Our Mission

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.

Understanding Indian Property:

Definitions for navigating the laws that control your land
Land Tenure & Jurisdictions: What are the possibilities?

- Tribe
- BIA (Federal)
- Allotment Landowner
- Tribal Member
- Non-Indian
- State
- County
- Town/City

Land and your business (and leasing options)

- Where is your land located?
- What type of title does the land have (trust, fee, etc.)
- What jurisdictions are you under?

Why do these questions matter?

- Financial and property risk is involved when your business or leasing options depend on different types of land
  - Options for financing are limited on lands with trust title
  - Fractional trust title on allotments increases risk
    - Harder to lease
    - Land becomes idle
  - Implementation of USDA programs is dependent upon land title and jurisdiction
  - Local politics may be involved and affect business risks
Property in Indian Country

- Property Types
  - Fee
  - Restricted-Fee
  - Trust (Indian tribes and individual Indians have beneficial use of the land, but title to land remains in trust and in the name of the United States government)
    - Tribal
    - Public Domain
    - Assignment

- Bundle of Rights
  - Possession
  - Exclusion
  - Enjoyment*
  - Control**
  - Disposition**

*Affected by the Federal trust relationship

- Personal Property, Real Property and AIPRA
  - Real property under Common Law
    - Real property includes the surface, subsurface, air space, any improvements attached to the land, and the legal rights of ownership
  - Not So Fast (Public Law 110-453, 10/11/2008)
    - Definition of covered permanent improvement: In this paragraph, the term “covered permanent improvement” means a permanent improvement (including an interest in such an improvement) that is—
      - (i) included in the estate of a decedent; and
      - (ii) attached to a parcel of trust or restricted land that is also, in whole or in part, included in the estate of that decedent.
    - Application and effect: The provisions of this paragraph apply to a covered permanent improvement—
      - (i) even though that covered permanent improvement is not held in trust; and
      - (ii) without altering or otherwise affecting the non-trust status of such a covered permanent improvement.
25 US Code – Ch. 24 Indian Land Consolidation
Sec. 2218 Approval of leases, rights-of-way, and sales of natural resources

- Definition: In this section, the term “allotted land” includes any lands held in trust or restricted status by the Secretary on behalf of one or more Indians

- Percentage Interest – The applicable percentage referred to in this section shall be as follows:
  (A) If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent
  (B) If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent
  (C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent
  (D) If there are 20 or more such owners, the percentage shall be a majority of the interests in the allotted land

Property in Indian Country

- Ownership
  - Tenancy in Common
  - Joint Tenancy with Right of Survivorship
    (Last Indian Standing)

A Simplified Six-Generation Example of Undivided Heirship
Fractionated Values and Lease Payment Values of Undivided Interest*
Appraisals – Establishing Value for Wills and Estate Planning, Family Agreements and Gift Deeds

What is an appraisal?

• An appraisal is an opinion of value
  – Personal Opinion of Value (non-monetary)
  – Professional Appraisal
    • Market Value (Sales Comparison)
    • Replacement Value (Cost Approach)
      Used for programs like HUD 184
    • Value in Use (Income Approach)
      Used in Leasing, Easements, and Mineral Extraction
  • Appraisal and Valuation Services Office (AVSO)
Personal Opinion of Value

- Family history
- Cultural importance
- Legal importance

Remember that it is up to you to share with your family and descendants those values that CANNOT be measured in money.
Co-Owner Management

The current state of “Corporate” ownership

- The Secretary of the Interior and Congress already recognize one form of ownership by Indian corporation.
- This has not posed a problem for heirship or trust status for over 70 years.
- The internal administrative burden lies with controls for both usage and ownership.

What about individual landowners?

Ownership is separate from use of the land.
What does this mean to me?

• Fractional ownership inhibits use
• Therefore, land management and estate planning are critical to continued successful use of Indian lands

Where are the reservation boundaries?

Owner Organizing Strategies
**Individual Allotment**

- You, your relatives and other co-owners create a unified structure to manage your land
- 50% + = speaking with one voice; control (veto power)
- Agree on how to use that piece of land (goals, plans and land use)
- Define future membership in the management/ownership structure

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**Family and Co-Owner Level Consolidation**

- Preserving your family’s connection to reservation lands
- Will likely cover multiple tracts of land, such that some or all your interests are managed
- May combine resources to continue consolidation
- Work to create agreement on how to exercise the group’s land ownership
Consolidation Organization

• Co-Owners create a unified structure for the management of land
• $50\% + = $ speaking with one voice; control (veto power)
• Ideal to assemble and consolidate land from more than one allotment (especially connected parcels) into sufficient quantity to permit viable economic use
Consolidation Organization
(continued)

• Greater potential for the development of “active” economic projects
  – Commercial development
  – Economic-scale ranching
  – Economic-scale farming
  – Residential development
  – Mineral extraction

Flexible Tools for Indian Land Owners

• Power of Attorney
• Association
• Cooperative
• Trust

Less Complex

More Complex

• Tribal Charter Corporation
• Federal Charter Corporation
• Modified Section 17 Charter
• Other

Questions?
Land Ownership and Management Resources

- Message Runner
  - MR 2: AIPRA
  - MR 3: Rights of Way
  - MR 5: Cutting through the Red Tape
  - MR 8: Appraisals
  - MR 9: Co-Owner Management
- Appraisal Insert (to the Land Buy-Back Program)

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