

disapprove any will which names as a beneficiary thereunder a government employee who is not related to the testator by blood, or otherwise the natural object of the testator's bounty.

#### § 17.14 Appeals.

(a) Notwithstanding the provisions in part 2 of this chapter concerning appeals generally from administrative actions, any appeal from the action of the superintendent of approving or disapproving a will shall be taken to the Secretary. Upon the superintendent's final action of approval or disapproval of a will, he shall immediately notify by mail all attorneys appearing in the case, together with interested parties who are not represented by attorneys, of his decision and of their right to file an appeal.

(b) Any party desiring to appeal from the action of the superintendent shall, within 15 days after the date of the mailing of notice of the decision file with the superintendent a notice in writing of his intention to appeal to the Secretary, and shall, within 30 days after the mailing date of such notice by the superintendent, perfect his appeal to the Secretary by service of the appeal upon the superintendent who will transmit the entire record to the Secretary. If no notice of intention to appeal is given within 15 days, the superintendent's decision will be final.

(c) Upon the filing of notice with the superintendent of intention to appeal or the perfecting of an appeal by service upon the superintendent, at the same time similar notice and service shall be effected by the party taking an appeal upon opposing counsel or litigants, and a statement included in the appeal that this has been done. A party taking an appeal may, within the same 30-day period allowed for perfecting an appeal, file a brief or other written statement of his contentions, showing also service of that brief upon opposing counsel or litigants. Opposing counsel or litigants shall have 30 days from the date of the service of appellant's brief upon them in which to file an answer brief, copies of which also shall be served upon the appellant or opposing counsel and litigants. Except by special

permission, no other briefs will be allowed on appeal.

[26 FR 10930, Nov. 22, 1961]

## PART 18—TRIBAL PROBATE CODES

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*; 25 CFR part 15; 43 CFR part 4.

SOURCE: 73 FR 67283, Nov. 13, 2008, unless otherwise noted.

### Subpart A—General Provisions

#### § 18.1 What is the purpose of this part?

This part establishes the Department's policies and procedures for reviewing and approving or disapproving tribal probate codes, amendments, and single heir rules that contain provisions regarding the descent and distribution of trust and restricted lands.

#### § 18.2 What definitions do I need to know?

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108–374, as codified at 25 U.S.C. 2201 *et seq.*

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Department* means the Department of the Interior.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Indian* means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any feder-

ally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Intestate* means that the decedent died without a will.

*OHA* means the Office of Hearings and Appeals within the Department of the Interior.

*Restricted lands* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted lands are treated as if they were trust lands. Except as the law may provide otherwise, the term "restricted lands" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Testator* means a person who has executed a will.

*Trust lands* means real property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*We* or *us* means the Secretary or an authorized representative of the Secretary.

### Subpart B—Approval of Tribal Probate Codes

#### § 18.101 May a tribe create and adopt its own tribal probate code?

Yes. A tribe may create and adopt a tribal probate code.

#### § 18.102 When must a tribe submit its tribal probate code to the Department for approval?

The tribe must submit its probate code to the Department for approval if

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the tribal probate code contains provisions regarding the descent and distribution of trust and restricted lands.

### **§ 18.103 Which provisions within a tribal probate code require the Department's approval?**

Only those tribal probate code provisions regarding the descent and distribution of trust and restricted lands require the Department's approval.

### **§ 18.104 May a tribe include provisions in its tribal probate code regarding the distribution and descent of trust personalty?**

No. All trust personalty will be distributed in accordance with the American Indian Probate Reform Act of 2004, as amended.

### **§ 18.105 How does a tribe request approval for a tribal probate code?**

The tribe must submit the tribal probate code and a duly executed tribal resolution adopting the code to the Assistant Secretary—Indian Affairs, Attn: Tribal Probate Code, 1849 C Street, NW., Washington, DC 20240, for review and approval or disapproval.

### **§ 18.106 What will the Department consider in the approval process?**

A tribal probate code must meet the requirements of this section in order to receive our approval under this part.

(a) The code must be consistent with Federal law.

(b) The code must promote the policies of the Indian Land Consolidation Act (ILCA) Amendments of 2000, which are to:

- (1) Prevent further fractionation;
- (2) Consolidate fractional interests into useable parcels;
- (3) Consolidate fractional interests to enhance tribal sovereignty;
- (4) Promote tribal self-sufficiency and self-determination; and
- (5) Reverse the effects of the allotment policy on Indian tribes.

(c) Unless the conditions in paragraph (d) of this section are met, the code must not prohibit the devise of an interest to:

- (1) An Indian lineal descendant of the original allottee; or
- (2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in the land.

(d) If the tribal probate code prohibits the devise of an interest to the devisees in paragraph (c)(1) or (c)(2) of this section, then the code must:

(1) Allow those devisees to renounce their interests in favor of eligible devisees as defined by the tribal probate code;

(2) Allow a devisee who is the spouse or lineal descendant of the testator to reserve a life estate without regard to waste; and

(3) Require the payment of fair market value as determined by the Department on the date of the decedent's death.

### **§ 18.107 When will the Department approve or disapprove a tribal probate code?**

(a) We have 180 days from receipt by the Assistant Secretary—Indian Affairs of a submitted tribal probate code and duly executed tribal resolution adopting the tribal probate code to approve or disapprove a tribal probate code.

(b) If we do not meet the deadline in paragraph (a) of this section, the tribal probate code will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

### **§ 18.108 What happens if the Department approves the tribal probate code?**

Our approval applies only to those sections of the tribal probate code that govern the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the tribal probate code to OHA.

### **§ 18.109 How will a tribe be notified of the disapproval of a tribal probate code?**

If we disapprove a tribal probate code, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

### **§ 18.110 When will a tribal probate code become effective?**

(a) A tribal probate code may not become effective sooner than 180 days

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after the date of approval by the Department.

(b) If a tribal probate code is deemed approved through inaction by the Department, then the code will become effective 180 days after it is deemed approved.

(c) The tribal probate code will apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

### § 18.111 What will happen if a tribe repeals its probate code?

If a tribe repeals its tribal probate code:

(a) The repeal will not become effective sooner than 180 days from the date we receive notification from the tribe of its decision to repeal the code; and

(b) We will forward a copy of the repeal to OHA.

### § 18.112 May a tribe appeal the approval or disapproval of a probate code?

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code.

## Subpart C—Approval of Tribal Probate Code Amendments

### § 18.201 May a tribe amend a tribal probate code?

Yes. A tribe may amend a tribal probate code.

### § 18.202 How does a tribe request approval for a tribal probate code amendment?

To amend a tribal probate code, the tribe must follow the same procedures as for submitting a tribal probate code to the Department for approval.

### § 18.203 Which probate code amendments require approval?

Only those tribal probate code amendments regarding the descent and distribution of trust and restricted lands require the Department's approval.

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### § 18.204 When will the Department approve an amendment?

(a) We have 60 days from receipt by the Assistant Secretary of a submitted amendment to approve or disapprove the amendment.

(b) If we do not meet the deadline in paragraphs (a) of this section, the amendment will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

### § 18.205 What happens if the Department approves the amendment?

Our approval applies only to those sections of the amendment that contain provisions regarding the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the amendment to OHA.

### § 18.206 How will a tribe be notified of the disapproval of an amendment?

If we disapprove an amendment, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

### § 18.207 When do amendments to a tribal probate code become effective?

(a) An amendment may not become effective sooner than 180 days after the date of approval by the Department.

(b) If an amendment is deemed approved through inaction by the Department, then the amendment will become effective 180 days after it is deemed approved.

(c) The amendment will apply only to the estate of a decedent who dies on or after the effective date of the amendment.

### § 18.208 May a tribe appeal an approval or disapproval of a probate code amendment?

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code amendment.

**Subpart D—Approval of Single Heir Rule**

**§ 18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?**

Yes. A tribe may create and adopt a single heir rule for intestate succession. The single heir rule may specify a single recipient other than the one specified in 25 U.S.C. 2206(a)(2)(D).

**§ 18.302 How does the tribe request approval for the single heir rule?**

The tribe must follow the same procedures as for submitting a tribal probate code to the Department for approval.

**§ 18.303 When will the Department approve or disapprove a single heir rule?**

We have 90 days from receipt by the Assistant Secretary of a single heir rule submitted separate from a tribal probate code to approve or disapprove a single heir rule.

**§ 18.304 What happens if the Department approves the single heir rule?**

If we approve the single heir rule, we will notify the tribe of the approval and forward a copy of the single heir rule to OHA.

**§ 18.305 How will a tribe be notified of the disapproval of a single heir rule?**

If we disapprove a single heir rule, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

**§ 18.306 When does the single heir rule become effective?**

(a) A single heir rule may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a single heir rule is deemed approved through inaction by the Department, then the single heir rule will become effective 180 days after it is deemed approved.

(c) The single heir rule will apply only to the estate of a decedent who dies on or after the effective date of the single heir rule.

**§ 18.307 May a tribe appeal approval or disapproval of a single heir rule?**

No. There is no right of appeal within the Department from a decision to approve or disapprove a single heir rule.

**Subpart E—Information and Records**

**§ 18.401 How does the Paperwork Reduction Act affect this part?**

The collection of information contained in this part has been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Number 1076-0168. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and members of the public are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.