

[INSERT INTO EITHER 25 C.F.R 15 (Probate) OR 25 CFR 18 (Tribal governments)]

§ 18.1 May a tribe adopt its own probate code?

A tribe may adopt a probate code to govern descent and distribution of trust and restricted lands that are located within the Indian tribe's reservation or otherwise subject to the tribe's jurisdiction. The code may include:

- (a) rules of intestate succession and
- (b) other provisions consistent with federal law and that promote the policies in 18.3.

§ 18.2 Must a tribe submit a tribal probate code to the Secretary for approval?

Only those tribal probate codes that govern the descent and distribution of trust and restricted lands require Secretarial approval.

§ 18.3 What will the Secretary consider in the approval process?

The Secretary will consider the following in determining whether to approve a tribal probate code:

(a) 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.

(b) Further, the tribal probate code must allow:

- (1) an Indian lineal descendant of the original allottee to inherit, and,

(2) an Indian who is not a member of the Indian tribe with jurisdiction over the interest in land to inherit.

(c) However a tribe may limit the individuals in (a) and (b) if the code allows those individuals to renounce their interests to eligible devisees in accordance with the tribal code, allows a devisee spouse or lineal descendant of the testator or of the original allottee to reserve a life estate without regard to waste, and allows for the payment of fair market value as determined by the Secretary on the date of the decedent's death.

§ 18.4 What procedure must a tribe follow to begin the approval process for either a tribal probate code or an amendment to the code?

To begin the approval process for either a tribal probate code or amendment to the code, the tribe must submit its probate code or an amendment to an existing code and a duly executed tribal resolution adopting the code or the amendment to the local Bureau Official as defined in 25 CFR 82.1(h).

§ 18.5 How will the Department review the tribal probate code or amendment?

The Department has 180 days from submission to approve or disapprove a tribal probate code. The local Bureau Official will make sure that a complete copy of the code and the resolution is submitted to the Regional Director for approval. The Department has 60 days from submission of an amendment of the tribal probate code to approve or disapprove the amendment.

§ 18.6 What happens if the Regional Director does not take any action on the tribal probate code within 180 days or an amendment within 60 days?

If the Regional Director does not take any action on the tribal probate code within 180

days, or action on an amendment within 60 days, the tribal probate code or the amendment to the code will be deemed to have been approved but only to the extent that it is consistent with federal law and promotes the policies of the ILCA Amendments of 2000 as listed above.

§ 18.7 What happens if the Regional Director approves a tribal probate code?

The Regional Director's approval applies only to those sections of the tribal probate code that govern the descent and distribution of trust or restricted land. The Regional Director will notify the tribe of the approval and forward a copy of the code or amendment to the Office of Hearings and Appeals. The Regional Director will also publish a notice and date of the approval in the Federal Register.

§ 18.8 When will a tribal probate code become effective?

A tribal probate code may not become effective sooner than 180 days after the date of approval.

§ 18.9 Which estates will be probated under an approved tribal probate code or amendment?

The tribal probate code or amendment will apply only to the estate of a decedent who dies on or after the date of the approval of the tribal probate code or amendment.

18.10 What will happen if a tribe repeals its tribal probate code?

If a tribe repeals its tribal probate code, the repeal:

(a) will not become effective sooner than 180 days from the date the Secretary receives notification from the tribe of its decision to repeal the code.

(b) will apply only to the estate of a decedent who dies on or after the effective date of the repeal.

§ 18.11 What happens if the Secretary disapproves a tribal probate code or amendment?

If the Secretary disapproves a tribal probate code or amendment, the Secretary shall provide the tribe with a written notification of the disapproval and an explanation of the reasons for the disapproval. A tribe may appeal the Regional Director's decision to disapprove a tribal probate code or an amendment. The Regional Director's decision will contain appeal rights to inform the tribe that it may appeal such decision directly to the Interior Board of Indian Appeals under 25 CFR Part 2

§ 18.2 Is notification of a tribal probate code required?

Notification of a tribal probate code will be required either by direct mail to tribal members as of the most recent voting member list of the tribe or by publication in a newspaper (tribal or otherwise) of general circulation on or near the reservation for 30 days prior to the code's effective date.