



Indian Land Tenure
F O U N D A T I O N

COMMUNITY SURVEY 2

Landownership
and Estate Planning
July 2004

Introduction:

Beginning December 2003 through January 2004, the Indian Land Tenure Foundation conducted a survey exploring land ownership, usage, and tenure by individual Indians across the United States. Like the Foundation's past surveys, this project was not intended to be a statistical polling of land ownership in Indian Country. Instead, this survey was done in order for Foundation staff, and other concerned members of the Indian Land Tenure community, to improve their understanding of the needs, concerns, and opinions of Indian people. The following chart identifies respondents to the survey.

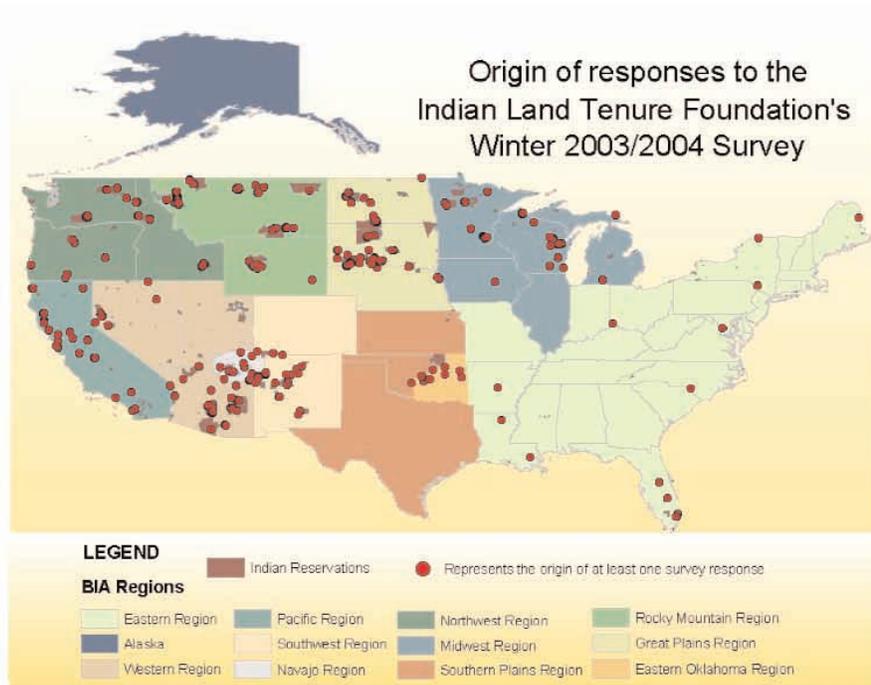
NAME OF REGION	STATES IN REGION	TRIBAL AFFILIATIONS OF RESPONDENTS TO THIS SURVEY	# OF RESPONSES FOR THIS REGION
Northwest Region	OR, WA, ID, small portion of western MT	Burns Paiute, Coeur d'Alene, Confed. Tribes of Colville, Coos, Lower Umpqua, and Siusla Indians, Cowlitz, Kalispel, Klamath Tribe, Kootenai, Lummi, Nez Perce, Nisqually, Confed. Salish & Kootenai, Shoshone-Bannock, Confed. Tribes of Umatilla, Confed. Tribes of Warm Springs, Confed. Tribes of Yakama	55
Rocky Mountain Region	MT, WY	Northern Cheyenne, Rocky Boy, Arapahoe, Assiniboine & Sioux of Fort Peck, Blackfeet, Crow, Fort Belknap, Shoshone	55
Pacific Region	CA	Alturas Rancheria, Cachil DeHe Wintun, California Valley Miwok, Dry Creek Pomo, Fort Independence Paiute, Guidiville Rancheria, Hoopa Valley, Lower Lake Rancheria, Pechanga, Pit River, Potter Valley Rancheria, Redwood Valley, Round Valley, San Pasqual, Tuolumne, Yurok	20
Western Region	NV, UT, AZ	Colorado River, Te-Moak W. Shoshone-Elko Band, Fort McDowell Yavapai, Fort Mojave, Gila River, Havasupai, Hopi, Hualapai, Pascua Yaqui, Pyramid Lake Paiute, Salt River Pima-Maricopa, San Carlos Apache, Tohono O'odham, Walker River Paiute, White Mountain Apache, Yavapai-Apache	35
Navajo Region		Dine	21
Southwest Region	CO, NM	Jicarilla Apache, Mescalero Apache, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Picuris, Pueblo of Taos, Southern Ute, Ute Mountain, Zuni	25
Midwest Region	MN, IA, WI, IL, MI	Bad River Band of Chippewa, Bois Forte, Grand Portage, Ho-Chunk, Lac Courte Oreilles, Lac du Flambeau, Leech Lake, Menominee, Oneida, Sault Ste. Marie, White Earth	37
Great Plains Region	SD, ND, NE	Cheyenne River, Crow Creek, Lower Brule, Oglala Sioux, Rosebud, Sicangu, Spirit Lake, Standing Rock, Three Affiliated Tribes of Fort Berthold, Yankton Sioux	81
Eastern Oklahoma Region		Cherokee, Chickasaw, Choctaw, Muscogee (Creek), Seneca-Cayuga, United Keetoowah Cherokee	10
Southern Plains Region	KS, Western OK, TX	Absentee-Shawnee, Apache Tribe of OK, Cheyenne-Arapaho, Citizen Potawatomi, Comanche, Kiowa, Sac and Fox	7
Eastern Region	(see map - Page 1)	Catawba, Cayuga, Houlton Band of Maliseet, Seminole, Seneca	6
		Respondent indicated their tribe was not listed	24
		Respondent did not clearly indicate tribal affiliation	45
Total			421

The regular and accurate gauging of native people's connection to their land - in terms of both their historical and cultural connection to it as well as their practical use and management of it - is essential to the Foundation's mission of repatriating lost lands, strengthening Indian management or control of lands, and supporting the sovereignty and self-determination of each Indian tribe in the United States. As a result, we would like to thank each and every person who participated in this time-consuming, complicated survey. As we have done with our previous surveys, we hope to show our thanks and respect for your opinion through the publication of the results. We also hope this information will stimulate discussions within Indian Country about these issues.

This brief report focuses on the results of the land ownership, usage and tenure survey. A letter requesting individuals participation in the survey was mailed out to 10,000 Indians across the United States. The participant was asked to dial a toll-free number and complete the survey by phone. 421 people from 106 tribes completed the survey. ♦♦♦

Geographic distribution of results:

Using a list of 354 tribes that was included in the survey mailing, the survey required the participants to indicate their tribal affiliation. The chart above shows the number of respondents who indicated they were affiliated with a tribe within one of the 12 BIA regions. A 13th group of respondents indicated that their tribe was not included on the survey list. A 14th group is composed of respondents who did not clearly indicate their tribal affiliation.

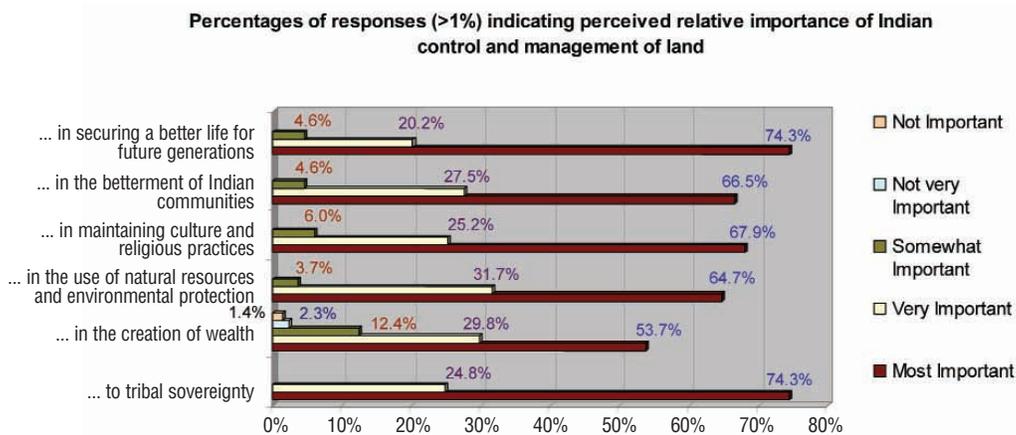


The 421 survey participants were spread out across all parts of the United States. While the majority were living on or near Indian reservations, nearly 20% of the respondents were not living in the state(s) in which the reservation associated with their tribal membership was located. While you read this report, it will be helpful for you to keep these numbers and the geographic distribution of the responses in mind so you may judge the value of our results for yourself. (In general, the larger the collected sample-size of surveys, the more accurate the results.) ♦♦♦

Tribal trust, individual trust, and fee land in Indian Country

The responses to the first set of questions confirmed what previous community surveys conducted by the Foundation have revealed: the vast majority of respondents assign tremendous value to land owned and managed by Native people.

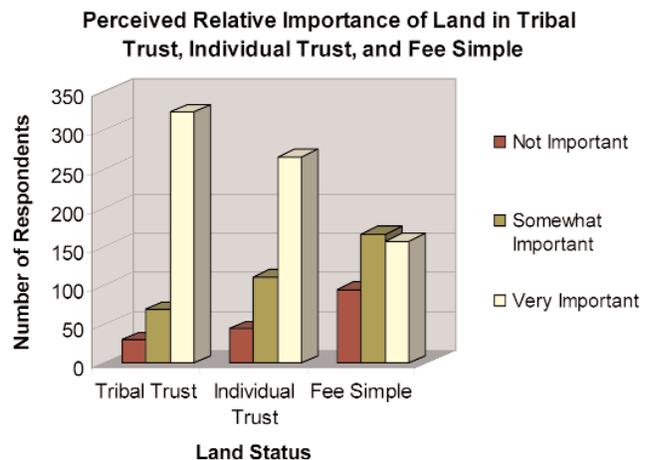
Our previous survey indicated that respondents assigned multiple values to Indian control and management of land above and beyond economic worth and, further, these values often relate to the strength and identity of the tribe or Indian community. For example, 74.31% of respondents to our earlier survey perceived Indian control and management of land as the most important factor in securing a better life for future generations and tribal sovereignty. The importance of Indian controlled and managed land to the betterment of Indian communities, cultural and religious practice, use and protection of natural resources, and the creation of wealth is summarized in the chart below.



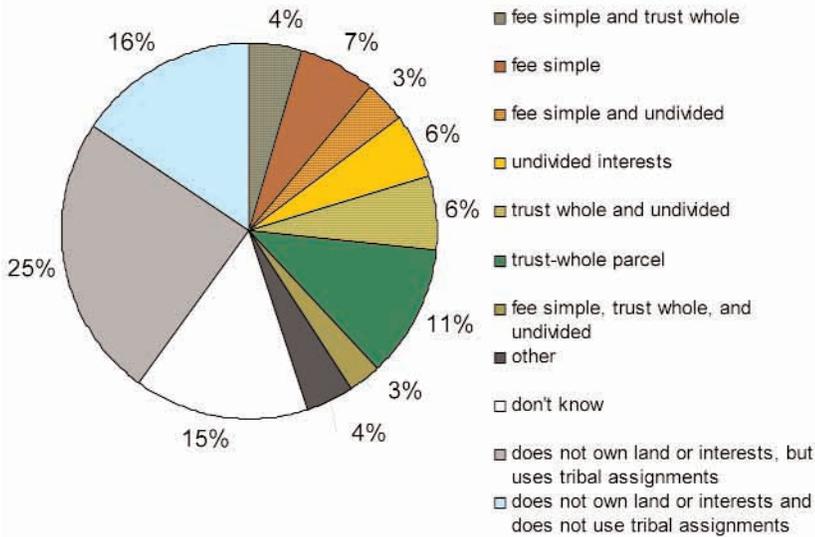
The Winter 2003/2004 survey was designed to delve deeper into this perceived importance of Indian land. In this survey, the goal was to further explore what kinds of lands Indian people value, use, and manage, and what Indian people may (or may not) be doing to keep this land in Indian ownership and management.

For example, the first set of questions on the survey was intended to gauge how the respondents value tribal trust land, trust land owned by Indian individuals, and fee simple land owned by Indians - three main types of land ownership commonly found on reservations due to the federal policy of allotment. As shown by the chart below, this survey revealed that the respondents valued tribal trust land as more important than individual trust land and significantly more than individual Indian-owned fee simple land.

In large part, this perceived importance of trust lands among the survey respondents may simply be a reflection of what types of land they indicated that they own and/or use (*with the assumption that if someone owns a particular type of land, such as fee simple, they would be more likely to say that that type of land was important*).



Landownership in Indian Country: Combinations of types of land ownership among survey respondents

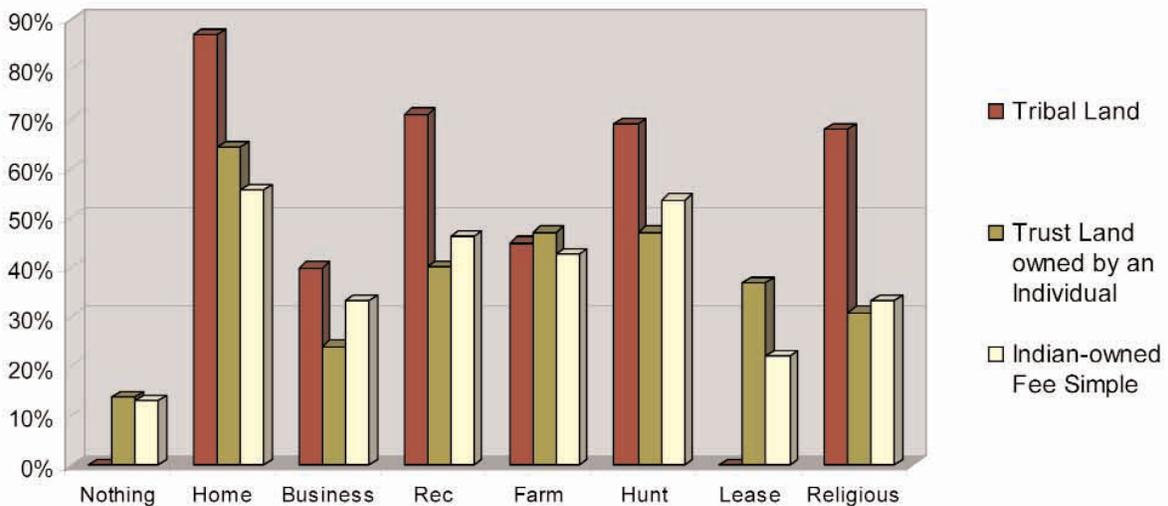


The chart on the left is a look at what types of land or land interests, if any, survey respondents indicated that they own or use.

41% of the respondents knew for certain that they did not own whole parcels of tribal trust land, undivided interests, or fee simple lands. A full quarter of the respondents indicated that the only land they use are tribal assignments. The second most common land type owned or used by the respondents to this survey is trust land owned only by one individual. 24% of the respondents indicated they owned this type of trust land. 18% of the respondents indicated that they owned undivided interests in trust land. 17% of the respondents indicated that they own fee land.

Or, this perceived importance of trust lands among the survey respondents may be a result of how they themselves use tribal trust land, individual trust land, and fee simple lands. The chart below summarizes the respondents answers to a question asking if they use tribal land, their individually-owned trust parcels or fee simple land for a home site, business, recreation, farming, hunting, religious or cultural practice, or if they lease it out.

Percentages of respondents using Tribal land, trust land, and Indian-owned fee simple land for various purposes



The survey indicated that people who used tribal land were, in general, more likely to use the assignments for home or business sites, recreation and hunting, and religious and cultural practice than owners of individual trust land or fee simple property. ♦♦♦

What is being done to keep land in trust and supportive of self-determination?

Whether it is due to the perception that trust land contributes to the strength of Indian communities, or because of the actual land ownership and use patterns among those surveyed, or a combination of both of these reasons, it is clear from the survey responses that participants view land in trust, and tribal trust in particular, as very important. Because of this, one would expect both tribes and individuals to be active in putting land into trust, ensuring that it is usable through land and interest consolidation, and keeping it in Indian ownership. One surprising finding from the survey, however, is that it doesn't appear that this is the case.

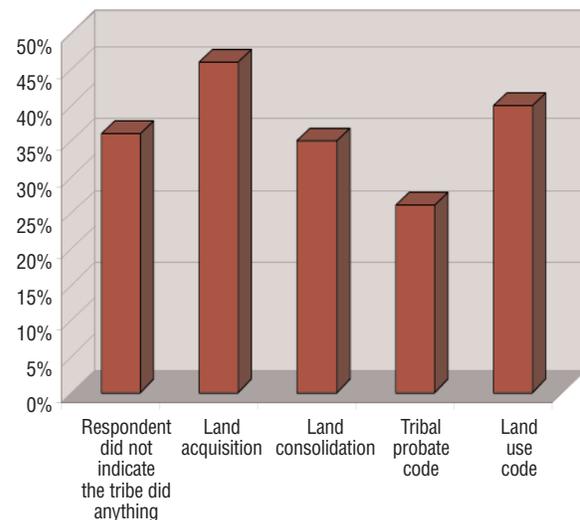
. . . by tribes?

For example, when the respondents were asked "What kind of strategic land planning is your tribe doing to increase tribal land or make land more useful?" 36% of the respondents did not indicate that their tribe was performing any of the following activities: land acquisition, land consolidation, creating and adhering to a tribal probate code, or creating and adhering to a tribal land use code.

Of course, this is only the respondents' perception of what their tribe may or may not be doing with respect to strategic land planning. There are several reasons why this perception may not be accurate. For example, those not involved in tribal government may not know what these particular land planning activities involve and therefore, cannot answer the question based on their experience. Or, tribal governments may not be effectively communicating to their members that these activities are going on or what they mean.

The possibility that there is some confusion among tribal members as to what their tribe is doing to keep land in Indian ownership and render it more useful is further indicated by looking at a set of responses from the survey which were submitted by members of one particular tribe in South Dakota. 41 respondents from this tribe responded to the survey. Their responses are listed below.

Responses to the question "What is your tribe doing to increase tribal land holdings or make tribal land more useful?"



- Percentage of respondents who did not indicate that the tribe was performing any of the activities presented: 32%.

(In fact, the tribe performs several activities related to land acquisition, consolidation, and use. See next page.)

- Percentage of respondents indicating that the tribe was acquiring land: 56%.

(The tribe has an active and aggressive land acquisition program.)

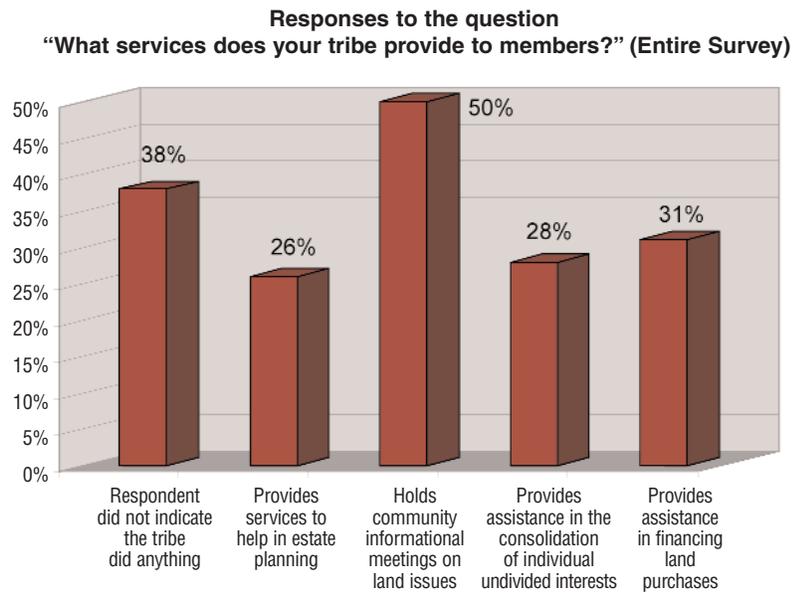
- Percentage of respondents indicating that the tribe was consolidating land: 56%. *(The tribe also has a land consolidation program.)*

- Percentage of respondents indicating that the tribe has a tribal probate code: 41%.

(This particular tribe DOES NOT have a tribal probate code.)

- Percentage of respondents indicating that the tribe has a tribal land use code: 44%. *(This Tribe has a land use code.)*

The same problem may have occurred when we asked the survey participants if their tribe provides any of the following services: estate planning, community informational meetings on land issues, assistance in the consolidation of undivided interests, and the assistance in financing land purchases by individuals. The chart below summarizes the responses to this question.



However, if the South Dakota tribe mentioned earlier is any indication, there may be confusion about the services that the tribe provides to members who will make decisions about land. The listing below summarizes their responses (this particular tribe provides all of the services presented below except financial assistance to tribal members for the purchase of land).

- Percentage of respondents who did not indicate that the tribe was providing any services presented: 51%
- Percentage of respondents indicating that the tribe is providing estate planning services: 15%
- Percentage of respondents indicating that the tribe is holding community informational meetings on land issues: 39%
- Percentage of respondents indicating that the tribe is providing assistance in the consolidation of individual undivided interests: 34%
- Percentage of respondents indicating that the tribe is providing assistance in financing land purchases: 20%

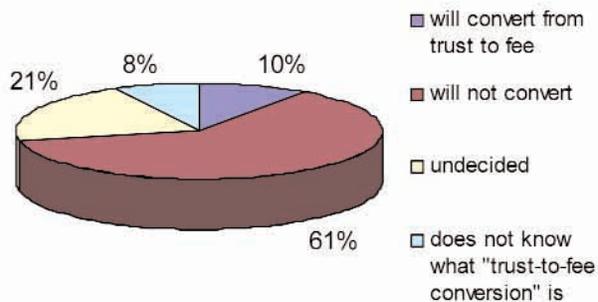
In considering these results, tribal leaders may want to consider stepping-up efforts to inform tribal members about tribal land programs and the services available to members to carry out land transactions.

... by individual landowners?

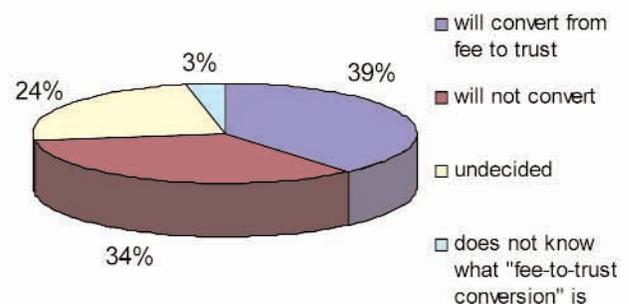
Even when respondents answered questions regarding decisions they have made about their own land or interests, it was not clear if they are working to keep their land in trust.

To illustrate, the survey asked respondents who indicated they own whole parcels of trust land and respondents who indicated they own fee land if they plan on converting their land (for fee simple owners, this would mean converting fee simple land into trust; for trust land owners, this would mean converting their trust land into fee.)

Whole trust parcel owners' responses to the question "Will you convert your trust parcel(s) into fee simple?"



Fee simple land owners' responses to the question "Will you convert your fee simple land into trust?"

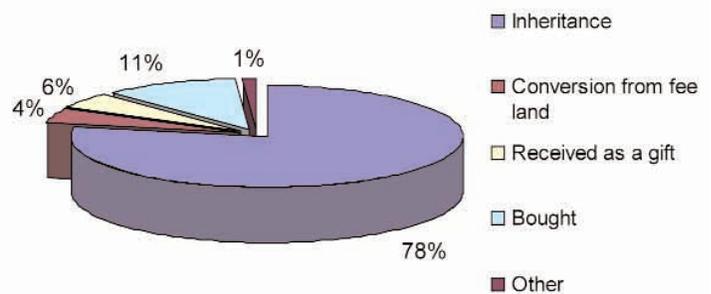


While there was a greater percentage of fee land owners who said they had plans to convert the land than their trust land owner counterparts, the percentage of both types of landowners who had not decided to convert their land was almost the same.

Furthermore, while many of the fee land owners indicated they have plans to convert the land into trust, according to this survey relatively few of these conversions have actually taken place. The chart below shows how respondents indicated they acquired their land. According to the survey, only 4% of trust land-owning respondents said they acquired the land by converting it from fee.

Due to the fact that so few survey respondents convert their land from fee to trust, it is difficult to come to any conclusions as to why few land owners have done this. For example, some respondents who converted their land indicated the process was not very difficult while others indicated it was extremely difficult. Whatever the reason, one thing is clear: there appears to be a significant gap between the importance people assign to land in trust and what they are doing to place land in trust.

Means by which respondents acquired whole parcels of trust land

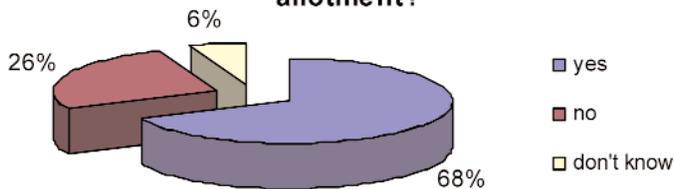


... by undivided interest holders?

An undivided interest is a share of the ownership of a parcel of trust land. The allotment of Indian lands placed a vast amount of tribal land into individual Indian ownership. When the ownership of the land is divided among heirs of the deceased land owner through probate, each heir receives an undivided interest in the land and not a physical portion of the land itself. Without effective estate planning and the presence of a valid will, the number of undivided interests in a parcel grows as each generation of interest holders dies and passes their interests to their numerous heirs.

What makes this harmful to Indian self-determination is that land owned by a large number of interests holders (or land that is “fractionated,” as this condition is also known) is extremely difficult to use. By law, owners must agree how to use the land and give each other permission for its use. However, many owners end up disagreeing about the land, or do not know who the other interest holders are, or cannot contact other interest holders. In fact, many people do not even know if they have interests or not. Nearly 31% of respondents to this survey indicated that they do not know if they hold undivided interests. If an interest holder cannot be found or contacted when an important decision about the parcel is being made, the Bureau of Indian Affairs then manages that interest by default.

Responses to the question "Do you have undivided interests in more than one allotment?"



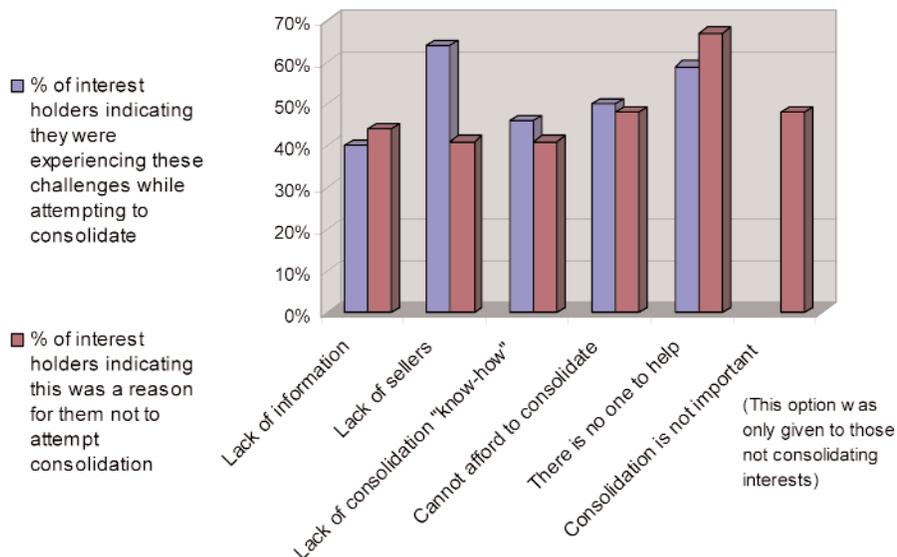
Additionally, many people have undivided interests in more than one parcel. In this survey, 68% of undivided interest holders indicated that they have interests in more than one allotment.

What undivided interest holders can do to eventually gain control of a parcel of land is to consolidate their interests. In very simple terms, consolidation means exchanging interests from multiple allotments (through a simple trade, purchase, or gift) either with

another willing interest owner or the tribe for interests in one allotment. According to this survey, 45% of interest holders who have interests in more than one allotment indicated that they were attempting to consolidate. 55% indicated that they were not.

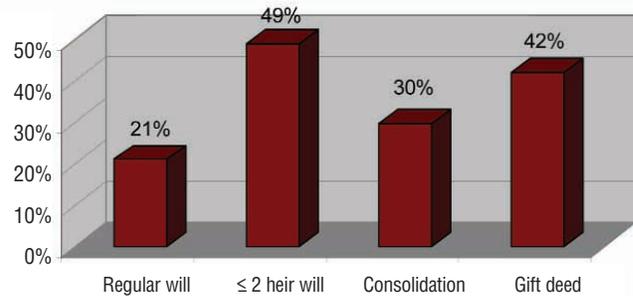
The survey also asked those who are consolidating interests if they are experiencing certain challenges in consolidating their interests such as lack of information about the property they have interests in, lack of willing sellers or people willing to exchange land or interests, lack of knowledge about how to consolidate, being unable to afford consolidation, and lack of anyone to help consolidate interests. The survey also asked whether those deciding not to consolidate chose not to do so because of similar reasons. (Additionally, these participants were asked if they felt it simply was not important to consolidate their undivided interests.) The results of these questions are below.

Challenges faced by respondents that either complicate their land consolidation or preclude their attempt to consolidate

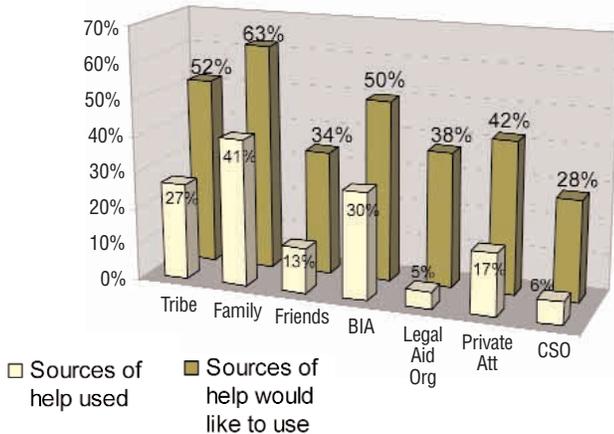


It is clear that consolidation is a challenging activity for interest owners who have interests in more than one allotment, whether they decide to pursue this challenge or decide it is too difficult. However, according to the survey, significantly more interest owners (89%) indicated that they are pursuing some form of estate planning which will pass on their interests to specified members of their immediate family after the interest holder's death and prevent (or at least limit) further fractionation. Estate planning activities this survey asked about were the writing of a regular will, the writing of a will that transfers land or interests to no more than two heirs, land consolidation through exchange, and gift deeding property.

Ways in which undivided interest holders are keeping the interests within their family



Sources of help respondents have used and would like to use in their estate planning



Even though it appears that interest holders are more willing to pursue some estate planning options, respondents to this survey indicated that they would appreciate more help with estate planning if it were available through several different outlets. Respondents were asked to indicate what groups or organizations they have received help from and from what groups or organizations they would appreciate receiving future estate planning help - their tribe, family, friends, the BIA, legal aid organizations, private attorneys, and community service organizations (CSO).

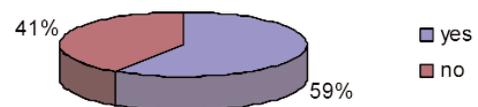
Landlessness in Indian Country

In addition to studying the decisions and plans of native land owners and interest holders, this survey attempted to learn more about landlessness in Indian Country. In this survey, 41% of the respondents knew for certain that they did not own whole parcels of tribal trust land, undivided interests, or fee simple lands. When asked if they expect to own land in the future, 59% of the landless and non-interest holding respondents said that they do expect to own land in the future. 41% indicated they did not.

For many of these respondents, not owning land is largely a choice; 40% of landless people who do not expect to own land in the future indicated that they simply have no desire to own land. Other reasons landless respondents gave for not owning land in the future were family disagreements (33%), the high-price of land (35%), and the fact that they are not an heir to land (60%).

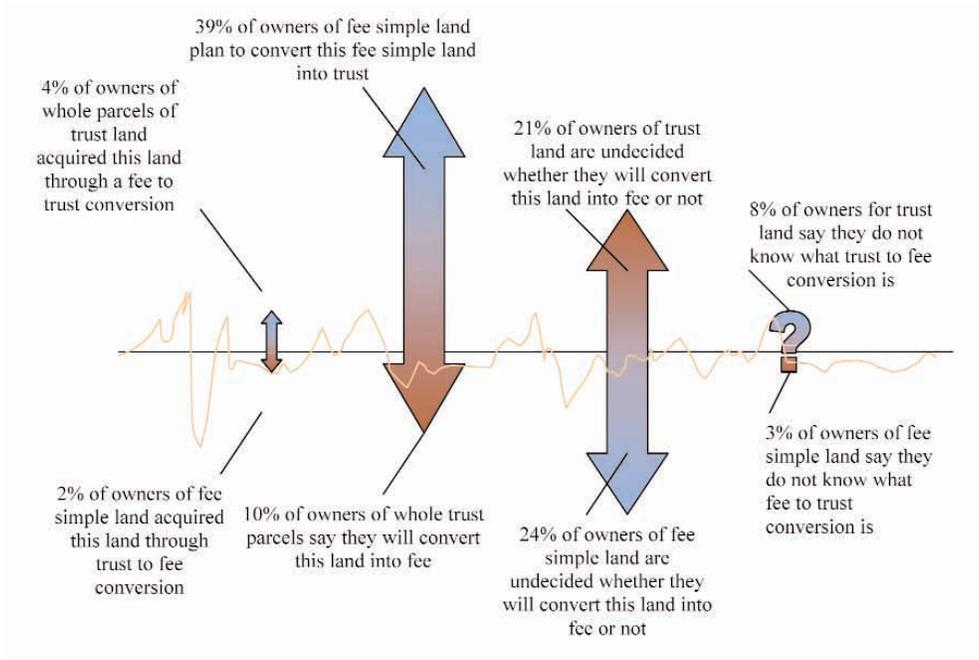
Of those landless Indians who expect to own land in the future, 26% believe they will inherit land, 41% expect to purchase land, and 32% expect to both inherit and purchase land.

Landless individuals' responses to the question "Do you expect to own land or undivided interests in the future?"



Is Indian Country shrinking?

Of course this question can only be answered by looking at the total acreage of land going into and out of trust, but the decisions that individual Indian land owners make should give us an indication as to the growth or diminishment of Indian Country. However, the results of this survey indicate that the outlook for Indian Country seems uncertain. Despite the importance the respondents placed on land in trust, native people are evidently facing a great deal of uncertainty and challenges with respect to placing land in trust and making it more supportive of Indian self-determination.



Conclusions from the Survey

While the survey provided a number of interesting results, the most important conclusion that can be drawn is that information and knowledge about the land asset and the processes related to land needs to be dramatically increased throughout Indian Country. This conclusion can be drawn from a number of survey results including the number of respondents that don't know if they own land or what status it is in if they do own land, those that don't know how many undivided interests they hold, the proportion of respondents that don't understand the trust/fee conversion processes, and the high number of tribal members that are unaware or misinformed about what land-related codes and services their tribes offer.

Understanding and addressing the latter issue should be a significant priority for the elected tribal leadership. Having an informed tribal membership, particularly around land that is at the base of sovereignty, could be the key to overcoming not only the erosion of the tribal land base, but a number of jurisdictional issues with the local non-Indian governments.

ILTF will continue to work with individual landowners and tribal staffs to elevate the level of understanding and awareness of Indian land ownership and control. However, it is also clear from the survey results that there are more important sources of information that Indian people turn to and want to go to for assistance and information. It is important for anyone providing information about land and particularly estate planning, to recognize that family and friends play nearly as large a role in information sharing as the tribes and the BIA.

The Indian Land Tenure Foundation thanks all those that took the time to respond to this survey. We also appreciate the thoughtfulness that you put into the responses and your interest in Indian land issues. Our goal remains the re-establishment of a consolidated Indian land base as the homeland for each tribe.

*“Land within the original boundaries
of every reservation and other areas of high significance
where tribes retain aboriginal interest
are in Indian ownership and management.”*

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