

§ 357. Condemnation of lands under laws of States

Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

(Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1084.)

CODIFICATION

Section is comprised of the second paragraph of section 3 of act Mar. 3, 1901. The first paragraph of such section 3 is classified to section 319 of this title.

§ 358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys

Any and all provisions contained in any Act passed prior to March 7, 1928, for the survey, resurvey, classification, and allotment of lands in severalty under the provisions of the Act of February 8, 1887 (24 Stat. 388), which provide for the repayment of funds appropriated proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes, are repealed: *Provided further*, That the repeal shall not affect any funds authorized to be reimbursed by any special Act of Congress wherein a particular or special fund is mentioned from which reimbursement shall be made.

(Mar. 7, 1928, ch. 137, § 1, 45 Stat. 206.)

REFERENCES IN TEXT

Act of February 7, 1887, referred to in text, is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

CHAPTER 10—DESCENT AND DISTRIBUTION; HEIRS OF ALLOTTEE

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§ 371. Descent of land

For the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of section 348 of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided*, That the provisions of this Act shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet."

(Feb. 28, 1891, ch. 383, § 5, 26 Stat. 795.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 28, 1891, ch. 383, 26 Stat. 794, as amended, which enacted sections 336, 371, and 397 of this title and amended section 331 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

A further provision of section 5 of act Feb. 28, 1891, "that no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights or equities of any person whose claim to membership in said tribe is now pending and being investigated," was repealed by a provision of the Indian Appropriation Act of Mar. 2, 1895, ch. 188, § 1, 28 Stat. 902.

§ 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys

When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under the Indian Land Consolidation Act [25 U.S.C. 2201 et seq.] or a tribal probate code approved under such Act and pursuant to such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decisions shall be subject to judicial review to the same extent as determinations rendered under section 373 of this title. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided*, That if the Secretary of the Interior shall find that the lands of the decedent are capable of parti-

tion to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by this or any other Act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of 10 per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid on such deferred payments, all payments made, together with all interest paid on such deferred installments, shall be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the allottee or his heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided*, That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent as their respective interests shall appear: *Provided further*, That the Secretary of the Interior is authorized, in his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further*, That any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior.

(June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 647; Pub. L. 101-301, § 12(c), May 24, 1990, 104 Stat. 211; Pub. L. 106-462, title I, § 106(b)(1), Nov. 7, 2000, 114 Stat. 2007.)

REFERENCES IN TEXT

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97-459, Jan. 12, 1983, 96 Stat. 2517, which is classified generally to chapter 24 (§ 2201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

This Act, referred to in text, is act June 25, 1910, ch. 431, 36 Stat. 855, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, section 6a-1 of former Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former Title 18 were repealed and restated as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. Section 6a-1 of former

Title 41 was repealed and restated as section 6102(e) of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Pub. L. 106-462 substituted “under the Indian Land Consolidation Act or a tribal probate code approved under such Act and pursuant to such rules” for “under such rules” in first sentence.

1990—Pub. L. 101-301 substituted “his decisions shall be subject to judicial review to the same extent as determinations rendered under section 373 of this title” for “his decision thereon shall be final and conclusive”.

1934—Act Apr. 30, 1934, substituted “, all payments made, together with all interest paid on such deferred installments, shall be so forfeited” for “a further amount, not exceeding 15 per centum of the purchase price together with all interest paid on such deferred installments may be so forfeited”, inserted “allottee or his” in sentence beginning “All forfeitures shall inure” and struck out “hereafter” from last proviso.

1928—Act Mar. 3, 1928, inserted in introductory text “or may hereafter be made,” after “has been made,” “together with all interest paid on such deferred installments” after “purchase price”, “or may hereafter be” after “restrictions on alienation has been”, and “hereafter” in last proviso, and substituted “by this or any other Act” for “by any Act”.

§ 372-1. Repealed. Pub. L. 101-301, § 12(a), May 24, 1990, 104 Stat. 211

Section, Pub. L. 90-28, title I, June 24, 1967, 81 Stat. 69, provided that, on and after June 24, 1967, hearing officers appointed for Indian probate work did not have to be appointed pursuant to the Administrative Procedure Act, as amended. Similar provisions were contained in the following prior appropriation acts:

May 31, 1966, Pub. L. 89-435, title I, 80 Stat. 181.
June 28, 1965, Pub. L. 89-52, title I, 79 Stat. 185.
July 7, 1964, Pub. L. 88-356, title I, 78 Stat. 284.
July 26, 1963, Pub. L. 88-79, title I, 77 Stat. 107.
Aug. 9, 1962, Pub. L. 87-578, title I, 76 Stat. 345.
Aug. 3, 1961, Pub. L. 87-122, title I, 75 Stat. 256.
May 13, 1960, Pub. L. 86-455, title I, 74 Stat. 104.
June 23, 1959, Pub. L. 86-60, title I, 73 Stat. 92.
June 4, 1958, Pub. L. 85-439, title I, 72 Stat. 155.
July 1, 1957, Pub. L. 85-77, title I, 71 Stat. 257.
June 13, 1956, ch. 380, title I, 70 Stat. 257.
June 16, 1955, ch. 147, title I, 69 Stat. 141.
Aug. 26, 1954, ch. 935, Ch. VII, 68 Stat. 813.

SAVINGS PROVISION

Pub. L. 101-301, § 12(b), May 24, 1990, 104 Stat. 211, provided that: “Hearing officers heretofore appointed to preside over Indian probate proceedings pursuant to the proviso repealed by subsection (a) [25 U.S.C. 372-1], having met the qualifications required for appointment pursuant to section 3105 of title 5, United States Code, shall be deemed to have been appointed pursuant to that section.”

§ 372-2. Indian probate judges

Notwithstanding any other provision of law, for fiscal year 2006 and each fiscal year thereafter, for the purpose of adjudicating Indian probate cases in the Department of the Interior, the hearing requirements of chapter 10 of this title are deemed satisfied by a proceeding conducted by an Indian probate judge, appointed by the Secretary without regard to the provisions of title 5 governing the appointments in the competitive service, for such period of time as the Secretary determines necessary: *Provided*, That the basic pay of an Indian probate judge so appointed may be fixed by the Secretary without

regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5, governing the classification and pay of General Schedule employees, except that no such Indian probate judge may be paid at a level which exceeds the maximum rate payable for the highest grade of the General Schedule, including locality pay.

(Pub. L. 109–54, title I, §108, Aug. 2, 2005, 119 Stat. 522; Pub. L. 112–74, div. E, title I, §111, Dec. 23, 2011, 125 Stat. 1009.)

AMENDMENTS

2011—Pub. L. 112–74 substituted “for fiscal year 2006 and each fiscal year thereafter, for the purpose of adjudicating” for “in fiscal years 2006 through 2010, for the purpose of reducing the backlog of”.

§ 372a. Heirs by adoption

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption—

(1) Unless such adoption shall have been—

(a) by a judgment or decree of a State court;

(b) by a judgment or decree of an Indian court;

(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or

(d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or

(2) Unless such adoption shall have been recognized by the Department of the Interior prior to the effective date of this section or in the distribution of the estate of an Indian who has died prior to that date: *Provided*, That an adoption by Indian custom made prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation.

This section shall not apply with respect to the distribution of the estates of Indians of the Five Civilized Tribes or the Osage Tribe in the State of Oklahoma, or with respect to the distribution of estates of Indians who have died prior to the effective date of this section.

(July 8, 1940, ch. 555, §§1, 2, 54 Stat. 746.)

REFERENCES IN TEXT

For effective date of this section, referred to in text, see Effective Date note set out below.

CODIFICATION

First and second paragraphs of this section are from sections 1 and 2, respectively, of act July 8, 1940.

EFFECTIVE DATE

Act July 8, 1940, ch. 555, §3, 54 Stat. 746, provided that: “This Act shall become effective six months after the date of its approval [July 8, 1940].”

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 373. Disposal by will of allotments held under trust

Any persons of the age of eighteen years or older having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with the Indian Land Consolidation Act [25 U.S.C. 2201 et seq.] or a tribal probate code approved under such Act and regulations to be prescribed by the Secretary of the Interior: *Provided, however*, That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further*, That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located: *Provided further*, That the approval of the will and the death of the testator shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit: *Provided also*, That this section and section 372 of this title shall not apply to the Five Civilized Tribes or the Osage Indians.

(June 25, 1910, ch. 431, §2, 36 Stat. 856; Feb. 14, 1913, ch. 55, 37 Stat. 678; Pub. L. 100–153, §2, Nov. 5, 1987, 101 Stat. 886; Pub. L. 106–462, title I, §106(b)(2), Nov. 7, 2000, 114 Stat. 2007.)

REFERENCES IN TEXT

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97–459, Jan. 12, 1983, 96 Stat. 2517, as amended, which is classified generally to chapter 24 (§2201 et seq.) of this title. For complete classi-

fication of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-462 substituted “with the Indian Land Consolidation Act or a tribal probate code approved under such Act and regulations to be prescribed by the Secretary of the Interior:” for “with regulations to be prescribed by the Secretary of the Interior:”.

1987—Pub. L. 100-153 which directed amendment of this section by substituting “the age of eighteen years or older” for “the age of twenty-one years, or over” was executed by substituting the new language for “the age of twenty-one years” as the probable intent of Congress because the words “, or over” did not appear.

1913—Act Feb. 14, 1913, amended section generally.

§ 373a. Disposition of trust or restricted estate of intestate without heirs; successor tribe; sale of land

Upon final determination by the Secretary of the Interior that the Indian holder of a trust or restricted allotment of lands or an interest therein has died intestate without heirs, the lands or interest so owned, together with all accumulated rents, issues, and profits therefrom held in trust for the decedent, shall escheat to the tribe owning the land at the time of allotment subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate and subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder.

If the tribe which owned the land at the time of allotment has been reorganized or reconstituted by reason of amalgamation with another tribe or group of Indians or of subdivision within the tribe or otherwise, the land shall escheat to the tribe or group which has succeeded to the jurisdiction of the original tribe over the area in question. If neither the tribe which owned the land at the time of allotment nor a successor tribe or group exists, the land or interest therein shall be held in trust for such Indians as the Secretary may designate within the State or States wherein the land is situated or, if the Secretary determines that the land cannot appropriately be used by or for such Indians, it shall be sold, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the proceeds of such sale shall be held in trust for such Indians as the Secretary may designate, within the State or States wherein the land is situated.

(Nov. 24, 1942, ch. 640, §1, 56 Stat. 1021.)

§ 373b. Restricted estate or homestead on the public domain

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the land shall become part of the public domain subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the

cash on hand or income accruing to said estate: *Provided*, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed \$50,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder¹ *Provided further*, That interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

(Nov. 24, 1942, ch. 640, §2, 56 Stat. 1022; Pub. L. 98-25, §§2, 3, May 2, 1983, 97 Stat. 185.)

AMENDMENTS

1983—Pub. L. 98-25, §2, inserted proviso that interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

Pub. L. 98-25, §3, substituted “\$50,000” for “\$2,000”.

NON-INDIAN LANDS IN HARNEY COUNTY, OREGON

Pub. L. 98-25, §2, May 2, 1983, 97 Stat. 185, provided in part that no non-Indian lands in Harney County, Oregon, shall be considered Indian country as defined in section 1151 of Title 18, Crimes and Criminal Procedure.

§ 373c. Sections 373a and 373b as inapplicable to certain Indians

The provisions of sections 373a and 373b of this title shall not apply to the Indians of the Five Civilized Tribes or the Osage Reservation, in Oklahoma.

(Nov. 24, 1942, ch. 640, §3, 56 Stat. 1022.)

§ 374. Attendance of witnesses

The authority delegated to judges of the United States courts by section 24 of title 35 is conferred upon the Secretary of the Interior to require the attendance of witnesses at hearings, upon proper showing by any of the parties to determine the heirs of decedents, held in accordance with sections 372 and 373 of this title, under such rules and regulations as he may prescribe.

(Aug. 1, 1914, ch. 222, §1, 38 Stat. 586.)

CODIFICATION

“Section 24 of title 35” substituted in text for “section 56 of title 35” on authority of act July 19, 1952, ch. 950, 66 Stat. 792, section 1 of which enacted Title 35, Patents.

§ 375. Determination of heirship of deceased members of Five Civilized Tribes

A determination of the question of fact as to who are the heirs of any deceased citizen allot-

¹ So in original. Probably should be followed by a colon.