Indian Land Fractionation

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Little Big Horn, June 2003, Photo by Dana EchoHawk
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**Introduction**

For Native American people, land is fundamental for cultural identity and for their economic future. In many ways, land is the essence of tribal nationhood and the importance of land to Native American’s should not be underestimated. Land is currently, at the center of the political conflicts existing between tribes and government. Their land has been diminished through treaties and allotment, continually eroding from generation to generation. And today, their remaining land holdings are so fractionated through undivided interest of numerous owners; it has become unusable. But how did it become this way? Are there solutions to fix fractionation? These questions are the basis of this paper.

The Allotment Act of 1887 stripped ninety million acres from tribal boundaries. This initial land loss is equivalent to an area one-third larger than the entire state of Colorado. But it didn't stop there. Prior to 1934 and the Indian Reorganization Act, an additional forty-four million acres were lost through fraud, tax sales, and the mismanagement of trust responsibility by the federal government. This resulted in the devastating conditions of checker boarding, fractionation, and jurisdiction disputes.

These conditions have compounded today and many acres within the boundaries of reservations are now out of Tribal ownership and control. Title to the land on most Indian reservations is held by many different entities, limiting economic opportunities. Due to fractionation, “tribes and tribal members are often unable to use their land to leverage debt for wealth building investments such as land development, homeownership, or business development.” (Indian Land Capital Fund, p 3)

Fractionation, the focus of this paper, is perhaps the largest obstacle that individual Indian landowners face in managing and using their lands. Much of the land is divided among so many heirs that it has become nearly impossible to use. The total number of ownership interests in the 183,000 existing allotments today is more than three million. Because the land is held in trust by the federal
government for use by Indian people, the Bureau of Indian Affairs has responsibility to administer and manage these lands. This specifically includes management of ownership records, lease contracts and distribution of fee proceeds to land owners. According to the BIA, it costs over $100 per ownership interest or $300 million per year to administer these accounts. (Indian Land Capital Fund, p 3)

Tribal governments today are organizing and setting in place regulations and policies to combat the land issues faced on virtually every reservation in the country. To quote Austin Nunez, Chair of the Indian Land Working Group from his testimony before the Senate Committee on Indian Affairs:

“Our lands, and our future generations on these lands, are our lifeblood; we will no longer stand for being land rich and dirt poor; detached from our lands as your laws have tried to make us. As members of the Indian Land Working Group, we seek to reverse this trend. We are “Taking A Stand On Our Indian Land”. We seek responsible use management and control of our land resources.”

Badlands South Dakota on Pine Ridge Reservation
Dana EchoHawk
What is fractionation? Picture a piece of land that has been divided and subdivided again and again and again. The land doesn't grow, but the number of owners does. The saying applies, “Sure, you might own land, but just enough to stand on.” All heir’s own interest in the same piece of land, but none have enough interest to manage the land assets. Now also picture the trustee of these land interests, the federal government having responsibility for managing eleven million acres nationwide for the owners. They must divide the income and disperse it to 230,000 current owners The BIA must handle probate cases, update ownership records, negotiate leases, divide the income. Needless to say, it has become unmanageable. The backlogs for probate cases are decades behind and record keeping is managed by obsolete computer systems. Landowners are denied basic information about their land and assets. “Diane Rasmussen, who inherited land from her grandmother on South Dakota’s Rosebud Reservation, remembers a relative giving her a check for about $800. “I thought at the time, ‘Gee, I didn’t know when you own the land you get that much.” Now her lease earnings have dwindled to as low as third-six cents, she said. But the fifty-eight-year-old Sicangu Lakota said she can’t find out why.” (Billings Gazette)

While fractionated land problems have long been acknowledged as an obstacle to trust land management, interest in the issue has been renewed because of the Cobell vs. Norton litigation. Efforts are currently underway by tribes, private sources and the federal government to alleviate further fractionation and the related problems. This paper provides an overview of the issues and possible solutions underway by the above entities.

“The earth was created by the assistance of the sun, and it should be left as it was… The country was made without lines of demarcation, and it is no man’s business to divide it…” Chief Joseph, Nez Perce
**Historical Overview – Fractionation Beginnings**

The history of Indian Land Tenure is a complex study. Treaties, Acts, policies and Indian land provisions, from first European contact to the present, have laid layer upon layer of complication. The issues surrounding land fractionation on Indian Reservations forms the basis of many of the problems tribes and Indian people face today. This report is the story of how fractionation came to be and continues into the present. Current issues, litigation and a discussion of what is being done or considered to alleviate and provide solutions to land fractionation dilemmas is discussed in the following pages.

**Historical Summary**

Henry Laurens Dawes served as U.S. Senator from 1875-93. His most important contribution came as chairman of the Senate Committee on Indian Affairs where he gave his name to the Dawes Act of 1887, also known as the Allotment Act. Allotment of Indian lands began long before Henry Dawes’s political career was launched. Soon after Columbus came to the American continent, a great debate raged in Spain about the humanness of Indians. It was argued that Indians were tainted with mortal sin and not worthy of humane treatment. Seizure of their land, their property and their lives was justified on this perception. In the years to follow, Indian land tenure would take many twists and turns.

During the late 1800’s, two groups pressured the U.S. Government to allot Indian land for different reasons. One group was Christian reformers. They saw themselves as advocates and protectors of Indians. They wanted Indian people to adopt the white man’s customs and assimilate themselves into the mainstream of American society. They viewed tribal customs and life-styles as savage and without merit.
“They were blind to the fact that Indian Nations had highly developed societies of their own with spiritual, political, economic and social system tied deeply to the land. A highly developed barter system existed within and between tribes, which was built on the tribe’s ability to hunt, fish, gather, and grow crops within traditional land areas.” (Indian Land Work Group, 1998)

Other groups lobbying for Indian land were even more powerful and influential than the Christian groups. These included homesteaders, land speculators, cattle companies and timber and railroad companies. Their representatives made it well known that they wanted to obtain select pieces of reservation land. Within the realms of these influences, Native life styles were beyond Europeans level of thought or experience.

“The allotment advocates had several reasons for supporting allotment. First, they considered the Indian way of life and collective use of land as communistic and backwards. They also saw the ownership of private property as an essential part of civilization that would give Indians a reason to stay in one place, cultivate land, disregard the cohesiveness of the tribe, and adopt the habits, practices, and interest of the new settler population. Furthermore, many thought that Indians had too much land. These people were eager to see Indian lands opened up for settlement as well as for railroads, mining, or forestry.” (www.indianlandtenure.org)

The Dawes Act allowed the President the authority to allot reservation land to individual Indians. After allotment, any surplus reservation land was purchased by the Federal Government or sold to non-Indians. The plan was simple:

- Indian people were allowed to select their acreage from their tribal reservation land.
Allotted land would be held in trust by the federal government for at least twenty-five years. During this time, the land could not be sold, traded or encumbered.

Surplus reservation lands were then sold and the funds derived were held in trust for the tribe to be use for educating and ‘civilizing’ the tribe when Congress approved these uses.

The aim of the Dawes Act was to bypass tribal governments and make land allotments directly to individual Indians. The act was designed to destroy the tribes by doing away with the land base held collectively and at the same time, to integrate Indians into the dominant society. Assimilation was the name of the game. The allotment policy was, in the words of President Theodore Roosevelt, “a mighty pulverizing engine to break up the tribal mass”. By 1934, when it was finally stopped, 118 out of 213 reservations had been allotted, resulting in the loss of nearly 90 million acres of tribal lands.

Lands were allotted as follows:

- To each head of a family, one-quarter of a section;
- To each single person over eighteen years of age, one-eighth of a section;
- To each orphan child under eighteen years of age, one-eighth of a section;
- To each other single person under eighteen years now living or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section.

Indian owners were not required to pay taxes on their land as long as it remained in trust. Section 5 of the Act further declared the sums agreed on by the United States for any portion of reservation land would be held in the U.S. Treasury for the sole use of the tribe with 3% annual interest. Congress would appropriate these funds for education and civilization of those tribes. Many people today are
unaware of this provision and do not realize that funds provided to Tribes from the Federal Government are not welfare or grant programs, but are provided as negotiated payment for lands sold during this period in history.

Indians were unfamiliar with owning land and were not prepared to handle the bureaucratic challenges related to ownership. After allotment, treaty lands continued to diminish due to the following conditions:

- Forced fee patent,
- Sale by both Indian landowners and the United States,
- Probate proceedings under state inheritance laws,
- Foreclosure, and
- Surplus sale of tribal lands.

**Allotment Policy Influences**

Senator Teller had predicted that the allotment policy was a most effective tool in the hands of non-Indian homesteaders, lumbermen, miners, ranchers and arid speculators. Cattlemen had a great influence on Congress regarding the Dawes Act…and it was grass they wanted. (When Cowboys Were Indians)

An example of Cattle Company involvement is found with the Blackfeet Tribe in Montana. “In discussing the need for access to Blackfeet land, the Helena Herald in the early 1880’s summarized popular sentiment. “The ranges are needed for our cattle and they are of no use in the world to the Indians.” At that time, their reservation lands were being trespassed by thousands of cattle owned by Floweree Cattle Company. To put an end to the

*Roundup Along the Belle Fourche, 1890, photo by J. C. H. Grabill.*
cattle tromping across their lands, the Blackfeet decided to fence the entire reservation boundary. This was to no avail as the fence was cut and trespassing cattle prevailed. Not only did trespassing continue, but also the cattle company owners kept up their cry for more land. The cries were successful and in 1907 the Blackfeet Reservation was allotted and a permit system installed to allow non-Indian cattle owners greater access to Blackfeet grass.

This same story is repeated everywhere that Allotment occurred. Through lease and purchase of Indian lands, non-Indians now had the opportunity to combine and utilize small tracts into larger units at very inexpensive rates.

Allotment Failure

Allotment failed to produce the promised improvement in Indians’ economic well-being. Instead, allotment weakened self-sufficiency by creating a myriad of problems for both tribes and individuals. These problems include checkerboard ownership of tribal lands. And as generations died and left allotment lands to their heirs, fractionation of land ownership begin to evolved and then spin out of control.

“By 1930, about 26% of the allotted land had been sold by individual owners, 36% had passed into heirship status and been rented out on a virtually permanent basis to non-Indians, and the reservation had become so fragmented and checker-boarded that the kind of cooperative enterprise for which the tribe’s land and traditions fitted them had become almost impossible.”

The Indian Reorganization Act of 1934

Many proclaimed that the passage of the Dawes Act of 1887 had ensured the salvation of America’s Indians. As a result of this new policy, they predicted, the Indians would be transformed. “As if by magic, the Indians would soon become self-sufficient Christian farmers and responsible citizens”. They would acquire fluency in the English language and in the ways of non–Indian society. Non-Indian trespassers and speculators would no longer threaten their lands, securely
protected by allotment. However, the evidence soon began to suggest that this transformation was not occurring.

The abuses of the Dawes Act were revealed and set forth in the Miriam Report in 1928. The 800-page report documented massive fraud and misappropriation and led to the repeal of the Dawes Act. Unfortunately, by 1954, it had become clear that the Indian Reorganization Act of 1934, plagued by the same incompetence and corruption created by the Dawes Act, was also failing.

The Indian Land Consolidation Act

The Indian Land Consolidation Act and its 1984 amendments made key changes in the amount of control tribes had over their land acquisition and consolidation efforts. However, this Act was written to assist tribes, not individuals and it did not aid individual landowners to exchange and consolidate their land interests. Additionally, it created an unconstitutional situation that had the potential to put tribes and individual Indian landowners at odds with one another. Under the provision of the Act, known as the 2% rule, Indian people with 2% or less ownership in a parcel of land found their land ownership transferred to the tribe. This was found to be unconstitutional.

Provisions of the Indian Land Consolidation Act include the following rules:

- Tribes can develop land consolidation plans to sell or exchange fractionated interests of Indian individuals for the purpose of eliminating fractionated interest (25 U.S.C. 2203)
- Tribes can buy one or more fractionated interests in a parcel without having to buy the entire tract. This benefits tribes with limited funds to begin slowly accumulating interests. (25 U.S.C. 2204)
- The 2% rule took ownership interests of 2% or less and transferred them to the tribe without compensation to the individual.
- Tribes can adopt inheritance codes prohibiting non-Indians or non-members from inheriting land on the reservation. (25 U.S.C. 2207)
Cultural Differences – Barriers to Understanding

An Indigenous Perspective

Proponents of the allotment policy failed to recognize or understand that individual ownership of land was a distinctly foreign concept among most tribes and many individuals made no use of their allotments. Most Europeans had no idea of the benefits derived from a communal existence.

Indigenous people around the world faced the same dilemmas during the allotment years. Isak Dinesen writes of the Masai people in Africa.

“It is more than their land you take away…it is their past as well, their roots and their identity. If they were to go away from their land, they must have people around them who had known it…Then they could still, for some years, talk of the geography and history, and what one had forgotten the other would remember. As it was, they were feeling the shame of extinction falling on them”. (Lynch, chp2)

The ‘shame of extinction’ was also being felt by Northern American Indians. The land and the natural resources were their cultural heritage, their way of life. Subsistence living and how they related to the land and natural resources was the basis of their identity. Their daily lives included their communities, people past and present, the land and the creator. This is how they kept their cultures in tact.

Chief Oren Lyons, Iroquois, who has taken part in the meetings in Geneva of Indigenous Peoples of the Human Rights Commission of the United Nations, said in 1984:

“We native (Indigenous) people did not have concept of private property in our lexicon, and the principles of private property were pretty much in conflict with our
value system. For example you wouldn’t see “no hunting or no fishing or no trespassing” signs in our territories. To a native person such signs would have been equivalent to “no breathing’ because the air is somebody’s private property. If you said to the people, “the Ontario government owns all the air in Ontario, and if you want some, you are going to have to go and see the Bureau of Air, we would all laugh.”

To the native way of thinking, all of life had access rights to the use of the land and its gifts within reason. People did not own the land; they simply used it and moved on, allowing the land and the plant and animal life to re-generate. Tribal people held their lands in common.

Indigenous peoples have a strong sense of place; they have a comprehensive understanding of the attributes of the land that sustain them – the wildlife, the plants, the fertility of the soil and the water. They are firmly rooted and committed to the protection and the preservation of particular spaces for future generations.

**Indifference to Ownership**

Non-Indians frequently have difficulty understanding and accepting the Indians’ lack of interest in acquiring material goods. This was a value held by many Indians in times past and has carried into present day thought. The person who tried to accumulate goods was often viewed with suspicion or fear. Vestiges of
this value system are still seen among Indians today who share what little they have, at times to their own detriment. Their land and community are important, more so than the concept of ownership of a parcel of land. Elizabeth Little Elk, a resident of the Rosebud Sioux Reservation, which is located on the beautiful short grass prairie in south central South Dakota, said:

“The Reservation is like oxygen to me. I cannot live without it.”

Non-Indian people are genuinely surprised, if not astounded, by someone’s choice, whether Indian or non-Indian, to live on the reservation.”

Allotment of Indian lands also brought other foreign Western concepts to Native people. A lack of knowledge, experience and understanding of the concepts of selling, leasing, wills, probate, heirship, deeds, land exchange and record keeping combined with the complexities and regulations of Trust Land contributed to the current difficulties and problems of land fractionation. The typical individual Indian person was not prepared or equipped with the necessary information or know how to address these issues.

After allotment, the life style of many Indian people was jeopardized. Traditional hunting, fishing, gathering and religious practices were halted since the location of assigned allotments did not cover these traditional use areas.

Cultural Differences Summary

If Indigenous people everywhere are to survive as a distinct people, they must have access to, and control over a land base, simply because culture and economy are indivisible. Westerners tend to equate culture with language or other outward manifestations such as dress, music, dance and art. However, Indigenous culture is more than this. It is a way of life. Indigenous cultures tend to be based upon a spiritual and material dependence on the land. To the degree that this relationship is severed, Indigenous culture will disappear. This, in part was the real aim of the Dawes Act.
“However, today, through education of tribal leaders, tribal members and specifically their youth, Native people are learning to protect their lands and manage their resources, the impact of which is preservation of culture, and balance of Indigenous values with Western perceptions of land ownership and use”.

Shiprock, New Mexico, Navajo Reservation, Dana EchoHawk
Overview and Definitions

To build and understanding of the issues, it is important to have a basic knowledge of the terms and what they mean in relationship to the issues of Indian Land Fractionation.

Fractionated Land – An Overview

Fractionated land is an allotment owned by more than one owner, caused by the way the General Allotment Act of 1887 dictated how lands would pass from one generation to another. There was no inheritance policy in place that resulted in single ownership. Since Indians were not allowed to write wills or to do any type of estate planning such as gift deeds, at that time the policy of the BIA was to give each heir an undivided interest. The land parcel would remain intact. As these new owners died, the ownership in the land would again be divided among surviving relatives, thus compounding over and over the number of ownership interests in a parcel of land. The BIA simply divided the land on paper. There was no planning for future land management. Single pieces of land often have hundreds of owners. The following graph depicts the increase in numbers of owners on a 160-acre tract of land from 1899 to 1991.

[Graph showing the increase in numbers of owners on a 160-acre tract from 1899 to 1991]
Fractionation makes it extremely difficult for any one of the owners to use the land. Administrative expenses for probating wills, managing individual allotments and determining each heir’s share within an allotment grow more cumbersome by the year. By law, heirs must be notified and a majority of owners must agree to a particular use of land. Farming or building a home on fractionated land has become unrealistic. Dividing the income from a leased parcel of land among heirs is a task that is increasingly complex and requires more and more people and computers. Additionally, efforts to consolidate allotted lands are complicated. There just are not enough allotments or fragments of allotments adjacent to one another to form an economically viable block of land for leasing or other forms of economic development. Their highly fractionated ownership has thus left the Indian allotted lands largely undeveloped. (A History of Federal Indian Policy, pg 111)

Trust Land

The terms ‘trust lands, ‘tribal trust land’ and ‘trust allotments’ all refer to the land held in trust by the Federal government as a result of the Allotment Act of 1934. These are the lands that have become fractionated today.

Fee Land

The Burke Act of 1906 authorized allotments to be taken out of trust if the allottee was deemed ‘competent and capable of managing his or her own affairs.’ When an allotment was taken out of trust, a fee patent was issued to the allottee, which rendered the land subject to state and local taxes. This came to be known as the ‘forced fee patent’ process, and it resulted in thousands of acres being lost to Indian ownership. For many individuals, taking the allotment out of trust only resulted in having it sold at a tax sale several years later for unpaid taxes. The terms fee land, patented lands and deeded lands are used interchangeably when discussing land that is held in fee simple.
By the end of the allotment era, approximately 27 million acres of allotments (almost 2/3 of all allotments) had passed into non-Indian ownership due to fee land status.

Definition of “Indian”

According to Census data, there are:

- 1.9 million self-identified Indians
- 1.2 million tribally-enrolled Indians

Prior to the enactment of the Indian Land Consolidation Act Amendments of 2000, persons of “documentable Indian blood” could inherit land in trust status. The current definition of Indian contained in the amendments will cut off far too many people who now qualify as Indian under other federal laws – yet are unaffiliated (not enrolled) for a variety of reasons. At the Standing Rock Sioux Reservation alone, 4,096 heirs representing interests in 15,749.44 acres will not be able to inherit. These numbers are alarming. No one knows the overall impact; how many tracts and acres are involved, not to mention the land value at stake. Native People are defending the position that who can inherit is a tribal authority and needs to be determined by each tribal community.

Checkerboard

During the 47 years of allotment, maps of Indian reservations came to look like checkerboards. That is, a pattern of mixed ownership. This condition exists because the Allotment Act allowed for a significant amount of land to pass out of tribal or individual Indian hands. Today, ownership of reservation lands consists of a) Tribal, b) individual Indian, c) non-Indian, as well as a mix of d) trust and e) fee lands. Following is a map of the Confederated Salish and Kootenai Tribes of the Flathead Nation showing the checkerboard land status within reservation boundaries:
Checkerboard conditions seriously impair the ability of tribes or individual Indians to use land to their own advantage. It prevents tribes and individual members from collecting enough acreage to create an economically viable plot of land, since they often own parcels that are not bordering on one another. Furthermore, serious questions of jurisdiction occur on reservations as different types of owners fall under different governing authorities. These issues are still prevalent as states and counties clash with tribal governments on questions of governmental authority in checkerboard areas.
Issues Surrounding Fractionation

Fractionated Heirship

Inheritance provisions of the Allotment Act of 1887 stipulated that when the owner of a piece of property died, the BIA was to give each heir an undivided share, which had not been partitioned or physically divided. The BIA simply ‘divided the land on paper”. The number of owners per parcel began to grow with each generation.

These provisions were changed in 1910 when Indians could then write wills. However, to this day the BIA continues to divide land on paper. As Trustee, the Federal Government has not promoted options such as partition, convey, will or exchange of undivided interest. Consequently, parcels become more fractionated with each generation.

As an example of continuing fractionation, consider a real tract identified in 1987 in Hodel v. Irving (481 U.S. 704 (1987):

Tract 1305 is 40 acres and produces $1,080 in income annually. It is valued at $8,000. It has 439 owners, one-third of whom receive less than $.05 in annual rent and two-thirds of whom receive less than $1. The largest interest holder receives $82.85 annually. The common denominator used to compute fractional interest in the property is 3,394,923,840,000. The smallest heir receives $.01 every 177 years. If the tract were sold (assuming the 439 owners could agree) for its estimated $8,000 value, he would be entitled to $.000428. The BIA estimates the administrative costs of handling this tract to be $17,156.00 annually.

Since 1987, this tract has become further fractionated and now has 505 owners. If the tract were sold (assuming the 505 owners could agree) for its estimated $22,000 value, the smallest heir would now be entitled to $.00001824. (Nordwall Testimony, p4)
To continue to divide land on paper has devalued the land. The Indian landowner becomes further and further from the use and control of his / her land interests. The following chart illustrates the problem of fractionated within a five state area.

Data provided by Northwest Area Foundation

Fractionation of Indian Lands
A Case Study

Ben Sherman was interviewed for this paper. He wrote the following account regarding fractionation of his family’s allotted homeland on Pine Ridge Reservation in South Dakota. Associated records and maps are found in the appendix.

The Sherman Land
May 4, 2004

The Sherman land is on the Pine Ridge Indian Reservation in South Dakota, about two miles northwest of Kyle. This is the homeland of the Oglala Sioux Tribe. The Sherman land consists mostly of rolling hills, with American Horse Creek flowing through the middle of the land. Four generations of Sherman’s have lived on the land.

It is a long narrow lot, measuring 440 ft. wide and 2,640 ft. long, for a total of 26.66 acres. The land is defined as restricted Indian lands held in trust by the United States.

It was once part of a larger allotment of 320 acres owned by Rattling White Feather. She was born in 1835 and died in 1917 after four marriages. Her third husband was Thomas Glode, father of Lizzie Glode. Lizzie Glode inherited 80 acres, which was partitioned from 320 acres and split among four sisters.

Lizzie Glode married Frank Sherman. When Lizzie died in 1934 she left a will that partitioned the 80 acres further among three of her children, William, Emma and Rosalie Sherman. That left 26.66 acres to each heir.

The land of William Sherman is what is now called the Sherman land. William died intestate in 1945. Without a will, the land went through probate, a process that took 12 years, being completed in 1957. The
undivided interests in the land went to William’s wife Victoria (1/3), and the
six children of the marriage each received a 1/9 fractionated interest.

Victoria Sherman died in 1951 without a will. Another probate gave 1/9 of
the land to her second husband, and 1/27 fractions to each of her children
and their estates. This gave each of the children of William and Victoria
and their estates an undivided fractionated interest of 4/27.

William and Victoria had one son; Mark Sherman, Sr. Mark was able to
acquire two of his sisters’ undivided interests in the land, making his
ownership 12/27. When Mark died in 1980 he willed his entire interest of
12/27 to his wife Alice Sherman. She is the largest single owner of the
26.66-acre plot of land.

William’s daughter Evelyn died in 1961 and willed her interest to her
surviving husband and two children. Her husband, a California white man,
has since died and the 4/81 interest in the Sherman land is in his estate,
about which nothing is known at this time. The Oglala Sioux Tribe
converted the 4/81 undivided interest from trust to fee land, since non-
Indians cannot own trust land.

Because of additional deaths of heirs in the family, the smallest
fractionated interests are 1/108. One of the interests is owned by a lady
from the Navajo Nation who married into the family, and who has never
been on the Sherman land.

Members of the family are beginning to have discussion about
consolidation of the many interests in the land. The major interest is in
finding ways of keeping ownership within the immediate family, among
family members who are most likely to use and enjoy the land. Although
there are small-fractionated ownership interests, there are less than 30
total owners.
The extended Sherman family continues to enjoy the land. There are springs on the land that flow cold and strong year-round. The land is abundant with natural herbs and wild berries.

Outside Kyle, South Dakota near the Sherman Land on Pine Ridge Reservation

Following is a review of some of the issues that contribute to Fractionation. Of these, the first two, adequate land records and the probate process are of greatest concern.

**Land Records**

The BIA’s current system to keep track of trust land is obsolete. There is no comprehensive database of information. Much work is required to improve the quality of data access as well as the timeliness in providing the data to tribes and individuals. Many times the closest Indian owners get to their land is a computerized listing of their interest holdings – and this is provided at the discretion / whim of the BIA realty officer. This information is critical if Indian landowners are to exchange and consolidate their fractionated land holdings. Ironically, this same information is readily available to non-Indian lessees who
wish to lease Indian land. Within the eight state region of Washington, Oregon, Montana, South Dakota, North Dakota, Idaho, Iowa and Minnesota, only six tribes have developed and rely on their own land database. Others use the obsolete LRIS (Land Records Information System) and the IRMS (Integrated Records Management System) maintained by the BIA. Without an adequate informational system, promoting consolidation of fractionated title will be cumbersome and time consuming.

In some cases, BIA employees have used the Privacy Act to prevent Indian landowners from getting information about their land. Thus, the names of co-owners have not been accessible to one another. This is a misuse of the Privacy Act. The Privacy Act does protect information on people such as their personnel or medical files that would be an invasion of privacy. However, land records can not be restricted if ‘their reasons for requesting access to the records would involve a desire to ensure that the rights of the allottee’s heirs are protected…”. But Indian people are being told they cannot obtain the names and addresses of other land co-owners. Idaho Legal Services has filed a suit addressing abuse of the Privacy Act on the Fort Hall Indian Reservation.

Documents that should readily be available to landowners from the BIA or Tribal Realty Office as follows:

1. Landowner Inherited Interest Card.
2. Land Status Map.
3. Lessor Income Card. (If the land is leased.)
2% Rule of the Indian Land Consolidation Act of 1984

Enactment of the Indian Land Consolidation Act was hurried through the House Interior Committee and left many tribes unaware of the Act’s existence until months after the President signed the bill into law. Section 207 is what has become known as the 2% rule. Under this provision, the federal government took ownership interests of 2% or less and transferred them to the tribe without compensation or even notification to the individual landowner.

The Supreme Court declared this provision unconstitutional on two different occasions, in Hodel v. Irving, 1987 and again in the Supreme Court ruling Babbitt v. Youpee, 1977. Although transfers (escheats), which have occurred under this
act, are considered null and void and must be returned to the rightful heirs or beneficiaries, there has been no positive action to return the 2% interests.

It is common to have a 2% ownership or interest in a corporation. There would be uproar in the greater society if 2% interests were taken from owners and given to the state without the owner’s knowledge of consent. Yet, this is what occurred on reservations with allotted trust lands.

**Leasing of Indian Land - Facts**

- Nine million agricultural acres of trust land.
- Six million acres of trust land is leased out to non-Indians
- Three million acres of trust land is leased to Indians
- Most Indian land is leased far below fair market rates. People off reservation are paying much more for the same kind of land. This is due to Indian people not knowing what fair market value is.

After generations of leasing Indian land, the non-Indian lessee begins to think of the land as theirs. When one landowner remonstrated with the farmer for trespassing, the farmer's reply was “You don’t own this land. It belongs to the BIA.” To manage leased lands, fractionation becomes an issue when the largest obstacle is locating and then obtaining the approval of all listed landowners. This requires access to ownership records held either at the BIA office or tribal realty offices. There are multiple different leases, depending on the land use. They include:

<table>
<thead>
<tr>
<th>Agriculture: farming and ranching activities</th>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td>Recreational</td>
</tr>
<tr>
<td>Pasture</td>
<td>Pasture/Haying</td>
</tr>
<tr>
<td>Farm</td>
<td>Farm/Pasture</td>
</tr>
<tr>
<td>Haying</td>
<td>Solid Minerals</td>
</tr>
<tr>
<td>Oil &amp; Gas</td>
<td>Timber</td>
</tr>
</tbody>
</table>
Fractionated heirship makes it more difficult for the land to be leased out, but easy for the landowners to be cheated. It’s easier for the BIA to mismanage the land, because most Indian owners don’t know who their co-owners are. When they go to the BIA asking for a list of names so they can get all the owners together and demand a better lease rate, they’re denied that information on the grounds that it violates the Privacy Act, yet the BIA will freely give that same information to the non-Indians who want to lease the land so they can gather signatures.

The following article about the leasing situation at Fort Hall Reservation in Idaho, illustrates what is occurring on reservations elsewhere. The locations and names change, but the situations are the same.

“Ernestine Werelus, a founding member of and spokesman for the Alliance said the organization negotiated five-year leases on 17 units of land totaling 9,958 acres that were up for renewal this year. An abstract she prepared shows the landowners will receive $2,075,197 more income than they received under the old five-year leases negotiated by the BIA. She said the BIA handles between 700-800 leases on the reservation, with some 200 coming up for renewal annually. “Imagine what the increase would be if we got to negotiate all of the leases that the BIA handles each year.”

(Morning News,)
Solutions to Fractionation

At the core of all solutions to fractionation is the principal of consolidation. There are many options for consolidation. Several are listed and discussed below. Of the seventy-five tribes in the eight state region of the Northwest, 22 have land consolidation plans. This number is growing. Tribal leaders across the nation are learning from one another and the issue of land management, acquisition and consolidation has come to the forefront of their concerns. The realization that land equates to economic benefits for their communities and tribal members is a hot topic at conferences, workshops and other tribal leader functions.

Land Consolidation

The services of Tribal or BIA Realty or land offices are important in helping to access or appraise land values, taking into consideration land descriptions, income history, timber cruises, oil and gas information or any marketable minerals/resources on the allotment, as well as any improvements that have been made. Federal law requires land exchanges to be of ‘substantially equal value’. Most often, exchanges are calculated based on a rough idea of what the value per acre is.

An example of how to calculation the value of the interest per acre for exchange land may be as follows:

- Allotment A is worth $50 / acre. Ten acres are valued at $500
- Allotment B is worth $100 / acre. Ten acres are valued at $1000
- For the exchange to occur the difference of $500 would have to be made up in either cash, or it could be done with other property owned by the parties involved.

Many tribes have begun planning for development of land consolidation programs. An adequate consolidation plan would be comparable to what today is known as the Integrated Resource Management Plan. As suggested by the
Indian Land Working Group’s 1999 report, “to be effective, a land consolidation plan:

- Should have input from all reservation landowners by way of a documented community-based planning process.
- Must not conflict with, but encompass, tribally established land use/zoning ordinances.
- Should include an educational component that will bring allotted land owners from a status of absentee landlords who receive only lease income to participating knowledgeable lessors or land users.
- The owners must be educated about the benefits of consolidating fractionated interests for potential home site, ranching, and grazing and commercial opportunities.
- Should include a process for title consolidation such as gift deed, sale and exchange among co-owners.

Land Exchange

Land exchange is a form of consolidation, illustrated in the following charts.

**Land Exchange Example, Before Exchange:**

<table>
<thead>
<tr>
<th></th>
<th>Brother #1</th>
<th>Brother #2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel A</td>
<td>1/8</td>
<td>1/8</td>
</tr>
<tr>
<td>Parcel B</td>
<td>1/4</td>
<td>1/4</td>
</tr>
<tr>
<td>Parcel C</td>
<td>1/8</td>
<td>1/8</td>
</tr>
</tbody>
</table>

Brother #1 wishes to exchange his interests so that he has an interest in only one allotment parcel instead of three. He therefore gave Brother #2 his 1/8 interest in both parcel A and C. In return, Brother #2 gave him the ¼ interest in parcel B. This exchange resulted in each of them having ownership in less parcels. The following illustrates the result of this possible exchange combination:
After Exchange:

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Brother #1</th>
<th>Brother #2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel A</td>
<td>0</td>
<td>1 / 4 (His own 1/8 plus the 1/8 Brother #1 gave him)</td>
</tr>
<tr>
<td>Parcel B</td>
<td>1 / 2 (His own ¼ plus the ¼ Brother #2 gave him)</td>
<td>0</td>
</tr>
<tr>
<td>Parcel C</td>
<td>0</td>
<td>1 / 4 (His own 1/8 plus the 1/8 Brother #1 gave him)</td>
</tr>
</tbody>
</table>

The above is a simplification of the exchange processes. In reality, it is more complicated than the above charts. Land exchanges are not done acre for acre. Instead they are exchanged dollar for dollar or value for value. For example, an exchange for 10 acres of range land in allotment "A" may or may not result in 10 acres of farmland when farmland may be worth more per acre.

Co-owners may agree to conduct a land exchange. However, under current regulations, if even one of the owners will not agree to the exchange, the exchange will not proceed. The BIA can't force the exchange, owners must all agree. There is legislature pending (H.R. 4325 (Title III) that will make land consolidation through leasing, buying, selling or trading, easier.

Partition

Co-owners of a parcel of fractionated land may come to an agreement to divide the land. Under this agreement, they would divide the land into specific parcels and then decide who would eventually own each parcel when the transaction is final. In an interview with Lehigh John of the Yakima Nation in Oregon, he stated that currently, partitioning is rarely used or applied.
Land Acquisition

Tribes and individuals seeking to consolidate allotted and fractionated land holdings often experience difficulty in obtaining the financing to do so. Fourteen tribes have land acquisition financing for individuals. These typically are through a tribal credit enterprise. These are lending programs in nature and typically do not provide other assistance or education on how tribal members can consolidate their fractionated interest, what lands are for sale or payment options for acquisition loans. The Lakota Fund in Kyle, South Dakota on Pine Ridge Reservation has a lending program in place. Additionally, there are other financing sources such as the Farmers Home Administration loans to low-income farmers and ranchers. But these sources are not widely known about or used due to limited access of information by individual tribal members.

Estate Planning: Wills / Life Estates / Gift Deeds

Without estate planning, a whole tract of land can become fractionated in just a few generations. Estate planning has not been promoted among Indian people. This has resulted in high backlog of probate cases currently pending on reservation lands. Additionally, tribal inheritance codes have not been implemented by all Tribes to prevent Indian lands from going out of trust status. Unless a tribe has an inheritance code preventing non-Indians from inheriting trust land, state probate law prevails. Tribes gained authority to establish inheritance codes under Section 206 of P.L. 98-608, 98 Stat. 3171.
Tribal Models Addressing Fractionated Land Issues

To prevent land from becoming further fractionated as it is passed from generation to generation, and to keep land in Indian ownership, many tribes are initiating programs or organizations to monitor land-fractionated interests and to establish solutions. There are various models of what tribes are doing to address the issues of land fractionation. Following are two examples. Although each has a different focus or organizational structure, each addresses the same issues of fractionation and the future management of their lands.

Confederated Tribes of the Umatilla Indian Reservation

The Umatilla have developed a plan for land acquisition and consolidation known as the “New Nation Project”. This is a 50-year plan by which CTUIR and tribal members can regain use and control of their lands. The project provides strategy with three areas of focus:

1. Land acquisition
2. Consolidation of fractionated lands
3. Effective land management

The above three land management strategies are tied directly to their long-term goals for “Social”, “Economic”, and “Cultural development”.

A key element of the New Nation Project is the development of a comprehensive database for all lands within the boundaries of the reservation. This database includes information regarding ownership interests and names, location, productivity, income, cultural characteristics, zoning, lease descriptions and permit information, current use, potential use, easements and off-reservation land use for lands adjacent to the reservation. The database is located and managed by the Department of Enrollment & Planning within the CTUIR offices but has links to the LRIS (Land Records Information System), the BIA Realty and the GIS Land Status information.
Prior to the development of the New Nation Project database, land information was located in various locations, including the BIA, multiple tribal offices and the Umatilla County offices. This made it extremely difficult for landowners or others to access the information required for management of their land interests.

“The New Nation Project provides assistance to individual tribal members in land exchange and/or consolidation of the land interests. The project accomplishes this by now being able to provide a response to inquiries from tribal members about parcels they own and the names and contact information for the co-owners.”

Rosebud Sioux Tribe

TLE (Tribal Land Enterprise) is the Rosebud Sioux answer to land consolidation. TLE was established in 1943 and is organized under the authority of the Rosebud Sioux Tribal Charter and the Indian Reorganization Act of 1934.

TLE is a business enterprise, which acquires and manages land. Its goals are to:

- Remedy the problem of fractionation,
- Provide a plan for consolidation of individual interests for economic purposes,
- Develop economic enterprises on land occupied by Indian communities within the Rosebud reservation, and
- Provide a long-term land-buying program for the benefit of the Tribe and Tribal members.

Rosebud Reservation consists of over 600,000 acres in five counties. TLE acquires tribal lands through the flexible use of TLE certificates. Tribal individuals can exchange their fractionated interests for TLE certificates.

A certificate of interest in TLE is similar to a stock or bond. It represents a share of ownership in the organization – and has value as such. An individual can
keep the certificates, and receive dividends along with the Tribe; or convert all or a portion of the certificates into cash.

TLE provides an opportunity for tribal members to consolidate and acquire lands. Without this option, many individuals would be inclined to remove their lands from trust status and sell it. This carries with it the possibility of further reducing reservation lands owned by tribal members.

Another aspect TLE focuses on is concerning non-member ownership. Non-member ownership may occur for instance, through marriage of two Indian people from different tribes. This situation complicates the title to the land and complicates any activity on the land. Often the non-member ownership in a parcel is greater than the ownership by members from that reservation. Economically, this is important when economic benefit derived from the land goes off the reservation to non-members who live somewhere else.

A solution to this problem is an Intertribal Land Acquisition and Exchange Plan. The Oglala Sioux Tribe is also located in South Dakota not far from the Rosebud Sioux Tribe. Both tribes have entered into an Intertribal agreement for Land Acquisition and Exchange. Under this agreement, TLE can purchase land or interests in trust land, which are offered for sale on the Pine Ridge Reservation and likewise, the Oglala Sioux Tribe, would purchase the same on the Rosebud Reservation. Land purchased under this program would then be set aside with the purpose of allowing tribal members to exchange land they own on another reservation for land on their own reservation. This plan facilitates the efforts of both tribes to consolidate land holdings and prevent further erosion of their land base. Additionally, it serves to bring more land ownership under tribal members ownership.

For an intertribal exchange to be legal, federal law requires that the governing bodies of each tribe have jurisdiction consents in writing for the acquisition. Additionally, selling fractionated interests to the Tribe does not require permission of other landowners.
Fractionation – Currently In The News

Cobell v. Norton

Since the allotment policy was created there has been a general underlying trend on the part of the Department of Interior to lease Indian land to non-Indians. Today, of the 9 million Indian-owned agriculture acres, 6 million is leased to non-Indians. Additionally, timber and mining leases have been granted to non-Indian corporations. Due to fractionation and mismanagement of records, owners have a difficult time accounting for the lease income that may be derived from their land. They receive a lease revenue check in the mail with no identification of the allotment from which it originates, or for that matter, any descriptive information at all. This has resulted in a class action suit on behalf of Indian landowners for mismanagement of the 500,000 individual Indian money accounts.

Elouise Cobell, a banker and Blackfoot from Montana inherited some land from her parents. When she realized that government checks in payment for farming, grazing and timber-cutting on her families property arrived in a haphazard way, some years the checks arrived, but many years they did not, she decided to file a class-action lawsuit on behalf of nearly a half-million Indians. In 1996 she challenged the government to rectify what she described as a collective wrong dating back more than a century. The lawsuit highlights the fact that there was never an accounts receivable system operating in the BIA. Simply put, this means that as millions of dollars of lease payments were gathered, there was no system in place to check whether or not the correct amount was received. The suit, filed in 1996, allows Indian account holders to pursue a full accounting of the trust funds.

Indian resources have been managed below the standards that have been set for the non-Indian world. Banks would never issue statements without reference to the funds deposited or withdrawn. However, this is precisely what the BIA has been doing for years.
It is against this backdrop that tribal communities have formulated goals for land recovery and management.

**Office of the Special Trustee (OST)**

Congress created the office of the Special Trustee (OST) in 1994. OST oversees the Interior Department’s effort to overhaul how it manages Native trust funds. It was designed to help the Bureau of Indian Affairs become more efficient and to end decades of trust fund mismanagement. OST will handle the ‘fiduciary trust’ side of trust services such as collection and distribution of oil, gas and lease payments. The BIA on the other hand, will be responsible for the “non-trust’ functions of land and natural resources management, probate and economic development.

OST is conducting a series of meetings at various locations throughout the country to introduce and define the OST ‘to-be’ project. ‘To-be’, as described by OST staff will eliminate redundancies, reduce backlogs and provide trust officers at the local level.

A main objective of OST is to maintain a verifiable system of records that “is capable, at a minimum, of identifying the location, owners, encumbrances, resources, rents and value of trust lands and resources”. (Trustfix.com) The intent is to establish a system of records that permits beneficial owners to obtain information regarding their trust assets in a timely manner and protect the privacy of such information.

Response to OST from Tribal leaders has not been favorable. In an ad run in the April 5th issue of The Native Voice, the headline states “Reorganization Is Moving Forward Without Consultation With Tribes”. Eighteen tribes from the states of Nebraska, North Dakota and South Dakota have formed The Great Plains tribal Chairman’s Association. In their regularly scheduled meeting on March 18, 2004, the Trust Reorganization, they passed a resolution to ‘remove any Trust Officers or Deputy Superintendents off their reservations as according to their respective Exclusion Code pursuant to their Tribal Laws.” (The Native Voice)
OST responded that “the Trust Reorganization has already left the station and that the reorganization is inevitable and the Tribes were consulted”. However, according to a great number of Tribes across the Nation, this is not true and they all share the common statement that they were not consulted. And further, the Great Plains Tribal Leaders all agree that the OST’s definition of ‘consultation’ is to gather all the Tribes together and inform them about the Trust Reorganization. “True consultation is when the tribes and the Government sit at the table together and negotiate and come to an agreement and this did not happen”, said Chairman Frazier. (The Native Voice, 4/15/04 p A2)

Tribal leaders would like to see an alternative plan wherein the majority of Trust function would remain at the Agency level. Both The Great Plains Tribal Chairman’s Association and the National Congress of American Indians call for a halt to the Reorganization.

On May 7, 2004, Senator Tim Johnson (D-South Dakota) asked for a “far-reaching investigation into the Office of Special trustee, citing concerns over the expansion of an agency originally designed to oversee, but not implement, trust reform”. (www.indianz.com, 5/7/2004)

**Probate Reform**

Probate cases are sometimes pending for up to ten years after death of an Indian trust landowners. The BIA can’t keep up with the increasing fractionation of Indian allotments. It costs the BIA more to manage fractionated land than it is reportedly worth. As a way to reduce fractionation of Indian lands while protecting the rights of tribal members and governments, Senator Ben Nighthorse Campbell, chairman of the Senate Committee on Indian Affairs introduced S.550 (Probate Reform Act of 2003). The heart of the American Indian Probate Reform Act of 2003 is the creation of a uniform probate code. Currently, Indian trust landowners are subject to more than thirty state probate laws, creating confusion and leading to disparate treatment. Under these
conditions, the problem of probate creates havoc in resolving fractionation. The following graph illustrates the seriousness of probate.

### Backlogged Indian Land Probate Cases by Area Office

<table>
<thead>
<tr>
<th>Area Office</th>
<th>Estimated Number of Backlogged Probate Cases</th>
<th>Number of Decision-Makers</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen, South Dakota</td>
<td>1,256</td>
<td>2</td>
<td>15-30 deaths per month</td>
</tr>
<tr>
<td>Billings, Montana</td>
<td>2,001</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Minneapolis, Minnesota</td>
<td>1,018</td>
<td>2</td>
<td>Many allotments</td>
</tr>
<tr>
<td>Portland, Oregon</td>
<td>645</td>
<td>1</td>
<td>Decision-maker shared with Sacramento</td>
</tr>
<tr>
<td>All Others</td>
<td>2,872</td>
<td>3</td>
<td>Outside of Northwest Area Foundation</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,792</strong></td>
<td><strong>10</strong></td>
<td></td>
</tr>
</tbody>
</table>

Data provided by Northwest Area Foundation
Conclusion

Fractionation of Indian trust lands has a long history stemming from the federal Indian policy of the 19th Century. Fractionation of Indian land occurs when land passes from one generation to the next and more and more heirs acquire an undivided interest in a common parcel of allotted land. Fractionation is a complex and emotionally charged issue due to cultural differences, historical federal Indian policy and mismanagement of trust responsibility by the Department of the Interior. Both Congress and the Department of the Interior are attempting to address this complex issue. Likewise Tribal governments are working to implement tribal codes and processes to alleviate these issues on their individual reservations. Organizations such at Indian Land Tenure and the Indian Land Working Group also address fractionation by offering assistance to tribes through workshops, curriculum and through financial programs for Indian land acquisition.

The Cobell v. Norton lawsuit is only somewhat closer to resolution than several years ago. In just the last month, two significant developments occurred. Alan Balaran the court-appointed special master for the case since 1999 resigned on April 5, 2004. He stated reasons of continued interference from the Interior Department. Secondly, it has been agreed with the government to appoint two mediators who may be able to help resolve this dispute. Additional developments are announced weekly, but progress is moving slowly.

Likewise Probate Reform is moving slowly ahead. The government and tribal interests differ on the exact details of the code and how the process should be carried out. The Bush administration is lobbying for changes that would give the Department of Interior greater authority to take unclaimed property, partition Indian lands, close Individual Indian Money (IIM) accounts and consolidate ownership. Tribal leaders are pushing for a bill that would strengthen their sovereignty. D. Fred Matt, chairman of the Confederated Salish and Kootenai Tribes of Montana, called for provisions to allow probates to be processed by
tribal courts, not the BIA, and said tribes, not the BIA, should have a first right to purchase fractionated parcels. (Indianz.com 10/16/2003)

Solutions to fractionated ownership of Indian land are in the beginning stages. Obstacles include the need to improve ownership records systems, recruitment of qualified staff at tribal or regional locations and reducing the probate backlog. Until these issues are resolved, solutions are not possible.

Fractionation continues to increase in complexity with no real solution currently in place. Wayne Nordwall, Director, Western Region BIA, appropriately summarized the current status of fractionation when he spoke to the Senate Committee on Indian Affairs. Both Federal officials and tribal leaders can agree.

“If we don’t fix it at this point, within eight or ten years this is going to become de facto communal land. On any given day, no one is going to know who owns the property.” (Indianz.com 10/16/2003)
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Appendix

1. Glossary of Terms


5. Office of the Special Trustee For American Indians

6. Article: The Great Plains Tribal Chairman’s Association Takes Steps To Address The DOI’s Trust Reorganization Fiasco

7. Hone, Emily, Morning News, Landowners want more money for reservation farming,

8. Chart: Indian Land Consolidation Acts and Amendments as codified in USC Title 25

9. Report: Profile of Land Ownership at 12 Reservations

10. Article: Johnson seeks investigation into OST expansion

11. Sherman land records and documents:
    a. Allotment or Estate Record
    b. Chart, Section Description
    c. Map: Pine Ridge Reservation Land Status as of 02/24/86
Glossary of Terms

**Allotment:** the original piece of land given to a person beginning in the late 1800’s usually totaling 160 or 80 acres. This occurred when the federal government was trying to break up reservations and sell any “surplus” lands to non-Indians as homesteads.

**Allottee:** the original individual owner named on the allotment. Future owners are known as heirs, but are frequently referred to as allottees.

**Escheat:** the transferring of land to the state or sovereign, by reason of lack of anyone to inherit or by reason of a breach of condition.

**Fee Land:** non-trust lands that the federal, state, and county governments have the power to tax. In some cases the courts have ruled that if an Indian owns fee land within the reservation, the owner doesn’t have to pay taxes.

**Fractionation:** to divide or break up, to separate into different portions. The process whereby more undivided interests are created; the ongoing process that causes the number of owners per allotment to increase with each generation.

**Probate Court:** When a person passes away, this court resolves any disputes over your property and distributes legal title to your land and other property to your heirs. Trust property, such as land or money in an Individual Indian Money account is handled by the Administrative Law Judge, Department of Interior, Office of Hearings and Appeals.

**Restricted Land:** land to which the tribe holds legal title, but the government can place restrictions on what the tribe can do with it. For example, the tribe must have the consent of the Secretary of the Interior to sell or exchange a piece of land. The deed is in the tribe’s name, however, and they have true ownership of the property, with mineral, water, and other property rights.

**Trust Land:** land to which the U.S. holds legal title and tribes or individuals hold beneficial title; both the tribe and its members can occupy and use the land and

Fractionation of Indian Lands
benefit from any income it may produce, but they do not own it, since the deed reads “property of the U.S.”

**Undivided Interests:** Each time an owner passes away, instead of dividing the land physically into smaller parcels, the BIA divides the land on paper, e.g. 80/120. Each co-owner shares in the tract along with the other owners. Things like lease or rental income are calculated according to the size of the share.