he 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. This 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 checker-boarding, 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 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 checker-boarding, continue to cause extreme social, cultural and economic hardship for Indian people.

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. 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. Often times, 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!), the 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, and economic hardship for Indian people.

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.

The federal trust status of Indian lands is the primary reason Indian nations and landowners are buried in so much red tape.
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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.
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 of this information still in question. While the BIA and the federal trust system are working on reforms to address the issues, 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.

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 consolida
dations 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.

- **TRB** – Reservation or land area code
- **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)
- **NUMBER** – Personal account number or tribal enrollment number

### Tract ID information.

- **LAC** – Reservation code for where the land is located
- **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)
- **NUMBER** – ID or allotment number for the specific tract of land
- **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.
- **TITLE PLANT** – Location of the regional BIA office
- **LAND AREA** – Reservation where the tract of land is located
- **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.

- **TYP** – Type of ownership (I=Indian, N=non-Indian)
- **OT** – Title of the type of title (T=trust, R=restricted, F=fee)
- **INT** – Interest in land (A=all, L=life estate, T=title only)
- **CLS** – Document code (10=deed, 11=probate, 12=modification)
- **YP** – Document code (TS=testate, IT=intestate)
- **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.

\[
\text{AGGREGATE DECIMAL} \times \text{TOTAL SECTION ACRES} = \text{EQUIVALENT ACRES}
\]

\[
0.011111111 \times 160 \text{ acres} = 1.777777777 \text{ acres}
\]

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.

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.
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
- 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; 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 than an account holder is deceased. Estate accounts remain open, earning income, until the probate process is completed and assets are distributed.

**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 summary 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).

**TOLL-FREE NUMBER**

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 ACCOUNT NUMBER**

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**

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

**INDIVIDUAL INDIAN MONIES**

Statement of Account

Office of the Special Trustee for American Indians

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</tbody>
</table>

**ACCOUNT OF JOB BLACK BEAR**

Office of the Special Trustee for American Indians

---

**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

**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 in 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.

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

**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.

**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.

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

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

**OWNERSHIP TYPE CLASSIFICATION** – Type of interest a landowner has 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.

**ENCUMBRANCE EFFECTIVE DATE** – The beginning date when the terms of the lease, right of way, permit, etc. begin.

**ENCUMBRANCE EXPIRATION DATE** – The ending date when the terms of the lease, right of way, permit, etc. end.

**LOCATION** – Geographical location of a tract of land.

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**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.
Instructions for Disbursement of Funds and Change of Address
Office of the Special Trustee for American Indians

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 income. 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.

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 (ITI), 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 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.

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.

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.
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 ownership 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.

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.
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.
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.
Managing Your Land and Assets

Indian Land Tenure Foundation

This number can be found on the ITI (see pages 4-5) and on the List of Real Property Assets (see page 7). Note: On this form, the “OST” refers to the Oglala Sioux Tribe (OST).

Percentage of the above tract of land that is owned by the allottee. The amount can be listed either as a ratio or a decimal. This information can be found on the ITI (see pages 4-5).

Number of acres of the above tract of land that is owned by the allottee. This information can be calculated from information found on the ITI (see “Calculating Ownership in Equivalent Acres” on page 5).

Total number of acres that the allottee is offering for exchange. This number is usually the same or greater than the number of acres the allottee is seeking to acquire. However, the value of the land is really more important as that is what will determine the amount of acres to be exchanged and acquired.

Tract ID number and the PLSS legal description of the land the allottee wishes to receive in the exchange. This information can be obtained from the tribe's land office or from the local BIA realty office. Note: Here “OST” refers to the Oglala Sioux Tribe, not Office of the Special Trustee.

Total annual income, not including assistance grants from the State, General Assistance (GA), or funds from the Veterans Administration, Social Security or any regular public benefit. Information about these sources of income is requested in question 12.

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

Applicant wishes to exchange for the following OST land(s):

<table>
<thead>
<tr>
<th>Tract ID</th>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Applicant makes an exchange of the following described land with the OST:

<table>
<thead>
<tr>
<th>Tract ID</th>
<th>Description</th>
<th>Equivalent Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>OS-</td>
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<td>OS-</td>
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<td>OS-</td>
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<td></td>
</tr>
</tbody>
</table>

Applicant's Signature: ____________________________ Date: ____________________________

Subscribed and sworn to before me this__ day of __________, 20__

Notary Public: ____________________________

My commission expires: ____________________________

Recommended for: ____________ APPROVAL ____________ DISAPPROVAL

Realty Specialist/Clark: ____________________________ Date: ____________________________

Application is hereby: ____________ APPROVED ____________ DISAPPROVED

Perintendent: ____________________________ Date: ____________________________

Total acres proposed by Applicant: ____________________________
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. Situations established in the Indian Land Consolidation Act (ILCA) of 1983 and the American Indian Probate Reform Act (AIRPA) 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 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.

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.

Leasing 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.
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.

Application to Lease Indian Land

Bureau of Indian Affairs

I, 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, I do authorize the Superintendent to perform every act necessary and required 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: Petition only to Oglala Sioux Tribe Housing and Oglala Sioux Tribe Partnership for Housing Leases

I, the Landowners, understand this Application is for a term of 28 or more years. The reservation to order a mortgage. If the Lease is assigned, the basis and name of the premise for the remainder of the contract who may not be assignee.

Two witnesses for each signature (be sure all those on front of application are available before signing application)

WITNESS

1. 

2. 

3. 

4. 

5. 

6. 

7. 

8. 

9. 

10. 

LESSOR (Landowner)

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

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 agreement 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.
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 regulations 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.”
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

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**Name, Tribal ID number, and the reservation name and/or code.**

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

**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.**

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.

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 simple 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

[Application form image]

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 Married Widowed Divorced: ________________________________

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. ________________________________

8. Permanent Address: ________________________________ (Name of tribe)

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.
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 . . .”

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.

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.”

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

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;
- 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.

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.
- Actively protect trust land from further fractionation by leaving all of the interests in an allotment to one person.
- 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 federal recognized Indian tribe; or
- Is eligible to become enrolled in any federal 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.”
Gift Deed

Gift deeds are one of the quickest and most simple tools available to Indian trust landowners to consolidate their lands and prevent further fractionation of their interests. (Land sales and exchanges, discussed in the previous section, are also good ways to consolidate and protect Indian trust lands.) Unlike writing a will, an attorney is not required to process a gift deed, making it a viable option for those who do not have immediate access to legal services. It should be noted, however, that a will is always the best way to make sure land and assets are distributed in the manner that the individual chooses.

A gift deed (sometimes called a gift conveyance) provides a way for transferring land between individual Indians or between individual Indians and the tribe. This can be done through:

• A gift deed, which transfers the title of property during the lifetime of the donor, or;

• Through a gift conveyance with estate lives retained, which means that the grantor can maintain land use, benefits and income from all or a portion the land until they die.

A gift deed or gift conveyance with estate lives keeps lands from being further divided, keeps lands out of the probate process, and allows the landowner to make sure that the land will be passed on without having to specifically include it in a will. Currently regulations do allow for gift deed transferring trust lands to a non-Indian. However, the trust status of the land cannot be terminated for a period of five years after the secretary of the interior approves the conveyance.

STEPS IN THE PROCESS

When a gift deed application is first submitted, either to the tribal or BIA realty office, it must be signed by the grantor in front of a witness and/or notary and include the Cobell Notice and Waiver and Confirmation of Consultation (which are also required for a land sale). Supporting documents, such as legal land description, survey or plat map, Title Status Report (TSR), Individual Trust Interest Report (ITI), and an appraisal, are also required to process the application. It should also be noted that, as in a land sale, majority consent is required from the co-owners of the allotment to gift deed one’s shares to someone who is not a co-owner.

Once the application is complete, including the supporting documents, a deed showing the transfer of ownership is prepared and the application is sent to the BIA superintendent for approval. If approved, the application is then routed to the Land Titles and Records Office for recording.

LENGTH OF TIME

Similar to a land sale, the gift deed process can take anywhere from one to eight months or more, depending on the complexity of the application and procedural differences that vary from region to region.

Application for Gift Deed

Bureau of Indian Affairs

[Form No. 4398]

**APPLICATION FOR GIFT DEED TO**

| DATE: | 1/28/19 |

Applicant:

| Trust Number: | 00000000 |

| Reservation: | | |

Application is hereby made for the GIFT DEED of the following described land:

In accordance with the Cobell Notice and Waiver and Confirmation of Consultation (which are also required for a land sale). Supporting documents, such as legal land description, survey or plat map, Title Status Report (TSR), Individual Trust Interest Report (ITI), and an appraisal, are also required to process the application. It should also be noted that, as in a land sale, majority consent is required from the co-owners of the allotment to gift deed one’s shares to someone who is not a co-owner.

Once the application is complete, including the supporting documents, a deed showing the transfer of ownership is prepared and the application is sent to the BIA superintendent for approval. If approved, the application is then routed to the Land Titles and Records Office for recording.

LENGTH OF TIME

Similar to a land sale, the gift deed process can take anywhere from one to eight months or more, depending on the complexity of the application and procedural differences that vary from region to region.

The amount of undivided interest being conveyed should be listed first (as a decimal or fraction). The following seven blanks are part of the legal land description and can be obtained from the ITI (see pages 4-5).

**PASSENGER ALL QUESTIONS**

1. Age: __________
2. Date of Birth: __________
3. Degree of Indian Blood: __________
4. Single Widowed Divorced Separated Married (If married, name of spouse: __________)
5. Education: Years in Elementary School _ High School _ Post Secondary College, Tech. School _
6. The following persons are dependent upon me for support: (Give names, ages, and relationship to you) ______________________
7. I am enrolled as a __________ Indian (Name of Tribe)
8. Permanent Address: __________ (Address) __________ (City) __________ (State) __________ (Zip)
9. Telephone: __________ Alternate: __________ Best time to call: __________
10. The amount of my annual income is: __________

**Name and tribal ID number of the person to whom the land is being gift deeded.**

**Tract ID number and reservation of the land being gifted.** This information can be found on the ITI (see pages 4-5) and the List of Real Property Assets (see page 7).

**Name of the person applying for the gift deed.** (Current owner of the undivided interest.)

**The amount of undivided interest being conveyed should be listed first (as a decimal or fraction). The following seven blanks are part of the legal land description and can be obtained from the ITI (see pages 4-5).**
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 transferrence 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.

The probate package is then sent to OHA, which 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 the property.

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

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:

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

Columbia Legal Services
Seattle, Washington
206-464-1122
www.columbialegal.org

Center for Indian Law and Policy
Seattle University School of Law
206-398-4284
www.indianwills.org

DNA-People’s Legal Services
Window Rock, Arizona
928-871-4151
www.dnalegalservices.org

Columbia Plains Legal Services
Mission, South Dakota
800-658-2297
www.helpsouthdakota.com/Home/DPLS

Montana Legal Services Association
Helena, Montana
406-442-9830
www.mlrsa.org

The Indian Land Tenure Foundation (ILTFT) 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.

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