

## **(D) Intestate descent of small fractional interests in land**

### **(i) General rule**

Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with clauses (ii) through (v).

### **(ii) Surviving spouse**

If there is a surviving spouse, and such spouse was residing on a parcel of land described in clause (i) at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with clause (iii).

### **(iii) Single heir rule**

Where there is no life estate created under clause (ii) or there is a remainder interest under that clause, the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to—

**(I)** the decedent's surviving child, but only if such child is an eligible heir; and if 2 or more surviving children are eligible heirs, then to the oldest of such children;

**(II)** if the interest does not pass under subclause (I), the decedent's surviving grandchild, but only if such grandchild is an eligible heir; and if 2 or more surviving grandchildren are eligible heirs, then to the oldest of such grandchildren;

**(III)** if the interest does not pass under subclause (I) or (II), the decedent's surviving great grandchild, but only if such great grandchild is an eligible heir; and if 2 or more surviving great grandchildren are eligible heirs, then to the oldest of such great grandchildren;

**(IV)** if the interest does not pass under subclause (I), (II), or (III), the Indian tribe with jurisdiction over the interest; or

**(V)** if the interest does not pass under subclause (I), (II), or (III), and there is no such Indian tribe to inherit the property under subclause (IV), the interest shall be divided equally among co-owners of trust or restricted interests in the parcel; and if there are no such co-owners, then to the United States, to be sold, and the proceeds from sale used, in the same manner provided in subparagraph (C).

The determination of which person is the oldest eligible heir for inheritance purposes under this clause shall be made by the Secretary in the decedent's probate proceeding and shall be consistent with the provisions of this chapter.

**(iv) Exceptions**

Notwithstanding clause (iii)—

**(I) (aa)** the heir of an interest under this subparagraph, unless the heir is a minor or incompetent person, may agree in writing entered into the record of the decedent's probate proceeding to renounce such interest, in trust or restricted status, in favor of—

**(AA)** any other eligible heir or Indian person related to the heir by blood, but in any case never in favor of more than 1 such heir or person;

**(BB)** not more than 1 co-owner of another trust or restricted interest in such parcel of land; or

**(CC)** the Indian tribe with jurisdiction over the interest, if any; and

**(bb)** the Secretary shall give effect to such agreement in the distribution of the interest in the probate proceeding; and

**(II)** the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of descent set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if—

**(aa)** a copy of the tribal rule is delivered to the official designated by the Secretary to receive copies of tribal rules for the purposes of this clause;

**(bb)** the tribal rule provides for the intestate inheritance of such interest by no more than 1 heir, so that the interest does not further fractionate;

**(cc)** the tribal rule does not apply to any interest disposed of by a valid will;

**(dd)** the decedent died on or after the date described in subsection (b) of section 8 of the American Indian Probate 2 Act of 2004, or on or after the date on which a copy of the tribal rule was delivered to the Secretary pursuant to item (aa), whichever is later; and

**(ee)** the Secretary does not make a determination within 90 days after a copy of the tribal rule is delivered pursuant to item (aa) that the rule would be unreasonably difficult to administer or does not conform with the requirements in item (bb) or (cc).

**(v) Effect of subparagraph**

Nothing in this subparagraph limits the right of any person to devise any trust or restricted interest pursuant to a valid will in accordance with subsection (b).