

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

Property in Indian Country

- Bundle of Rights
 - Possession
 - Exclusion
 - Enjoyment*
 - Control**
 - Disposition**
- *Affected by the Federal trust relationship

Property in Indian Country

- 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.

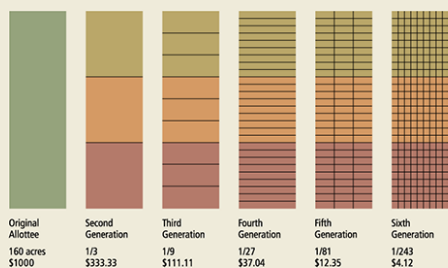
25 US Code – Ch. 24 Indian Land Consolidation
Sec. 2218 Approval of leases, rights-of-way, and sales
of natural resources

- 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*



*Presumes only three heirs per person per generation.

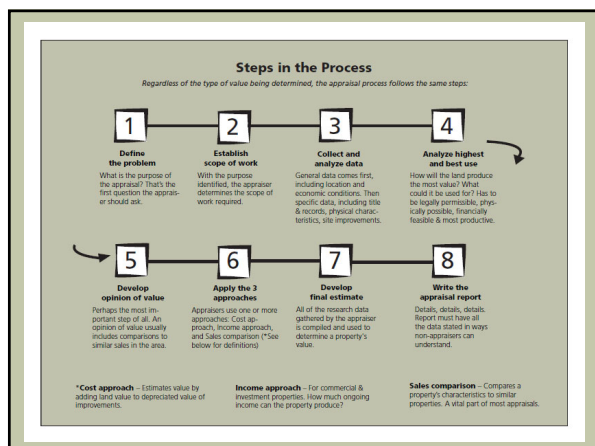
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Questions?

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

Questions?

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

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What about individual landowners?

Ownership is separate
from use of the land

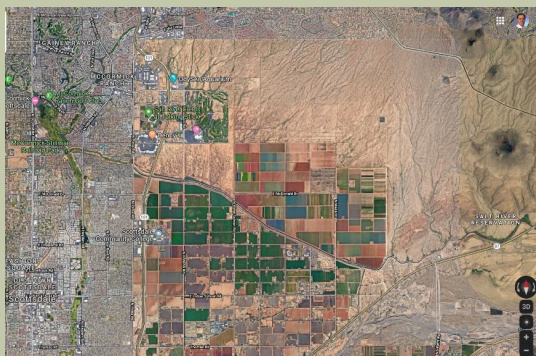
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What does this mean to me?

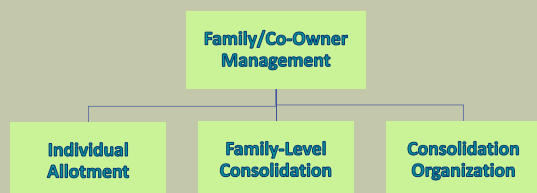
- Fractional ownership inhibits use
- Therefore, land management and estate planning are critical to continued successful use of Indian lands

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Where are the reservation boundaries?



Owner Organizing Strategies



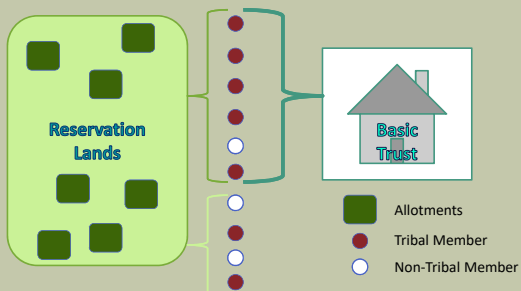
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Individual Allotment

- 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

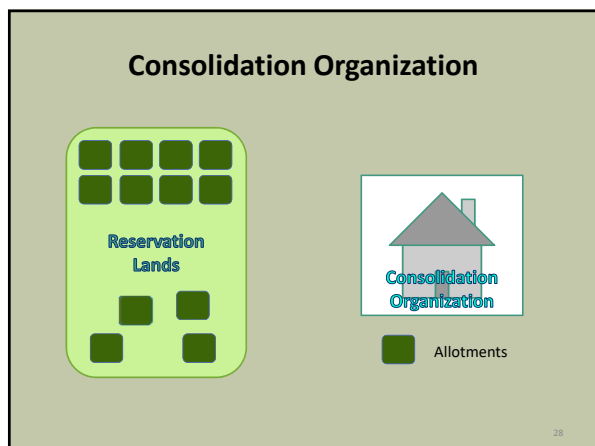


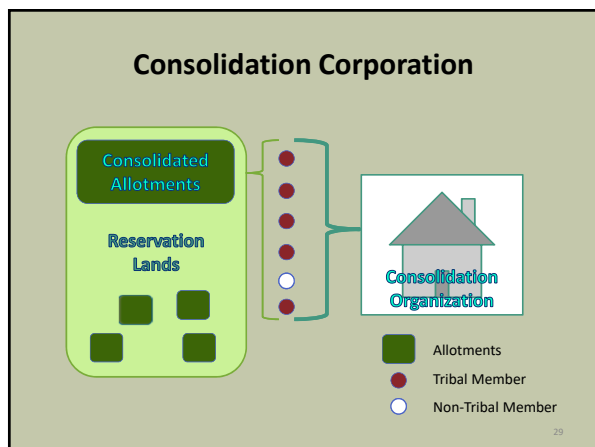
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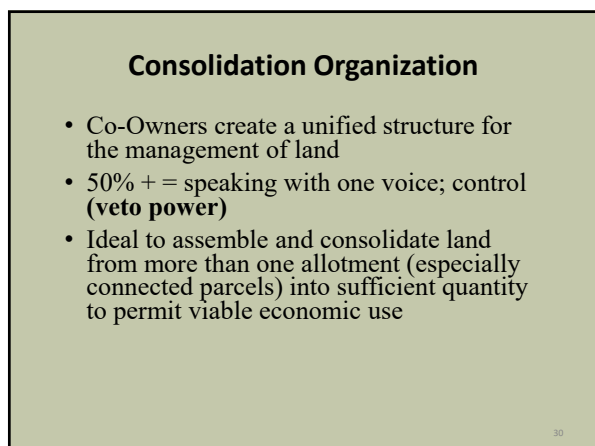
Family and Co-Owner Level Consolidation

- 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

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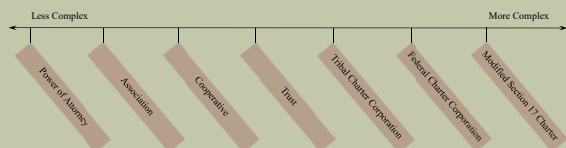
Consolidation Organization (continued)

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

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Flexible Tools for Indian Land Owners

- | | |
|---------------------|-------------------------------|
| • Power of Attorney | • Tribal Charter Corporation |
| • Association | • Federal Charter Corporation |
| • Cooperative | • Modified Section 17 Charter |
| • Trust | • Other |



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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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