

# Planning for the Passing of Reservation Lands to Future Generations



March 2009

## FACT SHEET # 11

### Partitioning an allotment

The American Indian Probate Reform Act of 2004 (AIPRA) allows a tribe or co-owner to request a partition of a *highly fractionated parcel* of trust or restricted land\*.

Under AIPRA a *partition* removes all other co-owners, consolidating 100 percent interest in the parcel for the tribe or the co-owner seeking the *partition*. This fact sheet provides general information about the *partition* process. For specific information about the *partition* process contact your local Bureau of Indian Affairs realty office.

#### What is a highly fractionated parcel of land?

AIPRA defines a *highly fractionated parcel* of land as one with:

- 50-99 co-owners with no individual holding an *undivided interest* greater than 10 percent or;
- 100 or more co-owners

#### Who can initiate the partitioning process?

AIPRA places limits on who can initiate the partitioning process and the purchase of an *undivided interest*. Only an *eligible bidder* can initiate the

*partition* of a highly fractionated parcel of trust land. Under AIPRA, an *eligible bidder* is defined as one of the following:

- The Indian tribe with jurisdiction where the highly fractionated trust parcel is located if it owns an *undivided interest* in the parcel.
- Any person who is a member or is eligible to be a member of the Indian tribe where the highly fractionated trust land is located.
- Any person who is a member or is eligible to be a member of any Indian tribe who already has an *undivided interest* in the highly fractionated trust land at the time of the partition.
- Any lineal descendent of the original allottee of the parcel who is a member or who is eligible to be a member of the Indian tribe where the highly fractionated trust land is located.

If any one of these requirements are met, the individual or tribe is considered an *eligible bidder* and can initiate the *partition* process to purchase the interests in trust land. The partitioning process can be initiated by an *eligible bidder* at any time.

\* Except Alaska, the Five Civilized Tribes, and Osage.

## How does the partition process start?

To begin the partitioning process, the *eligible bidder*, must complete a *partition* application. The application is available from the local Bureau of Indian Affairs (BIA) office.

The completed application is submitted by the BIA to the Secretary of the Department of Interior who will respond with an estimated cost of the *partition*. The fee can be paid in cash or with a bond. In some cases the Secretary may waive the payment or bond so the *partitioning* process can be continued. After the Secretary receives the payment and determines that the application is for a *highly fractionated parcel*, the process of getting consent from all the other co-owners begins.

## How does a co-owner get consent from the other owners?

Guidelines were included in AIPRA for obtaining consent from the co-owners in a parcel. Consent for a *partition* is required from the following:

- Indian tribe where the highly fractionated *undivided interest* is located, but only if the tribe also owns an interest in the parcel.
- Any owners who have been living on or have been operating any type of business on the parcel for at least three years before the Secretary received the application that requests a *partition* of the land.
- Any owner who has at least 50 percent of the interest in the parcel but only in cases where any one owner's total interest in the parcel has a value in excess of \$1,500.

The applicant is responsible for getting the requested consents from the co-owners. A Land Owner Schedule (LOS) report can be obtained from the BIA that lists the names and mailing addresses of all the co-owners. By law, any co-owner in an allotment may request and obtain the names and mailing addresses of all co-owners in the parcel.

If heirs or co-owners cannot be located, the Secretary can give consent on their behalf, but only after a search for the individuals has been completed. The Secretary can also give consent for minor and legal incompetent individuals.

Consents from co-owners must be in writing and acknowledged before a *notary*. If an applicant fails to obtain the appropriate consents from co-owners, the Secretary may either extend the time for obtaining additional consents or deny the request for the *partition*.

## What happens after consents from co-owners are obtained?

The Department of Interior sends a written notice to all co-owners stating that a *partition* has been requested. The notice will include the following:

- 1) Information that a proceeding to *partition* the land by sale has begun.
- 2) A legal description of the land.
- 3) Amount of the co-owner's interest in the land as listed in the BIA records at the time of the appraisal.
- 4) Results of the appraisal.
- 5) Owner's right to receive a copy of the appraisal upon written request.
- 6) Owner's right to comment on or object to the proposed *partition* and the appraisal.
- 7) Information about the right to appeal. A co-owner must comment on or object to the proposed *partition* or the appraisal in writing to be eligible to receive notice of the approval of the appraisal and the right to appeal.
- 8) Date by which the owner's written comments or objections must be received, (no less than 90 days after the notice was mailed).
- 9) Address for requesting copies of the appraisal and for submitting written comments or objections.
- 10) Name and telephone number of the official to be contacted to obtain information about the proceeding. Included are the time and date of the auction of the land or the deadline for submitting sealed bids.
- 11) Any other information the Secretary deems appropriate.

The notice will be sent to all current co-owners by certified mail to the addresses that appear in BIA records. Public notices will be posted in the tribal newspaper and in the surrounding county/city newspapers. Notices will also be posted at the tribal

business center offices on the reservation where the parcel is located.

### **Can the co-owners object to the appraisal?**

After the notices have been sent out, co-owners can respond with comments, objections or appeals about the appraisal. Based on the comments submitted by the co-owners, the Secretary can either order a new appraisal or approve the original one. If a new appraisal is conducted, a new notice will be posted, similar to the notice mentioned previously, stating the new appraisal value.

After the appraisal is approved, the Secretary will provide a notice by certified mail to the tribe with jurisdiction over the parcel of land and to all co-owners who submitted comments. This new notice will state:

- 1) The results of the appraisal.
- 2) That the co-owner has the right to review the appraisal.
- 3) Statement that the land will be sold for no less than the appraised value.
- 4) Time and date for submitting bids.
- 5) Right of the co-owner to appeal.
- 6) Time frame in which the co-owner(s) has to appeal the *partition*.
- 7) Consent by the co-owner or the Secretary if the value of that co-owner's parcel exceeds \$1,500.
- 8) Any other information that the Secretary deems appropriate.

### **How is the parcel sold?**

The parcel is now ready to be sold, either directly to the co-owner who requested the partition by a sealed bid or at a public auction. Only the *eligible bidders* are allowed to submit bids when the parcel is sold by auction or sealed bid.

### **Who can match the highest bidder?**

The Indian tribe where the *highly fractionated* parcel is located has the right to match the highest bidder. If the tribe wants to match the bid, the tribe must have a written resolution in the tribal code indicating that the tribe has a right to match the highest bid.

Any person who is a member or eligible to be a member of the Indian tribe with jurisdiction over the

parcel being sold and is, at the time of sale, the owner of the largest *undivided interest* in the parcel, has a right to purchase the parcel. This co-owner can pay the amount equal to the highest bid submitted at the sale, minus the amount of his or her share, but only if:

- 1) The co-owner placed a sufficient bid at the sale.
- 2) The co-owner's total *interest* in the parcel immediately prior to the sale was:
  - a. Greater than any interest held by another co-owner. There is an exception if there are two or more co-owners whose interests are of equal size but larger than the interests of all other co-owners. In that case, co-owners of the largest interests can agree in writing that one of them may exercise the right of the purchase, and;
  - b. Equal to or greater than 20% of the entire ownership of the parcel.
- 3) Within three days following the date of the auction or of receiving sealed bids, the co-owner delivers to the Secretary a written notice of intent to exercise the co-owner's rights.
- 4) The co-owner must provide the amount of the purchase price, no less than 30 days after the date of the auction or time for receiving sealed bids.

### **What if there are no bids?**

If there is a lack of bids or if there is a bid that is equal to or less than the final appraised value, the Secretary may purchase the parcel using acquisition funding on behalf of the Indian tribe where the *highly fractionated* parcel is located, or terminate the partition process.

### **When do co-owners get their money from the sale?**

After the sale, the Secretary distributes the proceeds to the co-owners of the interests. The amount is in proportion to their respective ownership interests. For example, if one of the co-owners owned a 10 percent *undivided interest* in the parcel that sold for \$2,000 the co-owner would receive 10 percent of the \$2,000 sale price or \$200. The money is deposited into each co-owner's IIM account.

Proceeds from the sale where co-owners' addresses, are unknown or not determined, or other persons whose ownership interests have not been recorded (such as those in the probate process) will be held by the Secretary until owners have been determined. After the probate has been settled, proceeds from the sale will be distributed to the other co-owners' IIM accounts.

### **What if co-owners refuse to forfeit their interests?**

If an individual refuses to forfeit his/her interest in the land parcel after the outcome of the partitioning process, the new owner or the United States may:

- 1) Begin a civil action in the district court in which the parcel of land is located.
- 2) Request that the court issue an order for *ejectment* or any other appropriate remedy necessary for the partition of the land by sale. An *ejectment* is a legal remedy that can be used to remove a person from wrongfully occupying real estate.

### **Summary**

AIPRA enables co-owners or the tribe where the interest is located to request a *partition of highly fractionated* trust lands\*. The land is auctioned off in a trust sale to the highest eligible bidder. These lands remain in trust.

After the sale, the Secretary distributes the proceeds into Individual Indian Money (IIM) accounts of the co-owners.

### **Acknowledgements**

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\* Except Alaska, the Five Civilized Tribes, and Osage.

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### **Disclaimer**

The information appearing in this fact sheet is presented for informational purposes only. The objective of the fact sheet is to help you develop an understanding of the American Indian Probate Reform Act (AIPRA). The contents should not be considered as legal advice or be used as such. For legal information specific to your situation, contact appropriate legal counsel with your tribe or an attorney.

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