

FINAL REPORT

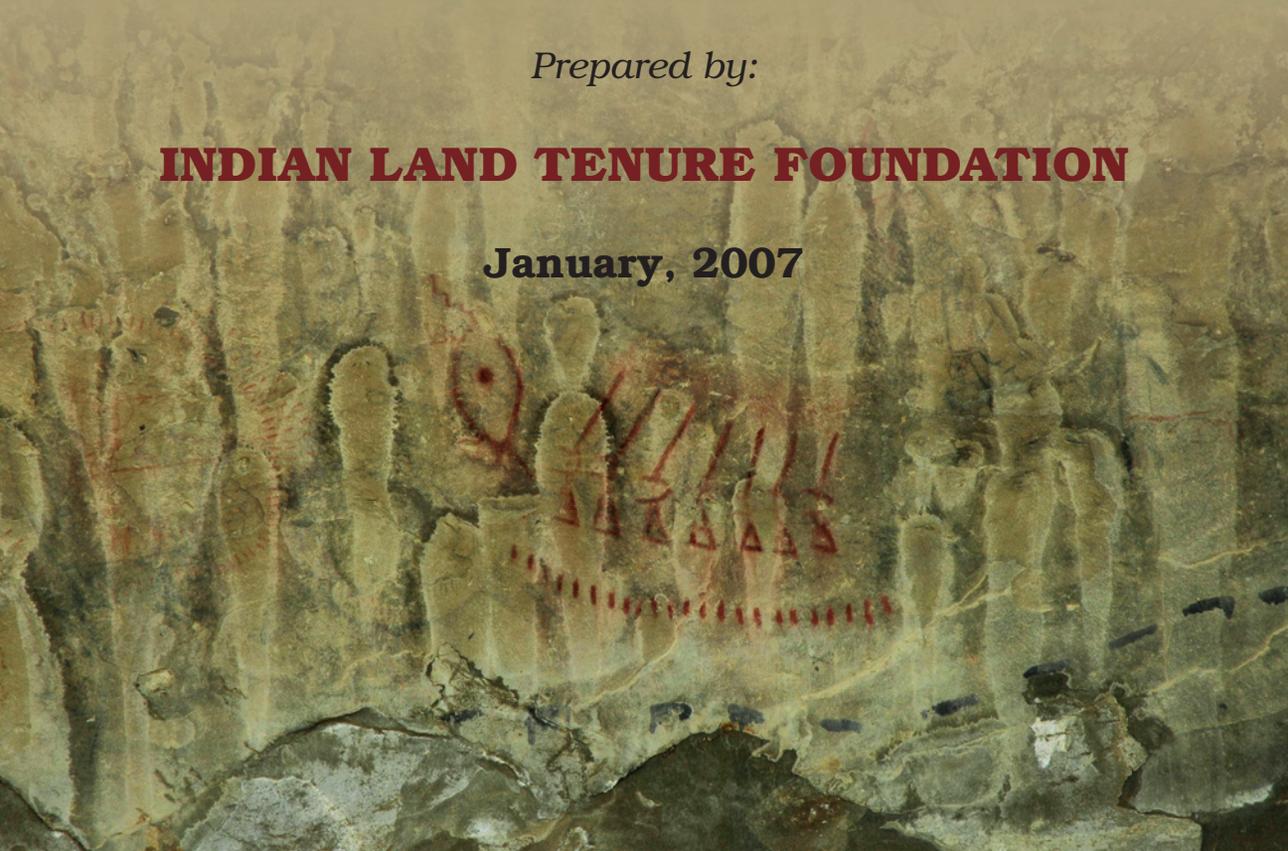
**ESTATE PLANNING SERVICES PILOT
OF THE
AMERICAN INDIAN PROBATE REFORM ACT
IMPLEMENTATION PROJECT**

Submitted to the
**Bureau of Indian Affairs
and the
Office of Special Trustee for American Indians**

Prepared by:

INDIAN LAND TENURE FOUNDATION

January, 2007



SUBCONTRACT NO. SEA004443-05

The American Indian Probate Reform Act (AIPRA) was enacted on October 27, 2004. The Act amended the Indian Land Consolidation Act and amendments made in 2000. AIPRA became effective June 20, 2006 and changed the way property is distributed at probate, increasing the importance and benefit of writing a will and doing estate planning.

The Act created a new nation-wide probate code that affects how trust property is distributed to heirs when there is no will, defines who is an “eligible heir” for purposes of inheriting trust property and many other changes. Without a will, the Act determines who receives property and allows for forced sale of trust property at probate.

This report documents the activities of the Indian Land Tenure Foundation and its program, the Institute for Indian Estate Planning and Probate at Seattle University School of Law, to provide community education and legal training on the Act, as well as provision of direct estate planning services to select geographic regions.

The pilot project was funded by the Department of Interior with oversight by the Bureau of Indian Affairs and the Office of Special Trustee for American Indians.



Indian Land Tenure
FOUNDATION

151 East County Road B2

Little Canada, MN 55117-1523

Phone: 651-766-8999 • Fax: 651-766-0012

info@indianlandtenure.org • www.indianlandtenure.org



Institute for Indian Estate Planning and Probate
Sullivan Hall, School of Law • Seattle University

P. O. Box 222000 • 901 12th Avenue

Seattle, WA 98122-1090

www.indianwills.org

American Indian Probate Reform Act

ESTATE PLANNING SERVICES PILOT PROJECT

EXECUTIVE SUMMARY

The Indian Land Tenure Foundation and its program, the Institute for Indian Estate Planning and Probate at Seattle University School of Law, provided services under subcontract no. SEA004443-05. The services included training on the American Indian Probate Reform Act and direct legal services to Indian clients on reservations in South Dakota, Washington, and Oregon.

Services and trainings were provided between January and September 2006. In total, 1,113 clients received direct legal service resulting in 829 written wills and 644 other estate planning documents. Of the wills written, 542 resulted in the reduction of fractionation of land title that would have occurred without a will. An additional 280 landowners, lawyers and tribal officials received detailed training about the provisions of AIPRA.

The cost of each will written was estimated to be less than \$570; the maximum cost of avoiding new undivided interests at probate was estimated at approximately \$89 per interest. Training was provided at a cost of \$156 per person.

The demand for estate planning services and additional AIPRA training remains strong in Indian Country.

INTRODUCTION

The passage of the American Indian Probate Reform Act (AIPRA) provided for numerous and significant changes in the laws governing descent, distribution and consolidation of Indian trust property. In response the Department of the Interior (DOI) initiated the Estate Planning Services Pilot Project to provide community education and legal training on the Act, as well as direct estate planning legal services to Indian trust landowners in select geographic regions. The purpose of the pilot project was, in part, to determine whether there was a need for estate planning services in Indian Country and whether such services would reduce fractionation of trust lands. The expectation was that by providing the services and information to clients, the clients would choose to limit, either through provision of a will or in vivo title transfers, the further division of land title before it occurred during the probate of their estate.

The Indian Land Tenure Foundation (ILTF) and its program, the Institute for Indian Estate Planning and Probate at Seattle University School of Law (the Institute) has significant experience in land tenure educational training and estate planning programs. In 2003, ILTF first solicited a series of proposals for Indian estate planning services and subsequently initiated four programs at a cost of nearly \$1.3 million. Three of these direct service programs continued to operate into 2005. Each of the programs operated on different models of service delivery as ILTF was interested in examining the cost effectiveness of service delivery models. The four programs were also in a variety of locations including Alaska, Idaho (also serving Oregon and Washington tribes), South Dakota, and Wisconsin. The three programs operating in 2005 continued to provide will writing services to over 100 clients per year with many more clients waiting to access the service.

After the passage of AIPRA, the need for the services provided by each of these programs was clearly going to escalate. ILTF responded to this challenge by creating the Institute to oversee the operation and projected growth of the estate planning programs. The Institute also serves as a clearinghouse for materials and information on estate planning and probate with a focus on reducing the fractionation of land title stemming from the General Allotment Act of 1887. The Institute also provides training and informational materials on AIPRA and the Act's provisions. This collective experience uniquely qualified ILTF and its Institute staff to undertake the work outlined in the proposal to DOI.



In August 2005, the Indian Land Tenure Foundation submitted a proposal to DOI to conduct a pilot program. The proposal envisioned delivering training to the legal community and tribal officials through a series of three workshops and direct legal services to Indian people on select reservations in two geographic areas—Washington/Oregon and South Dakota. The majority of the funds were to be used to hire four attorneys and two paralegals who would work exclusively to deliver estate planning services to individual clients on reservations within the geography of two legal service providers and to provide community education programs informing community members about AIPRA, the value of estate planning and reducing fractionation. The staff of the Institute would coordinate the activities of the two service providers, provide training to their staff, and conduct three workshops on AIPRA provisions for the legal community and tribal officials. ILTF central office staff would provide overall project management and accounting services.

ILTF was officially notified that it had been awarded the contract to conduct the Pilot Project in mid-September 2005. While some preliminary work was conducted during the next three weeks, it was only after the contract was finalized that focused efforts began to explore potential service providers. This involved contacting organizations with the potential to fill the service provider role, describing the project and funding, negotiating terms and, ultimately, finalizing contracts with two different service providers, one in each of the two geographic locations to be served.

Northwest Justice Project (NJP) was selected to serve Washington and Oregon and Dakota Plains Legal Services (DPLS) to provide services primarily in South Dakota but also in North Dakota and Nebraska. The selection process, including DOI approval, and finalized contractual arrangements were concluded by November. At that point the service providers became responsible for preparing position descriptions, arranging supervision, advertising, recruiting, hiring and training the staff specified in the contract. This was accomplished with NJP in January 2006.

DPLS encountered difficulty in hiring staff due to the rural and somewhat remote location of assignments and finally reassigned existing staff to the contract positions so that the work could begin. This was done in February 2006 and work in both locations began in earnest that month. DPLS was able to add two attorneys to its staff once each had passed the South Dakota Bar Exam in February.

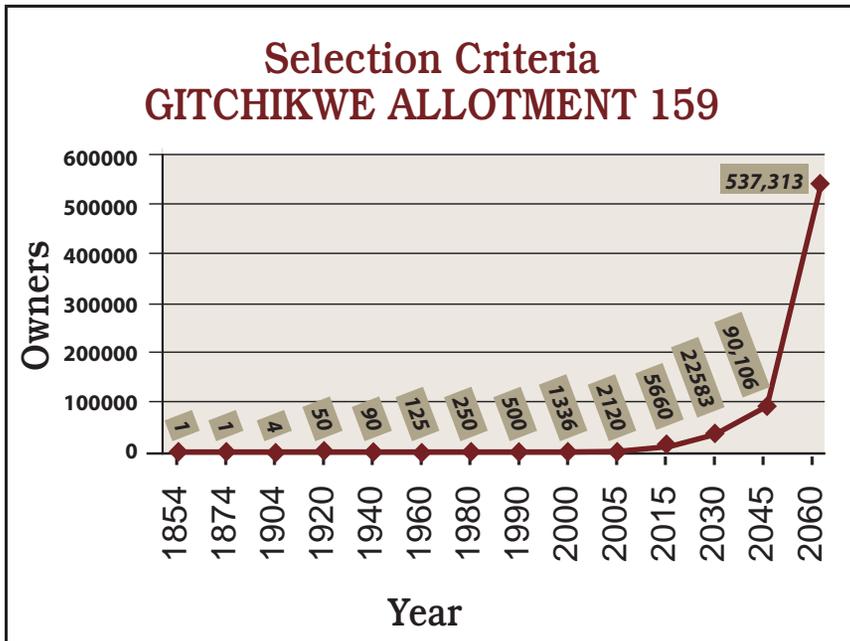
The reservations served in South Dakota included Pine Ridge, Rosebud, Yankton, Crow Creek, Lower Brule, Cheyenne River and Standing Rock. All of these reservations had previously received estate planning information and services from DPLS under a grant project funded by ILTF. The addition of services to the Rapid City area was new but was aimed to serve a relatively large Indian population that is well connected to South Dakota reservations.

The reservations selected to receive services from NJP included the Swinomish, Upper Skagit, Tulalip, Muckleshoot, Yakama, Colville and Spokane in Washington and the Umatilla in Oregon. Among those reservations to be served under the contract by NJP, the Swinomish, Upper Skagit, Muckleshoot, Colville, Spokane and Umatilla reservations had previously received estate planning services under an Indian Estate Planning project funded by ILTF and operated through the University of Idaho College of Law. The Tulalip and Yakama reservations had not received any focused estate planning service from any source prior to the Pilot Project.

Introducing the new source of estate planning services, community education and personnel to the reservations that had previously had services took some time. Part of the change involved having the attorneys and paralegals available throughout the year; the University of Idaho and DPLS utilized law school externs during the summer. The introduction process took even longer on the two reservations in the Pacific Northwest that had previously not had any such service. This was particularly true for the Yakama reservation, perhaps because of its size and separate population centers. Once the efforts of individual staff to become known on the reservations and the first community education presentations were completed, a steady flow of clients sought services.

In addition to providing the initial training of all project staff, the Institute staff also provided technical assistance to the legal staff of NJP and DPLS as unique questions arose regarding client assets and treatment under AIPRA. The Institute staff, as a central contact point, sought out resolutions to a number of these questions through interactions with BIA and OST.

Services were provided on all reservations through the end of September 2006 through contract funding. Each of the service providers continue to serve clients through funding arrangements with ILTF. NJP and ILTF are sharing the costs of operating the program at the same level of staff through the end of February 2007. DPLS has reserved sufficient ILTF grant funds that will allow it to retain the staffing at current levels through March 2007. The operation of the programs beyond these dates is uncertain at this time but the need to continue these services is clearly evident.



This chart shows projected fractionated ownership interest increases without estate planning.

PROJECT RESULTS

The overall results of the pilot project reflect a desire of many Indian people to have estate planning done and wills written, as well as a willingness to use the process to reduce the fractionation of allotments. The cumulative numbers of community education meeting attendees, clients served, and wills drafted and requested are considerable when consideration is given that the actual service time under the pilot project spanned just over seven months. Additionally, AIPRA and all of its provisions were still being sorted out and debated as the project began, giving an air of uncertainty as there was discussion of technical amendments and possible delays of implementation. Indeed, technical amendments were made to AIPRA on December 30, 2005 and May 12, 2006 and the last technical amendment bill, which includes provisions that would delay implementation of parts of the act, is still pending before Congress.

Estate Planning and Community Education Services

The following table provides information on project results by the service providers and cumulative totals for the pilot project from February 2006 through September 2006.

| CUMULATIVE TOTALS BY SERVICE PROVIDERS | | | |
|---|-------------|------------|--------------|
| | <i>DPLS</i> | <i>NJP</i> | <i>TOTAL</i> |
| Community Ed. Attendance | 696 | 465 | 1,161 |
| No. of Clients Served | 479 | 634 | 1,113 |
| Interests > 5% | 1,248 | 1,038 | 2,286 |
| Interests < 5% | 4,079 | 1,774 | 5,853 |
| Wills < Fractionation | 352 | 190 | 542 |
| Wills Drafted and Executed | 120 | 168 | 288 |
| Wills in Draft Form | 184 | 357 | 541 |
| Wills Requested – Not Drafted | 203 | 383 | 586 |
| <i>Other Estate Planning Documents</i> | | | |
| Drafted and Executed | 191 | 96 | 287 |
| In Draft Form | 149 | 208 | 357 |
| Requested – Not Drafted | 154 | 89 | 243 |

Table 1

The community education process reached almost 1,200 individuals in the community meetings that were held by the service providers. Not included in that total are people who learned about the project through other means initiated by project staff such as newspaper articles, flyers, posters, as well as and perhaps most importantly, word of mouth. The advantage introducing people to the services through community education meetings has over other methods is that more specific information can be accurately communicated to potential clients. Service staff has anecdotally suggested potential clients who have attended a community meeting have come to the first meeting more prepared than those who have been referred or heard about the service in a different fashion. Word of mouth has also been suggested as one of the most important client recruitment methods although it is only controlled by the clients and their experience with the service providers.

The community meetings began the end of March (April reporting period) and continued at varying levels throughout the service period. The two service providers met their contract requirements of five community education meetings within the first few months but added additional meetings to cover specific reservations. Ultimately, more than 89 community meetings were held ranging from the formal sessions required under the contract to less formal lunch meetings at senior citizen centers. Chart 1 below provides a graphic representation of community education attendance at the more formal meetings over the contract period.

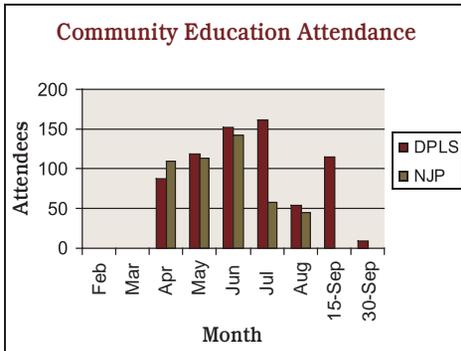


Chart 1

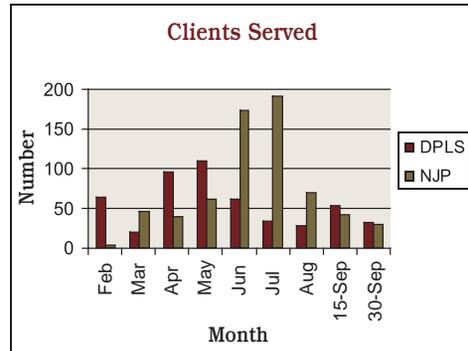


Chart 2

Chart 2 shows that the number of clients served was somewhat variable by each month and service provider. In total **1,113 clients were served** through the duration of the project. This represents the total number of individuals who received services even if that individual met with staff several times and had a will, durable power of attorney and a living will drafted and executed and/or devised a gift deed for trust property or requested one. It also includes individuals who might have contacted service staff, learned about AIPRA, concluded that having property pass by the federal probate code suited their need, and did not have a will prepared. Included as well are clients that did not pursue a will but received assistance in completing a gift deed or other in vivo transfer of assets.

The cumulative numbers are also very significant in light of the population from which they are derived. For example, the total membership of the tribes on the seven northwest reservations served totals 26,016. The total clients served under the project by NJP for the contract period represents 2.4% of that total population base. While relatively small compared to the total population figure, it is very significant in light of the fact that many people over a large geographic area were served by a staff of three within a very limited time frame. It is also important to note that the Indian population does not have a history or familiarity with estate planning and service providers note that considerable discussion and trust building must be done with each client.

It is likely that many more clients could have received service if time had been available. If all of the attorney and paralegal time was allocated to client service, disregarding training, travel, etc., the average client received 6.6 hours of service. This is extremely low given the fact that two client meetings is the absolute minimum for which a will could be completed and executed and that does not include staff time investigating trust and non-trust property ownership, drafting and any research required.

Throughout the training and community education events, the need for estate planning services was voiced. Indian people wanted to know where they could

receive assistance in having wills done. For individuals within the geographic scope of the project, the answer was easy, at least for the duration of the contract. For individuals from locations outside the service areas of the contract or ILTF grantee areas, the answer was typically difficult because so few attorneys, including legal services attorneys, have received training on the American Indian Probate Reform Act. The training symposium drew attorneys from broader geographic areas which will help address this issue in the future.

There were **829 wills drafted** throughout the duration of the project. Not unlike the number of clients served each month, the number of wills varied to some degree.

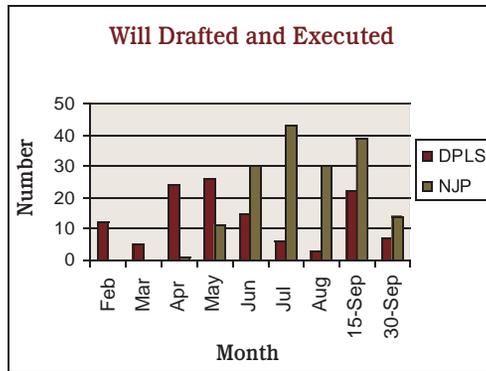


Chart 3

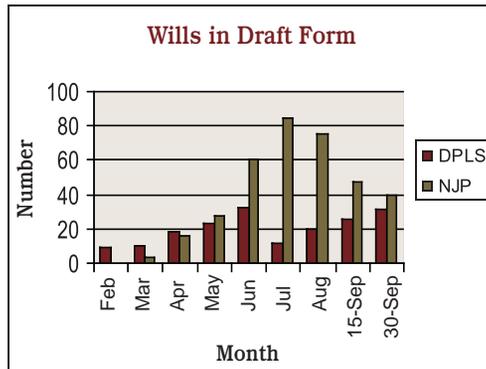


Chart 4

It is clear from the two charts above and table 1 noted earlier, that NJP staff was completing draft wills at a higher rate than the staff of DPLS. Several issues may have factored into this difference. First, DPLS had been serving the reservations in the service area for nearly 18 months before the contract period began. This resulted in wills being drafted and executed earlier in the project period but also resulted in an initial workload that has become somewhat cyclic. Secondly, DPLS carried a heavier load of preparing other estate planning documents such as gift deeds which take as much or more staff time. Thirdly, the DPLS clients seemed to have had a more difficult time receiving information on trust assets, such as title status reports, than NJP reported for its clients. Indeed, DPLS began the process of sending registered mail requests for the information to document that the request had been made. The last issue may have been the higher number of undivided interests involved with each of the DPLS wills.

Overall, the wills drafted involved **8,139 undivided interests in trust land**. On average, the DPLS wills involved **17.5 undivided interests** while the NJP wills involved approximately **5.4 undivided interests**.

In addition to drafting wills, the service providers assisted clients with gift deed transactions and other estate planning documents. Gift deeds were used to consolidate trust land interests by transferring title while the client was alive, keeping those interests out of the probate process.



The service providers also drafted and executed durable powers of attorney and living wills at the client's request. The total number of these ancillary documents was 644. (See charts below.)

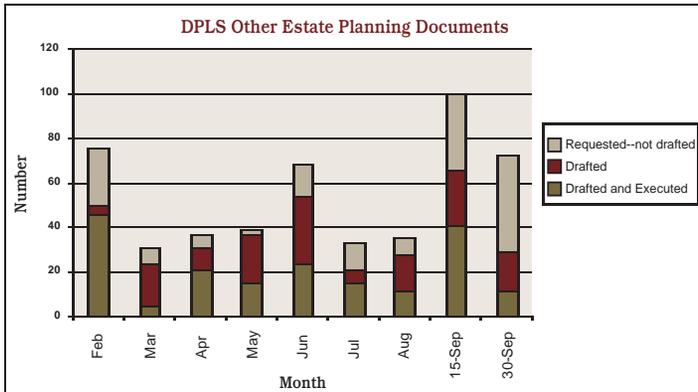


Chart 5

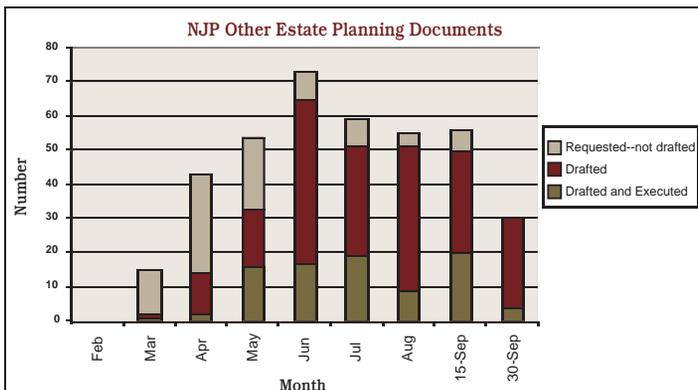


Chart 6

AIPRA TRAINING

In addition to the direct legal services provided by the two service providers, the Institute staff organized and delivered three major training sessions on AIPRA. The first was conducted in Seattle, Washington during March, the second held in Rapid City, South Dakota during July and the third was in Polson, Montana in September. The attendance was 171, 109, and 98 respectively. The Seattle symposium targeted an audience that was primarily attorneys and tribal officials as AIPRA was relatively new and there was considerable interest in understanding the law and how the various provisions would be applied. The second symposium was expanded to include more landowners and government employees. The third targeted Montana tribal government officials and landowners. For those that could not attend, the Institute’s training materials from these sessions “Understanding the American Indian Probate Reform Act” were offered for sale for a nominal fee and purchased by several university libraries as well as individuals.

The presentations from the first two symposiums were recorded for the development of a video presentation. The video material is being made available for individual and group viewings through www.legalspan.com. The Institute will be working with state bar associations to inform their members about this on-line access to the program.

CONCLUSION

The continuing need for education and estate planning services in those areas served by the pilot project is indicated by the number of estate planning documents and wills that were requested but not drafted. The graphics below show statistics for the entire duration of the project. At the end of the project period, nearly 100 wills had been requested but not drafted by the two service providers (see Chart 7); and more than 40 estate planning documents had been requested (see Chart 8).

It is also important to note that because future funding for the pilot project was uncertain, the emphasis of the service providers in August and September was placed on completing the existing backlog of work rather than generating more new clients.

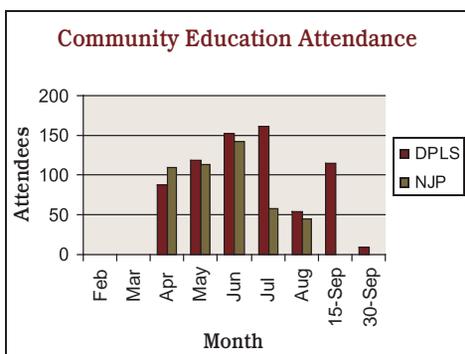


Chart 7

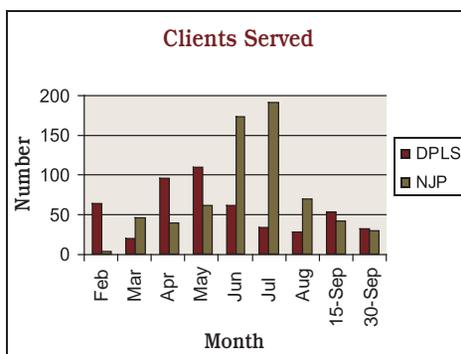


Chart 8

PROJECT COSTS

The funding committed to the contract for this pilot project was \$519,564. This amount was based upon the proposal submitted to the Department of Interior by ILTF in August 2005. In general, the proposal budget included direct service, training, technical assistance, and modest administrative costs.

Monthly invoices were submitted for the actual expenditures accrued by ILTF and the direct service providers. The final expenditure total for the contract was \$470,039.94 pending a final audit. The figure below graphically shows the expenditures over time.



Chart 9

As is clear from the graphic, the initial expenditures during the contract were administrative in nature. During the first several months, project staff worked with DOI staff to ascertain contract provisions and processes including the data to be collected on services provided and clients served. Direct service staff was added in January 2006 and from that time forward the expenditures for direct legal services remained relatively consistent. It should be noted that the final invoice included some expenditures from DPLS that were incurred during earlier periods but were not recognized until a full accounting was completed in September.

The expenditures for training, technical assistance and administration accounted for approximately 18 percent of the total expenditures. Within this grouping of expenses, a substantial proportion of the expenditures were related to the two major training symposia held in March and July and the preparation of the video summary of presentations from the symposia for broader distribution. These activities account for the peaks of these expenditures in March, June and August. The total cost of the March symposium held in Seattle and the July symposium in Rapid City was approximately \$38,340. The Confederated Salish and Kootenai Tribes hosted the Montana AIPRA training and assumed all costs for the venue, advertisement, and training material reproduction. The costs for this event were for trainers' travel, lodging and expenses totaling approximately \$5,400.

It should be noted that the full contract amount would have been expended with the provision of one more month of direct services. The initial start-up time of the contracting process and the hiring and training of service staff took approximately 45 days longer than anticipated. In considering future projects or programs, consideration will be given to the time necessary for recruitment and hiring legal staff for rural areas as it is more difficult.

DISCUSSION

For the most part, the pilot project went as planned and relatively smoothly. While there were some significant hurdles to get over at the outset, there were also a number of benefits to providing services in this fashion that became apparent during the work. Each is discussed below under its own subheading.

Overall Success of the Project

This project was successful at several levels. First, it provided estate planning legal services to 1,113 clients that were unlikely to have the financial wherewithal to retain a private attorney. Further, since the BIA announcement that it was discontinuing its will writing service for trust assets, other free or low cost services are virtually non-existent. To this extent, it is safe to say that over 1,000 clients received assistance above a baseline availability of nearly zero.

Secondly, fractionation of land title was reduced voluntarily by clients and in accordance with their own desires. This was accomplished at a relatively low cost as discussed below. It is not possible to determine what amount of consolidation activity was transpiring prior to the project as data is unavailable to ILTF and its partners on wills written by the BIA that reduced fractionation or the ongoing number of gift deed requests filed independent of the project.

And finally, the project led to the training of 378 lawyers, tribal officials and other interested parties on the provisions of AIPRA. The Continuing Legal Education programs provided by the Institute has created a cohort of informed and trained attorneys that may now serve the needs of Indian clients with the financial means to retain their services. Beyond this, the recognition and awareness of the need for an Indian person to have a valid will has been elevated immensely.

Staffing Levels

Some delay in getting the contract finalized led ILTF and the Institute to begin conversations in December about making additional attorney and paralegal positions available to the service providers. ILTF encouraged DPLS to use the existing staff that had been working on an ILTF grant to fulfill the contract as the grant time period could be extended indefinitely. DPLS did not make this transition fully until February.

Further discussions with the two service providers took place later in the contract when it became clear that the monthly costs, while consistent with the proposal and program design, would not be sufficient to expend the full contract. During these discussions, the providers were reluctant to add additional staff for the short time remaining or could not quickly identify qualified candidates available for short term work. If longer term funding of the program had been available, both service providers indicated they would be willing to add staff.

The staff at each of the two service providers was of high quality and able to connect immediately with the Indian communities and the individual clients they served.

Client Interactions

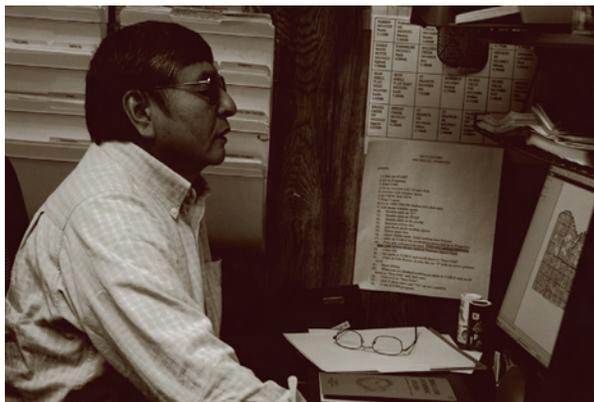
The length of the start-up time, from initial placement of staff to a steady stream of clients, of estate planning programs is generally related to the trust level engendered by the staff. Potential clients meet the staff at the public education sessions. If these sessions are well done and the number of initial clients is

relatively high, the program gets off to a fast start. However, the trust that is developed between the first clients and the staff is of great importance as word of mouth seems to be the most important factor in having a steady client stream.

The service providers under this contract successfully hired staff that were not only legally competent but were also skilled at interacting with the clients. DPLS had a reputation for doing good work with clients when the contract started and had a relatively steady stream of clients from the onset. NJP was relatively new to the work and had to build a sense of trust on each of the reservations before the client base was established. This is evidenced by the clients served at each site early in the contract period.

The value of holding community events as a way of recruiting new clients wanes over time. While the initial events are of high value in introducing the service as noted above, the attendance begins to fall off over time. Anecdotally, staff suggests that less than half of their new clients have attended a community meeting but most have heard of the service from an attendee or another client. In considering the charts on page 8, one can see the ebb and flow of attendance. NJP was successful in recruiting a new client stream from the community events. These events were an absolute necessity for the NJP site to get started quickly. On the other hand, DPLS which had been running the services prior to this project did not have the same attendance response early in the project as they had been conducting community events for nearly two years. However, as their work with existing clients began to be completed, the DPLS staff initiated more and different types of community meetings to get the word out about the available service and this is reflected in the rising attendance.

Anecdotally clients have suggested two other factors as important to their use of the program. First, the staff were from independent third parties and therefore advice provided was seen as unbiased. Had the legal advice come from either their tribe or a federal employee, the clients would have been suspect as to whether only their interests were being served. Secondly, unlike the will writing assistance provided in the past by the BIA that only dealt with trust assets, the attorneys in this program worked with clients to devise wills that covered the entire estate—trust and non-trust assets. This latter factor seems to be quite important in the prevention of further fractionation of undivided interests. By including all assets in one discussion and the subsequent written will, clients can easily see how the division of assets can be done along trust and non-trust lines while being equitable with heirs. Additionally, the clients only have to become comfortable with one attorney or paralegal in dealing with their entire estate.



Cost Effectiveness of the Program

While there is little question the activities within the program fulfilled much needed services in Indian Country for some very grateful clients, there remains a question on the cost effectiveness of the program.

The following table provides several costs per outcome estimates.

| COST PER OUTCOME ESTIMATES | | | |
|--|---------------------------|---------------------------|-------------------|
| <i>OUTCOME</i> | <i>NUMBER OF OUTCOMES</i> | <i>COST PER UNIT (\$)</i> | <i>ASSUMPTION</i> |
| Wills Written | 829 | \$567 | A |
| | | \$514 | B |
| | | \$319 | C |
| Other Estate Planning Documents | 644 | \$662 | B |
| | | \$319 | C |
| Symposium Attendees | 280 | \$156 | D |
| Undivided Interests fractionation prevented or reduced | 5,290 | \$89 | A |
| | | \$81 | B |
| | | | |

Table 2

Assumptions

A—Based on total project costs of \$470,040.

B—Based on total project costs less symposium costs of \$43,743

C—Equal division of total project costs by all estate planning documents (1,473)

D—Based on direct symposium costs

The costs of the various outcomes is difficult to separate without detailed analysis of timesheets and separate allocations of time spent with individual clients resulting in each type of estate planning document. This level of detail was not requested of, nor kept by the service providers. However, even with the cursory analysis provided in the table, the conclusion can be drawn that the pilot project provided services that led to outcomes at relatively low cost. At a cost of less than \$570 per will written by project staff, this cost compares to some of the lowest cost legal services available. This is particularly true when considering the complexity of obtaining client information from several sources and including both trust and non-trust assets.

The most significant cost figure is that related to the prevention of fractionation of 5,290 undivided interests (see the following section). At \$89 per interest, this compares favorably to the cost of purchasing interests in the BIA Indian Land Consolidation Pilot Project. According to the Office of Management and Budget (OMB), the average cost of acquiring an undivided interest was \$632 in 2002 and \$283 in 2001. Although it is important to note that the estate planning process does not permanently prevent future fractionation of the undivided interest.

Overall, it appears that the pilot project could be characterized as cost effective and efficient for the goals of wills written and fractionation reduced.

Administrative Cost Savings

In 2003 ILTF attempted to calculate the annual administrative costs incurred by the federal government in managing undivided interests in trust land. ILTF calculated this amount to be around \$115 to \$120 per undivided interest per year. BIA staff of the Minneapolis Regional Office unofficially concurred that the amount was within the range of their own findings.

Approximately 65 percent of the wills written by the service providers either consolidated undivided interests or prevented further fractionation of the ownership title. There were 8,139 undivided interests involved in the wills written. Presuming that 65 percent of the undivided interests (5,290) did not go through further fractionation it follows that the creation of a minimum of 5,290 new interests was prevented by the pilot project. The actual number of new interests that would have been created without the project's will writing services is probably much greater as most Indian interest holders have more than two eligible heirs.

Given acceptance of the above numbers, the savings to the federal government in annual administrative costs provided through this project would be in excess of \$608,000. This, of course, does not calculate the savings involved in the gift deed process which may add as much as an additional \$250,000 to the minimum savings.

As ILTF and the Institute continue providing these services, additional data on clients and eligible heirs will be collected to ascertain the specific savings to be had through will writing as a method of preventing fractionation.

RECOMMENDATIONS FOR FUTURE PROGRAMS

This contract ended leaving a significant number of people who wanted estate planning services without wills and other estate planning documents or with those documents incomplete. The Indian Land Tenure Foundation has funded continued work by the project service providers on the reservations served to allow completion of that work and in hopes that funding will be provided so that the work can be continued without a gap in service.

The experience of ILTF and the Institute in the earlier projects operated by DPLS and the University of Idaho College of Law in the operation of this pilot project and in hearing from Indian people at training sessions and community education events, the need for estate planning services in Indian Country definitely exists, is large and is, for the most part, currently unmet.

Based on the results of this contract and other estate planning services provided to individual Indian clients, ILTF makes the following recommendations.

- A continuous estate planning and will writing program should be funded by the federal government. This pilot project and earlier programs have demonstrated the need for the services provided and the willingness of Indian people to use such services to plan their estates. The Foundation and Institute currently field 8 to 10 inquiries each week about the services and their availability, continuation of the current service areas and the possibility of new service areas. Without a continuous funding source, service provision will become sporadic and the client stream continually disrupted. Additional costs will be incurred with each restart.

The certainty of funding for services is an important consideration as the service providers will need to provide their staff with some modicum of job security in order to keep well trained, high performance individuals. To that end, an appropriation of a large single amount sufficient to endow the program operations or a long term cost reimbursable contract is preferable. Providing funds or reimbursable contracts on an annual basis will not provide any certainty of funding and will require additional administrative time for seeking and supporting annual budget requests.

The financial support from the federal government is essential in continuing this type of activity. Private funders, while willing to help ILTF explore program models and demonstrate efficiencies, clearly see the fractionation of land title in Indian Country as a longstanding federal issue and they are not willing to commit funds for the resolution of the problem over a long period of time.

- Allow for several different models of service delivery. The model used during the pilot project involved full-time attorneys and paralegals at each site. While effective in a short duration program such as this contract, ILTF and the Institute have also found the use of summer internships for second year law students along with supervising attorneys to be both cost effective and allowing for the coverage of more reservations. The Institute has also established the first Indian Wills Clinical Program at Seattle University School of Law where students, working for credit and under appropriate attorney supervision, provide estate planning services at no cost to Indian clients. Other service models could involve a combination of internships, clinical programs and full-time attorneys, as well as, contracting with private practice attorneys at negotiated rates. The variety of situations found among the tribes and their members suggests that multiple approaches would ultimately be the most efficient overall program.
- Any future program should allow for sufficient start-up time. A minimum of three months should be allowed for recruitment and training of attorneys, particularly for the most rural service areas. In this particular project, DPLS had a difficult time finding attorneys that were available and willing to live and work in rural South Dakota. An additional two months should be allowed for the service providers to provide sufficient public outreach and to achieve a full client stream. Optimally, any new or continued program would take advantage of the current service areas as the client stream is developed and then add new service areas strategically thereafter.
- Service providers should provide sufficient community outreach to initiate the client base. Further community outreach should be matched to maintaining a steady stream of clients and not simply on a predetermined schedule. This will allow clients to be served on a timely basis and not become frustrated or disenchanted with the services. Other public relations efforts could and should be employed to raise the community awareness of the need for a will and the availability of services.



- A coordinating body for the provision of technical assistance and training, data collection, and administrative oversight is desirable. In this contract, ILTF and the Institute provided these functions. Each attorney and paralegal in the program received the same training and updates as the nuances of AIPRA became clear. Similarly, each service provider collected the same data from clients. A single coordinating organization also allows for the strategic placement of new service areas as funding becomes available.

- If an estate planning and will writing program is continued, there should be specific BIA/OST staff dedicated to fulfilling all requests for information on trust assets delivered from the service providers or their clients. Service staff report that the delays in receiving information, such as title status reports, results in the occasional loss of client interest in completing the will writing or gift deed processes. Alternatively, giving priority status to the requests by all BIA staff may resolve this issue but given competing priorities at any given time, this may not be sufficient.
- The issue of registering and storing wills must be resolved in the near term. Currently, each service provider is storing a copy of the wills written. This is not a preferred situation as storage space is limited and there is not a coordinated retrieval system that would inform the Office of Hearings and Appeals (OHA) of the existence of a will. The original documents held by the clients remain at threat of loss or destruction which will decrease the effectiveness of the service provision over time. The Institute staff has been investigating the possibility of electronic storage methods and has been assured by at least one company that designs software and data storage programs that storage, tracking and retrieval of electronic wills and related documents could be readily developed. Key to the issue is the fact that OHA requires paper copies in the event that an original will is lost or destroyed. The currently pending proposed federal probate regulations need to include an authorization for the use of electronic copies of wills, codicils and revocations in the federal probate process in order for development of an electronic storage, retrieval and management system to move forward.
- The project benefited by the assistance provided by local OST and BIA staff in several ways. The OST trust officers provided both referrals to the service providers and also helped clients obtain the information about trust assets and related income that could help clients make informed decisions about their estates. OST and BIA staff attended a number of the community meetings to answer questions and encourage potential clients to begin the process. OST trust officers were also particularly helpful in disseminating information and written material at meetings with landowners and account holders.

A future program should engage all of the OST and BIA field personnel in the program service areas in understanding the purpose of the work and their potential role in helping to facilitate it. A meeting between OST/BIA staff and the service providers would also be helpful for the service providers to gain insight into how best to work with agency staff to process requests, collect information, etc. A long term program should have at least an annual meeting of this type, if not semi-annual.



The Indian Land Tenure Foundation is a 501(c)(3) corporation created in October 2001 to assist tribes and individual Indians in the acquisition of alienated reservation lands, and the preservation, protection, ownership and management of Indian lands that hold historical, cultural, and economic significance. ILTF operates as a national community foundation providing information, outreach, public education, program services, special projects and grants to further its mission.

The Institute for Indian Estate Planning and Probate at Seattle University School of Law, a program of the Indian Land Tenure Foundation, was established in 2005 to assist Indian people in making informed decisions about their property by providing information and services on Indian estate planning, tribal probate codes and AIPRA.

Dakota Plains Legal Services, organized in 1967, is a non-profit organization that provides legal representation, advocacy, conflict resolution, and community education to Native American and non-Native American clients on reservations in South Dakota and North Dakota.

Northwest Justice Project is a non-profit organization that provides direct legal services throughout the state of Washington to Native American clients through their Indian Estate Planning Project by assisting tribal members with estate planning issues, drafting wills and related issues.

INDIAN LAND TENURE FOUNDATION

151 East County Road B2
Little Canada, MN 55117-1523

Phone: 651-766-8999 • Fax: 651-766-0012

info@indianlandtenure.org

www.indianlandtenure.org