

Public Law 109-157
109th Congress

An Act

To amend the Indian Land Consolidation Act to provide for probate reform.

Dec. 30, 2005
[S. 1481]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Land Probate Reform Technical Corrections Act of 2005”.

Indian Land
Probate Reform
Technical
Corrections Act
of 2005.
25 USC 2201
note.

SEC. 2. PARTITION OF HIGHLY FRACTIONATED INDIAN LAND.

Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) PURCHASE OF LAND.—

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

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

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

“(2) REQUIRED CONSENT.—

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

“(B) INTEREST OWNED BY TRIBE.—Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under subparagraph (A) has been met.”;

(2) by redesignating subsection (d) as subsection (c); and

(3) in subsection (c) (as redesignated by paragraph (2))—

(A) in paragraph (2)—

(i) in subparagraph (G)(ii)(I), by striking “a higher valuation of the land” and inserting “a value of the land that is equal to or greater than that of the earlier appraisal”; and

(ii) in subparagraph (I)(iii)—

(I) in subclause (III), by inserting “(if any)” after “this section”; and

(II) in subclause (IV)—

(aa) in item (aa), by striking “less” and inserting “more”; and
 (bb) in item (bb), by striking “to implement this section” and inserting “under paragraph (5); and
 (B) in paragraph (5), in the second sentence, by striking “shall” and inserting “may”.

SEC. 3. TRIBAL PROBATE CODES.

Section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205) is amended—

(1) in subsection (b)(3), by striking subparagraph (A) and inserting the following:
 “(A) the date that is 1 year after the date on which the Secretary makes the certification required under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374); or”; and
 (2) in subsection (c)—
 (A) in paragraph (1)(A), by striking “section” and all that follows through “the Indian tribe” and inserting “section 207(b)(2)(A)(ii), the Indian tribe”; and
 (B) in paragraph (2)(A)(i)(II)(bb), by inserting “in writing” after “agrees”.

SEC. 4. DESCENT AND DISTRIBUTION.

(a) IN GENERAL.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended—

(1) by redesignating subsections (h) through (p) as subsections (g) through (o), respectively;
 (2) in subsection (g) (as redesignated by paragraph (1))—
 (A) in paragraph (2)—
 (i) by inserting “specifically” after “pertains”; and
 (ii) by striking subparagraph (B) and inserting the following:
 “(B) the allotted land (or any interest relating to such land) of 1 or more specific Indian tribes expressly identified in Federal law, including any of the Federal laws governing the probate or determination of heirs associated with, or otherwise relating to, the land, interest in land, or other interests or assets that are owned by individuals in—
 “(i) Five Civilized Tribes restricted fee status; or
 “(ii) Osage Tribe restricted fee status.”; and
 (B) by adding at the end the following:

“(3) EFFECT OF SUBSECTION.—Except to the extent that this Act otherwise affects the application of a Federal law described in paragraph (2), nothing in this subsection limits the application of this Act to trust or restricted land, interests in such land, or any other trust or restricted interests or assets.”;

(3) in subsection (h) (as redesignated by paragraph (1))—
 (A) in paragraph (6), by striking “(25 U.S.C. 2205)”; and

(B) in paragraph (7), by inserting “in trust or restricted status” after “testator”;

(4) in subsection (j) (as redesignated by paragraph (1))—
 (A) in paragraph (2)(A)—

(i) in clause (ii)(I), by striking “the date of enactment of this subparagraph” and inserting “the date that is 1 year after the date on which the Secretary publishes a notice of certification under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374)”; and

(ii) in clause (iii), by striking “the provisions of section 207(a)(2)(A)” and inserting “subsection (a)(2)(A)”;

(B) in paragraph (8)(D), by striking “the provisions of section 207(a)(2)(D) (25 U.S.C. 2206(a)(2)(D))” and inserting “subsection (a)(2)(D)”; and

(C) in paragraph (9)(C)—

(i) by striking “section 207(e) (25 U.S.C. 2206(e))” and inserting “subsection (e)”; and

(ii) by striking “section 207(p) (25 U.S.C. 2206(p))” and inserting “subsection (o)”; and

(5) in subsection (o) (as redesignated by paragraph (1))—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking “section 207(a)(2)(A) or (D)” and inserting “subparagraph (A) or (D) of subsection (a)(2)”; and

(ii) in subparagraph (A), by striking “section 207(b)(1)(A)” and inserting “subsection (b)(1)(A)”;

(B) in paragraph (3)(B), by striking “section 207(a)(2)(A) or (D)” and inserting “subparagraph (A) or (D) of subsection (a)(2)”; and

(C) in paragraph (6)—

(i) in the first sentence, by striking “Proceeds” and inserting the following:

“(A) IN GENERAL.—Proceeds”; and

(ii) by striking the second sentence and inserting the following:

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

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

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

(b) **NONTESTAMENTARY DISPOSITION.**—Section 207(a)(2)(D)(iv)(I)(aa) of the Indian Land Consolidation Act (25 U.S.C. 2206(a)(2)(D)(iv)(I)(aa)) is amended—

(1) by striking “clause (iii)” and inserting “this subparagraph”; and

(2) in subitem (BB), by striking “any co-owner” and inserting “not more than 1 co-owner”.

(c) **JOINT TENANCY; RIGHT OF SURVIVORSHIP.**—Section 207(c) of the Indian Land Consolidation Act (25 U.S.C. 2206(c)) is amended by striking the subsection heading and inserting the following:

“(c) **JOINT TENANCY; RIGHT OF SURVIVORSHIP.**—”.

(d) **ESTATE PLANNING ASSISTANCE.**—Section 207(f)(3) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(3)) is amended in the matter preceding subparagraph (A) by inserting “, including noncompetitive grants,” after “grants”.

SEC. 5. FRACTIONAL INTEREST ACQUISITION PROGRAM.

Section 213 of the Indian Land Consolidation Act (25 U.S.C. 2212) is amended—

(1) by striking the section heading and inserting the following:

“SEC. 213. FRACTIONAL INTEREST ACQUISITION PROGRAM.”;

and

(2) in subsection (a)(1), by striking “(25 U.S.C. 2206(p))”.

SEC. 6. ESTABLISHING FAIR MARKET VALUE.

Section 215 of the Indian Land Consolidation Act (25 U.S.C. 2214) is amended by striking the last sentence and inserting the following: “Such a system may govern the amounts offered for the purchase of interests in trust or restricted land under this Act.”.

SEC. 7. LAND OWNERSHIP INFORMATION.

Section 217(e) of the Indian Land Consolidation Act (25 U.S.C. 2216(e)) is amended by striking “be made available to” and inserting “be made available to—”.

SEC. 8. CONFORMING AMENDMENTS.

(a) PROBATE REFORM.—The American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374) is amended—

(1) in section 4, by striking “(as amended by section 6(a)(2))”; and

(2) in section 9, by striking “section 205(d)(2)(I)(i)” and inserting “section 205(c)(2)(I)(i) of the Indian Land Consolidation Act (25 U.S.C. 2204(c)(2)(I)(i))”.

(b) TRANSFER AND EXCHANGE OF LAND.—Section 4 of the Act of June 18, 1934 (25 U.S.C. 464) is amended to read as follows:

“SEC. 4. TRANSFER AND EXCHANGE OF RESTRICTED INDIAN LAND AND SHARES OF INDIAN TRIBES AND CORPORATIONS.

“(a) APPROVAL.—Except as provided in this section, no sale, devise, gift, exchange, or other transfer of restricted Indian land or shares in the assets of an Indian tribe or corporation organized under this Act shall be made or approved.

“(b) TRANSFER TO INDIAN TRIBE.—

“(1) IN GENERAL.—Land or shares described in subsection (a) may be sold, devised, or otherwise transferred to the Indian tribe on the reservation of which the land is located, or in the corporation of which the shares are held or were derived (or a successor of such a corporation), with the approval of the Secretary of the Interior.

“(2) DESCENT AND DEVISE.—Land and shares transferred under paragraph (1) shall descend or be devised to any member of the Indian tribe or corporation (or an heir of such a member) in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), including a tribal probate code approved under that Act (including regulations).

“(c) VOLUNTARY EXCHANGES.—The Secretary of the Interior may authorize a voluntary exchange of land or shares described in subsection (a) that the Secretary determines to be of equal value if the Secretary determines that the exchange is—

“(1) expedient;

25 USC 2204.

25 USC 2201
note.

“(2) beneficial for, or compatible with, achieving proper consolidation of Indian land; and
“(3) for the benefit of cooperative organizations.”.

SEC. 9. EFFECTIVE DATE.

25 USC 464 note.

The amendments made by this Act shall be effective as if included in the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108-374).

Approved December 30, 2005.

LEGISLATIVE HISTORY—S. 1481:
CONGRESSIONAL RECORD, Vol. 151 (2005):
July 26, considered and passed Senate.
Dec. 18, considered and passed House.

