

at the time was still unallotted or was allotted to an individual but still held in trust for that individual by the U.S. government.³²

Indian Land Consolidation Act And Amendments

Indian Land Consolidation of 1983 sought to remedy the fractionated ownership problem by. It authorized tribes to develop land consolidation plans, and enact laws which restricted the rights of non-Indians or non-members to inherit trust or restricted lands. Further, it required that land would escheat to the tribe when the interest was 2% or less and earned less than \$100 in the previous year.³³ However, it did not provide for compensation to the heirs.

This Act was challenged in *Hodel v. Irving*.³⁴ The plaintiffs in this case were three enrolled members of the Oglala Sioux tribe who inherited an interest in the land which was less than a 2% interest and thus escheated to the tribe. The plaintiffs filed suit against Donald P. Hodel, in his official capacity as Secretary of the Interior. The Court held that this provision of the act was an unconstitutional taking.³⁵

Congress subsequently altered the act in three aspects. First, it required that DOI looks back five years instead of one to determine the income produced from a small interest.³⁶ Second it created a rebuttable presumption that this income stream will continue.³⁷ Finally, it permitted the devise of otherwise escheatable interests to persons who already owned an interest in the same parcel.³⁸ Nonetheless this act was subsequently held to be an unconstitutional taking.³⁹ Ultimately, congress Amended the Act again in 2000.⁴⁰ This time congress created a fractional interest Acquisition Program which allowed for the acquisition of fractional interests with the consent of the owner for fair market value.⁴¹

American Indian Probate Reform Act

Congress found that the Dawes Act and its amendments were problematic.⁴² Additionally, Congress determined that there was an increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations.⁴³

Eligible Heir is defined as any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are Indian; or lineal descendants within two degrees of consanguinity of an Indian; or owners of a trust or restricted interest in a parcel of land.⁴⁴

Certain people can purchase an interest in the parcel during probate. A decedent's heirs, other co-owners, and the tribe where the land is located are able to purchase the decedent's interest in the parcel.⁴⁵ The purchase price must equal or exceed the fair market value and the decedent's heirs would receive the money paid for the decedent's interest in the parcel instead of a share of the decedent's interest in the parcel.⁴⁶ If the decedent's heirs are to receive 5% interest or more in the parcel, or if they live on the parcel, their consent to the purchase is required.⁴⁷