

108TH CONGRESS
2D SESSION

S. 1721

AN ACT

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 2004”.

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;

18 (4) a uniform Federal probate code would
 19 likely—

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 and create in-
 24 centives for owners of trust and restricted land
 25 to engage in estate planning;

1 (C) facilitate intertribal efforts to produce
 2 tribal probate codes in accordance with section
 3 206 of the Indian Land Consolidation Act (25
 4 U.S.C. 2205); and

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

9 (5) the provisions of a uniform Federal probate
 10 code and other forth in this Act should operate to
 11 further the policy of the United States as stated in
 12 the Indian Land Consolidated Act Amendments of
 13 2000, Public Law 106–462, 102, November 7, 2000,
 14 114 Stat. 1992.

15 **SEC. 3. INDIAN PROBATE REFORM.**

16 (a) NONTTESTAMENTARY DISPOSITION.—Section 207
 17 of the Indian Land Consolidation Act (25 U.S.C. 2206)
 18 is amended by striking subsection (a) and inserting the
 19 following:

20 “(a) NONTTESTAMENTARY DISPOSITION.—

21 “(1) RULES OF DESCENT.—Subject to any ap-
 22 plicable Federal law relating to the devise or descent
 23 of trust or restricted property, any trust or re-
 24 stricted interest in land or interest in trust person-
 25 alty that is not disposed of by a valid will—

1 “(A) shall descend according to an applica-
 2 ble tribal probate code approved in accordance
 3 with section 206; or

4 “(B) in the case of a trust or restricted in-
 5 terest in land or interest in trust personalty to
 6 which a tribal probate code does not apply,
 7 shall descend in accordance with—

8 “(i) paragraphs (2) through (5); and

9 “(ii) other applicable Federal law.

10 “(2) RULES GOVERNING DESCENT OF ES-
 11 TATE.—

12 “(A) SURVIVING SPOUSE.—If there is a
 13 surviving spouse of the decedent, such spouse
 14 shall receive trust and restricted land and trust
 15 personalty in the estate as follows:

16 “(i) If the decedent is survived by 1
 17 or more eligible heirs described in subpara-
 18 graph (B) (i), (ii), (iii), or (iv), the sur-
 19 viving spouse shall receive $\frac{1}{3}$ of the trust
 20 personalty of the decedent and a life estate
 21 without regard to waste in the interests in
 22 trust or restricted lands of the decedent.

23 “(ii) If there are no eligible heirs de-
 24 scribed in subparagraph (B) (i), (ii), (iii),
 25 or (iv), the surviving spouse shall receive

1 all of the trust personalty of the decedent
2 and a life estate without regard to waste in
3 the trust or restricted lands of the dece-
4 dent.

5 “(iii) The remainder shall pass as set
6 forth in subparagraph (B).

7 “(iv) Trust personalty passing to a
8 surviving spouse under the provisions of
9 this subparagraph shall be maintained by
10 the Secretary in an account as trust per-
11 sonalty, but only if such spouse is Indian.

12 “(B) INDIVIDUAL AND TRIBAL HEIRS.—
13 Where there is no surviving spouse of the dece-
14 dent, or there is a remainder interest pursuant
15 to subparagraph (A), the trust or restricted es-
16 tate or such remainder shall, subject to sub-
17 paragraphs (A) and (D), pass as follows:

18 “(i) To those of the decedent’s chil-
19 dren who are eligible heirs (or if 1 or more
20 of such children do not survive the dece-
21 dent, the children of any such deceased
22 child who are eligible heirs, by right of rep-
23 resentation, but only if such children of the
24 deceased child survive the decedent) in
25 equal shares.

1 “(ii) If the property does not pass
2 under clause (i), to those of the decedent’s
3 surviving great-grandchildren who are eli-
4 gible heirs, in equal shares.

5 “(iii) If the property does not pass
6 under clause (i) or (ii), to the decedent’s
7 surviving parent who is an eligible heir,
8 and if both parents survive the decedent
9 and are both eligible heirs, to both parents
10 in equal shares.

11 “(iv) If the property does not pass
12 under clause (i), (ii), or (iii), to those of
13 the decedent’s surviving siblings who are
14 eligible heirs, in equal shares.

15 “(v) If the property does not pass
16 under clause (i), (ii), (iii), or (iv), to the
17 Indian tribe with jurisdiction over the in-
18 terests in trust or restricted lands;

19 except that notwithstanding clause (v), an In-
20 dian co-owner (including the Indian tribe re-
21 ferred to in clause (v)) of a parcel of trust or
22 restricted land may acquire an interest that
23 would otherwise descend under that clause by
24 paying into the estate of the decedent, before
25 the close of the probate of the estate, the fair

1 market value of the interest in the land; if more
2 than 1 Indian co-owner offers to pay for such
3 interest, the highest bidder shall acquire the in-
4 terest.

5 “(C) NO INDIAN TRIBE.—

6 “(i) IN GENERAL.—If there is no In-
7 dian tribe with jurisdiction over the inter-
8 ests in trust or restricted lands that would
9 otherwise descend under subparagraph
10 (B)(v), then such interests shall be divided
11 equally among co-owners of trust or re-
12 stricted interests in the parcel; if there are
13 no such co-owners, then to the United
14 States, provided that any such interests in
15 land passing to the United States under
16 this subparagraph shall be sold by the Sec-
17 retary and the proceeds from such sale de-
18 posited into the land acquisition fund es-
19 tablished under section 216 (25 U.S.C.
20 2215) and used for the purposes described
21 in subsection (b) of that section.

22 “(ii) CONTIGUOUS PARCEL.—If the
23 interests passing to the United States
24 under this subparagraph are in a parcel of
25 land that is contiguous to another parcel of

1 trust or restricted land, the Secretary shall
2 give the owner or owners of the trust or re-
3 stricted interest in the contiguous parcel
4 the first opportunity to purchase the inter-
5 est at not less than fair market value de-
6 termined in accordance with this Act. If
7 more than 1 such owner in the contiguous
8 parcel request to purchase the parcel, the
9 Secretary shall sell the parcel by public
10 auction or sealed bid (as determined by the
11 Secretary) at not less than fair market
12 value to the owner of a trust or restricted
13 interest in the contiguous parcel submit-
14 ting the highest bid.

15 “(D) INTESTATE DESCENT OF SMALL
16 FRACTIONAL INTERESTS IN LAND.—

17 “(i) GENERAL RULE.—Notwith-
18 standing subparagraphs (A) and (B), and
19 subject to any applicable Federal law, any
20 trust or restricted interest in land in the
21 decedent’s estate that is not disposed of by
22 a valid will and represents less than 5 per-
23 cent of the entire undivided ownership of
24 the parcel of land of which such interest is
25 a part, as evidenced by the decedent’s es-

1 tate inventory at the time of the heirship
2 determination, shall descend in accordance
3 with clauses (ii) through (iv).

4 “(ii) SURVIVING SPOUSE.—If there is
5 a surviving spouse, and such spouse was
6 residing on a parcel of land described in
7 clause (i) at the time of the decedent’s
8 death, the spouse shall receive a life estate
9 without regard to waste in the decedent’s
10 trust or restricted interest in only such
11 parcel, and the remainder interest in that
12 parcel shall pass in accordance with clause
13 (iii).

14 “(iii) SINGLE HEIR RULE.—Where
15 there is no life estate created under clause
16 (ii) or there is a remainder interest under
17 that clause, the trust or restricted interest
18 or remainder interest that is subject to this
19 subparagraph shall descend, in trust or re-
20 stricted status, to—

21 “(I) the decedent’s surviving
22 child, but only if such child is an eligi-
23 ble heir; and if 2 or more surviving
24 children are eligible heirs, then to the
25 oldest of such children;

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

8 “(III) if the interest does not
9 pass under subclause (I) or (II), the
10 decedent’s surviving great grandchild,
11 but only if such great grandchild is an
12 eligible heir; and if 2 or more sur-
13 viving great grandchildren are eligible
14 heirs, then to the oldest of such great
15 grandchildren;

16 “(IV) if the interest does not
17 pass under subclause (I), (II), or
18 (III), the Indian tribe with jurisdic-
19 tion over the interest; or

20 “(V) if the interest does not pass
21 under subclause (I), (II), or (III), and
22 there is no such Indian tribe to in-
23 herit the property under subclause
24 (IV), the interest shall be divided
25 equally among co-owners of trust or

1 restricted interests in the parcel; and
2 if there are no such co-owners, then to
3 the United States, to be sold, and the
4 proceeds from sale used, in the same
5 manner provided in subparagraph (C).

6 The determination of which person is the oldest
7 eligible heir for inheritance purposes under this
8 clause shall be made by the Secretary in the de-
9 cedent's probate proceeding and shall be con-
10 sistent with the provisions of this Act.

11 “(iv) EXCEPTIONS.—Notwithstanding
12 clause (iii)—

13 “(I)(aa) the heir of an interest
14 under clause (iii), unless the heir is a
15 minor or incompetent person, may
16 agree in writing entered into the
17 record of the decedent's probate pro-
18 ceeding to renounce such interest, in
19 trust or restricted status, in favor
20 of—

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

1 “(BB) any co-owner of an-
2 other trust or restricted interest
3 in such parcel of land; or

4 “(CC) the Indian tribe with
5 jurisdiction over the interest, if
6 any; and

7 “(bb) the Secretary shall give ef-
8 fect to such agreement in the distribu-
9 tion of the interest in the probate pro-
10 ceeding; and

11 “(II) the governing body of the
12 Indian tribe with jurisdiction over an
13 interest in trust or restricted land
14 that is subject to the provisions of
15 this subparagraph may adopt a rule of
16 intestate descent applicable to such
17 interest that differs from the order of
18 decendent set forth in clause (iii). The
19 Secretary shall apply such rule to the
20 interest in distributing the decedent’s
21 estate, but only if—

22 “(aa) a copy of the tribal
23 rule is delivered to the official
24 designated by the Secretary to

1 receive copies of tribal rules for
2 the purposes of this clause;

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

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

11 “(dd) the decedent died on
12 or after the date described in
13 subsection (b) of section 8 of the
14 American Indian Probate Act of
15 2004, or on or after the date on
16 which a copy of the tribal rule
17 was delivered to the Secretary
18 pursuant to item (aa), whichever
19 is later; and

20 “(ee) the Secretary does not
21 make a determination within 90
22 days after a copy of the tribal
23 rule is delivered pursuant to item
24 (aa) that the rule would be un-
25 reasonably difficult to administer

1 or does not conform with the re-
2 quirements in item (bb) or (cc).

3 “(v) RULE OF CONSTRUCTION.—This
4 subparagraph shall not be construed to
5 limit a person’s right to devise any trust or
6 restricted interest by way of a valid will in
7 accordance with subsection (b).

8 “(3) RIGHT OF REPRESENTATION.—If, under
9 this subsection, all or any part of the estate of a de-
10 cedent is to pass to children of a deceased child by
11 right of representation, that part is to be divided
12 into as many equal shares as there are living chil-
13 dren of the decedent and pre-deceased children who
14 left issue who survive the decedent. Each living child
15 of the decedent, if any, shall receive 1 share, and the
16 share of each pre-deceased child shall be divided
17 equally among the pre-deceased child’s children.

18 “(4) SPECIAL RULE RELATING TO SURVIVAL.—
19 In the case of intestate succession under this sub-
20 section, if an individual fails to survive the decedent
21 by at least 120 hours, as established by clear and
22 convincing evidence—

23 “(A) the individual shall be deemed to have
24 predeceased the decedent for the purpose of in-
25 testate succession; and

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

3 “(5) STATUS OF INHERITED INTERESTS.—Ex-
4 cept as provided in paragraphs (2) (A) and (D) re-
5 garding the life estate of a surviving spouse, a trust
6 or restricted interest in land or trust personalty that
7 descends under the provisions of this subsection
8 shall vest in the heir in the same trust or restricted
9 status as such interest was held immediately prior to
10 the decedent’s death.”.

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

15 “(b) TESTAMENTARY DISPOSITION.—

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

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

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

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

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

8 “(iv) any Indian;
9 in trust or restricted status.

10 “(B) RULES OF INTERPRETATION.—Any
11 devise of a trust or restricted interest in land
12 pursuant to subparagraph (A) to an Indian or
13 the Indian tribe with jurisdiction over the inter-
14 est shall be deemed to be a devise of the inter-
15 est in trust or restricted status. Any devise of
16 a trust or restricted interest in land to a person
17 who is only eligible to be a devisee under clause
18 (i) or (ii) of subparagraph (A) shall be pre-
19 sumed to be a devise of the interest in trust or
20 restricted status unless language in such devise
21 clearly evidences an intent on the part of the
22 testator that the interest is to pass as a life es-
23 tate or fee interest in accordance with para-
24 graph (2)(A).

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

3 “(A) IN GENERAL.—Except as provided
4 under any applicable Federal law, any trust or
5 restricted interest in land that is not devised in
6 accordance with paragraph (1)(A) may be de-
7 vised only—

8 “(i) as a life estate to any person,
9 with the remainder being devised only in
10 accordance with subparagraph (B) or para-
11 graph (1); or

12 “(ii) except as provided in subpara-
13 graph (B), as a fee interest without Fed-
14 eral restrictions against alienation to any
15 person who is not eligible to be a devisee
16 under clause (iv) of paragraph (1)(A).

17 “(B) INDIAN REORGANIZATION ACT
18 LANDS.—Any interest in trust or restricted land
19 that is subject to section 4 of the Act of June
20 18, 1934 (25 U.S.C. 464), may be devised only
21 in accordance with—

22 “(i) that section;

23 “(ii) subparagraph (A)(i); or

24 “(iii) paragraph (1)(A);

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

7 “(3) GENERAL DEVISE OF AN INTEREST IN
8 TRUST PERSONALTY.—

9 “(A) TRUST PERSONALTY DEFINED.—The
10 term ‘trust personalty’ as used in this section
11 includes all funds and securities of any kind
12 which are held in trust in an individual Indian
13 money account or otherwise supervised by the
14 Secretary.

15 “(B) IN GENERAL.—Subject to any appli-
16 cable Federal law relating to the devise or de-
17 scent of such trust personalty, 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 personalty may devise such an interest
21 to any person or entity.

22 “(C) MAINTENANCE AS TRUST PERSON-
23 ALTY.—In the case of a devise of an interest in
24 trust personalty to a person or Indian tribe eli-
25 gible to be a devisee under paragraph (1)(A),

1 the Secretary shall maintain and continue to
2 manage such interests as trust personalty.

3 “(D) DIRECT DISBURSEMENT AND DIS-
4 TRIBUTION.—In the case of a devise of an in-
5 terest in trust personalty to a person or Indian
6 tribe not eligible to be a devisee under para-
7 graph (1)(A), the Secretary shall directly dis-
8 burse and distribute such personalty to the dev-
9 isee.

10 “(4) INVALID DEVISES AND WILLS.—

11 “(A) LAND.—Any trust or restricted inter-
12 est in land that is not devised in accordance
13 with paragraph (1) or (2) or that is not dis-
14 posed of by a valid will shall descend in accord-
15 ance with the applicable law of intestate succes-
16 sion as provided for in subsection (a).

17 “(B) PERSONALTY.—Any trust personalty
18 that is not disposed of by a valid will shall de-
19 scend in accordance with the applicable law of
20 intestate succession as provided for in sub-
21 section (a).”.

22 (c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.—
23 Section 207(c) of the Indian Land Consolidation Act (25
24 U.S.C. 2206(c)) is amended by striking all that follows

1 the heading, “Joint Tenancy; Right of Survivorship”, and
2 inserting the following:

3 “(1) PRESUMPTION OF JOINT TENANCY.—If a
4 testator devises trust or restricted interests in the
5 same parcel of land to more than 1 person, in the
6 absence of clear and express language in the devise
7 stating that the interest is to pass to the devisees as
8 tenants in common, the devise shall be presumed to
9 create a joint tenancy with the right of survivorship
10 in the interests involved.

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

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

21 “(h) APPLICABLE FEDERAL LAW.—

22 “(1) IN GENERAL.—Any references in sub-
23 sections (a) and (b) to applicable Federal law
24 include—

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

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

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

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

4 and

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

6 “(2) NO EFFECT ON LAWS.—Nothing in this
7 Act amends or otherwise affects the application of
8 any law described in paragraph (1), or any other
9 Federal law that pertains to—

10 “(A) trust or restricted land located on 1
11 or more specific Indian reservations that are ex-
12 pressly identified in such law; or

13 “(B) the allotted lands of 1 or more spe-
14 cific Indian tribes that are expressly identified
15 in such law.

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

22 “(1) CONSTRUCTION THAT WILL PASSES ALL
23 PROPERTY.—A will shall be construed to apply to all
24 trust and restricted land and trust personalty which
25 the testator owned at his death, including any such

1 land or personalty acquired after the execution of his
2 will.

3 “(2) CLASS GIFTS.—

4 “(A) NO DIFFERENTIATION BETWEEN RE-
5 LATIONSHIP BY BLOOD AND RELATIONSHIP BY
6 AFFINITY.—Terms of relationship that do not
7 differentiate relationships by blood from those
8 by affinity, such as ‘uncles’, ‘aunts’, ‘nieces’, or
9 ‘nephews’, are construed to exclude relatives by
10 affinity. Terms of relationship that do not dif-
11 ferentiate relationships by the half blood from
12 those by the whole blood, such as ‘brothers’,
13 ‘sisters’, ‘nieces’, or ‘nephews’, are construed to
14 include both types of relationships.

15 “(B) MEANING OF ‘HEIRS’ AND ‘NEXT OF
16 KIN’, ETC.; TIME OF ASCERTAINING CLASS.—A
17 devise of trust or restricted interest in land or
18 an interest in trust personalty to the testator’s
19 or another designated person’s ‘heirs’, ‘next of
20 kin’, ‘relatives’, or ‘family’ shall mean those
21 persons, including the spouse, who would be en-
22 titled to take under the provisions of this Act
23 for nontestamentary disposition. The class is to
24 be ascertained as of the date of the testator’s
25 death.

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

9 “(3) MEANING OF ‘DIE WITHOUT ISSUE’ AND
10 SIMILAR PHRASES.—In any devise under this chap-
11 ter, the words ‘die without issue’, ‘die without leav-
12 ing issue’, ‘have no issue’, or words of a similar im-
13 port shall be construed to mean that an individual
14 had no lineal descendants in his lifetime or at his
15 death, and not that there will be no lineal descend-
16 ants at some future time.

17 “(4) PERSONS BORN OUT OF WEDLOCK.—In
18 construing provisions of this chapter relating to
19 lapsed and void devises, and in construing a devise
20 to a person or persons described by relationship to
21 the testator or to another, a person born out of wed-
22 lock shall be considered the child of the natural
23 mother and also of the natural father.

24 “(5) LAPSED DEVISES.—Subject to the provi-
25 sions of subsection (b), where the testator devises or

1 bequeaths a trust or restricted interest in land or
2 trust personalty to the testator's grandparents or to
3 the lineal descendent of a grandparent, and the devi-
4 see or legatee dies before the testator leaving lineal
5 descendents, such descendents shall take the interest
6 so devised or bequeathed per stirpes.

7 “(6) VOID DEVISES.—Except as provided in
8 paragraph (5), and if the disposition shall not be
9 otherwise expressly provided for by a tribal probate
10 code approved under section 206 (25 U.S.C. 2205),
11 if a devise other than a residuary devise of a trust
12 or restricted interest in land or trust personalty fails
13 for any reason, such interest shall become part of
14 the residue and pass, subject to the provisions of
15 subsection (b), to the other residuary devisees, if
16 any, in proportion to their respective shares or inter-
17 ests in the residue.

18 “(7) FAMILY CEMETERY PLOT.—If a family
19 cemetery plot owned by the testator at his decease
20 is not mentioned in the decedent's will, the owner-
21 ship of the plot shall descend to his heirs as if he
22 had died intestate.

23 “(j) HEIRSHIP BY KILLING.—

24 “(1) HEIR BY KILLING DEFINED.—As used in
25 this subsection, ‘heir by killing’ means any person

1 who knowingly participates, either as a principal or
2 as an accessory before the fact, in the willful and
3 unlawful killing of the decedent.

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

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

18 “(A) under intestate succession under this
19 section;

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

22 “(C) as the surviving spouse;

23 “(D) by devise;

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

25 “(F) as a survivorship interest; and

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

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

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

11 “(B) As to trust or restricted land or trust
12 personalty held jointly by 3 or more persons, in-
13 cluding both the heir by killing and the dece-
14 dent, any income which would have accrued to
15 the heir by killing as a result of the death of
16 the decedent shall pass to the estate of the de-
17 cedent as if the heir by killing had predeceased
18 the decedent and any surviving joint tenants.

19 “(C) Notwithstanding any other provision
20 of this subsection, the decedent’s trust or re-
21 stricted interest land or trust personalty that is
22 held in a joint tenancy with the right of survi-
23 vorship shall be severed from the joint tenancy
24 as though the property held in the joint tenancy
25 were to be severed and distributed equally

1 among the joint tenants and the decedent's in-
2 terest shall pass to his estate; the remainder of
3 the interests shall remain in joint tenancy with
4 right of survivorship among the surviving joint
5 tenants.

6 “(5) LIFE ESTATE FOR THE LIFE OF AN-
7 OTHER.—If the estate is held by a third person
8 whose possession expires upon the death of the dece-
9 dent, it shall remain in such person's hands for the
10 period of time following the decedent's death equal
11 to the life expectancy of the decedent but for the
12 killing.

13 “(6) PREADJUDICATION RULE.—

14 “(A) IN GENERAL.—If a person has been
15 charged, whether by indictment, information, or
16 otherwise by the United States, a tribe, or any
17 State, with voluntary manslaughter or homicide
18 in connection with a decedent's death, then any
19 and all trust or restricted land or trust person-
20 alty that would otherwise pass to that person
21 from the decedent's estate shall not pass or be
22 distributed by the Secretary until the charges
23 have been resolved in accordance with the provi-
24 sions of this paragraph.

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

6 “(C) CONVICTION.—Upon conviction of
7 such person, and the exhaustion of all appeals,
8 if any, the trust and restricted land and trust
9 personalty in the estate shall pass in accordance
10 with this subsection.

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

17 “(k) GENERAL RULES GOVERNING PROBATE.—

18 “(1) SCOPE.—Except as provided under appli-
19 cable Federal law or a tribal probate code approved
20 under section 206, the provisions of this subsection
21 shall govern the probate of estates containing trust
22 and restricted interests in land or trust personalty.

23 “(2) PRETERMITTED SPOUSES AND CHIL-
24 DREN.—

25 “(A) SPOUSES.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), if the surviving spouse
3 of a testator married the testator after the
4 testator executed the will of the testator,
5 the surviving spouse shall receive the intes-
6 tate share in the decedent’s trust or re-
7 stricted land and trust personalty that the
8 spouse would have received if the testator
9 had died intestate.

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

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

16 “(II)(aa) the spouse of a testator
17 is a non-Indian; and

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

21 “(III) it appears, based on an ex-
22 amination of the will or other evi-
23 dence, that the will was made in con-
24 templation of the marriage of the tes-
25 tator to the surviving spouse;

1 “(IV) the will expresses the in-
2 tention that the will is to be effective
3 notwithstanding any subsequent mar-
4 riage; or

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

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

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

23 “(I) the testator and surviving
24 spouse were continuously married

1 without legal separation for the 5-year
2 period preceding the decedent's death;

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

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

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

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

21 “(B) CHILDREN.—

22 “(i) IN GENERAL.—If a testator exe-
23 cuted the will of the testator before the
24 birth or adoption of 1 or more children of
25 the testator, and the omission of the chil-

1 dren from the will is a product of inadvert-
2 ence rather than an intentional omission,
3 the children shall share in the trust or re-
4 stricted interests in land and trust person-
5 alty as if the decedent had died intestate.

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

11 “(iii) ADOPTED-OUT CHILDREN.—

12 “(I) IN GENERAL.—For purposes
13 of this Act, an adopted person shall
14 not be considered the child or issue of
15 his natural parents, except in distrib-
16 uting the estate of a natural kin,
17 other than the natural parent, who
18 has maintained a family relationship
19 with the adopted person. If a natural
20 parent shall have married the adopt-
21 ing parent, the adopted person for
22 purposes of inheritance by, from and
23 through him shall also be considered
24 the issue of such natural parent.

1 “(II) ELIGIBLE HEIR PURSUANT
2 TO OTHER FEDERAL LAW OR TRIBAL
3 LAW.—Notwithstanding the provisions
4 of subparagraph (B)(iii)(I), other
5 Federal laws and laws of the Indian
6 tribe with jurisdiction over the trust
7 or restricted interest in land may oth-
8 erwise define the inheritance rights of
9 adopted-out children.

10 “(3) DIVORCE.—

11 “(A) SURVIVING SPOUSE.—

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

20 “(ii) SEPARATION.—A decree of sepa-
21 ration that does not dissolve a marriage,
22 and terminate the status of husband and
23 wife, shall not be considered a divorce for
24 the purpose of this subsection.

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

10 “(B) EFFECT OF SUBSEQUENT DIVORCE
 11 ON A WILL OR DEVISE.—

12 “(i) IN GENERAL.—If, after executing
 13 a will, a testator is divorced or the mar-
 14 riage of the testator is annulled, as of the
 15 effective date of the divorce or annulment,
 16 any disposition of trust or restricted inter-
 17 ests in land or of trust personalty made by
 18 the will to the former spouse of the tes-
 19 tator shall be considered to be revoked un-
 20 less the will expressly provides otherwise.

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

1 “(iii) PROVISIONS OF WILLS.—Any
2 provision of a will that is considered to be
3 revoked solely by operation of this sub-
4 paragraph shall be revived by the remar-
5 riage of a testator to the former spouse of
6 the testator.

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

11 “(5) ADVANCEMENTS OF TRUST PERSONALTY
12 DURING LIFETIME; EFFECT ON DISTRIBUTION OF
13 ESTATE.—

14 “(A) The trust personalty of a decedent
15 who dies intestate as to all or a portion of his
16 or her estate, given during the decedent’s life-
17 time to a person eligible to be an heir of the de-
18 cedent under subsection (b)(2)(B), shall be
19 treated as an advancement against the heir’s
20 inheritance, but only if the decedent declared in
21 a contemporaneous writing, or the heir ac-
22 knowledged in writing, that the gift is an ad-
23 vancement or is to be taken into account in
24 computing the division and distribution of the
25 decedent’s intestate estate.

1 “(B) For the purposes of this section,
2 trust personalty advanced during the decedent’s
3 lifetime is valued as of the time the heir came
4 into possession or enjoyment of the property or
5 as of the time of the decedent’s death, which-
6 ever occurs first.

7 “(C) If the recipient of the trust person-
8 alty predeceases the decedent, the property
9 shall not be treated as an advancement or taken
10 into account in computing the division and dis-
11 tribution of the decedent’s intestate estate un-
12 less the decedent’s contemporaneous writing
13 provides otherwise.

14 “(6) HEIRS RELATED TO DECEDENT THROUGH
15 2 LINES; SINGLE SHARE.—A person who is related
16 to the decedent through 2 lines of relationship is en-
17 titled to only a single share of the trust or restricted
18 land or trust personalty in the decedent’s estate
19 based on the relationship that would entitle such
20 person to the larger share.

21 “(7) NOTICE.—

22 “(A) IN GENERAL.—To the maximum ex-
23 tent practicable, the Secretary shall notify each
24 owner of trust and restricted land of the provi-
25 sions of this Act.

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

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

8 “(A) IN GENERAL.—Any person 18 years
9 of age or older may renounce or disclaim an in-
10 heritance of a trust or restricted interest in
11 land or in trust personalty through intestate
12 succession or devise, either in full or subject to
13 the reservation of a life estate (where the inter-
14 est is an interest in land), in accordance with
15 subparagraph (B), by filing a signed and ac-
16 knowledged declaration with the probate deci-
17 sionmaker prior to entry of a final probate
18 order. No interest so renounced or disclaimed
19 shall be considered to have vested in the re-
20 nouncing or disclaiming heir or devisee, and the
21 renunciation or disclaimer shall not be consid-
22 ered to be a transfer or gift of the renounced
23 or disclaimed interest.

1 “(B) ELIGIBLE RECIPIENTS OF RE-
2 NOUNCED OR DISCLAIMED INTERESTS; NOTICE
3 TO RECIPIENTS.—

4 “(i) INTERESTS IN LAND.—A trust or
5 restricted interest in land may be re-
6 nounced 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 inter-
20 est in trust personalty may be renounced
21 or 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
25 the provisions of that subsection.

1 “(iii) UNAUTHORIZED RENUNCI-
2 ATIONS AND DISCLAIMERS.—Unless re-
3 nounced or disclaimed in favor of a person
4 or Indian tribe eligible to receive the inter-
5 est in accordance with the provisions of
6 this subparagraph, a renounced or dis-
7 claimed interest shall pass as if the renun-
8 ciation or disclaimer had not been made.

9 “(C) ACCEPTANCE OF INTEREST.—A re-
10 nunciation or disclaimer of an interest filed in
11 accordance with this paragraph shall be consid-
12 ered accepted when implemented in a final
13 order by a decisionmaker, and shall thereafter
14 be irrevocable. No renunciation or disclaimer of
15 an interest shall be included in such order un-
16 less the recipient of the interest has been given
17 notice of the renunciation or disclaimer and has
18 not refused to accept the interest. All dis-
19 claimers and renunciations filed and imple-
20 mented in probate orders made effective prior
21 to the date of enactment of the American In-
22 dian Probate Reform Act of 2004 are hereby
23 ratified.

24 “(D) RULE OF CONSTRUCTION.—Nothing
25 in this paragraph shall be construed to allow

1 the renunciation of an interest that is subject to
2 the provisions of section 207(a)(2)(D) (25
3 U.S.C. 2206(a)(2)(D)) in favor of more than 1
4 person.

5 “(9) CONSOLIDATION AGREEMENTS.—

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

19 “(B) EFFECTIVE.—An agreement ap-
20 proved under subparagraph (A) shall be consid-
21 ered final when implemented in an order by a
22 decisionmaker. The final probate order shall di-
23 rect any changes necessary to the Secretary’s
24 land records, to reflect and implement the
25 terms of the approved agreement.

1 “(C) EFFECT ON PURCHASE OPTION AT
 2 PROBATE.—Any interest in trust or restricted
 3 land that is subject to a consolidation agree-
 4 ment under this paragraph or section 207(e)
 5 (25 U.S.C. 2206(e)) shall not be available for
 6 purchase under section 207(p) (25 U.S.C.
 7 2206(p)) unless the decisionmaker determines
 8 that the agreement should not be approved.”.

9 **SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN**
 10 **LANDS.**

11 Section 205 of the Indian Land Consolidation Act
 12 (25 U.S.C. 2204) (as amended by section 6(a)(2)) is
 13 amended by adding at the end the following:

14 “(d) PARTITION OF HIGHLY FRACTIONATED INDIAN
 15 LANDS.—

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

1 “(2) REQUIREMENTS.—Each partition action
2 under this subsection shall be conducted by the Sec-
3 retary in accordance with the following require-
4 ments:

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

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

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

19 provided that no such application shall be valid
20 or considered if it is received by the Secretary
21 prior to the date that is 1 year after the date
22 on which notice is published pursuant to section
23 8(a)(4) of the American Indian Probate Reform
24 Act of 2004.

1 “(B) COSTS OF SERVING NOTICE AND PUB-
2 LICATION.—The costs of serving and publishing
3 notice under subparagraph (F) shall be borne
4 by the applicant. Upon receiving written notice
5 from the Secretary, the applicant must pay to
6 the Secretary an amount determined by the
7 Secretary to be the estimated costs of such
8 service of notice and publication, or furnish a
9 sufficient bond for such estimated costs within
10 the time stated in the notice, failing which, un-
11 less an extension is granted by the Secretary,
12 the Secretary shall not be required to com-
13 mence the partition process under subpara-
14 graph (A) and may deny the application. The
15 Secretary shall have the discretion and author-
16 ity in any case to waive either the payment or
17 the bond (or any portion of such payment or
18 bond) otherwise required by this subparagraph,
19 upon making a determination that such waiver
20 will further the policies of this Act.

21 “(C) DETERMINATION.—Upon receipt of
22 an application pursuant to subparagraph (A),
23 the Secretary shall determine whether the sub-
24 ject parcel meets the requirements set forth in
25 section 202(6) (25 U.S.C. 2201(6)) to be classi-

1 fied as a parcel of highly fractionated Indian
2 land.

3 “(D) CONSENT REQUIREMENTS.—

4 “(i) IN GENERAL.—A parcel of land
5 may be partitioned under this subsection
6 only if the applicant obtains the written
7 consent of—

8 “(I) the Indian tribe with juris-
9 diction over the subject land if such
10 Indian tribe owns an undivided inter-
11 est in the parcel;

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

16 “(aa) continuously main-
17 tained a bona fide residence on
18 the parcel; or

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

22 “(III) the owners (including par-
23 ents of minor owners and legal guard-
24 ians of incompetent owners) of at
25 least 50 percent of the undivided in-

1 terests in the parcel, but only in cases
2 where the Secretary determines that,
3 based on the final appraisal prepared
4 pursuant to subparagraph (F), any 1
5 owner's total undivided interest in the
6 parcel (not including the interest of
7 an Indian tribe or that of the owner
8 requesting the partition) has a value
9 in excess of \$1,500.

10 Any consent required by this clause must
11 be in writing and acknowledged before a
12 notary public (or other official authorized
13 to make acknowledgments), and shall be
14 approved by Secretary unless the Secretary
15 has reason to believe that the consent was
16 obtained as a result of fraud or undue in-
17 fluence.

18 “(ii) CONSENT BY THE SECRETARY
19 ON BEHALF OF CERTAIN INDIVIDUALS.—
20 For the purposes of clause (i)(III), the
21 Secretary may consent on behalf of—

22 “(I) undetermined heirs of trust
23 or restricted interests and owners of
24 such interests who are minors and

1 legal incompetents having no parents
2 or legal guardian; and

3 “(II) missing owners or owners
4 of trust or restricted interests whose
5 whereabouts are unknown, but only
6 after a search for such owners has
7 been completed in accordance with the
8 provisions of this subsection.

9 “(E) APPRAISAL.—After the Secretary has
10 determined that the subject parcel is a parcel of
11 highly fractionated Indian land pursuant to
12 subparagraph (C), the Secretary shall cause to
13 be made, in accordance with the provisions of
14 this Act for establishing fair market value, an
15 appraisal of the fair market value of the subject
16 parcel.

17 “(F) NOTICE TO OWNERS ON COMPLETION
18 OF APPRAISAL.—Upon completion of the ap-
19 praisal, the Secretary shall give notice of the re-
20 quested partition and appraisal to all owners of
21 undivided interests in the parcel, in accordance
22 with principles of due process. Such notice shall
23 include the following requirements:

24 “(i) WRITTEN NOTICE.—The Sec-
25 retary shall attempt to give each owner

1 written notice of the partition action stat-
2 ing the following:

3 “(I) That a proceeding to parti-
4 tion the parcel of land by sale has
5 been commenced.

6 “(II) The legal description of the
7 subject parcel.

8 “(III) The owner’s ownership in-
9 terest in the subject parcel as evi-
10 denced by the Secretary’s records as
11 of the date that owners are deter-
12 mined in accordance with clause (ii).

13 “(IV) The results of the ap-
14 praisal.

15 “(V) The owner’s right to receive
16 a copy of the appraisal upon written
17 request.

18 “(VI) The owner’s right to com-
19 ment on or object to the proposed
20 partition and the appraisal.

21 “(VII) That the owner must
22 timely comment on or object in writ-
23 ing to the proposed partition or the
24 appraisal, in order to receive notice of

1 approval of the appraisal and right to
2 appeal.

3 “(VIII) The date by which the
4 owner’s written comments or objec-
5 tions must be received, which shall
6 not be less than 90 days after the
7 date that the notice is mailed under
8 this clause or last published under
9 clause (ii)(II).

10 “(IX) The address for requesting
11 copies of the appraisal and for sub-
12 mitting written comments or objec-
13 tions.

14 “(X) The name and telephone
15 number of the official to be contacted
16 for purposes of obtaining information
17 regarding the proceeding, including
18 the time and date of the auction of
19 the land or the date for submitting
20 sealed bids.

21 “(XI) Any other information the
22 Secretary deems to be appropriate.

23 “(ii) MANNER OF SERVICE.—

24 “(I) SERVICE BY CERTIFIED
25 MAIL.—The Secretary shall use due

1 diligence to provide all owners of in-
2 terests in the subject parcel, as evi-
3 denced by the Secretary's records at
4 the time of the determination under
5 subparagraph (C), with actual notice
6 of the partition proceedings by mail-
7 ing a copy of the written notice de-
8 scribed in clause (i) by certified mail,
9 restricted delivery, to each such owner
10 at the owner's last known address.
11 For purposes of this subsection, own-
12 ers shall be determined from the Sec-
13 retary's land title records as of the
14 date of the determination under sub-
15 paragraph (C) or a date that is not
16 more than 90 days prior to the date
17 of mailing under this clause, which-
18 ever is later. In the event the written
19 notice to an owner is returned unde-
20 livered, the Secretary shall attempt to
21 obtain a current address for such
22 owner by conducting a reasonable
23 search (including a reasonable search
24 of records maintained by local, state,
25 Federal and tribal governments and

1 agencies) and by inquiring with the
2 Indian tribe with jurisdiction over the
3 subject parcel, and, if different from
4 that tribe, the Indian tribe of which
5 the owner is a member, and, if suc-
6 cessful in locating any such owner,
7 send written notice by certified mail
8 in accordance with this subclause.

9 “(II) NOTICE BY PUBLICA-
10 TION.—The Secretary shall give notice
11 by publication of the partition pro-
12 ceedings to all owners that the Sec-
13 retary was unable to serve pursuant
14 to subclause (I), and to unknown
15 heirs and assigns by—

16 “(aa) publishing the notice
17 described in clause (i) at least 2
18 times in a newspaper of general
19 circulation in the county or coun-
20 ties where the subject parcel of
21 land is located or, if there is an
22 Indian tribe with jurisdiction
23 over the parcel of land and that
24 tribe publishes a tribal newspaper
25 or newsletter at least once every

1 month, 1 time in such newspaper
2 of general circulation and 1 time
3 in such tribal newspaper or news-
4 letter;

5 “(bb) posting such notice in
6 a conspicuous place in the tribal
7 headquarters or administration
8 building (or such other tribal
9 building determined by the Sec-
10 retary to be most appropriate for
11 giving public notice) of the In-
12 dian tribe with jurisdiction over
13 the parcel of land, if any; and

14 “(cc) in addition to the fore-
15 going, in the Secretary’s discre-
16 tion, publishing notice in any
17 other place or means that the
18 Secretary determines to be ap-
19 propriate.

20 “(G) REVIEW OF COMMENTS ON AP-
21 PRAISAL.—

22 “(i) IN GENERAL.—After reviewing
23 and considering comments or information
24 timely submitted by any owner of an inter-
25 est in the parcel in response to the notice

1 required under subparagraph (F), the Sec-
 2 retary may, consistent with the provisions
 3 of this Act for establishing fair market
 4 value—

5 “(I) order a new appraisal; or

6 “(II) approve the appraisal;

7 provided that if the Secretary orders a new ap-
 8 praisal under subclause (I), notice of the new
 9 appraisal shall be given as specified in clause
 10 (ii).

11 “(ii) NOTICE.—Notice shall be
 12 given—

13 “(I) in accordance with subpara-
 14 graph (H), where the new appraisal
 15 results in a higher valuation of the
 16 land; or

17 “(II) in accordance with subpara-
 18 graph (F)(ii), where the new appraisal
 19 results in a lower valuation of the
 20 land.

21 “(H) NOTICE TO OWNERS OF APPROVAL
 22 OF APPRAISAL AND RIGHT TO APPEAL.—Upon
 23 making the determination under subparagraph
 24 (G), the Secretary shall provide to the Indian
 25 tribe with jurisdiction over the subject land and

1 to all persons who submitted written comments
2 on or objections to the proposed partition or ap-
3 praisal, a written notice to be served on such
4 tribe and persons by certified mail. Such notice
5 shall state—

6 “(i) the results of the appraisal;

7 “(ii) that the owner has the right to
8 review a copy of the appraisal upon re-
9 quest;

10 “(iii) that the land will be sold for not
11 less than the appraised value, subject to
12 the consent requirements under paragraph
13 (2)(D);

14 “(iv) the time of the sale or for sub-
15 mitting bids under subparagraph (I);

16 “(v) that the owner has the right,
17 under the Secretary’s regulations gov-
18 erning administrative appeals, to pursue
19 an administrative appeal from—

20 “(I) the determination that the
21 land may be partitioned by sale under
22 the provisions of this section; and

23 “(II) the Secretary’s order ap-
24 proving the appraisal;

1 “(vi) the date by which an administra-
2 tive appeal must be taken, a citation to the
3 provisions of the Secretary’s regulations
4 that will govern the owner’s appeal, and
5 any other information required by such
6 regulations to be given to parties affected
7 by adverse decisions of the Secretary;

8 “(vii) in cases where the Secretary de-
9 termines that any person’s undivided trust
10 or restricted interest in the parcel exceeds
11 \$1,500 pursuant to paragraph (2)(D)(iii),
12 that the Secretary has authority to consent
13 to the partition on behalf of undetermined
14 heirs of trust or restricted interests in the
15 parcel and owners of such interests whose
16 whereabouts are unknown; and

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

19 “(I) SALE TO ELIGIBLE PURCHASER.—

20 “(i) IN GENERAL.—Subject to clauses
21 (ii) and (iii) and the consent requirements
22 of paragraph (2)(D), the Secretary shall,
23 after providing notice to owners under sub-
24 paragraph (H), including the time and
25 place of sale or for receiving sealed bids, at

1 public auction or by sealed bid (whichever
2 of such methods of sale the Secretary de-
3 termines to be more appropriate under the
4 circumstances) sell the parcel of land by
5 competitive bid for not less than the final
6 appraised fair market value to the highest
7 bidder from among the following eligible
8 bidders:

9 “(I) The Indian tribe, if any,
10 with jurisdiction over the trust or re-
11 stricted interests in the parcel being
12 sold.

13 “(II) Any person who is a mem-
14 ber, or is eligible to be a member, of
15 the Indian tribe described in sub-
16 clause (I).

17 “(III) Any person who is a mem-
18 ber, or is eligible to be a member, of
19 an Indian tribe but not of the tribe
20 described in subclause (I), but only if
21 such person already owns an undi-
22 vided interest in the parcel at the time
23 of sale.

24 “(IV) Any lineal descendent of
25 the original allottee of the parcel who

1 is a member or is eligible to be a
2 member of an Indian tribe or, with re-
3 spect to a parcel located in the State
4 of California that is not within an In-
5 dian tribe's reservation or not other-
6 wise subject to the jurisdiction of an
7 Indian tribe, who is a member, or eli-
8 gible to be a member, of an Indian
9 tribe or owns a trust or restricted in-
10 terest in the parcel.

11 “(ii) RIGHT TO MATCH HIGHEST
12 BID.—If the highest bidder is a person who
13 is only eligible to bid under clause (i)(III),
14 the Indian tribe that has jurisdiction over
15 the parcel, if any, shall have the right to
16 match the highest bid and acquire the par-
17 cel, but only if—

18 “(I) prior to the date of the sale,
19 the governing body of such tribe has
20 adopted a tribal law or resolution re-
21 serving its right to match the bids of
22 such nonmember bidders in partition
23 sales under this subsection and deliv-
24 ered a copy of such law or resolution
25 to the Secretary; and

1 “(II) the parcel is not acquired
2 under clause (iii).

3 “(iii) RIGHT TO PURCHASE.—Any
4 person who is a member, or eligible to be
5 a member, of the Indian tribe with juris-
6 diction over the trust or restricted interests
7 in the parcel being sold and is, as of the
8 time of sale under this subparagraph, the
9 owner of the largest undivided interest in
10 the parcel shall have a right to purchase
11 the parcel by tendering to the Secretary an
12 amount equal to the highest sufficient bid
13 submitted at the sale, less that amount of
14 the bid attributable to such owner’s share,
15 but only if—

16 “(I) the owner submitted a suffi-
17 cient bid at the sale;

18 “(II) the owner’s total undivided
19 interest in the parcel immediately
20 prior to the sale was—

21 “(aa) greater than the undi-
22 vided interest held by any other
23 co-owners, except where there are
24 2 or more co-owners whose inter-
25 ests are of equal size but larger

1 than the interests of all other co-
2 owners and such owners of the
3 largest interests have agreed in
4 writing that 1 of them may exer-
5 cise the right of purchase under
6 this clause; and

7 “(bb) equal to or greater
8 than 20 percent of the entire un-
9 divided ownership of the parcel;

10 “(III) within 3 days following the
11 date of the auction or for receiving
12 sealed bids, and in accordance with
13 the regulations adopted to implement
14 this section, the owner delivers to the
15 Secretary a written notice of intent to
16 exercise the owner’s rights under this
17 clause; and

18 “(IV) such owner tenders the
19 amount of the purchase price required
20 under this clause—

21 “(aa) not less than 30 days
22 after the date of the auction or
23 time for receiving sealed bids;
24 and

1 “(bb) in accordance with
2 any requirements of the regula-
3 tions promulgated to implement
4 this section.

5 “(iv) INTEREST ACQUIRED.—A pur-
6 chaser of a parcel of land under this sub-
7 paragraph shall acquire title to the parcel
8 in trust or restricted status, free and clear
9 of any and all claims of title or ownership
10 of all persons or entities (not including the
11 United States) owning or claiming to own
12 an interest in such parcel prior to the time
13 of sale.

14 “(J) PROCEEDS OF SALE.—

15 “(i) Subject to clauses (ii) and (iii),
16 the Secretary shall distribute the proceeds
17 of sale of a parcel of land under the provi-
18 sions of this section to the owners of inter-
19 ests in such parcel in proportion to their
20 respective ownership interests.

21 “(ii) Proceeds attributable to the sale
22 of trust or restricted interests shall be
23 maintained in accounts as trust personalty.

24 “(iii) Proceeds attributable to the sale
25 of interests of owners whose whereabouts

1 are unknown, of undetermined heirs, and
2 of other persons whose ownership interests
3 have not been recorded shall be held by the
4 Secretary until such owners, heirs, or other
5 persons have been determined, at which
6 time such proceeds shall be distributed in
7 accordance with clauses (i) and (ii).

8 “(K) LACK OF BIDS OR CONSENT.—

9 “(i) LACK OF BIDS.—If no bidder de-
10 scribed in subparagraph (I) presents a bid
11 that equals or exceeds the final appraised
12 value, the Secretary may either—

13 “(I) purchase the parcel of land
14 for its appraised fair market value on
15 behalf of the Indian tribe with juris-
16 diction over the land, subject to the
17 lien and procedures provided under
18 section 214(b) (25 U.S.C. 2213(b));
19 or

20 “(II) terminate the partition
21 process.

22 “(ii) LACK OF CONSENT.—If an appli-
23 cant fails to obtain any applicable consent
24 required under the provisions of subpara-
25 graph (D) by the date established by the

1 Secretary prior to the proposed sale, the
2 Secretary may either extend the time for
3 obtaining any such consent or deny the re-
4 quest for partition.

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 order for ejectment or any other appro-
18 priate remedy necessary for the partition
19 of the land by sale.

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

23 “(i) the United States—

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

1 “(II) 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 against the United States or that the
7 United States is a necessary and indispen-
8 sable party.

9 “(4) GRANTS AND LOANS.—The Secretary may
10 provide grants and low interest loans to successful
11 bidders at sales authorized by this subsection, pro-
12 vided that—

13 “(A) the total amount of such assistance in
14 any such sale shall not exceed 20 percent of the
15 appraised value of the parcel of land sold; and

16 “(B) the grant or loan funds provided shall
17 only be applied toward the purchase price of the
18 parcel of land sold.

19 “(5) REGULATIONS.—The Secretary is author-
20 ized to adopt such regulations as may be necessary
21 to implement the provisions of this subsection. Such
22 regulations shall include provisions for giving notice
23 of sales to prospective purchasers eligible to submit
24 bids at sales conducted under paragraph (2)(I).”.

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

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

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

5 “(a) PURPOSE.—The purpose of this section is to
6 provide a means for the co-owners of trust or restricted
7 interests in a parcel of land to enter into surface leases
8 of such parcel for certain purposes without approval of
9 the Secretary.

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

15 “(c) OWNER MANAGEMENT.—

16 “(1) IN GENERAL.—Notwithstanding any provi-
17 sion of Federal law requiring the Secretary to ap-
18 prove individual Indian leases of individual Indian
19 trust or restricted land, where the owners of all of
20 the undivided trust or restricted interests in a parcel
21 of land have submitted applications to the Secretary
22 pursuant to subsection (a), and the Secretary has
23 approved such applications under subsection (d),
24 such owners may, without further approval by the
25 Secretary, enter into a lease of the parcel for agri-
26 cultural purposes for a term not to exceed 10 years.

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

5 “(d) APPROVAL OF APPLICATIONS FOR OWNER MAN-
6 AGEMENT.—

7 “(1) IN GENERAL.—Subject to the provisions of
8 paragraph (2), the Secretary shall approve an appli-
9 cation for owner management submitted by a quali-
10 fied applicant pursuant to this section unless the
11 Secretary has reason to believe that the applicant is
12 submitting the application as the result of fraud or
13 undue influence. No such application shall be valid
14 or considered if it is received by the Secretary prior
15 to the date that is 1 year after the date on which
16 notice is published pursuant to section 8(a)(4) of the
17 American Indian Probate Reform Act of 2004.

18 “(2) COMMENCEMENT OF OWNER-MANAGED
19 STATUS.—Notwithstanding the approval of 1 or
20 more applications pursuant to paragraph (1), no
21 trust or restricted interest in a parcel of land shall
22 acquire owner-managed status until applications for
23 all of the trust or restricted interests in such parcel
24 of land have been submitted to and approved by the
25 Secretary pursuant to this section.

1 “(e) VALIDITY OF LEASES.—No lease of trust or re-
2 stricted interests in a parcel of land that is owner-man-
3 aged under this section shall be valid or enforceable
4 against the owners of such interests, or against the land,
5 the interest or the United States, unless such lease—

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

8 “(2) has been approved by the Secretary in ac-
9 cordance with other Federal laws applicable to the
10 leasing of trust or restricted land.

11 “(f) LEASE REVENUES.—The Secretary shall not be
12 responsible for the collection of, or accounting for, any
13 lease revenues accruing to any interests under a lease au-
14 thorized by subsection (e), so long as such interest is in
15 owner-managed status under the provisions of this section.

16 “(g) JURISDICTION.—

17 “(1) JURISDICTION UNAFFECTED BY STATUS.—
18 The Indian tribe with jurisdiction over an interest in
19 trust or restricted land that becomes owner-managed
20 pursuant to this section shall continue to have juris-
21 diction over the interest to the same extent and in
22 all respects that such tribe had prior to the interest
23 acquiring owner-managed status.

24 “(2) PERSONS USING LAND.—Any person hold-
25 ing, leasing, or otherwise using such interest in land

1 shall be considered to consent to the jurisdiction of
2 the Indian tribe referred to in paragraph (1), includ-
3 ing such tribe's laws and regulations, if any, relating
4 to the use, and any effects associated with the use,
5 of the interest.

6 “(h) CONTINUATION OF OWNER-MANAGED STATUS;
7 REVOCATION.—

8 “(1) IN GENERAL.—Subject to the provisions of
9 paragraph (2), after the applications of the owners
10 of all of the trust or restricted interests in a parcel
11 of land have been approved by the Secretary pursu-
12 ant to subsection (d), each such interest shall con-
13 tinue in owner-managed status under this section
14 notwithstanding any subsequent conveyance of the
15 interest in trust or restricted status to another per-
16 son or the subsequent descent of the interest in trust
17 or restricted status by testate or intestate succession
18 to 1 or more heirs.

19 “(2) REVOCATION.—Owner-managed status of
20 an interest may be revoked upon written request of
21 the owners (including the parents or legal guardians
22 of minors or incompetent owners) of all trust or re-
23 stricted interests in the parcel, submitted to the Sec-
24 retary in accordance with regulations adopted under
25 subsection (l). The revocation shall become effective

1 as of the date on which the last of all such requests
2 has been delivered to the Secretary.

3 “(3) EFFECT OF REVOCATION.—Revocation of
4 owner-managed status under paragraph (2) shall not
5 affect the validity of any lease made in accordance
6 with the provisions of this section prior to the effective
7 date of the revocation, provided that, after such
8 revocation becomes effective, the Secretary shall be
9 responsible for the collection of, and accounting for,
10 all future lease revenues accruing to the trust or restricted
11 interests in the parcel from and after such
12 effective date.

13 “(i) DEFINED TERMS.—

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

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

19 “(B) the parent or legal guardian of a
20 minor or incompetent person who owns a trust
21 or restricted interest in a parcel of land.

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

1 “(A) the interest is a trust or restricted in-
2 terest in a parcel of land for which applications
3 covering all trust or restricted interests in such
4 parcel have been submitted to and approved by
5 the Secretary pursuant to subsection (d);

6 “(B) the interest may be leased without
7 approval of the Secretary pursuant to, and in a
8 manner that is consistent with, the require-
9 ments of this section; and

10 “(C) no revocation has occurred under
11 subsection (h)(2).

12 “(j) SECRETARIAL APPROVAL OF OTHER TRANS-
13 ACTIONS.—Except with respect to the specific lease trans-
14 action described in paragraph (1) of subsection (c), inter-
15 ests that acquire owner-managed status under the provi-
16 sions of this section shall continue to be subject to all Fed-
17 eral laws requiring the Secretary to approve transactions
18 involving trust or restricted land (including leases with
19 terms of a duration in excess of 10 years) that would oth-
20 erwise apply to such interests if the interests had not ac-
21 quired owner-managed status under this section.

22 “(k) EFFECT OF SECTION.—Subject to subsections
23 (c), (f), and (h), nothing in this section diminishes or oth-
24 erwise affects any authority or responsibility of the Sec-

1 retary with respect to an interest in trust or restricted
2 land.”.

3 **SEC. 6. ADDITIONAL AMENDMENTS.**

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

6 (1) in the second sentence of section 205(a) (25
7 U.S.C. 2204(a)), by striking “over 50 per centum of
8 the undivided interests” and inserting “undivided in-
9 terests equal to at least 50 percent of the undivided
10 interest”;

11 (2) in section 207 (25 U.S.C. 2206), by adding
12 a subsection at the end as follows:

13 “(p) PURCHASE OPTION AT PROBATE.—

14 “(1) IN GENERAL.—The trust or restricted in-
15 terests in a parcel of land in the decedent’s estate
16 may be purchased at probate in accordance with the
17 provisions of this subsection.

18 “(2) SALE OF INTEREST AT FAIR MARKET
19 VALUE.—Subject to paragraph (3), the Secretary is
20 authorized to sell trust or restricted interests in land
21 subject to this subsection, including the interest that
22 a surviving spouse would otherwise receive under
23 section 207(a)(2) (A) or (D), at no less than fair
24 market value, as determined in accordance with the

1 provisions of this Act, to any of the following eligible
2 purchasers:

3 “(A) Any other eligible heir taking an in-
4 terest in the same parcel of land by intestate
5 succession or the decedent’s other devisees of
6 interests in the same parcel who are eligible to
7 receive a devise under section 207(b)(1)(A).

8 “(B) All persons who own undivided trust
9 or restricted interests in the same parcel of
10 land involved in the probate proceeding.

11 “(C) The Indian tribe with jurisdiction
12 over the interest, or the Secretary on behalf of
13 such Indian tribe.

14 “(3) REQUEST TO PURCHASE; AUCTION; CON-
15 SENT REQUIREMENTS.—No sale of an interest in
16 probate shall occur under this subsection unless—

17 “(A) an eligible purchaser described in
18 paragraph (2) submits a written request to pur-
19 chase prior to the distribution of the interest to
20 heirs or devisees of the decedent and in accord-
21 ance with any regulations of the Secretary; and

22 “(B) except as provided in paragraph (5),
23 the heirs or devisees of such interest, and the
24 decedent’s surviving spouse, if any, receiving a

1 life estate under section 207(a)(2) (A) or (D)
2 consent to the sale.

3 If the Secretary receives more than 1 request to pur-
4 chase the same interest, the Secretary shall sell the
5 interest by public auction or sealed bid (as deter-
6 mined by the Secretary) at not less than the ap-
7 praised fair market value to the eligible purchaser
8 submitting the highest bid.

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

12 “(A) appraise the interest at its fair mar-
13 ket value in accordance with this Act;

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

19 “(C) if the Secretary receives more than 1
20 request to purchase the interest by a person de-
21 scribed in subparagraph (B), provide notice of
22 the manner (auction or sealed bid), time and
23 place of the sale, a description, and the ap-
24 praised fair market value, of the interest to be
25 sold—

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

4 “(ii) to all other eligible purchasers,
5 by posting written notice in at least 5 con-
6 spicuous places in the vicinity of the place
7 of hearing.

8 “(5) SMALL UNDIVIDED INTERESTS IN INDIAN
9 LANDS.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), the consent of a person who is an
12 heir otherwise required under paragraph (3)(B)
13 shall not be required for the auction and sale
14 of an interest at probate under this subsection
15 if—

16 “(i) the interest is passing by intes-
17 tate succession; and

18 “(ii) prior to the auction the Sec-
19 retary determines in the probate pro-
20 ceeding that the interest passing to such
21 heir represents less than 5 percent of the
22 entire undivided ownership of the parcel of
23 land as evidenced by the Secretary’s
24 records as of the time the determination is
25 made.

1 “(B) EXCEPTION.—Notwithstanding sub-
2 paragraph (A), the consent of such heir shall be
3 required for the sale at probate of the heir’s in-
4 terest if, at the time of the decedent’s death,
5 the heir was residing on the parcel of land of
6 which the interest to be sold was a part.

7 “(6) DISTRIBUTION OF PROCEEDS.—Proceeds
8 from the sale of interests under this subsection shall
9 be distributed to the heirs, devisees, or spouse whose
10 interest was sold in accordance with the values of
11 their respective interests. The proceeds attributable
12 to an heir or devisee shall be held in an account as
13 trust personalty if the interest sold would have oth-
14 erwise passed to the heir or devisee in trust or re-
15 stricted status.”;

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

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

19 “(3) TRIBAL PROBATE CODES.—Except as pro-
20 vided in any applicable Federal law, the Secretary
21 shall not approve a tribal probate code, or an
22 amendment to such a code, that prohibits the devise
23 of an interest in trust or restricted land to—

24 “(A) an Indian lineal descendant of the
25 original allottee; or

1 “(B) an Indian who is not a member of the
2 Indian tribe with jurisdiction over such an in-
3 terest;

4 unless the code provides for—

5 “(i) the renouncing of interests to eli-
6 gible devisees in accordance with the code;

7 “(ii) the opportunity for a devisee who
8 is the spouse or lineal descendant of a tes-
9 tator to reserve a life estate without regard
10 to waste; and

11 “(iii) payment of fair market value in
12 the manner prescribed under subsection
13 (c)(2).”; and

14 (B) in subsection (c)—

15 (i) in paragraph (1)—

16 (I) by striking the paragraph
17 heading and inserting the following:

18 “(1) AUTHORITY.—

19 “(A) IN GENERAL.—”;

20 (II) in the first sentence of sub-
21 paragraph (A) (as redesignated by
22 clause (i)), by striking “section
23 207(a)(6)(A) of this title” and insert-
24 ing “section 207(b)(2)(A)(ii) of this
25 title”; and

1 (III) by striking the last sentence
2 and inserting the following:

3 “(B) TRANSFER.—The Secretary shall
4 transfer payments received under subparagraph
5 (A) to any person or persons who would have
6 received an interest in land if the interest had
7 not been acquired by the Indian tribe in accord-
8 ance with this paragraph.”; and

9 (ii) in paragraph (2)—

10 (I) in subparagraph (A)—

11 (aa) by striking the subpara-
12 graph heading and all that fol-
13 lows through “Paragraph (1)
14 shall not apply” and inserting the
15 following:

16 “(A) INAPPLICABILITY TO CERTAIN INTER-
17 ESTS.—

18 “(i) IN GENERAL.—Paragraph (1)
19 shall not apply”;

20 (bb) in clause (i) (as redес-
21 ignated by item (aa)), by striking
22 “if, while” and inserting the fol-
23 lowing: “if—
24 “(I) while”;

1 (cc) by striking the period at
2 the end and inserting “; or”; and

3 (dd) by adding at the end
4 the following:

5 “(II)(aa) the interest is part of a
6 family farm that is devised to a mem-
7 ber of the family of the decedent; and

8 “(bb) the devisee agrees that the
9 Indian tribe with jurisdiction over the
10 land will have the opportunity to ac-
11 quire the interest for fair market
12 value if the interest is offered for sale
13 to a person or entity that is not a
14 member of the family of the owner of
15 the land.

16 “(ii) RECORDING OF INTEREST.—On
17 request by the Indian tribe described in
18 clause (i)(II)(bb), a restriction relating to
19 the acquisition by the Indian tribe of an
20 interest in a family farm involved shall be
21 recorded as part of the deed relating to the
22 interest involved.

23 “(iii) MORTGAGE AND FORE-
24 CLOSURE.—Nothing in clause (i)(II)
25 limits—

1 “(I) the ability of an owner of
2 land to which that clause applies to
3 mortgage the land; or

4 “(II) the right of the entity hold-
5 ing such a mortgage to foreclose or
6 otherwise enforce such a mortgage
7 agreement in accordance with applica-
8 ble law.

9 “(iv) DEFINITION OF ‘MEMBER OF
10 THE FAMILY’.—In this paragraph, the
11 term ‘member of the family’, with respect
12 to a decedent or landowner, means—

13 “(I) a lineal descendant of a de-
14 cedent or landowner;

15 “(II) a lineal descendant of the
16 grandparent of a decedent or land-
17 owner;

18 “(III) the spouse of a descendant
19 or landowner described in subclause
20 (I) or (II); and

21 “(IV) the spouse of a decedent or
22 landowner.”; and

23 (II) in subparagraph (B), by
24 striking “subparagraph (A)” and all
25 that follows through “207(a)(6)(B) of

1 this title” and inserting “paragraph
2 (1)”;

3 (4) in section 207 (25 U.S.C. 2206), by striking
4 subsection (g);

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

6 (A) by striking the section heading and in-
7 serting the following:

8 **“SEC. 2212. FRACTIONAL INTEREST ACQUISITION PRO-**
9 **GRAM.”;**

10 (B) in subsection (a), by—

11 (i) adding in paragraph (1) “or from
12 an heir during probate in accordance with
13 section 207(p) (25 U.S.C. 2206(p))” after
14 “owner,”; and

15 (ii) striking “(2) AUTHORITY OF SEC-
16 RETARY.—” and all that follows through
17 “the Secretary shall submit” and inserting
18 the following:

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

21 (iii) by striking “whether the program
22 to acquire fractional interests should be ex-
23 tended or altered to make resources” and
24 inserting “how the fractional interest ac-

1 quisition program should be enhanced to
2 increase the resources made”;

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

5 “(4) shall minimize the administrative costs as-
6 sociated with the land acquisition program through
7 the use of policies and procedures designed to ac-
8 commodate the voluntary sale of interests under this
9 section, notwithstanding the existence of any other-
10 wise applicable policy, procedure, or regulation,
11 through the elimination of duplicate—

12 “(A) conveyance documents;

13 “(B) administrative proceedings; and

14 “(C) transactions.”;

15 (D) in subsection (c)—

16 (i) in paragraph (1)—

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

20 (II) in subparagraph (A), by in-
21 serting “in such parcel” following
22 “the Secretary shall convey an inter-
23 est”;

24 (III) in subparagraph (A), by
25 striking “landowner upon payment”

1 and all that follows and inserting the
2 following: “landowner—

3 “(i) on payment by the Indian land-
4 owner of the amount paid for the interest
5 by the Secretary; or

6 “(ii) if—

7 “(I) the Indian referred to in this
8 subparagraph provides assurances
9 that the purchase price will be paid by
10 pledging revenue from any source, in-
11 cluding trust resources; and

12 “(II) the Secretary determines
13 that the purchase price will be paid in
14 a timely and efficient manner.”; and

15 (IV) in subparagraph (B), by in-
16 sserting before the period at the end
17 the following: “unless the interest is
18 subject to a foreclosure of a mortgage
19 in accordance with the Act of March
20 29, 1956 (25 U.S.C. 483a)”;

21 (ii) in paragraph (3), by striking “10
22 percent or more of the undivided interests”
23 and inserting “an undivided interest”; and
24 (E) by adding at the end of the section:

1 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
2 is authorized to be appropriated to carry out this section
3 \$75,000,000 for fiscal year 2005, \$95,000,000 for fiscal
4 year 2006, and \$145,000,000 for each of fiscal years 2007
5 through 2010.”;

6 (6) in section 214 (25 U.S.C. 2213), by striking
7 subsection (b) and inserting the following:

8 “(b) APPLICATION OF REVENUE FROM ACQUIRED
9 INTERESTS TO LAND CONSOLIDATION PROGRAM.—

10 “(1) IN GENERAL.—The Secretary shall have a
11 lien on any revenue accruing to an interest described
12 in subsection (a) until the Secretary provides for the
13 removal of the lien under paragraph (3), (4), or (5).

14 “(2) REQUIREMENTS.—

15 “(A) IN GENERAL.—Until the Secretary
16 removes a lien from an interest in land under
17 paragraph (1)—

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

24 “(ii) any revenue derived from any in-
25 terest acquired by the Secretary in accord-

1 ance with section 213 shall be deposited in
2 the fund created under section 216.

3 “(B) APPROVAL OF TRANSACTIONS.—Not-
4 withstanding section 16 of the Act of June 18,
5 1934 (commonly known as the ‘Indian Reorga-
6 nization Act’) (25 U.S.C. 476), or any other
7 provision of law, until the Secretary removes a
8 lien from an interest in land under paragraph
9 (1), the Secretary may approve a transaction
10 covered under this section on behalf of an In-
11 dian tribe.

12 “(3) REMOVAL OF LIENS AFTER FINDINGS.—
13 The Secretary may remove a lien referred to in
14 paragraph (1) if the Secretary makes a finding
15 that—

16 “(A) the costs of administering the interest
17 from which revenue accrues under the lien will
18 equal or exceed the projected revenues for the
19 parcel of land involved;

20 “(B) in the discretion of the Secretary, it
21 will take an unreasonable period of time for the
22 parcel of land to generate revenue that equals
23 the purchase price paid for the interest; or

24 “(C) a subsequent decrease in the value of
25 land or commodities associated with the parcel

1 of land make it likely that the interest will be
2 unable to generate revenue that equals the pur-
3 chase price paid for the interest in a reasonable
4 time.

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

14 “(5) OTHER REMOVAL OF LIENS.—The Sec-
15 retary may, in consultation with tribal governments
16 and other entities described in section 213(b)(3), pe-
17 riodically remove liens referred to in paragraph (1)
18 from interests in land acquired by the Secretary.”;

19 (7) in section 215 (25 U.S.C. 2214), in the last
20 sentence, by striking “section 2212 of this title” and
21 inserting “this Act”;

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

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

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

5 (B) in subsection (b)—

6 (i) in paragraph (1)—

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

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

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

16 (IV) by adding at the end the fol-
17 lowing:

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

21 (ii) by striking paragraph (2) and in-
22 serting the following:

23 “(2) **USE OF FUNDS.**—The Secretary may use
24 the revenue deposited in the Acquisition Fund under
25 paragraph (1) to acquire some or all of the undi-

1 vided interests in any parcels of land in accordance
2 with section 205.”;

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

4 (A) in subsection (b)(1), by striking sub-
5 paragraph (B) and inserting a new subpara-
6 graph (B) as follows:

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

14 “(i) to an Indian person who is the
15 owner’s spouse, brother, sister, lineal an-
16 cestor, lineal descendant, or collateral heir;
17 or

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

23 (B) in subsection (e), by striking the mat-
24 ter preceding paragraph (1), and inserting
25 “Notwithstanding any other provision of law,

1 the names and mailing addresses of the owners
2 of any interest in trust or restricted lands, and
3 information on the location of the parcel and
4 the percentage of undivided interest owned by
5 each individual shall, upon written request, be
6 made available to”;

7 (C) in subsection (e)(1), by striking “In-
8 dian”;

9 (D) in subsection (e)(3), by striking “pro-
10 spective applicants for the leasing, use, or con-
11 solidation of” and inserting “any person that is
12 leasing, using, or consolidating, or is applying
13 to lease, use, or consolidate,”; and

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

16 “(f) PURCHASE OF LAND BY INDIAN TRIBE.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), before the Secretary approves an applica-
19 tion to terminate the trust status or remove the re-
20 strictions on alienation from a parcel of, or interest
21 in, trust or restricted land, the Indian tribe with ju-
22 risdiction over the parcel shall have the
23 opportunity—

24 “(A) to match any offer contained in the
25 application; or

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

5 “(2) EXCEPTION FOR FAMILY FARMS.—

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

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

23 (10) in section 219(b)(1)(A) (25 U.S.C.
24 2218(b)(1)(A)), by striking “100” and inserting
25 “90”; and

1 (11) in section 219, by adding at the end of the
2 section:

3 “(g) OTHER LAWS.—Nothing in this Act shall be
4 construed to supersede, repeal, or modify any general or
5 specific statute authorizing the grant or approval of any
6 type of land use transaction involving fractional interests
7 in trust or restricted land.”.

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

10 (1) by striking paragraph (2) and inserting the
11 following:

12 “(2) ‘Indian’ means—

13 “(A) any person who is a member of any
14 Indian tribe, is eligible to become a member of
15 any Indian tribe, or is an owner (as of the date
16 of enactment of the American Indian Probate
17 Reform Act of 2004) of a trust or restricted in-
18 terest in land;

19 “(B) any person meeting the definition of
20 Indian under the Indian Reorganization Act (25
21 U.S.C. 479) and the regulations promulgated
22 thereunder; and

23 “(C) with respect to the inheritance and
24 ownership of trust or restricted land in the
25 State of California pursuant to section 207, any

1 person described in subparagraph (A) or (B) or
2 any person who owns a trust or restricted inter-
3 est in a parcel of such land in that State.”;

4 (2) by striking paragraph (4) and inserting the
5 following:

6 “(4) ‘trust or restricted lands’ means lands,
7 title to which is held by the United States in trust
8 for an Indian tribe or individual, or which is held by
9 an Indian tribe or individual subject to a restriction
10 by the United States against alienation; and ‘trust
11 or restricted interest in land’ or ‘trust or restricted
12 interest in a parcel of land’ means an interest in
13 land, title to which is held in trust by the United
14 States for an Indian tribe or individual, or which is
15 held by an Indian tribe or individual subject to a re-
16 striction by the United States against alienation.”;
17 and

18 (3) by adding at the end the following:

19 “(6) ‘parcel of highly fractionated Indian land’
20 means a parcel of land that the Secretary, pursuant
21 to authority under a provision of this Act, deter-
22 mines to have, as evidenced by the Secretary’s
23 records at the time of the determination—

24 “(A) 50 or more but less than 100 co-own-
25 ers of undivided trust or restricted interests,

1 and no 1 of such co-owners holds a total undi-
2 vided trust or restricted interest in the parcel
3 that is greater than 10 percent of the entire un-
4 divided ownership of the parcel; or

5 “(B) 100 or more co-owners of undivided
6 trust or restricted interests;

7 “(7) ‘land’ means any real property, and in-
8 cludes within its meaning for purposes of this Act
9 improvements permanently affixed to real property;

10 “(8) ‘person’ or ‘individual’ means a natural
11 person;

12 “(9) ‘eligible heirs’ means, for purposes of sec-
13 tion 207 (25 U.S.C. 2206), any of a decedent’s chil-
14 dren, grandchildren, great grandchildren, full sib-
15 lings, half siblings by blood, and parents who are—

16 “(A) Indian; or

17 “(B) lineal descendants within 2 degrees of
18 consanguinity of an Indian; or

19 “(C) owners of a trust or restricted inter-
20 est in a parcel of land for purposes of inheriting
21 by descent, renunciation, or consolidation agree-
22 ment under section 207 (25 U.S.C. 2206), an-
23 other trust or restricted interest in such parcel
24 from the decedent; and

1 “(10) ‘without regard to waste’ means, with re-
2 spect to a life estate interest in land, that the holder
3 of such estate is entitled to the receipt of all income,
4 including bonuses and royalties, from such land to
5 the exclusion of the remaindermen.”.

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

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

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

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

23 (3) inserting “in accordance with the Indian
24 Land Consolidation Act (25 U.S.C. 2201 et seq.)

1 (including a tribal probate code approved under that
2 Act or regulations promulgated under that Act):”.

3 (e) ESTATE PLANNING.—

4 (1) CONDUCT OF ACTIVITIES.—Section
5 207(f)(1) of the Indian Land Consolidation Act (25
6 U.S.C. 2206) is amended by striking paragraph (1)
7 and inserting the following:

8 “(1) IN GENERAL.—

9 “(A) The activities conducted under this
10 subsection shall be conducted in accordance
11 with any applicable—

12 “(i) tribal probate code; or

13 “(ii) tribal land consolidation plan.

14 “(B) The Secretary shall provide estate
15 planning assistance in accordance with this sub-
16 section, to the extent amounts are appropriated
17 for such purpose.”.

18 (2) REQUIREMENTS.—Section 207(f)(2) of the
19 Indian Land Consolidation Act (25 U.S.C.
20 2206(f)(2)) is amended by striking “and” at the end
21 of subparagraph (A), redesignating subparagraph
22 (B) as subparagraph (D), and adding the following:

23 “(B) dramatically increase the use of wills
24 and other methods of devise among Indian
25 landowners;

1 “(C) substantially reduce the quantity and
2 complexity of Indian estates that pass intestate
3 through the probate process, while protecting
4 the rights and interests of Indian landowners;
5 and”.

6 (3) PROBATE CODE DEVELOPMENT AND LEGAL
7 ASSISTANCE GRANTS.—Section 207(f)(3) of the In-
8 dian Land Consolidation Act (25 U.S.C. 2206(f)(3))
9 is amended by striking paragraph (3) and inserting
10 the following:

11 “(3) PROBATE CODE DEVELOPMENT AND
12 LEGAL ASSISTANCE GRANTS.—In carrying out this
13 section, the Secretary may award grants to—

14 “(A) Indian tribes, for purposes of tribal
15 probate code development and estate planning
16 services to tribal members;

17 “(B) organizations that provide legal as-
18 sistance services for Indian tribes, Indian orga-
19 nizations, and individual owners of interests in
20 trust or restricted lands that are qualified as
21 nonprofit organizations under section 501(c)(3)
22 of the Internal Revenue Code of 1986 and pro-
23 vide such services pursuant to Federal poverty
24 guidelines, for purposes of providing civil legal
25 assistance to such Indian tribes, individual own-

1 ers, and Indian organizations for the develop-
2 ment of tribal probate codes, for estate plan-
3 ning services or for other purposes consistent
4 with the services they provide to Indians and
5 Indian tribes; and

6 “(C) in specific areas and reservations
7 where qualified nonprofit organizations referred
8 to in subparagraph (B) do not provide such
9 legal assistance to Indian tribes, Indian organi-
10 zations, or individual owners of trust or re-
11 stricted land, to other providers of such legal
12 assistance;

13 that submit an application to the Secretary, in such
14 form and manner as the Secretary may prescribe.

15 “(4) AUTHORIZATION FOR APPROPRIATIONS.—

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

19 (4) NOTIFICATION TO LANDOWNERS.—Section
20 207 of the Indian Land Consolidation Act (25
21 U.S.C. 2206) is amended by adding at the end the
22 following:

23 “(1) NOTIFICATION TO LANDOWNERS.—After receiv-
24 ing written request by any owner of a trust or restricted
25 interest in land, the Secretary shall provide to such land-

1 owner the following information with respect to each tract
 2 of trust or restricted land in which the landowner has an
 3 interest:

4 “(1) The location of the tract of land involved.

5 “(2) The identity of each other co-owner of in-
 6 terests in the parcel of land.

7 “(3) The percentage of ownership of each owner
 8 of an interest in the tract.

9 “(m) PILOT PROJECT FOR THE MANAGEMENT OF
 10 TRUST ASSETS OF INDIAN FAMILIES AND RELATIVES.—

11 “(1) DEVELOPMENT PILOT PROJECT.—The
 12 Secretary shall consult with tribes, individual land-
 13 owner organizations, Indian advocacy organizations,
 14 and other interested parties to—

15 “(A) develop a pilot project for the cre-
 16 ation of legal entities such as private or family
 17 trusts, partnerships corporations, or other orga-
 18 nizations to improve, facilitate, and assist in the
 19 efficient management of interests in trust or re-
 20 stricted lands or funds owned by Indian family
 21 members and relatives; and

22 “(B) develop proposed rules, regulations,
 23 and guidelines to implement the pilot project,
 24 including—

1 “(i) the criteria for establishing such
2 legal entities;

3 “(ii) reporting and other requirements
4 that the Secretary determines to be appro-
5 priate for administering such entities; and

6 “(iii) provisions for suspending or re-
7 voking the authority of an entity to engage
8 in activities relating to the management of
9 trust or restricted assets under the pilot
10 project in order to protect the interests of
11 the beneficial owners of such assets.

12 “(2) PRIMARY PURPOSES; LIMITATION; AP-
13 PROVAL OF TRANSACTIONS; PAYMENTS BY SEC-
14 RETARY.—

15 “(A) PURPOSES.—The primary purpose of
16 any entity organized under the pilot project
17 shall be to improve, facilitate, and assist in the
18 management of interests in trust or restricted
19 land, held by 1 or more persons, in furtherance
20 of the purposes of this Act.

21 “(B) LIMITATION.—The organization or
22 activities of any entity under the pilot project
23 shall not be construed to impair, impede, re-
24 place, abrogate, or modify in any respect the
25 trust duties or responsibilities of the Secretary,

1 nor shall anything in this subsection or in any
2 rules, regulations, or guidelines developed under
3 this subsection enable any private or family
4 trustee of trust or restricted interests in land to
5 exercise any powers over such interests greater
6 than that held by the Secretary with respect to
7 such interests.

8 “(C) SECRETARIAL APPROVAL OF TRANS-
9 ACTIONS.—Any transaction involving the lease,
10 use, mortgage or other disposition of trust or
11 restricted land or other trust assets adminis-
12 tered by or through an entity under the pilot
13 project shall be subject to approval by the Sec-
14 retary in accordance with applicable Federal
15 law.

16 “(D) PAYMENTS.—The Secretary shall
17 have the authority to make payments of income
18 and revenues derived from trust or restricted
19 land or other trust assets administered by or
20 through an entity participating in the pilot
21 project directly to the entity, in accordance with
22 requirements of the regulations adopted pursu-
23 ant to this subsection.

24 “(3) LIMITATIONS ON PILOT PROJECT.—

1 “(A) NUMBER OF ORGANIZATIONS.—The
2 number of entities established under the pilot
3 project authorized by this subsection shall not
4 exceed 30.

5 “(B) REGULATIONS REQUIRED.—No entity
6 shall commence activities under the pilot project
7 authorized by this subsection until the Sec-
8 retary has adopted final rules and regulations
9 under paragraph (1)(B).

10 “(4) REPORT TO CONGRESS.—Prior to the expi-
11 ration of the pilot project provided for under this
12 subsection, the Secretary shall submit a report to
13 Congress stating—

14 “(A) a description of the Secretary’s con-
15 sultation with Indian tribes, individual land-
16 owner associations, Indian advocacy organiza-
17 tions, and other parties consulted with regard-
18 ing the development of rules and regulations for
19 the creation and management of interests in
20 trust and restricted lands under the pilot
21 project;

22 “(B) the feasibility of accurately moni-
23 toring the performance of legal entities such as
24 those involved in the pilot project, and the ef-

1 fectiveness of such entities as mechanisms to
2 manage and protect trust assets;

3 “(C) the impact that the use of entities
4 such as those in the pilot project may have with
5 respect to the accomplishment of the goals of
6 the Indian Land Consolidation Act (25 U.S.C.
7 2201 et seq.); and

8 “(D) any recommendations that the Sec-
9 retary may have regarding whether to adopt a
10 permanent program as a management and con-
11 solidation measure for interests in trust or re-
12 stricted lands.

13 “(n) NOTICE TO HEIRS.—Prior to holding a hearing
14 to determine the heirs to trust or restricted property, or
15 making a decision determining such heirs, the Secretary
16 shall seek to provide actual written notice of the pro-
17 ceedings to all heirs. Such efforts shall include—

18 “(1) a search of publicly available records and
19 Federal records, including telephone and address di-
20 rectories and including electronic search services or
21 directories;

22 “(2) an inquiry with family members and co-
23 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
6 firm 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 ef-
12 forts under subsection (m); and

13 “(B) in the proceeding to determine a de-
14 cedent’s heirs, the Secretary finds that the heir
15 has had no contact with other heirs of the dece-
16 dent, if any, or with the Department relating to
17 trust or restricted land or other trust assets at
18 any 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
25 after a review of the efforts made in the heirship

1 proceeding and a finding has been made that this
 2 subsection has been complied with.

3 “(4) An heir determined to be missing pursuant
 4 to this subsection shall be deemed to have pre-
 5 deceased the decedent for purposes of descent and
 6 devise of trust or restricted land and trust person-
 7 alty within 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
2 after the date of enactment of this Act, the Sec-
3 retary shall notify Indian tribes and owners of trust
4 or restricted lands of the amendments made by this
5 Act.

6 (2) SPECIFICATIONS.—The notice required
7 under paragraph (1) shall be designed to inform In-
8 dian owners of trust or restricted land of—

9 (A) the effect of this Act and the amend-
10 ments made by this Act, with emphasis on the
11 effect of the provisions of this Act and the
12 amendments made by this Act, on the testate
13 disposition and intestate descent of their inter-
14 ests in trust or restricted land;

15 (B) estate planning options available to the
16 owners, including any opportunities for receiv-
17 ing estate planning assistance or advice;

18 (C) the use of negotiated sales, gift deeds,
19 land exchanges, and other transactions for con-
20 solidating the ownership of land; and

21 (D) a toll-free telephone number to be used
22 for obtaining information regarding the provi-
23 sions of this Act and any trust assets of such
24 owners.

1 (3) REQUIREMENTS.—The Secretary shall pro-
2 vide the notice required under paragraph (1)—

3 (A) by direct mail for those Indians with
4 interests in trust and restricted lands for which
5 the Secretary has an address for the interest
6 holder;

7 (B) through the Federal Register;

8 (C) through local newspapers in areas with
9 significant Indian populations, reservation
10 newspapers, and newspapers that are directed
11 at an Indian audience; and

12 (D) through any other means determined
13 appropriate by the Secretary.

14 (4) CERTIFICATION.—After providing notice
15 under this subsection, the Secretary shall—

16 (A) certify that the requirements of this
17 subsection have been met; and

18 (B) publish notice of that certification in
19 the Federal Register.

20 (b) EFFECTIVE DATE.—Section 207 of the Indian
21 Land Consolidation Act (25 U.S.C. 2206), except sub-
22 sections (e) and (f) of that section, shall not apply to the
23 estate of an individual who dies before the date that is
24 1 year after the date on which the Secretary makes the
25 certification 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
5 any reason, the remainder of this Act and of amendments
6 made by this Act, and the application of the provisions
7 and of the amendments made by this Act to any other
8 person or circumstance shall not be affected by such hold-
9 ing, except that each of subclauses (II), (III), and (IV)
10 of section 205(d)(2)(I)(i) is deemed to be inseverable from
11 the other 2, such that if any 1 of those 3 subclauses is
12 held to be invalid for any reason, neither of the other 2
13 of such subclauses 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.

Passed the Senate June 2, 2004.

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

S. 1721

AN ACT

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