

## AIPRA Regulation Effecting Indian Land Leasing

### **Sec. 2201. Definitions**

For the purpose of this chapter—

(6) “parcel of highly fractionated Indian land” means a parcel of land that the Secretary, pursuant to authority under a provision of this Act, determines to have, as evidenced by the Secretary’s records at the time of the determination--

(A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or

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

### **Sec. 2206. Descent and distribution**

#### **(c) Joint tenancy; right of survivorship.**

##### **(1) Presumption of joint tenancy.**

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

#### **(e) Approval of agreements**

The official authorized to adjudicate the probate of trust or restricted lands shall have the authority to approve agreements between a decedent’s heirs and devisees to consolidate interests in trust or restricted lands. The agreements referred to in the preceding sentence may include trust or restricted lands that are not a part of the decedent’s estate that is the subject of the probate. The Secretary may promulgate regulations for the implementation of this subsection.

#### **(j) General rules governing probate.**

##### **(9) Consolidation agreements.**

###### **(A) In general.**

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

###### **(B) Effective.**

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

###### **(C) Effect on purchase option at probate.**

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

### **Sec. 2216. Trust and restricted land transactions**

#### **(c) Acquisition of interest by Secretary**

An Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000, and

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located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.

### **(e) Land ownership information**

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

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

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

### **(a) Approval by the Secretary**

#### **(1) In general**

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

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

#### **(2) Rule of construction**

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

#### **(3) Definition**

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

### **(b) Applicable percentage**

#### **(1) Percentage interest**

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

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

#### **(2) Determination of owners**

##### **(A) In general**

For purposes of this subsection, in determining the number of owners of, and their interests in, the undivided interest in the allotted land with respect to a lease or agreement, the Secretary shall make such determination based on the records of the Department of the Interior that identify the owners of such lands and their interests and the number of owners of such land on the date on which the lease or agreement involved is submitted to the Secretary under this section.

##### **(B) Rule of construction**

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