



Cutting through the Red Tape:

An Indian Landowner's Guide to Reading and Processing Federal Forms

The federal trust relationship that closely binds Indian people to the U.S. federal government can be traced back to the General Allotment Act of 1887. The Act, also known as the Dawes Act after its chief sponsor, Senator Henry Dawes, authorized the president to divide reservation lands into separate tracts of land for individual tribal members. The remaining "surplus" lands were transferred to the federal government who in turn sold them to private, non-Indian parties and business interests. As a result of the Act and subsequent legislation, approximately 90 million acres of reservation land were removed from Indian ownership and control. In addition to the loss of homelands, serious problems resulting from the Act, such as fractionation and reservation checkerboarding, continue to cause extreme social, cultural and economic hardship for Indian people.

However, the General Allotment Act had another, equally devastating consequence. With the stroke of a pen, the Act transferred legal title to the vast majority of the Indian land base to the federal government. Indian nations and landowners retained "beneficial use" of the lands, meaning they could use and earn income from the land throughout their lifetimes and transfer their ownership interest to their heirs. Because of their trust status, the lands were free from taxation and, in theory, protected from further loss through sale. Sadly, such federal policies as the Burke Act, forced fee patents, and Termination in the next century proved that theory dead wrong. Ultimately, the federal government holding the underlying title left Indian lands vulnerable to the whims of federal policy and placed the management of the land and assets in the hands of federal agencies. This has forced Indian nations and landowners to follow copious, excessive, and restrictive federal regulations in respect to the use and management of their lands.

The federal trust status of Indian lands is the primary reason Indian nations and landowners are buried in so much red tape.



WHY CREATE A PUBLICATION ON RED TAPE?

The primary purpose of this publication is to help Indian landowners effectively navigate the mountains of red tape that stand between them and individual or tribal control of their assets. Information about the forms in this publication was collected through interviews with federal employees, tribal land office staff, attorneys, appraisers, Indian landowners and others who work in the field of Indian land and asset management on a daily basis. All of them, to varying degrees, expressed frustration with this system, which is so heavily regulated, is so costly to administer, and continuously fails to serve its primary "customers"—Indian nations and landowners.

But we are not merely dealing with an excessive amount of paperwork and maze-like bureaucratic processes. As readers will see (and likely already know all too well) most of the forms themselves are confusing, poorly designed and outdated. Some of the most common forms haven't been updated since the 1950s. Oftentimes, instead of creating a new form (which would require approval of the Office of Management and Budget (OMB)—too much red tape to even bother!),

Bureau of Indian Affairs (BIA) employees are instructed to just cross out portions of the old form that no longer apply and fill it in with new information.

Another challenge is that many of the forms and standard procedures vary from region to region depending on geography, natural resources, land use, land ownership patterns, degree of tribal involvement and other factors. Sometimes, BIA regional and area offices establish protocols and procedures that have developed over time, and are accepted as official policy, but are not actually part of the federal regulations. When some of these "policies" are not enforced consistently, they make it harder for Indian people to use their lands productively or resolve issues, such as the fractionated ownership of Indian trust interests.

However, there is increasing pressure to reform, even coming from within the federal agencies themselves. For example, a top-level administrator with Office of the Special Trustee for American Indians (OST) has been working on a project to standardize the gift deed form and process to make it easier for Indian people to gift deed their lands and to eliminate loopholes that allow lands to pass out of trust status. OST is also working on a project to allow Individual Indian Monies (IIM) account holders to access their accounts online, just like online banking through a private bank. They are already testing this technology with tribes and plan to focus on individual account holders next. And, the BIA is in the final stages of developing a new fee-to-trust handbook that is meant to improve efficiency and standardize practices.

On the tribal side, Indian nations are increasingly seeking out opportunities to take over BIA realty functions themselves. Many tribes now compact out BIA realty services through 638 contracts (Public Law 93-638) that allow the tribe to provide services for their members at the tribal level. Tribal land offices are expanding across Indian Country and land office professionals are seeking out ways to talk to and learn from one another as a group.

Sign up for email updates on our website and follow us on [Twitter](#), [Facebook](#) and [YouTube](#).

STAY CONNECTED! WWW.ILTF.ORG



NONPROFIT ORG
U.S. POSTAGE PAID
SAINT PAUL MN
PERMIT NO. 7725

Indian Land Tenure Foundation
151 East County Road B2
Little Canada, MN 55117-1523





Acronym Decoder

Bureaucratic agencies are famous for their excessive use of acronyms—words that are formed from the initial letters of other words. Here is a list of some (but by no means all) of the acronyms used by the federal agencies featured in this publication.

AIPRA	American Indian Probate Reform Act	NEPA	National Environmental Policy Act
BIA	Bureau of Indian Affairs	OAS	Office of Appraisal Services
Cat Ex	Categorical Exclusion	OHA	Office of Hearings and Appeals
CFR	Code of Federal Regulations	OMB	Office of Management and Budget
DOI	Department of the Interior	OST	Office of the Special Trustee for American Indians
EIS	Environmental Impact Statement	OTFM	Office of Trust Fund Management
ESA	Environmental Site Assessment	PLSS	Public Land Survey System
FONSI	Finding of No Significant Impact	ROW	Right of Way
FSA	Farm Service Agency	RTA	Regional Trust Administrator
FTO	Fiduciary Trust Officer	TAAMS	Trust Asset and Account Management System
IBIA	Interior Board of Indian Appeals	TANF	Temporary Assistance for Needy Families
IHS	Indian Health Service	TBCC	Trust Beneficiary Call Center
IIM	Individual Indian Monies (Account)	TFAS	Trust Fund Accounting System
ILCA	Indian Land Consolidation Act	TSR	Trust Status Report
ILCP	Indian Land Consolidation Program	USPAP	Uniform Standards of Professional Appraisal Practice
IR	Interest Report	WAU	Whereabouts Unknown
ITI	Individual Trust Interest (Report)	WIC	Women, Infants and Children
LTRO	Land Titles and Records Office		
NBC	National Business Center		

Table of Contents

UNDERSTANDING YOUR ACCOUNTS:

+ Individual Trust Interest Report	4
+ Individual Indian Monies Statement of Account	6
+ List of Real Property Assets	7
+ IIM Account Preferences	8

MANAGING YOUR LANDS AND ASSETS:

+ Appraising the Value of Indian Trust Land	10
+ Sale of Indian Land	12
+ Land Exchange	14
+ Leasing Indian Land	16
+ Right of Way	18
+ Trust-to-Fee Transfer	20
+ Fee-to-Trust Transfer	22

PRESERVING YOUR LAND FOR FUTURE GENERATIONS:

+ Writing a Will	24
+ Gift Deed	26
+ Notice of Probate	27
+ Landowner Resources	28



Continued from Cover...Why Red Tape?

For its part, the Indian Land Tenure Foundation hopes to serve as a resource for all of these groups, by providing materials that can be used to educate administrators, tribal officials, and Indian landowners alike. Our primary interest, however, is in ensuring that Indian people have the information and resources they need to take full control of their own lands and assets.

HOW IS THE INDIAN TRUST SETTLEMENT RELATED TO RED TAPE?

In June 1996, Elouise Cobell (Blackfeet) filed a lawsuit against the Department of the Interior, seeking a historical accounting of how it managed proceeds from land leases and oil, gas, mining and timber royalties on Indian land and a reform of the trust system that manages these accounts on behalf of approximately 500,000 Indian people. While the U.S. Court of Appeals found in favor of the plaintiffs (Cobell) in 2001, the Department of the Interior failed to ever produce an

accurate accounting, exposing the trust system to have been grossly mismanaged for over a century.

Nine years later, the Claims Settlement Act of 2010 authorized the \$3.4 billion Indian Trust Settlement. As part of the settlement, most individual IIM account holders will receive about \$1,800, though a few will receive more. In addition, \$1.9 billion will be used for a land consolidation fund to buy fractionated interests and return them to the tribe. Plaintiffs in the lawsuit have stated that, while they accepted the \$3.4 billion settlement because it was the best they could do, the actual amount owed Indian landowners is much higher.

While not all Indian landowners are happy with the terms of the settlement, one thing all of Indian Country can agree on is that for far too long the federal government was neglecting its trust obligation to protect Indian land and assets. And that, going forward, Indian people must learn how to manage their own lands and

assets to ensure that this egregious breach of trust never happens again. In order to become a better manager of assets, it is first important to understand what is owned and what the processes are to manage the asset. We hope this publication will assist Indian landowners to that end.

Note about the forms

The reproduced documents in this publication are designed to look as much as possible like the actual federal forms that an Indian landowner or tribe would encounter. However, they should not be mistaken for the actual forms, which must be acquired from and processed by the appropriate tribal or federal agency. Names of individuals, companies, places, numbers, dollar amounts and any other form of personal information found on any of the forms in this publication are entirely fictitious and meant only to serve as examples of the kind of information that would be displayed.

Visit the ILTF website, www.iltf.org, for new and updated federal forms and their explanations.



*"Our primary interest...
is in ensuring that Indian people
have the information and resources
they need to take full control
of their own lands and assets."*

Understanding Your Accounts

At a minimum, all Indian landowners should know how much land they own, where their land is located, how much their share is worth, and how that land is being used and by whom. As part of its trust responsibility, the Bureau of Indian Affairs (BIA) and, more recently, the Office of the Special Trustee for American Indians (OST), is responsible for recording, storing and providing access to and an accurate accounting of this information. We know from the Cobell lawsuit that Indian trust lands and assets were, for over a century, grossly mismanaged, leaving the accuracy of this information still in question. While the BIA and the federal trust system are working on reforms to address the issues raised by Cobell, things will not change

overnight. It is up to Indian people to read and understand information about their land ownership and their finances and to take actions necessary to protect and preserve their own resources.

Individual Trust Interest Report

The Individual Trust Interest Report (ITI) is one of the most important documents for an Indian trust land owner to understand. It contains essential information about a landowner's trust land (surface) and mineral (mineral rights) holdings. For example, it lists the location and size of a trust land allotment, the allottee's share of undivided interests in an allotment and how much that share is worth. Much of the information on the ITI is used by the BIA for internal coding and tracking.

The ITI lists all of the allottee's holdings in every allotment where he or she has inherited an interest. If an Indian person has inherited a lot of interests, the ITI can be several pages long and it's not always clear where one allotment ends and another begins. It's important for landowners to make this distinction if they are considering selling, exchanging or gift deeding some of their interests.

WHAT TO EXPECT

The ITI is generated from the Trust Asset and Accounting Management System (TAAMS) at the regional BIA Land Titles and Records Office and mailed to landowners on a quarterly basis. A copy of the ITI is required for most land-related applications, such as land consolidations and exchanges, transferring land from fee to trust status and gift deeds. A copy of the ITI can be requested through the local or regional BIA realty office or through OST. In order to request a copy of the ITI, a landowner will need to provide his or her tribal enrollment number.



Fly to your land on Google Earth

If you have access to the Internet, you can use the Public Land Survey System (PLSS) description of your land (found on the ITI) to zoom in on your allotment on Google Earth.

First, if your computer does not already have it installed, you'll have to download Google Earth. To do this, go to www.earth.google.com and click on the button to download the latest version of the program.

Next, go to the EarthPoint website at www.earthpoint.us/townships.aspx. Scroll down to the section titled: "Convert Township, Range and Section to Latitude and Longitude." Referring to the PLSS information on your ITI, select the correct information in the drop down boxes on the EarthPoint website. Click on "Fly to On Google Earth" and open the webpage that is automatically created for your land.

Once you're on Google Earth, you will see one line marking the boundaries of the township and another line marking the boundaries of the 640-acre section of land your allotment is in. Use the directions (NE, NW, SE or SW) in the legal land description of your ITI to determine the exact location of your allotment. You can zoom in and out by double-clicking on the webpage or using the + and - scroll bar at the right. You can also activate different "Layers" on the webpage to see more map details, such as towns and roads.

Internal ID number assigned by the BIA along with the initials of the employee who requested the report.

Land interest owner account information. This is also used for the IIM account number.

- a. TRB – Reservation or land area code
- b. CL – Identifies the type of account (A = original allottee, U = not original allottee, N = lineal descendant, L = life estate, dower or curtesy, or homestead interest for an Indian, B = life estate, dower or curtesy, or homestead interest for a non-Indian, J = judgment per capita payment, P = tribal per capita payment, X = non-Indian fee interest owner)
- c. NUMBER – Personal account number or tribal enrollment number

Last name, first name and middle initial of the allottee.

Tract ID information.

- a. LAC – Reservation code for where the land is located
- b. PFX – Stands for "prefix" and is part of the tract numbering system. May or may not be filled in. (Blank=surface, M=minerals, B=both)
- c. NUMBER – ID or allotment number for the specific tract of land
- d. SFX – Stands for "suffix" and is part of the tract numbering system. Normally when a tract is subdivided it is assigned an A, B, C, 1, 2, 3, etc.
- e. TITLE PLANT – Location of the regional BIA office
- f. LAND AREA – Reservation where the tract of land is located
- g. RESOURCES – Indicates whether the allottee has surface rights, mineral rights or both

Description of where the land is located based on the Public Land Survey System (PLSS). This is what is used for the "legal land description" in many BIA applications and forms.

Land interest owner and document information.

- a. TYP – Type of ownership (I=Indian, N=non-Indian)
- b. OT – Type of title (T=trust, R=restricted, F=fee)
- c. INT – Interest in land (A=all, L=life estate, T=title only)
- d. CLS – Document code (10=deed, 11=probate, 12=modification)
- e. TYP – Document code (TS=testate, IT=intestate)
- f. NUMBER – Probate or conveyance number that includes: code for city of assigned law judge, law judge's numbers, and year submitted to law judge

Calculating ownership in equivalent acres

If you are considering a land exchange, consolidation or sale, you will need to know your ownership interest in equivalent acres.

To calculate this, use the information on your ITI to multiply the AGGREGATE DECIMAL by the TOTAL SECTION ACRES.

$$\begin{array}{rclcl} \text{AGGREGATE DECIMAL} & \times & \text{TOTAL SECTION ACRES} & = & \text{EQUIVALENT ACRES} \\ .0111111111 & \times & 160 \text{ acres} & = & 1.777777777 \text{ acres} \end{array}$$

Note: If your ownership is in undivided interests, this number will NOT represent an actual plot of land, but it will allow you to estimate a value for the interests you own in a tract of land.

Date of birth and death (if deceased) of the allottee.

Individual Trust Interest Report

Bureau of Indian Affairs

PLSS legal land description

The Public Land Survey System (PLSS) legal land description is included on the Individual Trust Interest Report (ITI) and states the exact location of your allotment using land surveying terminology. The description includes the section, township, range, county, state and meridian. A section is equivalent to 640 acres, and most allotments are 160 acres, which would be one quarter of the section. Underneath the words "Legal Description" on the ITI is a direction (NE, NW, SE or SW) that identifies which quadrant (or quarter) of the section your land is in. If your allotment is less than 160 acres, there will be two or more directions listed. For example, an 80-acre allotment might have E, SW in the legal description. This would mean that the allotment is in the eastern half of the southwest quadrant of the section.

Date of the last time the report was accessed.

Name of the original allottee. Also used as part of the tract description.

SECTION COUNTY ACRES – Total number of acres in this section of a tract of land. There may be more than one section located in a tract and multiple legal descriptions to describe the acres. This is summed up in the CUM SECTION ACRES and TOTAL SECTION ACRES.

TOTAL ESTIMATED VALUE – Value of the entire tract of land based on the annual rental income from surface use. When ownership is highly fractionated, this number is much higher than an individual allottee's share.

AGGREGATE DECIMAL – Current allottee's share of the land converted to a decimal.

AGGREGATE SHARE CONVERTED TO LCD – Number of people that share an interest in this tract of land.

INDIVIDUAL SHARE MONETARY VALUE – Value of current allottee's share of the annual rental income.

REPORT-ID: TAO09IR
REQUESTOR: JDOE

BUREAU OF INDIAN AFFAIRS
INVENTORY OF DESCENDENTS REPORT
ALL TITLE HOLDINGS

PAGE: 1
DATE: 04/25/2010
CST TIME: 03:24 PM

-----OWNER-----
TRB CL NUMBER
123 U 456789

BIRTHDATE:05/24/1954 DEATHDATE: 00/00/0000

-----NAMES OR ALIASES-----
LAST NAME FIRST NAME MIDDLE NAME
BLACK BEAR JOE E

-----TRACT ID----- TITLE
LAC PFX NUMBER SFX PLANT LAND AREA RESOURCES -----DATE OF LAST-----
EXAMINATION/VERIFICATION
344 920 -C ABERDEEN PINE RIDGE Surface 08/30/2000 00/00/0000

RICHARD BLACK BEAR
** ORIGINAL ALLOTTEE **

SEC	TOWNSHIP	RANGE	COUNTY	ST	MERIDIAN	LEGAL DESCRIPTION	SECTION COUNTY ACRES	CUM SECTION ACRES
25	044.00N	038.00W	SHANNON	SD	Sixth Principal	SE	160.000	160.000
TOTAL SECTION ACRES:							160.000	160.000

-----OWNER----- --DOCUMENT--
TYP OT INT CLS TYP NUMBER NAME IN WHICH ACQUIRED FRACTION OF TRACT TOTAL ESTIMATED
(SURNAME/FIRST NAME) (+/-)AS ACQUIRED VALUE
I T A 11 IT BI554C971 BLACK BEAR 1
90

OWNER ID _____ OF THE PERSON THEY RECEIVED FROM

\$ 10,043.00

INDIVIDUAL SHARE MONETARY VALUE	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
\$ 111.59	90	.0111111111

REPORT CONT....

OWNER ID – Person from whom the current allottee inherited the land.



Individual Indian Monies Statement of Account

Individual Indian Monies (IIM) accounts are managed by the Office of the Special Trustee for American Indians (OST), which was established in 1994 as part of the American Indian Trust Fund Management Reform Act. Prior to the establishment of OST, IIM accounts were managed by the BIA. The IIM Statement of Account contains important information about an individual Indian account holder's income and expenses from the use or sale of a trust asset such as agricultural or grazing leases, coal production, timber harvesting or oil and gas leases. Funds listed on the account statement can also come from a per capita payment or from proceeds from an estate account following a probate.

WHAT TO EXPECT

All IIM account funds are invested in government securities and earn interest until they are disbursed. IIM account statements are mailed to account holders on a quarterly basis along with a List of Real Property Assets (see next page). However, if the account has a very low balance and does not have any activity for an 18 month period, the beneficiary will receive a statement only once a year.

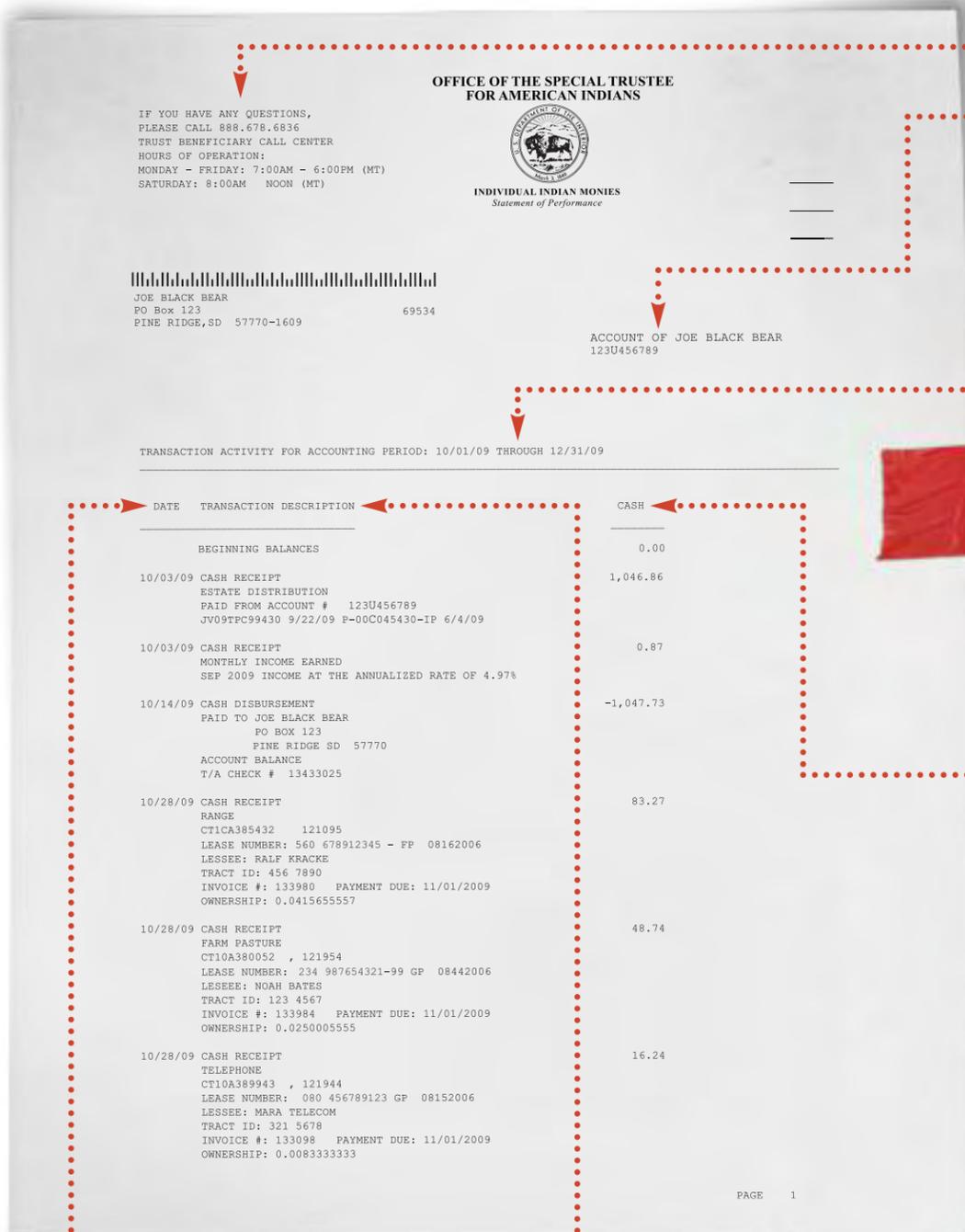
There are three different types of IIM accounts: unrestricted, restricted and estate.

- Most adults have **unrestricted** accounts in which funds are disbursed to the account holder whenever the account balance reaches \$15 or more, unless the

account holder requests otherwise or has direct deposit. (See "Instructions for Disbursement of Funds and Change of Address" pages 8-9.)

- An account may be **restricted** if there is a claim pending against the account, such as for child support; if a current address is not on file (i.e., the beneficiary is on the Whereabouts Unknown list); or if the account holder is a minor. Restricted account funds are disbursed in accordance with a BIA-approved disbursement plan.
- **Estate** accounts are established when OST receives notice that an account holder is deceased. Estate accounts remain open, earning income, until the probate process is completed and assets are distributed.

Individual Indian Monies Statement of Account Office of the Special Trustee for American Indians



Toll-free number for account holders to call if they have questions about their statement or their account. All callers must be able to verify that they are or have at one time been an IIM account holder.

Name and IIM account number of the account holder. This account number is also used for the ITI. (See ITI example on pages 4-5 for explanation of what each part of the account number means.)

Start and end dates for the transaction activity included in the statement. The timeframe in this example is the fourth quarter of 2009.

CASH – This column shows funds received into the account from sources such as leases or interest payments and funds that were disbursed to the account holder. Funds that were disbursed are preceded by a minus sign indicating a deduction from the account.

DATE – Date of each account transaction during the statement period.

TRANSACTION DESCRIPTION – This column describes the transactions, such as cash receipts and disbursements (funds coming into and out of the account) including the names of payers and types of leases (sources of payments and funds that were disbursed).



List of Real Property Assets

Office of the Special Trustee for American Indians

List of Real Property Assets

This List of Real Property Assets offers a quick snapshot of pertinent information about all of an IIM account holder's trust land holdings. Information is divided into two sections which describe first the trust land holdings and then the various encumbrances (leases, rights of way, etc.) that are held on those lands.

Landowners can learn a lot about what they own by looking at this form, including the amount of undivided interest they own in each parcel of land, the type of ownership they hold, existing leases on the land, what the leases are for and when they are due to expire. Landowners who plan to negotiate a new lease agreement or who are considering new land use options for the property should review this information carefully.

WHAT TO EXPECT

This form is mailed to IIM account holders on a quarterly basis along with the IIM Statement of Account. Accounts with low balances and minimal activity will receive a statement only once a year.

UNDIVIDED OWNERSHIP – Shows the amount of undivided interest the landowner holds in the tract of land.

TRACT ID/TRACT DESCRIPTION – The Tract ID is a unique BIA number assigned to a tract of land which includes the reservation code and the allotment number. The Tract ID is also used on the ITI and in the IIM Statement of Account to identify the same tract of land. The Tract Description is the official name, if any, of a tract of land. This name comes from the original allottee.

LOCATION – Geographical location of a tract of land.

OWNERSHIP CLASSIFICATION – Type of interest a landowner has in the property. "Title" means the landowner owns title to the interest, but does not receive income from the use of the interest. "Beneficial" means that the landowner does not own the title, but receives the financial benefits of the interest. Landowners can hold both title and beneficial interest in the property.

TRACT ACRES – Number of acres in the identified tract of land.

ENCUMBRANCE HOLDER – Person or entity paying for the use of the property, e.g., the leaseholder.

EXPIRATION DATE – When the terms of the lease, right of way, permit, etc. end.

ENCUMBRANCE TYPE – Lease, right of way, permit or other legal instrument that authorizes the use of the property.

EFFECTIVE DATE – When the terms of the lease, right of way, permit, etc. begin.

DOCUMENT ID – Unique BIA number assigned to identify the legal instrument (for example, the lease) that authorizes the use of the property.

TRACT ID – Corresponds with the Tract ID of the tract of land listed in the "Trust Land" section in the top part of the form.

LIST OF REAL PROPERTY ASSETS

JOE BLACK BEAR
ACCOUNT NO. 123U456789

AS OF 12/31/09

PAGE 2

TRUST LAND

UNDIVIDED OWNERSHIP	TRACT ID TRACT DESCRIPTION	TRACT ACRES	LOCATION	OWNERSHIP CLASSIFICATION
0.0415655557	* 456 7890 LITTLE BATTLE	160.00	CHEYENNE RIVER, SD	TITLE & BENEFICIAL
0.0250005555	* 123 4567 THREE STARS	320.00	PINE RIDGE, SD	TITLE
0.0083333333	* 321 5678 BORDEAUX	160.00	ROSEBUD, SD	TITLE & BENEFICIAL

ENCUMBRANCES

TRACT ID	DOCUMENT ID	ENCUMBRANCE TYPE	ENCUMBRANCE HOLDER	EFFECTIVE DATE	EXPIRATION DATE
456 7890	560 678912345	GRAZING LEASE	KRACKE, RALF	01/04/2006	12/31/2011
123 4567	234 987654321	AGRICULTURAL LEASE	BATES, NOAH	01/01/2004	12/31/2014
321 5678	080 456789123	TELEPHONE	MARA TELECOM	01/01/2001	12/31/2021

Have a question?

The OST's Trust Beneficiary Call Center is the best place to start if you have a question about your IIM account or account statement. The Call Center is open Monday through Friday, 7:00 a.m. – 6:00 p.m. and Saturday, 8:00 a.m. - 12:00 p.m. (Mountain Time). Call Center staff are trained to respond to nearly all trust account related questions, including information about your account balance, requesting a payment, change of address, setting up direct deposit, and more. The Call Center's toll-free number is: 1-888-678-6836.

OST field staff include six Regional Trust Administrators (RTAs) and 52 Fiduciary Trust Officers (FTOs). Located across Indian Country, FTOs serve as the primary point of contact for trust beneficiaries and frequently hold outreach meetings for beneficiaries to provide general trust information and to answer questions. Contact the OST Call Center to find the FTO and RTA responsible for overseeing IIM accounts in your area.

IIM Account Preferences

The Individual Indian Monies (IIM) Instructions for Disbursement of Funds and Change of Address is used by the Office of the Special Trustee for American Indians (OST) to establish the account preferences and update personal information, such as change of address or name, of IIM trust account holders.

IIM account holders who have moved or are no longer receiving quarterly statements, should contact OST right away to update their contact information to ensure there is no lapse in service. The Instructions for Disbursement of Funds and Change of Address form can be accessed online on OST's website, www.ost.doi.gov/information, and returned to the OST Trust Beneficiary Call Center offices in Albuquerque, New Mexico. (See "Landowner Resources" on page 28 for the full address.) Beneficiaries can also call the Trust Beneficiary Call Center, 1-888-678-6836, to update their account information over the phone. To process the request, Call Center staff require the caller to provide at least two of the following pieces of information:

- Social security number
- Date of birth
- Last address of record
- IIM account number
- Approximate date and amount of the last disbursement

IIM ACCOUNT NUMBER OR TRIBAL ID NUMBER – This number can be found on the ITI (see pages 4-5) and on the IIM Statement of Account (see page 6).

PAYMENT INSTRUCTIONS – IIM account holders can choose when they receive payment and how much is disbursed at any given time. Unless a specific request is made, most funds in an unrestricted account are automatically disbursed when the account balance reaches the minimum threshold amount of \$15.00. When oil and gas royalty payments exceed \$5.00 in a given cycle, funds are disbursed to the beneficiary. Money that is held in an IIM account is invested in government securities and will earn income at the federal fund interest rate.

Instructions for Disbursement of Funds and Change of Address

Office of the Special Trustee for American Indians

OMB Control No. 1035-0004 Expiration Date: 07/31/2013 Form OST 01-004

Individual Indian Monies (IIM)
Instructions for Disbursement of Funds and Change of Address
 Office of the Special Trustee for American Indians -- <http://www.doi.gov/ost/>
 If you have any questions call OST at: 1 – 888 – OST – OTFM (1–888–678–6836) TOLL FREE NUMBER

1	IIM ACCOUNT NUMBER OR TRIBAL ID NUMBER (If Known)				
2	CURRENT LEGAL NAME OF ACCOUNT HOLDER	First	Full Middle Name	Last	Suffix (e.g. Jr.)
	OTHER NAMES USED (Maiden or Also Known As, etc.)	First	Full Middle Name	Last	Suffix (e.g. Jr.)
3	DATE OF BIRTH (MM/DD/YYYY) and SOCIAL SECURITY #	Date of Birth		Social Security Number	
4	CONTACT TELEPHONE NUMBERS and EMAIL ADDRESS	() Telephone Number	() Cell Phone Number	Email address	
5	PAYMENT INSTRUCTIONS	<p>Select one of the following options:</p> <p><input type="checkbox"/> Automatically disburse all of my funds: I request all of my IIM funds be paid automatically when the account balance reaches the minimum threshold amount.</p> <p style="text-align: center;">OR</p> <p><input type="checkbox"/> Specific instructions to disburse my funds: I request that my IIM funds be disbursed as follows (check only one box):</p> <p style="margin-left: 20px;"><input type="checkbox"/> No Current Disbursements - I request that my IIM funds be held in my account until I provide further instructions.</p> <p style="margin-left: 20px;"><input type="checkbox"/> One-Time Disbursement - I request that \$ _____ be paid to me on _____ (Date), and the balance be held in my IIM account until I provide further instructions.</p> <p style="margin-left: 20px;"><input type="checkbox"/> Scheduled Disbursements of Account Balance - I request that 100% of the account balance of my IIM funds be paid to me (circle one of the following: monthly, quarterly or annually) starting on _____ (Date).</p> <p style="margin-left: 20px;"><input type="checkbox"/> Other - I request that my IIM funds be disbursed as follows: _____</p>			
		<p>Third Party Payment</p> <p>Complete the following <u>only</u> if you want your payment made payable to someone other than you.</p> <p>Printed Name of Third Party Payee: _____</p> <p>Address of Third Party Payee:</p> <p>Street Address, PO Box, Rural Route Box _____</p> <p>Apt. No., Building Name _____</p> <p>City _____ State _____ Zip Code _____</p> <p>() Telephone Number _____</p>			

Are your "Whereabouts Unknown?"

Many people believe the BIA and OST will always know where they are. They won't! People end up on the "Whereabouts Unknown" list for several reasons. For example, when a person dies without a will, his or her assets may go to his or her living heirs. Many times those heirs are not living in the same area, and no one knows where they are. Often people move and forget to notify the BIA or OST, especially if they don't have an active account when they move.

According to recent data, there are more than 102,000 individuals on the OST's Whereabouts Unknown list with \$66 million in trust assets in their accounts. That's a lot of unclaimed Indian money!

To help locate these individuals, OST posts the Whereabouts Unknown list on its website and circulates it at regional trust beneficiary meetings.

Here are three actions you can take to help OST locate people who are on its "Whereabouts Unknown" list:

- 1) Go to OST's website at www.ost.doi.gov and click on the link "Is OST Holding Money for You?" to see a list of people on the Whereabouts Unknown list.
- 2) Fill out the Instructions for Disbursement of Funds and Change of Address form found on OST's website and return it to the OST's central offices in Albuquerque, New Mexico.
- 3) Call OST's toll-free hotline, 1-888-678-6836, to update your contact information and to speak to an OST representative.

METHOD OF PAYMENT – IIM account holders have several options for how payment is received: direct deposit to a checking or savings account; using the OST debit card; or by check. While check is still the most common form of payment, OST encourages beneficiaries to sign up for direct deposit and have their funds transferred electronically to their bank or financial institution. With direct deposit, postings are automatic and account holders don't have to wait for a check to come in the mail. In addition, if a beneficiary moves and fails to update his or her address with OST, there will not be a lapse in payment. Income will continue to be automatically deposited into the identified bank account. The OST debit card program is a new option for account holders who do not have their own bank account but would like to have access to their money right away. With this option, OST sets up a bank account for the beneficiary through Chase Bank, where the money is deposited. However, there are some fees associated with using the card, so beneficiaries are advised to consider this option carefully before selecting it.

MAILING ADDRESS – In order to receive payments and account information, account holders must notify OST if their address has changed. The U.S. Treasury will not forward checks to an address that has not been updated by the trust beneficiary.

OMB Control No. 1035-0004

Expiration Date: 07/31/2013

Form OST 01-004

Individual Indian Monies (IIM)
Instructions for Disbursement of Funds and Change of Address
Office of the Special Trustee for American Indians -- <http://www.doi.gov/ost/>
If you have any questions call OST at: 1 – 888 – OST – OTFM (1-888-678-6836) TOLL FREE NUMBER

6	METHOD OF PAYMENT Must select one option. NOTE: The electronic transfer of your IIM funds to an OST Debit Card or Direct Deposit to your checking or savings account helps to safeguard against lost, stolen or forged checks. In addition, you will generally receive your IIM funds quicker with electronic transfer since mail time for a check will vary depending on the United States Postal Service and the destination.	<input type="checkbox"/> Direct Deposit to checking or savings account Banking information – Attach a voided check or provide the following information: Routing #: _____ Account #: _____ Name on the Account: _____ Financial Institution Name: _____ Contact Telephone Number(s): _____ Financial Institution Address: _____ OR <input type="checkbox"/> OST Debit Card OR <input type="checkbox"/> Check NOTE: If you want your check to be delivered to an address different than the mailing address set forth in Section 7 below, please provide your check mailing address on a separate paper.
7	MAILING ADDRESS NOTE: Complete this section even if you are requesting an OST Debit Card or if you are receiving your funds by Direct Deposit.	Street Address, PO Box, Rural Route Box _____ Apt. No., Building Name _____ City _____ State _____ Zip Code _____ <input type="checkbox"/> Please check if this is a new address
8	YOUR SIGNATURE OR MARK NOTE: Your signature or mark must be witnessed. The witness must complete Section 9.	I certify that the information provided is true and correct. _____ Account Holder Signature or Mark Date _____
9	WITNESS OF ACCOUNT HOLDER'S SIGNATURE OR MARK NOTE: The witness must be age 18 or older, and must sign immediately after the Account Holder signs the document in Section 8. The dates in Section 8 and Section 9 must be identical.	I, the undersigned, certify that this request was signed in my presence. _____ Witness Signature Date _____ Printed Name of Witness _____ Address: _____ Street Address, Apt. No., PO Box, Rural Route _____ Telephone Number _____ City _____ State _____ Zip Code _____

OMB Control No. 1035-0004

Expiration Date: 07/31/2013

Form OST 01-004

Individual Indian Monies (IIM)
Instructions for Disbursement of Funds and Change of Address
Office of the Special Trustee for American Indians -- <http://www.doi.gov/ost/>
If you have any questions call OST at: 1 – 888 – OST – OTFM (1-888-678-6836) TOLL FREE NUMBER

THIS SECTION FOR OST USE ONLY	
COMPLETE FOR TELEPHONE REQUESTS	
I. Telephone request received: Date: _____ Time: _____ **Use security questions in Part II, to verify the account holder's identity.	II. Security Question(s): When changes are requested by telephone, verify the identity by using a combination of any 2 of the following if information is available in TFAS: <input type="checkbox"/> Social Security Number (last 4 digits or whole) <input type="checkbox"/> Date of Birth <input type="checkbox"/> Last Address of Record <input type="checkbox"/> IIM Account Number <input type="checkbox"/> Approximate Date and Amount of the Last Disbursement NOTE: If identity is not verified, refer account holder to OST Field Office to make changes in person or by mail.
III. OST Employee Information: Signature: _____ Print Name: _____ Position Title: _____ Office Phone Number: _____	
Security password verified? <input type="checkbox"/> Yes <input type="checkbox"/> Account holder has not created a security password	
COMPLETE FOR REQUESTS RECEIVED BY MAIL OR IN PERSON	
Date Received: _____	Position Title: _____
Print OST Employee Name: _____	Signature: _____
Disbursement Authorizing Official Acct Bal. _____	Date: _____ Signature: _____ Print Name: _____
CSS# _____ DATE _____	SERVICE CENTER # _____
Date: _____ Prepared By _____	RFM AUDIT TRAIL
Approved By _____ Post QA _____	INITIALS _____ TRAN # _____ DATE _____
CSS Encoder _____	Pre Q&A/CSS Approval _____
TFAS Verification _____	Account # _____

FOR OST USE ONLY
SERVICE CENTER NUMBER:
NUMBER:

This part of the form is used by OST staff to process requests by telephone, mail or in person. This page is not filled out by the IIM account holder.

SECURITY QUESTIONS – Beneficiaries can make changes to their IIM account over the phone through the OST Call Center. In order to do so, they will need to verify at least two of the pieces of information listed on the form.

Did you know?

Unlike a bank account, the IIM account cannot be closed because the funds are tied to a trust asset that may continue to earn income. However, trust assets can be transferred or gift deeded to another party. This is one way to consolidate highly fractionated trust interests.

Managing Your Land and Assets

Ever since Indian lands were allotted and placed under the federal trust system, the Bureau of Indian Affairs (BIA) has regulated and controlled nearly every aspect of Indian land and asset management. All land-related transactions—such as leases, land exchanges, sales, and gift deeds—must follow a strict federal protocol and require the secretary of interior’s approval. Some of these federal regulations are detailed in the Code of Federal Regulations (CFR), but many of them are just administrative procedures that have been developed over time and have no real practical purpose or grounding in federal law. It is tragically ironic that the processes have become so complex and convoluted that only BIA staff, whose internal procedural manuals continue to expand, could possibly process an



application or request. Increasingly, tribes are compacting out many realty functions from the BIA through Public Law 93-638

contracts. However, even compact tribes have to follow the federal guidelines and, ultimately, acquire the secretary’s approval.

Appraising the Value of Indian Trust Land

Nearly all applications for land-related transactions require the landowner to provide additional documentation regarding the land. This often includes an Individual Trust Interest Report (ITR), the legal land description, a survey or plat map of the land, sometimes an environmental assessment or review of the property and almost always, an appraisal of the land’s value.

Appraisals are used to determine the fair market value for Indian trust land and resources. While requirements may vary from region to region, appraisals are generally required for land sales, land exchanges, land consolidations, gift deeds, rights of way and leases. It should be noted, however, that an appraisal of value, does not necessarily determine the actual price. In a land sale or lease, for example, a landowner may choose to negotiate for more than the appraised value. However, in most cases, especially when the tribe is the buyer, the landowner sells for the appraised value.

For allotments that are held in undivided interests, an appraisal is completed based on the value of the entire allotment and then divided by the percentage of interest held. For example, if the value of an entire 160 acre allotment is \$10,000 and an individual’s ownership interest is 1/10, the appraised value of his or her land would be \$1,000.

In general, an appraisal is considered valid for one year, though this depends on how fast the land values are changing. As such, if an appraisal is requested on behalf of multiple co-owners of an allotment within a year’s time, only one appraisal would be required to determine the value of that allotment. This allows the BIA to cut down on the number of appraisals it pays for.

STEPS IN THE PROCESS

To request an appraisal, the appropriate BIA realty office or tribal land office will send a request for appraisal services to the Office of the Special Trustee (OST). The appraisal request identifies specific items to be addressed in the appraisal, such as: the transaction type (lease, sale exchange, right of way, etc.), property type (agricultural, residential, commercial, industrial, recreational, etc.), and whether there are utilities present and which kind. If there are no problems with the request, OST will forward the request either to an in-house appraiser or to a contract appraiser. When a contractor receives an appraisal request, he or she must prepare a statement of work and submit it to OST for consideration. Once a contract for the appraisal is awarded, the appraiser can begin the appraisal process, which he or she is required to complete within 90 days. When the appraisal is complete, the appraiser submits it to the Office of Appraisal Services (OAS) which is overseen by OST, for review and final approval.

WHAT TO EXPECT

Appraisals of Indian land must comply with certain standards, but because every

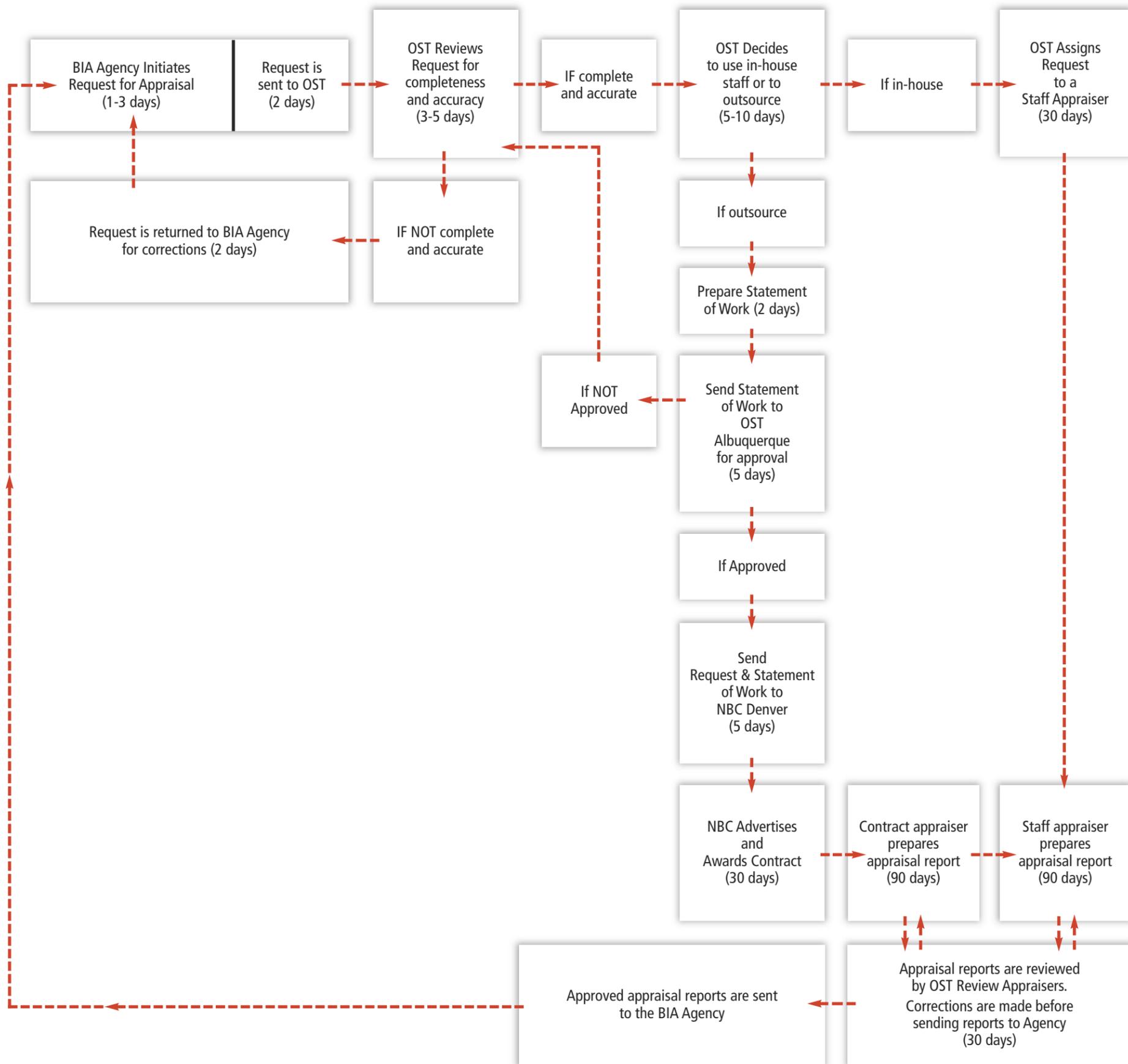
piece of property is unique, there is no one form or format used by all appraisers. All appraisers working or contracting for OST are required to follow the Uniform Standards of Professional Appraisal Practice (USPAP) and are required to be certified general appraisers. However, the content of each appraisal varies, sometimes dramatically, based on multiple factors, such as whether the land or property is residential, commercial or agricultural, where it is located, the condition of existing structures, and the determined value of comparable properties in the area.

In some regions, such as the Great Plains, the BIA realty office or tribal land office does not automatically send the landowner a copy of the full appraisal when it is completed. Instead, a letter is sent to the landowner with the estimation of value that was determined. In other regions and area offices, such as the Minnesota Agency in the Midwest Region, the entire appraisal is sent to the landowner upon completion. Either way, the landowner always has the right to review the full appraisal upon request.

LENGTH OF TIME

Depending on whether the appraisal is completed by an in-house appraiser or outsourced to a contractor, it can take anywhere from 160 to 190 days to receive an appraisal once the request has been made. There are several factors that can affect this timeline, such as geographic isolation of the property or a unique natural resource, that require the appraiser to spend more time acquiring data or information to support an opinion of value. Other factors can decrease the timeline. For example, in some areas (such as the Great Plains) multi-year appraisal contracts are used. These reduce the amount of time it takes to get an appraisal completed by eliminating the need to advertise and award a separate contract for each appraisal. This also eliminates the need to develop a statement of work for each contract and have it reviewed.

BIA/OST Procedures for Requesting Appraisal Reports



To be considered valid, an appraisal must be:

- Conducted by a certified general appraiser.
- Statistically and mathematically correct.
- Consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).
- Logical.

In most cases, appraisals are accurate and relevant. However, if a landowner is not satisfied with the appraisal, the individual or tribe can seek another appraisal.

Who pays for an appraisal?

It is a myth that landowners have to pay for appraisals of their trust land. They don't! The BIA is required to pay for all appraisals, even if the cost of the appraisal is greater than the value of the land. The only exception is in the case of a right of way, when the person or company seeking the right of way has to foot the bill.

Sale of Indian Land

The Claims Settlement Act of 2010 authorized approval of the \$3.4 billion Cobell Settlement, which allocates \$1.9 billion to the Indian Trust Land Consolidation Fund for the purchase of individual trust land undivided interests. Undivided interests purchased through the program will be returned to the tribe with the goal of reducing fractionation and consolidating the tribal land base. Once the process and procedures for purchasing the trust land have been determined, Indian landowners across Indian Country will be contacted by the overseeing agency—likely the BIA—and invited to sell their individual ownerships interests in fractionated parcels.

Programs to reduce fractionation through land consolidation have been in place ever since the Indian Land Consolidation Act (ILCA) of 1983. Amendments to the law in 1984, 2000, and 2004 (which became the American Indian Probate Reform Act) solidified the government’s commitment to finding a solution, though, so far, very little real progress has been made. In 1998, Congress appropriated \$5 million for the Indian Land Consolidation Pilot Program, also known as the “Buy Back Program.” The primary goal was to consolidate allotted fractional interests into tribal land bases, with a secondary goal of reducing the administrative costs of managing fractional interests. The program (which has received a modest amount of federal funding over the years) has been considered somewhat successful in slowing the rate of fractionation on participating reservations. However, critics of the program point to several problems, including inadequate funding, too much BIA control, lack of probate reform, and failure to promote other solutions for individual landowners.

Consolidating trust lands and reducing fractionation are definitely good things. At the same time, individual landowners should carefully consider any decision to sell their lands. There may be other options, such as a gift conveyance or partition, that would accomplish the same goals, but in a way that allows the landowner or his or her family to keep control of the assets.

STEPS IN THE PROCESS

Most trust land sold on the reservation is purchased by the tribe. According to federal regulations, the tribe has first right of refusal for all trust land sales. If a landowner wants to sell to someone other than the tribe, he or she may have to provide evidence to the BIA or tribal realty department that an attempt to sell to the tribe first has been made but the tribe did not want to purchase the land. The seller will also have to acquire consent of a majority of the co-ownership in the allotment in order to sell his or her interests to someone who is not already a co-owner.

After the application and supporting documents (such as ITI, survey and plat map and Cobell Notice and Waiver and Confirmation of Consultation) are submitted to either the tribal land office or BIA realty office, a request for appraisal will be submitted. Once the appraisal is completed, it will be sent to the landowner with a copy of the deed for sale. The landowner can either accept the appraised value for the land or try to negotiate for more. The BIA is obligated to support the landowner in these negotiations, regardless of the asking price. If a satisfactory deal cannot be reached between both parties, the landowner can choose to not sell the land at that point. The land is not sold until the deed is signed. If a deal is reached, the deed will be signed by both parties and the money for the sale will be dispersed to the landowner’s IIM account.

LENGTH OF TIME

One source reported that a land sale process in the Great Plains Region takes anywhere from one to three months, depending on the complexity of the sale and how many owners are involved. A source from the Midwest Region

claimed that six to eight months would be possible, but considered very fast. This source pointed out that changes to the system resulting from the Cobell lawsuit may improve transparency but have decreased efficiency. Some processes now take quite a bit longer.

This form was slightly revised from the original 1955 form (still in use by most BIA realty staff) to be included in a mass mailing for the Indian Land Consolidation Program, a project of the Indian Land Consolidation Act (ILCA). The program solicited sales of undivided interests from Indian landowners across the country which would pass to tribes for land consolidation after 20 years or sufficient income from the property repaid the cost. The ILCA application was designed to encourage mass, quick sales of interests in multiple allotments. The more common 1955 form requires identifying information about a specific allotment such as original allottee, legal description of the land, total acreage, and fractional interest. Instead, the ILCA application asked that the landowner just attach an ITI, which lists all allotments a landowner has interest in. This led to confusion on the part of the landowner, some of whom ended up accidentally selling all of their interests in all of their allotments at once. In practice, when the BIA processes a land sale application, it can only be for one allotment at a time.

Form No 5-5404
ILCA October 1, 2005

Applicant _____

The seller's name.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

INSTRUCTIONS FOR COMPLETING APPLICATION

- Please answer all questions.
- Please be sure to sign your name on the space provided on the last page of the application.
- Please sign before a witness. Please have them sign on the last page of the application.

APPLICATION FOR THE SALE OF INDIAN LAND

Allottee: See attached Land Inventory
Application is hereby made for the SALE of the following described land: See attached Inventory

In justification for this application, true statements are made to the following items:
PLEASE ANSWER ALL QUESTIONS

- Age: _____ Male: Female:
- Date of Birth: _____
- Degree of Indian Blood: _____
- Father's name: _____ Mother's Maiden Name: _____
- Single Widow Divorced Married Widower Separated
- Education : Years in elementary school _____ High School _____ College _____
- The following persons are dependent upon me for support. (Give names, ages, and relationship)

- I am enrolled as a _____ Indian Enrollment No. _____
Name of Tribe
- Permanent Address _____
(Address) (City) (State) (Zip)
- Telephone/ Contact Number (for sale processing): _____
- The amount of my annual income is \$ _____
- My income is obtained from the following sources: _____
- Social Security Number (Required): _____

Additional Questions on Back of Application

In this case, “Land Inventory” is referring to the ITI Report (see pages 4-5). The ITI lists all tracts in which landowner holds interests. This list should be carefully reviewed and only those parcels holding interests the landowner wants to sell should be identified.

Application for the Sale of Indian Land

Bureau of Indian Affairs

14. If receiving public assistance grants from the State or general assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, state kind and amount (if none, state none.) _____

15. I do I do not live on or make personal use of the land or made improvements to the land covered by the application.

16. The land is leased and the annual rent received is _____

17. I intend to use the proceeds of the sale for the following Living Expense Personal:

18. Is there a Power of Attorney or Guardianship? Yes No

If yes, Name. _____

I (We) authorize the sale of the land hereto described and hereby accept the offered fair market value.

X _____ X _____
APPLICANT SIGN HERE If married, name of spouse

X _____
APPLICANT PRINT NAME

If married, do you wish to have spouse included in the conveyance (on the deed) Yes No
If spouse is included in conveyance, they may not sign as a witness.
If yes - is Spouse a Tribal member? Yes No

Witness _____ Date: _____

Witness Print Name _____

Please return the application, Land Inventory, Cobell Notice, and Waiver and Confirmation of Consultation for processing

The application is hereby accepted for administrative processing:

The application is approved: _____ Date: _____

Approving Official _____ Date: _____

The answer to this question should not affect the sale, but if the seller wants to retain an existing use of the land or home, he or she will have to enter into either a lease agreement with the buyer or be granted a life estate.

This information can be obtained from the IIM Statement of Account (see page 6).

A personal question that is, frankly, none of the BIA's business. Unless a landowner is required to answer this question, it should be left blank.

Another way the ILCA program tried to rush the sale of these interests was by providing an appraisal of value up front, with the mailing.

The "Cobell Notice and Waiver and Confirmation of Consultation" is mailed to all IIM account holders. It informs account holders of their rights as members of the class action Cobell lawsuit, including that they have the right to consult with class counsel and that entering into transactions (such as a land sale, exchange, transfer or trust land conversion) will not adversely affect their rights as members of the class.

If the applicant wanted to identify the buyer somewhere, they could write it in here. Even on the form used most often by BIA staff, there is no place designated on the form for the buyer's name. This is partly due to the fact that, in most cases, the buyer is the tribe.

Many BIA applications including this one, have the same series of personal questions about level of education, number of dependents, sources of income, how the land in question is used, and what will be done with any proceeds from the land. In most cases, the answers to these questions will have no bearing on whether the application is approved or not. (A fee-to-trust application might be an exception, however, since attitudes towards approving these requests, especially for individuals, vary greatly from region to region and all responses might be evaluated more carefully.)

On the whole, these questions are clearly an invasion of privacy and many people, rightfully, find them offensive. They were originally required by the BIA as a way to determine an individual's degree of competency to manage his or her own affairs. They are a dark reminder of the Allotment Era and of the paternalistic and patronizing underpinnings of the trust relationship. Unfortunately, they linger on in these forms, and will continue to do so until the BIA makes administrative reform in this area a priority.

Retain your mineral rights

Land sale applications do not always include an option for the seller to retain the mineral rights, but they should! You can always retain mineral rights when you sell surface rights to land, whether it's included on the application or not. You never know what might be discovered underground. If you're determined to give up the mineral rights during a sale, you might consider having a geological survey completed for the subsurface before you sell the land. If there's anything of value discovered, you could use this as a bargaining point to get a better price for the property.

Land Exchange

Land exchanges are one of the most important tools that individuals have in overcoming the challenges of fractionated ownership. A land exchange allows landowners to consolidate their multiple undivided interests so that they can either gain a larger share of an allotment or an entire tract of land. The more interest a landowner has in a tract of land, the more control he or she has over land use decisions, such as building a home, farming, leasing or starting a business.

A land exchange application usually has to be approved by both the BIA and the tribal government and is subject to the terms in the Code of Federal Regulations, 25 CFR 151.7 and 151.10. Tribal regulations on exchangeable and non-exchangeable land may vary from reservation to reservation. As such, the form for land exchanges will also vary somewhat, depending upon each tribe's land use priorities and plans. It should also be noted that land exchanges may not be possible on all reservations.

STEPS IN THE PROCESS

Landowners interested in applying for a land exchange should first obtain and read a copy of their ITI to determine the lands available to be exchanged. The next step is to visit either the tribal land office or BIA realty office to find out what lands can be acquired in the exchange. Not all tribal land is available for exchange. Some of the lands that are generally not available include:

- Areas around towns
- Park and recreation areas
- Commercial and industrial areas
- Historical and religious sites
- Archaeological sites
- Potential tourist attraction sites
- Timber reserve lands
- Large consolidated tracts

Landowners who are exchanging for land in an allotment where they are not already a co-owner will need to acquire the consent of ALL of the owners in the allotment. (The BIA can provide names and contact information for all of the owners.) When contacting the other owners, it is important to make them aware that if their undivided interest is not part of the exchange the size of their interest and the income they receive will not be affected by the exchange. Ultimately, this is a good deal for everyone because the fewer owners there are, the easier it is to do anything with the land.

Once all of the signatures are collected (unless the exchange is for tribal land or land where the landowner is already a co-owner) the application is submitted to the tribal land office or BIA realty office. They will submit the application to the BIA area office, along with a Title Status Report (TSR) and other documentation, and request an appraisal to determine the value of the properties. It should be noted that even if equal amounts of land are being exchanged (i.e. 1/16 for 1/16) they may not be equal in value. Occasionally, landowners will have to pay some amount of money (in cash) to make up the difference.

If the application is approved, the BIA realty office will make the necessary changes to the land ownership files. These changes will appear on the landowners ownership documents such as the ITI and the IIM Statement of Account.

LENGTH OF TIME

Because of the multiple levels of approval and processing, land exchanges can take a long time to complete. For example, according to a recent study, the average time required to complete a land exchange on the Pine Ridge Indian Reservation is 4.5 years.

Application for the Exchange of Indian Land

Bureau of Indian Affairs



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR THE EXCHANGE OF INDIAN LAND

DATE _____

In justification of this application, true statements are made to the following items:

1. Age: _____ 2. Date of Birth : _____
3. Degree of Indian Blood: _____ Enrollment Number: _____
4. I am enrolled as a _____ Indian.
Name of Tribe _____
5. Single Married Widow Widower Spouse's name _____
6. The following persons are dependent upon me for support. (Give names, ages, and relationship): _____
7. Education: Years in grade school _____ High School _____ College _____
8. Permanent address _____
9. The amount of my annual income is \$ _____
10. My income is obtained from the following sources: _____
11. PLEASE STATE WHETHER ANY PARTY INVOLVED IN THIS TRANSACTION IS EMPLOYED BY THE U.S. GOVERNMENT AND IF SO, WHERE they are employed _____
12. If receiving public assistance grants from the State or General Assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, state kind and amount. If none, state none. _____
13. If indebted to the United States, state amount and purpose of indebtedness. _____
14. I do/do not live on or make personal use of the land covered by this application. _____
15. The land is leased and the annual rent received is \$ _____
16. Your reason(s) for exchanging land: _____

Some examples include federal taxes that are owed or a federal lien or court judgment on the property.

This information can be obtained from the IIM Statement of Account (see page 6).

Leasing Indian Land

With very few exceptions, all leases (residential, business, agricultural, mineral and gas) on Indian trust land must be approved by the secretary of the interior. Even tribes that have compacted to provide their own realty services must follow federal regulations and ultimately have all leases go through the BIA for approval. Stipulations established in the Indian Land Consolidation Act (ILCA) of 1983 and the American Indian Probate Reform Act (AIPRA) of 2004 also require written consent from a majority of the undivided interest holders in an allotment for a lease to be approved (see “Landowner Consent Requirements,” page 17).

According to federal regulations, in order to acquire majority consent for a lease, the secretary can provide consent on behalf of some groups of landowners, such as minors, those whose whereabouts are unknown, and certain heirs of an estate. As a result, some leasing decisions are made without the knowledge and full consent of all landowners.

STEPS IN THE PROCESS

Whether it is an Indian or non-Indian person seeking to lease Indian trust land, the process is the same. An application to lease must be submitted to the appropriate BIA realty office, including the required landowner consent. Upon written request, the BIA will provide the lessee (the person seeking to lease the land) with a list of the landowners’ names and addresses to acquire necessary consent.

When a lease is about to expire—about 13 months before the lease ends—the BIA sends landowners a notice explaining what they need to do to lease their land along with an appraised value for the land. Landowners have 90 days to negotiate a new lease on their own. If they fail to do so, the land will remain in the federal leasing system and the bidding process will begin automatically. “Bid sheets” listing Indian lands available to be leased will be posted in newspapers, post offices, and other public places. In order to bid on land, potential lessees must submit a sealed (not public) bid to the BIA. The highest bids are selected and the lease agreement is drafted.

After the lessee signs the lease, it is sent to tribal realty or the agency for approval. The superintendent approves the lease, and then it is sent to the Land Titles and Records Office for recording. Landowners are sent a copy of the lease once the process is completed.

WHAT TO EXPECT

Lease agreements are usually negotiated by the BIA on behalf of the landowners, but landowners can and should have a say in the terms of the lease agreement, including the type of use, the length of the lease, and the amount to be paid. When landowners receive letters requesting consent to lease their lands, they should read these carefully and ask questions before signing anything. Local landowner associations or tribal land offices can be a good resource for information on leasing. In addition, the IIM Statement of Account and List of Real Property and Assets both list detailed information about any leases held on a trust account holder’s lands, including when those leases expire. This is a good place to start for individuals who would like to learn more about how their lands are currently being managed and would like to take a more proactive role in future lease negotiations.

It should be noted that an Indian landowner who owns fractional interests in trust property must also obtain permission for a lease for any specified use of the land from a majority of the total landownership. As with any other lessee, the Indian interest holder must pay his or her co-owners at least fair market value for this use, unless the other owners have waived their right to receive rental income. Waiving the right to receive rental income is relatively common among families where

there are only a few owners in the allotment.

Once a lease is approved, lease payments are submitted to the BIA, processed by OST, and deposited into IIM accounts for disbursement to individual landowners and tribes. These payments will be shown on the IIM

Statement of Account.

LENGTH OF TIME

Once a completed application has been submitted, it could take anywhere from a few months to more than a year for a lease to be approved.

Commonly referred to as the “Tract ID.” This number can be found on the ITI (see pages 4-5) the IIM Statement of Account (see page 6) and the List of Real Property Assets (see page 7).

The legal land description. This is found on the ITI (see pages 4-5).

APPLICATION TO LEASE

Date _____ RENEWAL _____ NEW LEASE _____

ALLOTMENT NO: _____ LEGAL: _____

THIS APPLICATION TO LEASE DOES NOT AUTHORIZE THE USE OF THE LAND UNTIL A LEASE CONTRACT IS APPROVED BY THE SUPERINTENDENT AND WILL NOT BE ACCEPTED UNLESS COMPLETED IN INK

1. Please circle the Type of Lease you are applying for:
 Farm/Pasture Pasture Haying Farm/Pasture/Haying Business
 Residential (a) Standard Residential (1- 5 years) or (15 years) Circle ONE TERM
 (b) Oglala Sioux Lakota Housing Authority OR HUD 184
 (c) Long Term Lease for: Oglala Sioux Partnership for Housing
 NOTE: Submit the completed form to OSTPH or OSLHA
2. Length of Lease: _____ Years _____ Months: _____ Starting Date: _____
3. The information below concerning acres can be obtained from old lease contract(s)
 Farmland Acres: _____ Rental Rate Offered Per Acre: \$ _____
 Grassland Acres: _____ Rental Rate Offered Per Acre: \$ _____
 Upland/Hayland Acres: _____ Rental Rate Offered Per Acre: \$ _____
 Meadow Hayland: _____ Rental Rate Offered Per Acre: \$ _____
 Tame Grass Hayland: _____ Rental Rate Offered Per Acre: \$ _____
 Residential: _____ Rental Rate Offered Per Acre: \$ _____
 Business: _____ Rental Rate Offered Per Acre: \$ _____
 Other: _____ Rental Rate Offered Per Acre: \$ _____
4. The following improvements are property of the applicant and may be removed 120 days after the expiration of the lease contract (Improvements are any removable structure/objects).
5. Improvements now located on property which will remain on the property and will be maintained by the applicant: _____
6. Permanent Conservation Practice(s) now on the land:
 Grassed Waterways Terracing Contouring
 Contour Stripping Strip Cropping Alfalfa
7. Lessee agrees to stock the grassland included in this lease at the rate of _____ beginning _____
8. It is understood and agreed that the approval of a lease does not give the lessee(s) the right to hunt or fish, nor does it give the lessee(s) the right to invite non-Indians to hunt or fish on the leased premises.
9. I further understand that in the event that there are any unpaid judgments against me as a Lessee(s) or bondsperson, or if my present leases are not in good standing, my application will not be considered. I further agree to comply with all Federal Regulations pertaining to 25 CFR 162. In the event my lease includes the use of the building, I do hereby agree to insure the said Buildings at a value satisfactory to all interested parties provided insurance can be obtained on the same.

TELEPHONE NO. _____

Signature of Applicant _____

Are you a Government Employee:
(YES) (NO) CIRCLE ONE: _____

Printed Name _____

Address (City, State, Zip Code) _____

FOR 100% TRIBAL LAND ONLY- For Residential and Business Lease Applications

Lease types vary from region to region. This sample lease application is from the Pine Ridge Indian Reservation where agricultural leases are the most common. The residential lease options are also specific to Pine Ridge.

This lease is has been abbreviated for the purposes of this publication. An actual lease is often several pages long and includes detailed terms of the agreement, including late payment penalties, subleasing, improvements and insurance.

Lease terms vary depending on the purpose for the lease, the type of resource on the land, and the region. In general, agricultural leases average about five years and leases for natural resources, mining or residential use tend to be much longer, 25+ years.

Application to Lease Indian Land

Bureau of Indian Affairs



I/WE, THE LANDOWNERS OF THE ALLOTMENT HEREIN DESCRIBED, DO HEREBY AGREE TO THE TERMS AND CONDITIONS WITH ALL OF THE APPLICATION AND AGREE TO COMPLY WITH ALL FEDERAL REGULATIONS CONCERNING THE LEASING OF INDIAN TRUST LANDS, FURTHERMORE, WE DO AUTHORIZE THE SUPERINTENDENT TO PERFORM EVERY ACT NECESSARY AND REQUISITE TO THE CONSUMMATION OF SUCH LEASE WITH THE SAME VALIDITY AS IF WE WERE PRESENT TO EXECUTE THE SAME.

NOTE: FOR LONG-TERM RESIDENTIAL LEASE UNDER LEASEHOLD MORTGAGES ONLY: Pertains only to Oglala Sioux Lakota Housing and Oglala Sioux Tribal Partnership for Housing Leases

I/WE, THE LANDOWNERS, UNDERSTAND THIS APPLICATION IS FOR A TERM OF 25 OR MORE YEARS. The residence is under a mortgage. If the Lessee defaults, the lease and residence can be assigned to another eligible person for the remainder of the contract who may not be co-owner.

TWO WITNESSES FOR EACH SIGNATURE (Be sure all items on front of application are complete before signing application)

WITNESS	LESSOR (Landowner)
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____
1. _____	_____
2. _____	_____

Know your rights!

Some landowners who take the first steps to find out more about their lands can experience resistance from BIA realty staff. For example, landowners have complained of being told that the Privacy Act prevents them from being able to obtain the names and addresses of other co-owners. This is not true! If you are a co-owner in an allotment you have the right to receive contact information for all of the other owners. You also have the right to review the current lease agreement for your land, and to negotiate your own lease under the terms you and your co-owners choose.



Did you know?

Today, only one third of Indian land used for agriculture is leased to Indian people. The rest is leased to non-Indians under a federal leasing system. Unfortunately, this system has a history of being biased toward non-Indian farmers and ranchers and has not always ensured that Indian landowners are receiving a fair price for the use of their lands.

25 CFR 162 is the Code of Federal Regulations that applies to the leasing of Indian land.

Landowner consent requirements

A new lease or permit requires consent from a majority of interest holders for it to be approved by the BIA. The specific consent requirements, as amended by AIPRA in 2004, are as follows:

- 90 percent of the ownership, if there are five or fewer owners
- 80 percent of the ownership, if there are between six and ten owners
- 60 percent of the ownership, if there are between eleven and nineteen owners
- a simple majority (more than 50 percent of the ownership,) if there are twenty or more owners

Tribal consent is not required for the BIA to approve a lease on trust land where the tribe owns a minority interest and minimum consent has been obtained.

Right of Way

Rights of way are agreements allowing one person or entity to cross property that is owned by another party. Examples of rights of way include public and private roads, pipelines, power lines and railroad tracks. Ever since the General Allotment Act of 1887, which transferred the title and oversight of all reservation land to the federal government, thousands of rights of way have been granted across Indian land.

The permissions granted by rights of way vary quite a bit, ranging from perpetual easements for transportation or communication routes to short-duration rights of way for construction or servicing of sites. Some rights of way affect one allotment or parcel of tribal land while others cross hundreds of allotments and involve thousands of individual Indian trust land owners, including the tribes.

STEPS IN THE PROCESS

Individuals or companies requesting a right of way across Indian land must comply with all federal regu-

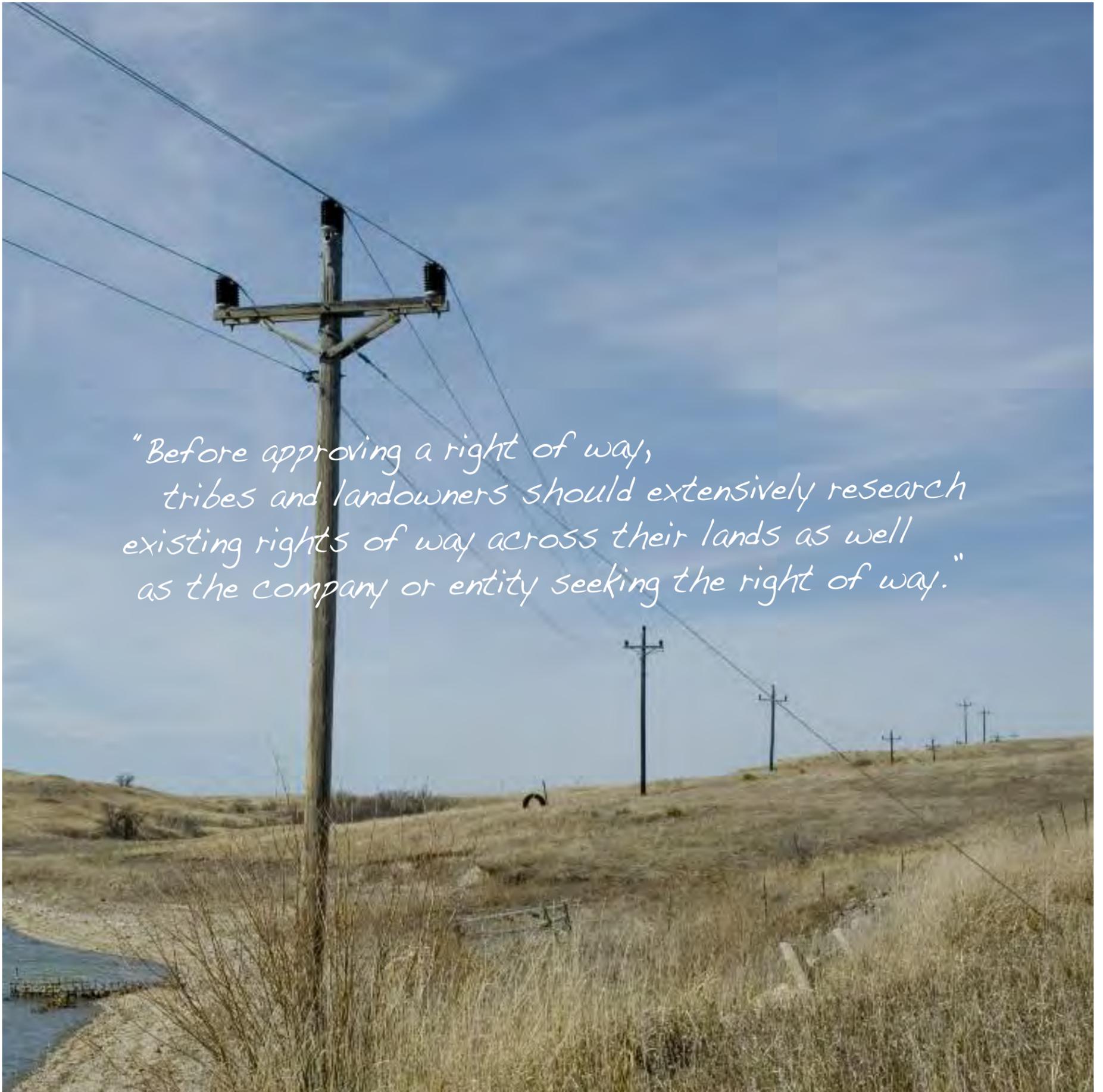
lations and procedures as detailed in Code of Federal Regulations 25 CFR 169. This is a very complex process requiring extensive documentation and reporting. In the end, the tribe and Indian landowners must give consent before any right of way across Indian land can be granted.

Landowners will be notified of any right of way requests. Initial notification will seek a landowner's permission to enter the land for survey and mapping purposes. An appraisal of the land will also be requested. In most cases, the appraisal is paid for by the party seeking the right of way. It provides an opinion of the land's value and it is used to negotiate the terms and conditions of the right of way, including "just compensation" to the property owner. Just compensation is measured as the difference between the value of the entire property before the taking and the value of the remainder after the taking. Severance damages may also figure into the calculation if there is a decrease in the value of the remainder related to the activities. Landowners are encouraged to accompany the appraiser during the

inspection of the property. If a landowner or tribe does not agree with the appraisal's findings, another appraisal can be requested, but it would be up to the property owner to pay for any additional appraisals.

Before approving a right of way, tribes and landowners should extensively research existing rights of way across their lands as well as the company or entity seeking the right of way. During the negotiation process, landowners should clearly communicate their bottom line financially and in caring for land. Tribal governments should clarify policy considerations such as those regarding taxation, environmental and other land regulations and restrictions, and community needs regarding the utility.

Note: For more detailed information on how to appraise, negotiate and manage a right of way across Indian land, see Message Runner, Vol. 3.



"Before approving a right of way, tribes and landowners should extensively research existing rights of way across their lands as well as the company or entity seeking the right of way."

Consent of Landowners to Grant Right of Way

Bureau of Indian Affairs

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSENT OF LANDOWNERS TO GRANT RIGHT -OF-WAY

Allotment No: _____ Allottee: _____

Description: _____

I, _____, the undersigned owner of said land described above consent and agree to the following: (Please check 1, 2, 3, or 4)

() 1. Do give permission to granting a right-of-way proposed for _____, _____ and waive payment for the rights granted in return for the benefit of increasing the value of the land in future sales and lease contracts and other benefits that may be derived thereof.

() 2. Do give permission to granting a right-of-way as proposed for _____, _____ for payment _____ of said land for the rights granted and severance damages as determined by the Secretary.

() 3. Desire to negotiate for other terms; do give permission to granting right-of-way as proposed for _____ Negotiated as follows: _____

() 4. DO NOT CONSENT to the grant for the above described right-of-way.

WITNESS

OWNER-

WITNESS

OWNER-

Commonly referred to as the "Tract ID." This number can be found on the ITI (see pages 4-5) the IIM Statement of Account (see page 6) and the List of Real Property Assets (see page 7).

Name of the original allottee of the tract of land. This is found on the ITI (see pages 4-5) and is also included as part of the Tract Description on the List of Real Property Assets (see page 7).

Legal land description. This is found on the ITI (see pages 4-5).

Type of right of way being granted, such as electricity, water, telephone, road.

Individual landowner's "just compensation" or proportionate share of the value of the right of way as determined by the appraisal.

This form will also have a place to describe the right of way to be granted, including structures and appurtenances to be erected, installed and maintained.

When negotiating a right of way, landowners should:

- Compile a list of all right of way documentation related to their lands.
- Obtain copies of current rates and agreements that have already been negotiated on the right of way with the tribe and other trust land owners.
- Be aware of the availability of third party condemnation for individual Indian-owned land.
- Gather information and data on the acquiring party. What do they want? How far will they be willing to go for the right of way?
- Share all information collected with other undivided interest holders of the land.
- Create a journal of every communication, writing down to whom they spoke, the subject of the discussion, and when the discussion took place. Whenever possible, they should include a third party in the discussions and record that person's name as well.

Establish a time limit in the terms

When granting a right of way, tribes and landowners should insist on setting a time limit as part of the terms. According to the federal laws governing rights of way, unless a time limit is part of the governing document, the right of way will be granted perpetually by default.

Trust-to-Fee Transfer

Trust-to-fee transfers, also known as fee patents or patents-in-fee, have a long and sometimes painful history among many Indian people and tribes. In 1906, the Burke Act was passed, which authorized the secretary of the interior to decide whether an Indian person was “competent” to manage his or her lands. If he or she was deemed “competent,” the secretary could take the land out of trust in a “forced fee patent” making the land taxable and available to be sold. The secretary of the interior was authorized to do this with or without the knowledge and/or against the wishes of the allottee. Thus, some Indian people during the early 20th century, including many Indian soldiers away fighting in WWI, ended up having their land sold in tax foreclosure auctions because they owed taxes on land they thought was still in trust.

More recently, some Indian landowners have had concerns that they would not be able to pass their trust land on to a non-Indian spouse or child who does not have the degree of blood quantum required by the tribe for enrollment. In some cases, these landowners have chosen to transfer their trust lands to fee status so they could safely keep their lands in their family.

However, there are other options—such as writing a will that includes a life estate for family members.

STEPS IN THE PROCESS

This particular form was last updated in 1955—over half-a-century ago—though it is still the standard form used by the BIA to process a trust-to-fee transfer. Like most of the other BIA forms in this publication, it includes the usual invasive questions about marital status, income and use or proposed use of the land. Compared to the amount of information and documentation

required to put land back into trust (in a fee-to-trust transfer), transferring land from trust-to-fee is relatively simple and fast.

LENGTH OF TIME

While there was a time when a trust-to-fee transfer could take as little as three weeks, these days it generally takes somewhere between three to six months, largely due to the appraisal required. Congressional approval is required to dispose of tribal land, though it’s rare for a tribe to transfer land from trust to fee status.

Application for Patent-in-Fee

Bureau of Indian Affairs

Form No. 5-5404
May 1955

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR PATENT IN FEE

Applicant _____ I.D. No. _____ Reservation _____

Application is hereby made for Fee Patent for the following described Land:
An undivided _____ interest _____

_____ County, Minnesota.

Containing _____ acres, more or less.

In justification of this application, true statements are made to the following items (item 15 only is applicable for the sale of inherited lands in multiple ownership):

PLEASE ANSWER ALL QUESTIONS

- Age _____
- Date of birth _____
- Degree of Indian blood _____
- (Circle one of the following)

Single	Divorced/Separated	If married, name of Spouse:
Married	Widow/Widower	
- Education: Years in elementary school _____
- High School _____
College _____
- The following persons are dependent upon me for support (Give names, ages, and relationship)

- I am enrolled as _____ Indian
(NAME OF TRIBE)
- Permanent address _____

Applicant’s name, tribal ID number and the reservation name and/or code.

It is possible, though relatively uncommon, for someone to request a fee patent for undivided interests.

Legal land description, found on the ITI (see pages 4-5). The form does not request it, but the applicant would also include the allotment ID number for the parcel here.

Number of acres the applicant is requesting to transfer to fee status.

There is no “item 15” on this form. BIA realty staff who were asked about this oversight did not know why item 15 is missing or what piece of information the note in parentheses refers to.

What happens when Indian land goes out of trust?

- The land becomes taxable.
- The land can easily be sold or transferred to a non-Indian.
- Checkerboarding on the reservation increases.
- The tribe loses jurisdiction over the land, diminishing tribal control and sovereignty.
- In most instances, the land becomes subjected to county zoning and land use codes.
- Federal programs for trust lands are no longer accessible.
- It's very hard to return the land to trust status again in the future.



10. The amount of my annual income is \$ _____

11. My income is obtained from the following sources: _____

12. If receiving public assistance grants from the State or general assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, **state kind and amount.** (If none, state, none.)

13. If indebted to the United States, state amount and purpose of indebtedness. (If not, state none.)

14. I do (do not)* live on or make personal use of the land covered by this application.

It is also agreed that the issuance of the patent in fee of this land may be disposed of in accordance with regulations prescribed by the Secretary of the Interior.

(Applicant) ←

The applicant signs here.

Subscribed and sworn before me this ____ day of _____, 20 _____. I hereby certify that the effect of this ____ application was explained to and fully understood by the applicants and the application is hereby approved.

←

The BIA realty staff signs here.

Title _____

ACKNOWLEDGEMENT OF APPLICANTS SIGNATURE

STATE OF _____
COUNTY OF _____

Subscribed and sworn to (or affirmed) before me this ____ Day of _____,

20 _____, by _____
(Applicant)

Notary Public

My commission expires: _____

Consider preserving a life estate

Trust land cannot be gifted or passed on to a non-Indian. However, non-Indians (such as a spouse) can be granted a life estate, allowing them to live on and earn income from the land throughout their lives. Landowners can also choose to grant themselves a life estate as part of a gift conveyance or a will. With a life estate, everyone's needs can be met and the land can remain in trust status.

Fee-to-Trust Transfer

Having fee simple¹ lands transferred into federal trust status is a powerful tool for making reservations whole and protecting Indian lands for future generations. When fee lands are returned to trust, Indian nations and people begin to eliminate the checkerboard pattern of trust and fee lands and regain control of lands on the reservation.

Trust lands are protected from sale or default to non-Indians, are free from county taxation and are within tribal jurisdiction. Having lands in trust status also allows individual Indian landowners and tribes to take advantage of federal programs restricted to trust lands, such as opportunities for business development, housing, environmental and cultural protection.

STEPS IN THE PROCESS

Before submitting a fee-to-trust application, the tribe or landowner should take time to gather all of the required information and discuss the application with the BIA realty or tribal land office staff. It is important to make sure that the initial application is completed carefully, with special attention paid to the criteria required for the secretary of the interior to authorize a request as identified in 25 CFR 151.10 (see "Criteria for On-reservation Trust Land Acquisitions," page 23). Getting advice from other tribes or individuals who have been successful with fee-to-trust applications is also a good idea.

When the application is submitted to the BIA, the tribe or landowner should have a copy made that is dated, stamped and initialed by the realty staff. The realty staff will review the application and then submit it to the superintendent with a recommendation. At this point, applicants should request a copy of the recommendation and make sure everything in the application is still accurate.

Upon receipt of the application, the superintendent will notify the state and local governments who have regulatory jurisdiction over the land to be acquired. These entities have 30 days to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. The applicant is provided with a copy of these written comments and is given a "reasonable time" in which to reply and/or request that the secretary issue a decision. If everything goes smoothly, the land will be put into trust at this point. However, if the state protests, the application can go first to the Interior Board of Indian Appeals (IBIA) and ultimately end up in federal court.

It is important to note that once the initial application has been submitted, applicants need to stay on top of the application's whereabouts and status by making regular phone calls to the realty office to check in. As a general rule, one week that someone is not contacted regarding the application is equal to one extra month added on to the overall time to process the application.

WHAT TO EXPECT

Local and county governments will sometimes challenge fee-to-trust transfers because it could result in loss of tax revenue and jurisdiction. In some cases, Indian nations have to be prepared to educate neighboring communities about the importance and benefits of restoring Indian lands to Indian control and trust status. Some of the benefits include: economic development and jobs, new community amenities, and natural or cultural resource protection.

Individuals seeking to have fee lands transferred to trust status can also encounter resistance either from the tribe, the BIA or other entities. In general, the BIA gives priority to tribal over individual fee-to-trust transfers. Attitudes toward individual fee-to-trust transfers can vary dramatically from one region or agency to the next, and, these attitudes can influence the process itself. Landowners

should fully understand their rights and responsibilities regarding fee-to-trust transfers and be prepared to advocate for their position every step of the way.

LENGTH OF TIME

Generally, the fee-to-trust process takes anywhere from 12 to 18 months. Occasionally a transfer will take less

time, eight or nine months, but this is rare, and is usually due to extreme persistence on the part of the tribe or individual landowner who has submitted the request. A request may also take much longer if the case is complicated by any number of factors. Diligence and persistent follow-up are important.

Legal description of the land, similar to what is found on the ITI (see pages 4-5). This description can be obtained from a survey plat or existing description of the land.

Application for Trust Acquisition of Fee Land

Bureau of Indian Affairs



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR TRUST ACQUISITION OF FEE LAND

Applicant: _____ Reservation: _____
Date: _____

Application is hereby made for trust acquisition by the United States of America of fee land described as follows: _____

Containing _____ acres, more or less. (Attach survey plat or map, if available.)

In justification of this application, true statements are made to the following items. PLEASE ANSWER ALL QUESTIONS.

1. Age: _____
2. Date of Birth: _____
3. Degree of Indian Blood: _____
4. Marital Status: Single: _____ Widow: _____ Divorced: _____
Married: _____ Widower: _____ Separated: _____
5. Years of Education: Elementary School: _____ High School: _____ College: _____
6. The following persons are dependent upon me for support. (Give names, ages, and relationship).

7. I am enrolled as a _____ Indian, Enrollment No. _____
(Name of tribe)
8. Permanent Address: _____

9. Telephone Number: _____
10. The amount of my annual income is: \$ _____
11. My income is obtained from the following sources: _____

Landowners who are under 40 years old should fully explain why they want the BIA to manage the land for them (see line 16 of the application). The BIA is more likely to challenge an application for an individual who is young and fails to make a good case for having his or her lands put into trust.

¹When lands are held in “fee simple” status, the owner holds title to and has full control over the property and also pays property taxes. The owner of fee simple land can make decisions about land use and/or sell the land without government oversight. Many reservations have both fee land and trust land within their boundaries, creating a “checkerboard” land ownership pattern that weakens tribal jurisdiction and threatens tribal sovereignty.



12. Social Security Number: _____

13. If receiving public assistance grants from the State or general assistance from the Bureau of Indian affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, state kind and amount. (If none, state none.)

14. I do (do not) live on or make personal use of the land covered by this application. _____

15. I intend to use the land for the following purpose: _____
Homesite For: _____
Other Use. (Specify): _____

16. Please explain your need or why it is necessary to have this land placed in trust status: (Attach a sperate sheet if necessary.) _____

17. Are you the sole owner of other trust lands?
Number of Acres: _____ Location: _____

18. Any additional comments you might have regarding your request for a trust acquisition: _____

I (We) authorize the trust acquisition of the land heretofore described and agree that the proposed trust acquisition be in accordance with regulations prescribed by the Secretary of the Interior. I (We) also state that the effect of this application was explained and I (We) fully understand.

Your Signature (Date) Spouse, if party to this trust acquisition.
(Must also complete the application.)

Witness (Date)

Approved: _____
Superintendent or Realty Officer

Date: _____

Please Note: After your application is approved, we will notify you and request that you provide a commitment to insure title from an approved title insurance company. See attached.

Some public benefits Indian landowners living on a reservation might receive include: health care through IHS, free lunch programs, General Assistance, WIC, TANF, police, fire, ambulatory care, telephone subsidies and any other service the tribal government provides.

Answering “do not” to question number 14 could jeopardize the fee-to-trust application by implying that the land is merely investment property. If possible, options for personal use and development, such as farming, building a homesite, or developing a business, should be considered and stated as: “I plan on . . .”

This question is related to the determination of competency, a federal policy requiring an Indian person to be deemed “incompetent” to manage his or her own affairs in order to have lands placed in trust by the BIA. While this policy is outdated, unjust and offensive, it is still upheld by many BIA officials, especially when considering individual fee-to-trust transfers. As such, it must be taken seriously and answered carefully. Possible responses could include: “I can handle my personal finances, but I don’t know anything about managing land” or “When I pass on, I want my estate to go through just one probate.”

In general, landowners who already hold trust lands have a better chance of having additional lands placed in trust. While this question asks only about lands in which the landowner is sole owner, applicants should list any fractionated interests in land that are held as well.

If all of the other questions have been answered sufficiently, it is best to leave this blank.

Once a fee-to-trust application is approved, landowners are required to purchase title insurance for the property. However, it is a good idea to purchase the title commitment up front, before the application is submitted, to find out details about the title that may not be known, such as encumbrances, liens, rights of way or other unforeseen conditions that could hinder the application. The title commitment is about \$500.00 but is a cost the landowner would have to incur anyway if the application is approved. It is better to know what to expect before the application is processed.

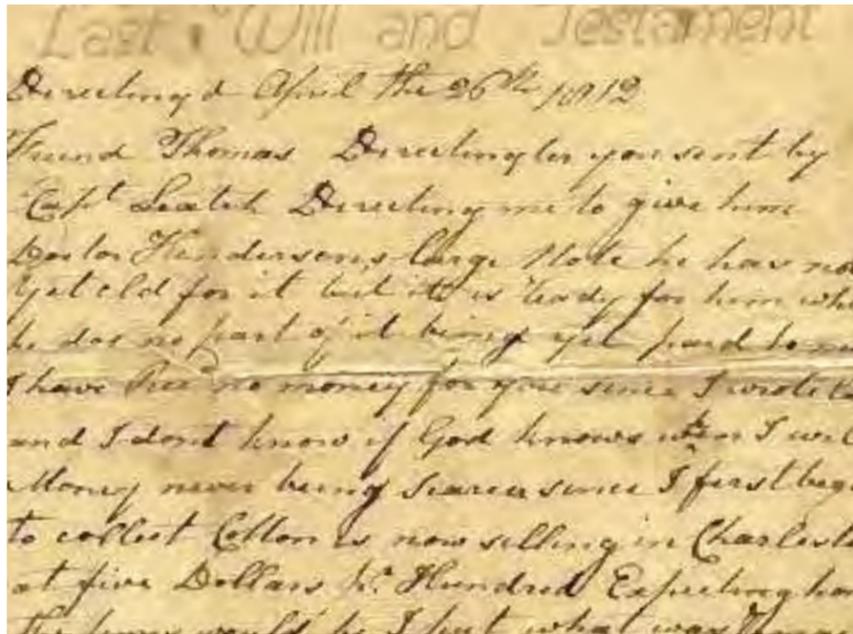
Criteria for on-reservation trust land acquisitions

- The existence of statutory authority for the acquisition and any limitations contained in such authority;
- The need of the individual Indian or the tribe for additional land;
- The purposes for which the land will be used;
- If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
- If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- Jurisdictional problems and potential conflicts of land use which may arise;
- If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and,
- The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

On Reservation Acquisitions, 25 CFR 115.10

Preserving Your Land for Future Generations

The growing problem of fractionated ownership, ongoing threats to tribal sovereignty and the uncertainty of future federal Indian policy are just some of the reasons why Indian landowners must take action to protect and preserve their own lands for future generations. While the federal government has attempted to fix some of these problems through legislation and regulatory reforms, progress is slow, and in some cases, things have only become worse. The good news is that Indian people do have viable options for protecting their land and assets through estate planning, and in particular, through writing a will.



Writing a Will

When Indian lands were allotted and the federal trust was established in the late 1800s, it's not surprising that very few Indian people considered writing a will to protect their lands and assets when they passed on. The state probate laws determining trust land inheritance divided up land ownership amongst all of the original allottee's heirs into undivided interests. With each passing generation, the undivided interests continued to be passed down to all heirs and the number of owners grew, and continues to grow exponentially, resulting in the highly fractionated ownership of much of Indian land today. Many state probate laws passed ownership to the surviving spouse, even if he or she was non-Indian. Because a non-Indian cannot hold trust land, this land lost its trust status, causing more land to go out of Indian control.

In 2004, the American Indian Probate Reform Act (AIPRA) established a uniform federal probate code which applies to nearly all allotted reservations in the U.S. It includes provisions meant to decrease fractionation by setting limits on who can inherit Indian trust land and allowing for the sale of small interests at probate. Unfortunately, those provisions allow the federal government, rather than the landowner, to make decisions about the distribution of land and assets once the landowner is deceased. AIPRA automatically applies to all Indian probates of trust land in the U.S. *unless there is a tribal probate code in place or the landowner has a valid will.*

Some of the key provisions of AIPRA include:

- Does not apply if there is a tribal probate code in place or the decedent has a will. Otherwise, applies to all trust land and assets.
- Applies to those who died on or after June 20, 2006.
- Allows only an "Indian" person to inherit or purchase trust land at probate. This includes: eligible heirs who meet AIPRA's definition of "Indian" (see "Under AIPRA an 'Indian' Is a Person Who...", page 25), a co-owner in the allotment, the tribe, and non-Indian children of lineal descent within two generations of the decedent.
- If the interests are five percent or greater:
 - + Spouse, Indian or non-Indian, receives a life estate, but does not inherit the interests.
 - + The interests pass equally first to eligible children, then grandchildren (if no children), then great-grandchildren (if no grandchildren, etc.), then surviving parents, then siblings, then the tribe, then co-owners, then to the secretary of the interior for sale.
- If the interests are less than five percent:
 - + Spouse, Indian or non-Indian, receives a life estate only if he or she is living on the parcel at the time of the decedent's death.
 - + The interests pass directly to the oldest eligible living child, grandchild or great-grandchild. This is known as the "single heir rule."
 - + If none of the above heirs exist, the interests pass to the tribe, then co-owners, then to the secretary of the interior for sale.

- Purchases at probate of interests less than five percent can occur without the consent of a surviving spouse and heirs.
 - + Amendments to the law state that only the tribe or secretary can purchase interests without consent.
 - + Purchases at probate of interests greater than five percent require the consent of the surviving spouse and heirs.

With a will a landowner can:

- Allow an Indian spouse to inherit trust land.
- Transfer trust land to some individuals that are not considered eligible under AIPRA.
- Choose to leave someone out of the will.
- Actively protect trust land from further fractionation by leaving all of the interests in an allotment to one person.
- Choose a life estate or joint tenancy with right of survivorship so that all family members can benefit from the land during their lifetimes.
- Clarify wishes in regard to non-trust land and other personal property.
- Make the probate process much easier for living family members.

Landowners should prepare their wills with the help of an attorney who is familiar with AIPRA and with the probate and transference of Indian trust lands and assets. There are legal service agencies throughout Indian Country who specialize in writing wills for Indian people (see "Landowner Resources," page 28). Most of these organizations can provide will writing services at a very low cost or sometimes free.

The attorney that helps prepare the will can provide a more detailed checklist of information needed and things to consider when writing a will. Some of the information requested will likely include:

- Names and addresses of family members or other individuals to whom the property will be left.
- List of personal property to be left and to whom.
- Individual Trust Interest Report.
- Individual Indian Monies Statement of Account.
- Deeds for fee land (if any).
- Mortgage and title documents for home and other property (if any).

In order to write a valid will, an individual must be at least 18 years of age and fully competent to manage his or her own affairs. The will must be signed by the person who is writing it and two witnesses who are not receiving anything from the will. Sometimes people will have a notary sign as well. An affidavit signed by the witnesses will also accompany the will. This document is to ensure that the legitimacy of the witness signatures is not questioned at probate if they are not able to attend.

The sooner a will is prepared the better. Once a will is in place, it can always be legally amended or a new will can be written. It's a good idea to review a will after major events such as a birth, death or marriage that may affect the will.

Under AIPRA, an “Indian” is a person who...

- Is an enrolled tribal member of any federally recognized Indian tribe; or
- Is eligible to become enrolled in any federally recognized tribe; or
- Was an owner of an interest in trust or restricted land prior to October 27, 2004; or
- Meets the definition of “Indian” under the Indian Reorganization Act, meaning:
 - + all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction, and
 - + all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and
 - + all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.
- In California, owns any trust or restricted land in California.



“AIPRA automatically applies to all Indian probates of trust land in the U.S. unless there is a tribal probate code in place or the landowner has a valid will.”

Notice of Probate

When a person dies without a will, the division of his or her estate to legal heirs is determined in a court proceeding called a probate hearing. For Indian people, this process is outlined in the Code of Federal Regulations, 25 CFR 15.4 and is overseen by the Office of Hearings and Appeals (OHA). Because of the complexity of Indian estates, which have historically involved multiple heirs and interests in property across multiple jurisdictions, there has long been a backlog of Indian probates. It is not uncommon for an heir to a deceased person's estate to pass on before the original probate is resolved.

Before the passage of the American Indian Probate Reform Act (AIPRA) of 2004, the transference of Indian

property followed the probate laws of the state where the property was located and/or where the tribal member resided. In some cases, proceedings would have to take place in multiple states in order for one probate to be completed. AIPRA, which was meant to improve efficiency of the probate process and reduce the number of undivided interests, established a uniform federal probate code that applies to all Indian trust land probates (with the exception of the Osage and the Five Civilized Tribes) unless there is a valid (AIPRA approved) tribal probate code in place or if the deceased Indian person has a valid will.

STEPS IN THE PROCESS

When the BIA learns of an Indian trust landowner's

death, it prepares a probate package to submit to OHA for probate. The probate package includes: death certificate, birth records, marriage records, divorce records, adoption records, statements of paternity or maternity, names and addresses of potential heirs and beneficiaries, wills, creditor claims, name changes or aliases, inventory of trust property and any other relevant information. When it sends the probate package, the BIA notifies interested parties, such as the potential heirs and beneficiaries, that the probate package has been sent and provides the address of the OHA office. If possible, potential beneficiaries should request to review a copy of the probate package prior to the probate and try to learn as much as possible about the process and what to expect before the hearing.

Once OHA receives the probate package, an initial probate hearing, or court proceeding, is set to determine the distribution of the estate. Notice of the hearing is posted and sent to interested parties at their last known address. The tribe is also notified if the record reveals that the tribe may have the option to purchase trust land interests during the probate. Very complex probates may require multiple hearings. Especially to someone unfamiliar with it, the probate process can be very confusing and frustrating. Sometimes, decisions about the distribution of assets are made without full agreement of all interested parties or there are forced sales of trust land interests.

Once a final order in the probate has been issued, a notice is sent to interested parties with a copy of the decision attached. Any interested parties who disagree with the decision have 60 days to file a written petition for a rehearing. (The written petition must be in accordance with the provisions of 43 CFR 4.241.) If there are no petitions filed within this 60-day period, the superintendent will initiate the distribution of the estate, which includes changing the land title records and distributing

Notice of Probate Office of Hearings and Appeals

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
 Probate Hearings Division
 909 St. Joseph Street, Suite 201

IN THE MATTER OF THE ESTATE OF:
MARTHA LITTLE BEAR

Deceased Oglala Sioux
 Indian Enrollment No.: 555U555555

PROBATE P00055555P

NOTICE
TO ALL PERSONS HAVING OR CLAIMING AN INTEREST
IN THE SUBJECT MATTER OF THIS PROCEEDING

NOTICE IS GIVEN that a decision was entered in the above estate, a copy of which is attached.

The decision becomes final sixty (60) days from the date of mailing of this notice unless, within that period, a written petition for rehearing is filed with the Office of Hearings and Appeals at the above address by an aggrieved party in accordance with the provisions of 43 CFR 4.241. Petitions for rehearing must be delivered or mailed to the above address within the time specified. Estate of Martha Little Bear, 12 IBIA 345(2002).

A petition for rehearing must be under oath and must give a concise but complete statement of the grounds upon which it is based. If it is based upon newly discovered evidence, it shall be accompanied by the affidavits of witnesses stating fully what the new evidence is to be. The petition shall include the petitioner's reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision.

No claims shall be paid and no distribution shall be made during the pendency of proceedings following the filing of a petition for rehearing, except as specifically authorized by the undersigned.

PURSUANT TO 25 CFR 15.303, NO DISTRIBUTION OF ESTATE PROPERTY OR PAYMENT OF CLAIMS SHALL BE MADE UNTIL AT LEAST 75 DAYS AFTER THE MAILING OF THIS DECISION. FOR INFORMATION RELATING TO DISTRIBUTIONS, INTERESTED PARTIES SHOULD CONTACT THE AGENCY.

PARTICULAR NOTICE IS GIVEN TO INTERESTED PARTIES NAMED ON THE ATTACHED SHEET.

Dated _____ at Rapid City, SD

I certify that on _____
 I mailed a copy of this document and attachments
 to all person named on the attached sheet.

Barbara Smith
 Indian Probate Judge

BY: _____

notice_dec_rehrg_right_V1_21

-1-

Number assigned to a specific probate file. Used when calling to receive information about the probate's status.

Name, tribe and tribal ID or enrollment number of the deceased person whose estate is at probate.

You can avoid a lengthy probate of your estate by:

- Having an updated, valid will that clearly states your intentions in respect to your land and assets
- Gift deeding your trust land during your lifetime to:
 - + Family members
 - + Co-owners of the allotment
 - + The tribe
- Educating yourself about AIPRA and your own tribe's probate code (if it has one)

Landowner Resources

Indian Trust Settlement

www.IndianTrust.com

Indian Trust Settlement

P.O. Box 9577

Dublin, OH 43017-4877

Toll-Free: 1-800-961-6109

Email: Info@IndianTrust.com

Want more Red Tape?

Contact our offices or visit our website to order additional copies of this and other ILTF publications. The *Message Runner* is free to tribes, tribal colleges, nonprofits and individuals, though for very large orders, some charges may apply.

Visit our website for an interactive version of the forms featured in this publication. We will update existing forms and add new ones regularly so check back often!

Office of the Special Trustee for American Indians

www.ost.doi.gov

Trust Beneficiary Call Center

4400 Masthead Street, NE

Albuquerque, NM 87109

Toll Free: 1-888-678-6836

OST REGIONAL OFFICES:

Great Plains and Alaska Regions

505-816-1465

Navajo, Western and Pacific Regions

505-816-1073

Northwest and Eastern Regions

505-816-1071

Rocky Mountain and Midwest Regions

505-816-1108

Southern Plains, Eastern Oklahoma and Southwest Regions

505-816-1462

Bureau of Indian Affairs

www.bia.gov

Alaska Region

907-586-7177

Eastern Region

615-564-6700

Eastern Oklahoma Region

918-781-4600

Great Plains Region

605-226-7343

Midwest Region

612-713-4400

Navajo Region

505-863-8314

Northwest Region

503-231-6702

Pacific Region

916-978-6000

Rocky Mountain Region

406-247-7943

Southern Plains Region

405-247-6673

Southwest Region

505-563-3103

Western Region

602-379-6600

Estate Planning and Probate

American Indian Wills Clinic

Native American Legal Resource Center, Oklahoma City University School of Law

405-208-5017

<http://law.okcu.edu/index.php/clinical-programs/american-indian-wills-clinic/>

California Indian Legal Services

Escondido, California

800-743-8941

www.calindian.org

Center for Indian Law and Policy

Seattle University School of Law

206-398-4284

www.indianwills.org

Columbia Legal Services

Seattle, Washington

206-464-1122

www.columbialegal.org

Dakota Plains Legal Services

Mission, South Dakota

800-658-2297

www.helpsouthdakota.com/Home/DPLS

DNA-People's Legal Services

Window Rock, Arizona

928-871-4151

www.dnalegalservices.org

Montana Legal Services Association

Helena, Montana

406-442-9830

www.mtlsa.org

The Indian Land Tenure Foundation (ILTF) is a national, community-based organization focused on American Indian land recovery and management. ILTF's primary aim is to ensure that all reservation and important off-reservation lands are owned and managed by Indian people and Indian nations.

As a community foundation, ILTF relies on funding from private foundations and donations from Indian nations, corporations and individuals to support its programming in Indian Country. Please consider making a donation to the Indian Land Tenure Foundation today.

To learn more about our work and programs and to make a donation, visit our website at: www.iltf.org.

THIS EDITION OF THE MESSAGE RUNNER WAS MADE POSSIBLE THROUGH A GRANT FROM THE H. B. HERON FOUNDATION.



STAY CONNECTED! WWW.ILTF.ORG

Sign up for email updates on our website and follow us on [Twitter](#), [Facebook](#) and [YouTube](#).



Indian Land Tenure
FOUNDATION

151 East County Road B2
Little Canada, MN 55117
651-766-8999
www.iltf.org

Spring 2011, Volume 5