 16 amended by striking paragraph (3) and inserting the
 17 following:

18 “(3) *PROBATE CODE DEVELOPMENT AND LEGAL*
 19 *ASSISTANCE GRANTS.*—In carrying out this section,
 20 the Secretary may award grants to—

21 “(A) Indian tribes, for purposes of tribal
 22 probate code development and estate planning
 23 services to tribal members;

24 “(B) organizations that provide legal assist-
 25 ance services for Indian tribes, Indian organiza-

tions, 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).”.

1 (4) *NOTIFICATION TO LANDOWNERS.*—Section
 2 207 of the Indian Land Consolidation Act (25 U.S.C.
 3 2206) is amended by adding at the end the following:

4 “(l) *NOTIFICATION TO LANDOWNERS.*—After receiving
 5 written request by any owner of a trust or restricted interest
 6 in land, the Secretary shall provide to such landowner the
 7 following information with respect to each tract of trust or
 8 restricted land in which the landowner has an interest:

9 “(1) *The location of the tract of land involved.*

10 “(2) *The identity of each other co-owner of inter-*
 11 *ests in the parcel of land.*

12 “(3) *The percentage of ownership of each owner*
 13 *of an interest in the tract.*

14 “(m) *PILOT PROJECT FOR THE MANAGEMENT OF*
 15 *TRUST ASSETS OF INDIAN FAMILIES AND RELATIVES.*—

16 “(1) *DEVELOPMENT PILOT PROJECT.*—The Sec-
 17 retary shall consult with tribes, individual landowner
 18 organizations, Indian advocacy organizations, and
 19 other interested parties to—

20 “(A) *develop a pilot project for the creation*
 21 *of legal entities such as private or family trusts,*
 22 *partnerships corporations, or other organizations*
 23 *to improve, facilitate, and assist in the efficient*
 24 *management of interests in trust or restricted*

lands or funds owned by Indian family members
and relatives; and

“(B) develop proposed rules, regulations,
and guidelines to implement the pilot project, in-
cluding—

“(i) the criteria for establishing such
legal entities;

“(ii) reporting and other requirements
that the Secretary determines to be appro-
priate for administering such entities; and

“(iii) provisions for suspending or re-
voking 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 man-
agement of interests in trust or restricted land,
held by 1 or more persons, in furtherance of the
purposes of this Act.

1 “(B) *LIMITATION.*—*The organization or ac-*
2 *tivities of any entity under the pilot project shall*
3 *not be construed to impair, impede, replace, ab-*
4 *rogate, or modify in any respect the trust duties*
5 *or responsibilities of the Secretary, nor shall*
6 *anything in this subsection or in any rules, reg-*
7 *ulations, or guidelines developed under this sub-*
8 *section enable any private or family trustee of*
9 *trust or restricted interests in land to exercise*
10 *any powers over such interests greater than that*
11 *held by the Secretary with respect to such inter-*
12 *ests.*

13 “(C) *SECRETARIAL APPROVAL OF TRANS-*
14 *ACTIONS.*—*Any transaction involving the lease,*
15 *use, mortgage or other disposition of trust or re-*
16 *stricted land or other trust assets administered*
17 *by or through an entity under the pilot project*
18 *shall be subject to approval by the Secretary in*
19 *accordance with applicable Federal law.*

20 “(D) *PAYMENTS.*—*The Secretary shall have*
21 *the authority to make payments of income and*
22 *revenues derived from trust or restricted land or*
23 *other trust assets administered by or through an*
24 *entity participating in the pilot project directly*
25 *to the entity, in accordance with requirements of*

1 *the regulations adopted pursuant to this sub-*
 2 *section.*

3 “(3) *LIMITATIONS ON PILOT PROJECT.*—

4 “(A) *NUMBER OF ORGANIZATIONS.*—*The*
 5 *number of entities established under the pilot*
 6 *project authorized by this subsection shall not ex-*
 7 *ceed 30.*

8 “(B) *REGULATIONS REQUIRED.*—*No entity*
 9 *shall commence activities under the pilot project*
 10 *authorized by this subsection until the Secretary*
 11 *has adopted final rules and regulations under*
 12 *paragraph (1)(B).*

13 “(4) *REPORT TO CONGRESS.*—*Prior to the expi-*
 14 *ration of the pilot project provided for under this sub-*
 15 *section, the Secretary shall submit a report to Con-*
 16 *gress stating—*

17 “(A) *a description of the Secretary’s con-*
 18 *sultation with Indian tribes, individual land-*
 19 *owner associations, Indian advocacy organiza-*
 20 *tions, and other parties consulted with regarding*
 21 *the development of rules and regulations for the*
 22 *creation and management of interests in trust*
 23 *and restricted lands under the pilot project;*

24 “(B) *the feasibility of accurately monitoring*
 25 *the performance of legal entities such as those in-*

1 *involved in the pilot project, and the effectiveness*
 2 *of such entities as mechanisms to manage and*
 3 *protect trust assets;*

4 “(C) *the impact that the use of entities such*
 5 *as those in the pilot project may have with re-*
 6 *spect to the accomplishment of the goals of the*
 7 *Indian Land Consolidation Act (25 U.S.C. 2201*
 8 *et seq.); and*

9 “(D) *any recommendations that the Sec-*
 10 *retary may have regarding whether to adopt a*
 11 *permanent program as a management and con-*
 12 *solidation measure for interests in trust or re-*
 13 *stricted lands.*

14 “(n) *NOTICE TO HEIRS.—Prior to holding a hearing*
 15 *to determine the heirs to trust or restricted property, or*
 16 *making a decision determining such heirs, the Secretary*
 17 *shall seek to provide actual written notice of the proceedings*
 18 *to all heirs. Such efforts shall include—*

19 “(1) *a search of publicly available records and*
 20 *Federal records, including telephone and address di-*
 21 *rectories and including electronic search services or*
 22 *directories;*

23 “(2) *an inquiry with family members and co-*
 24 *heirs of the property;*

1 “(3) *an inquiry with the tribal government of*
 2 *which the owner is a member, and the tribal govern-*
 3 *ment with jurisdiction over the property, if any; and*

4 “(4) *if the property is of a value greater than*
 5 *\$2,000, engaging the services of an independent firm*
 6 *to conduct a missing persons search.*

7 “(o) *MISSING HEIRS.*—

8 “(1) *For purposes of this subsection and sub-*
 9 *section (m), an heir may be presumed missing if—*

10 “(A) *such heir’s whereabouts remain un-*
 11 *known 60 days after completion of notice efforts*
 12 *under subsection (m); and*

13 “(B) *in the proceeding to determine a dece-*
 14 *dent’s heirs, the Secretary finds that the heir has*
 15 *had no contact with other heirs of the decedent,*
 16 *if any, or with the Department relating to trust*
 17 *or restricted land or other trust assets at any*
 18 *time during the 6-year period preceding the*
 19 *hearing to determine heirs.*

20 “(2) *Before the date for declaring an heir miss-*
 21 *ing, any person may request an extension of time to*
 22 *locate such heir. The Secretary shall grant a reason-*
 23 *able extension of time for good cause.*

24 “(3) *An heir shall be declared missing only after*
 25 *a review of the efforts made in the heirship proceeding*

1 *and a finding has been made that this subsection has*
 2 *been complied with.*

3 *“(4) An heir determined to be missing pursuant*
 4 *to this subsection shall be deemed to have predeceased*
 5 *the decedent for purposes of descent and devise of*
 6 *trust or restricted land and trust personalty within*
 7 *that decedent’s estate.”.*

8 **SEC. 7. ANNUAL NOTICE AND FILING REQUIREMENT FOR**
 9 **OWNERS OF INTERESTS IN TRUST OR RE-**
 10 **STRICTED LANDS.**

11 *The Indian Land Consolidation Act (25 U.S.C. 2201*
 12 *et seq.) is amended by adding at the end the following:*

13 **“SEC. 222. ANNUAL NOTICE AND FILING; CURRENT WHERE-**
 14 **ABOUTS OF INTEREST OWNERS.**

15 *“On at least an annual basis, the Secretary shall in-*
 16 *clude along with other regular reports to owners of trust*
 17 *or restricted interests in land and individual Indian money*
 18 *account owners a change of name and address form by*
 19 *means of which the owner may confirm or update the own-*
 20 *er’s name and address. The change of name and address*
 21 *form shall include a section in which the owner may con-*
 22 *firm and update the owner’s name and address.”.*

23 **SEC. 8. NOTICE; EFFECTIVE DATE.**

24 *(a) NOTICE.—*

1 (1) *IN GENERAL.*—Not later than 180 days after
2 the date of enactment of this Act, the Secretary shall
3 notify Indian tribes and owners of trust or restricted
4 lands of the amendments made by this Act.

5 (2) *SPECIFICATIONS.*—The notice required under
6 paragraph (1) shall be designed to inform Indian
7 owners of trust or restricted land of—

8 (A) the effect of this Act and the amend-
9 ments made by this Act, with emphasis on the ef-
10 fect of the provisions of this Act and the amend-
11 ments made by this Act, on the testate disposi-
12 tion and intestate descent of their interests in
13 trust or restricted land;

14 (B) estate planning options available to the
15 owners, including any opportunities for receiv-
16 ing estate planning assistance or advice;

17 (C) the use of negotiated sales, gift deeds,
18 land exchanges, and other transactions for con-
19 solidating the ownership of land; and

20 (D) a toll-free telephone number to be used
21 for obtaining information regarding the provi-
22 sions of this Act and any trust assets of such
23 owners.

24 (3) *REQUIREMENTS.*—The Secretary shall pro-
25 vide the notice required under paragraph (1)—

1 (A) by direct mail for those Indians with
 2 interests in trust and restricted lands for which
 3 the Secretary has an address for the interest
 4 holder;

5 (B) through the Federal Register;

6 (C) through local newspapers in areas with
 7 significant Indian populations, reservation
 8 newspapers, and newspapers that are directed at
 9 an Indian audience; and

10 (D) through any other means determined
 11 appropriate by the Secretary.

12 (4) CERTIFICATION.—After providing notice
 13 under this subsection, the Secretary shall—

14 (A) certify that the requirements of this sub-
 15 section have been met; and

16 (B) publish notice of that certification in
 17 the Federal Register.

18 (b) EFFECTIVE DATE.—Section 207 of the Indian
 19 Land Consolidation Act (25 U.S.C. 2206), except sub-
 20 sections (e) and (f) of that section, shall not apply to the
 21 estate of an individual who dies before the date that is 1
 22 year after the date on which the Secretary makes the certifi-
 23 cation required under subsection (a)(4).

1 **SEC. 9. SEVERABILITY.**

2 *If any provision of this Act or of any amendment*
3 *made by this Act, or the application of any such provision*
4 *to any person or circumstance, is held to be invalid for any*
5 *reason, the remainder of this Act and of amendments made*
6 *by this Act, and the application of the provisions and of*
7 *the amendments made by this Act to any other person or*
8 *circumstance shall not be affected by such holding, except*
9 *that each of subclauses (II), (III), and (IV) of section*
10 *205(d)(2)(I)(i) is deemed to be inseverable from the other*
11 *2, such that if any 1 of those 3 subclauses is held to be*
12 *invalid for any reason, neither of the other 2 of such sub-*
13 *clauses shall be given effect.*

14 **SEC. 10. REGULATIONS.**

15 *The Secretary is authorized to adopt such regulations*
16 *as may be necessary to implement the provisions of this*
17 *Act.*

Calendar No. 515

108TH CONGRESS
2^D Session

S. 1721

[Report No. 108-264]

A BILL

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

May 13, 2004

Reported with an amendment