

TERMINATION OF RESTRICTIONS ON AND CONVEYANCES
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2.2 Sale of Allotted and Purchased Lands, Exclusive of Inherited Lands of Five Civilized Tribes.

.1 Policy. The Bureau's responsibility for the sale or disposition of trust or restricted lands stems from the United States Government's responsibilities as trustee for the lands. Consequently, the sale or disposition of the lands shall be accomplished in such a manner as to properly discharge the responsibilities and obligations of a trustee to the owner of the land; namely, to assure:

- A. That the rights of the individual owners of the land are protected.
- B. That it is in the long-range best interest of the owners to sell their land.
- C. That, except in the case of gift transactions authorized by the regulations, the present fair market value is obtained for the owners. After exposure to the open competitive market, through advertisement for sealed bids, if the highest bid received is less than the appraised value, such bid may be accepted with the consent of the owner when the bid received approximates the appraised value and is, in the judgment of the Area Director, the highest price that may be realized in the circumstances (see 25 CFR 121.12).

In negotiated sales other than gift transactions authorized by the regulations, the negotiated sale price must be not less than the appraisal. See 54 IAM 2.2.3G.

- D. That every Indian landowner who applies for a sale is fully advised that mineral interests may be reserved in connection with a proposed sale. In each case in which the Indian applicant for a land sale is deemed to be in need of assistance in managing his or her affairs, it is mandatory, except as otherwise authorized, that all mineral interests be reserved where the land is prospectively valuable for mineral or minerals, including, of course, all instances where there is known value or development of minerals.

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The reservation of minerals in connection with the sale of lands in multiple ownership must be handled on the basis of uniformity of quantity of interest as between tenants in common. To do otherwise would complicate ownership records beyond the point of practicability. Thus, all owners will be required to agree on the quantity of interest, if any, to be reserved. Where one or more of the owners is deemed to be in need of assistance in managing his or her own affairs, the action required to be taken on behalf of such individuals will be governing upon all of the other owners as well.

The assistance of the Solicitor's field staff should be utilized in preparation of mineral reservation clauses to assure that such clauses are adequate and appropriate to reserve the minerals desired, and such incidents as are necessary to derive full benefits from the minerals reserved.

The execution of this policy requires that each field office processing applications for the sale of land must obtain reliable data regarding the classification of lands under its jurisdiction with respect to minerals. Information on the subject may be obtained from the Branch of Mineral Classification, Geological Survey, Washington, D. C.

Requests for assistance from the Branch of Mineral Classification should be confined to those instances in which reliable information is not presently available on the general classification of lands. Their response to inquiries will, of necessity, deal with areas and not with specific tracts. The Branch of Mineral Classification prefers that where lands within reservations are involved, two copies of maps be supplied covering the entire reservation; one copy of the map will be returned with their report for the entire area. However, isolated tracts outside of reservations will have to be handled on an individual basis and such requests should include a description of the land according to public land surveys. In the absence of such surveys, a map or plat will suffice. The reports will be confined to a classification as to prospective value.

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- E. That the interests of the tribe are protected to the fullest possible extent in any case in which the tribe has a legitimate and valid interest in acquiring the individual Indian property that may be offered for sale. The precautions which are required to protect this tribal interest are stated in Commissioner's policy statement issued May 12, 1958, as follows:

"Because of the evidence of widespread public concern and substantial public misunderstanding about the Indian Bureau's policy governing sales of Indian land, it seems essential at this time to state the policy that is being followed (and the reasons for it) as clearly and concisely as possible.

"It should be emphasized at the outset that what follows deals only with lands which are the property in trust of individual Indians. Tribally owned lands, which comprise roughly three-fourths of the Indian holdings currently in Federal trust status, lie wholly outside the scope of this discussion since they cannot be sold or alienated except as authorized by Congressional legislation. While there has been some slight diminishment of tribal holdings in the past few years in connection with Federal flood control projects (principally in the upper Missouri Basin), this has been much more than offset by the addition or return of more than 1,000,000 acres to tribal holdings during the same period since 1953. These additions have resulted either from tribal purchases approved by the Department or from legislation sponsored or endorsed by the Department.

"To put the current policy governing sales of individually owned Indian lands in proper perspective, it is necessary to review briefly the immediate historical background. During the 1930's and the early 1940's the Department followed substantially the same policy on land sales that is now being so strenuously urged by the outstanding critics of the present policy. In other words, it strongly discouraged individual Indian landowners from selling their holdings and permitted such sales ordinarily only to other Indian individuals or to tribal groups. During this period hundreds of Indian landowners who

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wished to convert their landholdings in excess of their needs into cash for various purposes were completely frustrated and tied to lands that may have produced little or no benefit to them. Where sales were permitted with the market limited to Indian purchasers, thousands of acres were sold at prices substantially below the returns that the Indian sellers might have realized if free and unrestricted bidding had been permitted.

"During the late 1940's the former policy of restricting the market to Indian purchasers began to break down as Indian landowners demanded to be allowed to sell their holdings for a maximum price. They developed the practice of going directly to Congress for individual legislation that gave them 'fee patents' or unrestricted title to their lands. Although the Department in this period generally recommended against the enactment of such bills, a great many of those introduced in each Congressional session were nonetheless enacted. A substantial acreage of individually owned Indian land was removed from Federal trusteeship through this process and undoubtedly the major portion of it was sold to non-Indian purchasers.

"The policy which the Department and Bureau have been following over the past few years, and especially since 1955, is based on a full recognition of the individual Indian property rights which are unquestionably involved. In allotting lands to individual Indians on many of the reservations and the public domain under Congressional law during the latter part of the 19th century and down through the 1920's, the Federal Government, in effect, gave these Indians a deed to the lands allotted. It thus vested in these individual Indians (and their rightful heirs) a valid property right, though under trust, fully equivalent, in the last analysis, to that enjoyed by any other American property owner.

"Under the system of free democracy few concepts are more centrally important than respect for individual property rights. This is in sharp contrast with the situation in the Soviet Union and other communist countries where individual property rights are either not

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recognized at all or regularly and systematically subordinated to the interests of the State or the larger group.

"At the same time, however, we are also fully aware of our trust responsibilities for tribal property and we recognize that many of the tribal organizations have a legitimate and valid interest in acquiring individual Indian properties that may be offered for sale. The problem, in essence, has been to work out a method for permitting the fullest possible development of sound tribal land acquisition plans without violating the property rights and interests of the individual tribal members.

"During the past four years the Department and Bureau have been giving a great deal of intensive study to this problem and we have recently developed a policy which, we believe, goes a long way toward attainment of the desired objective. The essential elements of this policy are as follows:

1. Wherever a single Indian owner of an allotment asks that his land be sold and, after careful examination of the circumstances in his case, a sale appears to be clearly justified in the light of his long-range best interests, a sale will be authorized.

2. In all such cases the tribal organization will be notified that the particular allotment is being offered for sale. This will give the tribe an opportunity to negotiate a purchase with the owner. If the owner insists on competitive bidding, he will be specifically asked whether he is willing to let the tribal organization meet the high bid that may be offered. The land will then be advertised for sale and sealed bids will be received. If all bids fall substantially below the Bureau's appraisal of the property's value, all will be rejected. If one or more of the bids are acceptable, the tribe will be given the opportunity to buy the land by meeting the high bid provided that the owner has agreed in advance to such an arrangement. If the owner has not agreed and one or more sealed bids ~~exceed the~~

an acceptable

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~~appraisal~~, the land will be put up for auction with the amount of the highest sealed bid as the floor of the auction bidding. This will give the tribe an additional opportunity to acquire the property in competition with other bidders.

3. In connection with Indian allotments which are in multiple ownership as a result of inheritance, the same general procedure will be followed with a few noteworthy exceptions. Such properties will be sold only if a sale is requested by one of the owners and approved by or on behalf of all the others. If any one of the owners is interested in buying out the others, he will be given first opportunity to purchase the land at the Bureau's appraisal figure unless one or more of the other owners object. A sale may also be made to one of the owners at less than the appraisal if the other owners are agreeable. If more than one of the owners wishes to buy the allotment, all of those interested will submit sealed bids and the property will be sold to the highest bidder. If none of the owners is interested, the property will be offered to the tribal organization at the appraisal price unless one of the owners object. If there is objection by an owner, then the procedure outlined under Number 2 above, involving sealed bids to be followed by an auction, will be used.

"The Department and its Bureau of Indian Affairs recognize that there are difficulties in the present situation which will hinder the tribes from full realization of their land acquisition and development plans even under the policy outlined above. One of these is the difficulty of securing the approval of frequently dozens of owners for sale of multiple-ownership lands as required under existing law. Another is the fact that many, perhaps most, of the tribes do not now have the financial resources needed for a substantial land purchase program. The Department and Bureau are now working to develop legislative proposals which we believe will go a long way toward eliminating these deterrents."

If a tribe, after full consideration of the foregoing policy statement, formally adopts a resolution expressing

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no interest in the purchase of lands which may be offered for sale at the request of its members, such sales may proceed without regard to the special procedures relating to tribal land acquisition. If a tribe has developed a land acquisition program which defines the precise geographical areas to which its interest is confined, sales of individual lands located outside of such areas may proceed without first referring the cases to the tribe. Where the tribal acquisition program is applicable broadly throughout the reservation and in cases where the lands are located within the boundaries of a specific program area, reference to the tribe as a preliminary step is mandatory. The requirement of referring cases to the tribe does not apply where public domain allotments, or other Indian lands, outside reservation boundaries are concerned. See 25 CFR 121.11 regarding notification to tribes.

- F. That recognition is given to the fact that in certain instances the Bureau of Indian Affairs has a dual responsibility; that is, its trust obligations extend both to the Indian landowner who is offering land for sale and to the individual Indians or the tribe who may desire to purchase the offered lands. The Commissioner's policy statement of May 12, 1958, previously quoted, contains not only the broad general principals of Bureau policy on this subject but the procedural details for its enforcement.

The Commissioner's memorandum of April 21, 1959, approved by the Assistant Secretary April 22, 1959, states the general principals and policy which must be observed in determining under what circumstances, individual Indians or Indian tribes may be permitted to acquire land in a trust status. The text of that statement of policy is as follows:

"From time to time questions arise concerning our policies on when Indians may acquire additional land in a trust status and when they will be required to acquire their additional lands in a fee status. I am writing this memorandum in an effort to clarify our policies in this field.

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"It should be understood that in setting down any general policy guidelines there will have to be some exceptions because of the great variety of situations. Moreover, these policy guidelines are for situations where we have administrative discretion and are subject to limitations found in various statutes or appropriation acts.

GENERAL OBJECTIVE

"It seems to me, our guiding principle can be stated quite simply.

"We will take lands in trust to provide protection and service to those Indians who are in need of it. It should be made clear to the Indian people that our policies are intended to help the tribes and the individuals acquire and keep additional lands when they need such help.

"Conversely, we will not take additional land in trust for Indians who now have the ability to manage their own affairs. I see no reason why an Indian quite able to successfully manage his own affairs should be permitted to acquire additional land in trust and receive a variety of free real estate services and tax exemption for his newly acquired land. It would be far better for the Bureau of Indian Affairs to be able to concentrate its efforts on assisting those genuinely in need of assistance and be relieved of providing protection and help to those Indians wanting more land who are highly successful through their own efforts in a business or a profession or as a farmer or cattleman with large holdings.

TRIBAL LANDS

"When a tribe is being given or otherwise acquiring Federally owned land by special legislation, a decision as to whether or not the tribe should receive the lands in trust is a matter for Congress to determine and we will ordinarily make no recommendations.

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"When the land is being acquired by the tribe without special legislation, if it is within the reservation boundary, the land will be taken in a trust status if the tribe so desires, regardless of whether it was held in trust or in fee by the grantor unless there is statutory prohibition.

"If the land acquired by the tribe is outside of the reservation boundary, title to it will be taken in fee unless there are very unusual circumstances, perhaps involving a land exchange.

INDIVIDUALLY OWNED LANDS

"If the Indian is unable to manage his own affairs without assistance, newly acquired land within a reservation will be taken in a trust status for him. This land may have previously been in either trust or fee status. Usually, of course, land to be acquired will be already in a trust status. There should be no hardship to local governments from some tracts going from a fee to a trust status, as in all probability, there will be a net increase from year to year in Indian land going out of trust and being placed on the tax roll.

"If an Indian is clearly able to handle his own affairs without assistance and desires to acquire additional land, he should be required to take the land in a fee status unless there are unusual circumstances such as reinvestment of funds resulting from the Government taking his former trust lands."

It must always be remembered that the United States may not legally be burdened with the obligations of trusteeship in the absence of authority from the Congress and further, that the authorities which have been delegated by the Secretary to take action affecting the title to Indian trust or restricted lands are based on statutory authorities enacted by the Congress. All of the statutes authorizing the sale of Indian lands provide for the issuance of patents in fee simple to the purchasers or provide that approval of the deeds executed by the Indian landowners shall operate to transfer title to the purchasers in fee simple, as though a patent in fee were

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issued. We must, therefore, look to other than our authorities for the sale of Indian land to find authority to permit acquisition by other Indians or Indian tribes in a trust status.

Perhaps the statute of broadest application in this respect is the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as supplemented by the Oklahoma Indian Welfare Act of 1936. The annual appropriation acts have for many years contained general authority for the use of Indian tribal funds for the purchase of land and have directed that the authorized purchases be in a trust status. The Act of March 2, 1931, amended June 30, 1932 (47 Stat. 474; 25 U.S.C. 409a), authorizes the Secretary to allow the reinvestment of the proceeds of the sale of trust or restricted lands in other lands selected by the Indian and provides that title to the land so selected and purchased shall be restricted in the same quantity and upon the same terms and conditions as the lands from which the reinvested funds were derived. There are a number of statutes of special application on particular Indian Reservations or to particular Indian tribes and members thereof, which authorize land purchases in a trust status. For example, statutes authorizing the investment of judgment moneys have contained this kind of authority. Statutes, such as the Act of September 2, 1958 (72 Stat. 1766), relating to the Fort Randall Dam and Reservoir Project and the Indians of the Crow Creek Sioux Reservation in South Dakota, contain special authority for the acquisition of land in a trust status to replace land acquired by the United States for the project.

Some of the statutory authorities for the acquisition of land for Indians make mandatory the taking of title in trust. Some of the authorities provide that they may be exercised by the Secretary of the Interior in his discretion. Under the 1931 and 1932 acts, for example, the Secretary may in his discretion require an individual Indian who is unable to manage his own affairs to take trust title to lands purchased with the proceeds of the sale of other trust lands even though the Indian might wish to acquire the land in fee simple.

It is within this total area of discretion which has been vested in the Secretary by the Congress that the foregoing

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statement of policy must operate. Policy may not be invoked contrary to the provisions of a mandatory statute nor to accomplish an objective which is not within the scope of statutory authority. It may prove helpful in clarifying the nature of the discretion which has been vested in the Secretary, to repeat that in every case where land is being purchased by an individual Indian or an Indian tribe, the United States may not be burdened with trust responsibility except as Congress has authorized, and that most such authorities vest discretion in the Secretary as to whether the use of the authority is to be permitted. This applies both to purchases with trust moneys and with non-trust moneys. Where trust funds are to be used for the purchase, the Secretary's discretion may also extend to determining whether the purchase of land is a wise and proper use of the money. Under a few special statutes (The Fort Randall and Crow Creek Act, supra), Congress has made the decision that land may be purchased with the money and that title shall be taken in trust.

By way of implementing the foregoing, the following criteria are established as guides to assist the field in determining when land may be acquired in trust and when it must be acquired in fee.

- (1) As outlined in the policy statement approved April 22, 1959, the competency factor is to receive primary consideration in connection with purchases by individual Indians.
- (2) An Indian who owns an undivided trust interest in property may acquire the interests of the other owners, whether they be presently held in trust or in fee, and may be permitted to take title in trust provided there is statutory authority therefor, without regard to the competency factor.

.2 Authority.

- A. Statutory. Sales of individually owned trust or restricted Indian lands, including allotments, Indian homesteads, and purchased properties on reservations or on the public domain, are authorized under the Acts

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of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); March 3, 1909 (35 Stat. 778); June 25, 1910 (36 Stat. 855), as amended by the Act of April 30, 1934 (48 Stat. 647; 25 U.S.C. 372); February 14, 1913 (37 Stat. 678; 25 U.S.C. 373); May 25, 1918 (40 Stat. 561); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

B. Regulations. The regulations governing the sale of individually owned trust and restricted lands are contained in 25 CFR 121.

.3 Procedures. In the procedures outlined in this section, no attempt has been made to prescribe the number of copies of documents to be prepared for field purposes. It will be necessary for each Area to supplement the instructions to provide copies for Area and Agency purposes.

A. Application for sale of land.

(1) An Indian owner or owners wishing to sell land must submit to the Superintendent completed Form 5-105. Applications for the sale of land held in multiple ownership may be executed by any Indian owner holding an interest in the land, but the application must be approved by or on behalf of all of the other owners, except as provided herein. The requirement in the May 12, 1958, policy statement that the consent to sale of all owners be obtained was modified by the Commissioner's letter to the Area Director, Sacramento, dated January 6, 1959, a copy of which was sent to all Area Directors, as to lands that can be sold pursuant to the Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), which authorizes the sale of trust allotted heirship lands without the consent of all the owners, upon a finding that one or more of the heirs is incompetent. This provision of the 1910 Act is applicable except where the lands are held subject to the Indian Reorganization Act and the Oklahoma Welfare Act. The authority granted by the 1910 Act should be exercised with caution in order to avoid the possibility of justified charges that the Bureau is selling Indian land without the

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consent of the owners. It is not possible to prescribe hard-and-fast rules which would govern every case; however, the use of the authority granted by the 1910 Act would be justified where land is held in complicated heirship status, the owners of a substantial percentage of the interest desire the sale, and no valid reason is advanced by the non-consenting owners for not selling. Also, in cases where a minority interest is held by an unprobated estate, or by a person whose whereabouts cannot be ascertained and the above conditions exist the use of the 1910 Act authority may be justified.

In obtaining the consent of the other owners to a proposed sale where consent is required, or in notifying the other owners of a proposed sale where the consent of all owners is not necessary, they shall be notified at the same time of the preference accorded by the foregoing statement of policy to the owners of property in heirship status to purchase the other interests therein.

- (2) Sales of undivided interests, where other undivided interests will remain in trust or restricted status, will not be made except to other owners of the land and to the tribe as herein provided.

Indian tribes may acquire undivided interests in inherited Indian land that is offered for sale or exchange, provided that such interests are acquired by the tribes for the purpose of consolidating lands in aid of the economic development of the Indian community or any of its members and/or as part of a tribal plan for ameliorating the social and economic problems created by the process of heirship and land fractionization.

- (3) All applicable questions on the application form must be fully answered.
- (4) Title status reports should be obtained and determination made that it can reasonably be expected that

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title can be conveyed, i.e., that, where necessary, guardians have been or will be appointed for minors and non compos mentis persons, and that there are no unprobated estates where the consent of all owners is required; that where fee patents are to be issued, there are approved Bureau of Land Management plats describing the parcel to be sold, etc.

- (5) The Superintendent shall determine, after consideration of the information in the application, the program outlined in Item 15 of the application, and such investigation as he deems necessary, whether a sale would be in the long-range best interests of the owners. In making this determination, which in most cases will be of great and lasting significance to the individual Indians concerned, the Superintendent should seek the assistance and advice of his staff specialists and technicians not only in the area of resources management, but also those in the field of community services. The Superintendent shall reduce to writing his findings that a sale will be in the long-range best interests of the owners, indicating the factors considered and his reasons for his decision.
- (6) When an application for sale of land is approved, an appraisal shall be requested. See 54 IAM 10.1.3B.

When it becomes necessary in connection with sales, exchanges, probate inventories, etc., to obtain estimates of fair market value of mineral interests in tracts which are located within areas "prospectively valuable for minerals," those estimates of value should be obtained by utilizing the services of staff appraisers, working cooperatively with local representatives of the Conservation Division of the Geological Survey,--both the Mining Supervisor and the Oil and Gas Supervisor,--in accordance with the procedures which have been employed effectively in the past. It is believed that proper coordination of staff appraisal functions with the cooperative services of the Mining and Oil and Gas Supervisors will meet your requirements in most cases. In many

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instances, particularly in the case of appraisals merely to determine probate fees, staff appraisers will have sufficient information on the particular lands, and of the local mineral market conditions, to provide appraisals without the necessity of obtaining evaluations from the Mining and Oil and Gas Supervisors.

In the interest of encouraging Indians to assume responsibility for administering their own resources and inspiring confidence in the procedures that have been developed for their protection, appraised values may be made known to the Indian owners of the land. When this information is given to the owners, they should be informed in detail why it is to their advantage to hold the information in confidence and not reveal the appraised value to others.

Appraisals made in connection with applications for sale of individual Indian lands are, of course, estimates of the fair market value. Such appraisals are made to the use of the land as dictated by the needs and desires of the general public, and hence, represent an indication of what the land should reasonably be expected to bring on the market. These appraisals, then, are estimates of value to help the Bureau, as trustee for the lands, to decide on acceptable selling prices.

For quite some time it has been the Bureau's position that to disclose the appraised value to the public and particularly to prospective purchasers would, in effect, tend to fix a maximum that would be offered for the land and would thus preclude the owner from having the benefit of testing an open and competitive market. For this reason, appraised values will not be published in Invitations for Bids.

The dual responsibility of the Government to individual Indian landowners and to Indian tribes necessitates that when the tribe is interested in purchasing a tract and it is within their purchase program, the amount of the appraisal should be disclosed to the tribal officials, and they should be cautioned to

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respect the confidential nature of the information. The parties should then be afforded an opportunity to negotiate at not less than that figure. If the negotiations are not successful, the previously established procedures should then be followed. These contemplate that the individual landowner may grant the tribe a preference right to meet the high sealed bid, or if the landowner is unwilling to do that, the tribe may, at its own option, ask that it be given the privilege of competing for the land in oral bidding.

- (7) If an application for sale is disapproved, the Superintendent shall advise the applicant or applicants by letter of the basis for the action, with advice of the right of appeal. All appeals shall be processed in accordance with Chapter 12, 54 IAM.

- B. Notice to tribe and to other Indians. When an application for sale is approved, the appropriate officials of the tribe shall be notified by memorandum of the proposed sale. The memorandum shall state that if the tribe is interested in acquiring the tract, it will be necessary for the tribe to so advise the Superintendent. A specific time limit shall be fixed by the memorandum for the tribe to consider and act. The time limit should be reasonable, considering both the interest of the Indian landowners and the interest of the tribe. Tribes whose existing form of tribal government does not have sufficient flexibility to provide for consideration of these matters with reasonable dispatch may find it necessary to set up a special committee with power to represent the tribe on land matters. Copies of the notice to the tribe shall be publicly posted on the reservation for the information of other members of the tribe who may be interested in acquiring land.

If the tribe is interested in acquiring the tract, it shall so advise the Superintendent by a statement in writing signed by the tribal officer or officers who are authorized to speak for the tribe in such matters. The tribe shall then be given the opportunity of negotiating a purchase prior to advertisement at not less than the appraised value. If the negotiations fail, the land may be included in any subsequent land sale advertisement.

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Whether the tribe will be afforded an opportunity of meeting the high bid will be dependent upon whether the owner has agreed to grant a preference right. Individual members of the tribe shall also have an opportunity to acquire the tract by negotiation if an individual member is interested in the acquisition of the tract. If a preference is not granted to the tribe, it may become necessary to provide for oral bidding. See 25 CFR 121.14.

C. Advertised sales. Upon approval of application Form 5-105 by the Superintendent, the following action will be taken prior to issuing public invitation for bids:

- (1) Written statement of the Superintendent's findings that a sale will be in the long-range best interest of the owners and on the need for assistance in regard to reserving the minerals.
- (2) Appraisal report.
- (3) Title report with abstract of probate orders.
- (4) Statement of irrigation operation and maintenance charges and construction costs where applicable. See 25 CFR 121.21.
- (5) Where a preference to purchase is to be given to the tribe, or to a member of the tribe, or to any reasonably defined class of Indians (25 CFR 121.18), the written statement of the landowner or owners to that effect should be obtained and made a part of the case assembly.
- (6) Prior to advertisement an effort may be made to obtain from the Indian owners statements of a minimum price they will accept for their land in an advertised sale. (See Exhibit 16 for form of authorization to be used.) Such minimum price may be the appraised value or any amount above the appraised value. Where an owner agrees to accept such a minimum price and the amount of the highest acceptable bid at an advertised sale, equals or exceeds that amount it will not be necessary to contact such owner

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again for the purpose of obtaining his acceptance of the bid. After the sale such owner should, of course, be notified that an acceptable bid has been received. This procedure contemplates that the appraised values will be made known to the owners and necessitates that they be fully informed of the nature of appraisals as estimates of value to help in deciding on acceptable selling prices, as set out in 54 IAM 2.2.1A(6). It is realized that this procedure will not, in every case, avoid the necessity of obtaining acceptances from the owners, but it should be of assistance in many cases.

- D. Advertisements. Form 5-114, "Invitation, Bid, and Award," will be used in all jurisdictions. The appraised value of the tract may not be shown in the advertisement. Any departure from the standard terminology in the advertisement involving restrictions, reservations, or conditions must be approved by the Area Director.

In the sale of tracts which have been determined by the tribe to be essential to the protection of its interests and in which negotiation has not been successful, the advertisement will provide for oral bidding to follow the opening of sealed bids in all cases in which a preference right to meet the high bid has not been granted to the tribe seeking such a right, provided the tribe is not the high bidder in such cases. The auction will be held provided one or more acceptable sealed bids are received. The auction will be limited to bidders who, in their sealed bids, offer 75 percent or more of the appraised value of the land. It will not be required that the sealed bid of the tribe amount to 75 percent or more of the appraised value, in order for the tribe to participate in the oral auction. See the regulations, 25 CFR 121.14. Three copies of the advertisement should be sent to the Central Office. After the bids are in, a like number of copies of the abstract of bids should be sent to the Central Office.

- E. Bids. The provisions of the regulations contain relatively detailed guidelines on the subject of inviting, receiving and processing bids. Certain general observations may prove

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helpful. All employees, whether directly responsible for the sale of land or otherwise, should strictly observe the highest degree of caution to the end that they neither give assistance nor the appearance of assistance to prospective bidders in preparing bids. Proper discussion with prospective bidders is limited to assistance in locating the property on maps, giving directions for locating the property on the ground, and general comment on the character of the property, the nature of the improvements, if any, the general type and estimated volume of timber thereon, etc. It is regarded as desirable to refrain from even such limited discussions of the property on the day of the sale.

Responsibility for receiving and holding bids should be assigned, if possible, to a single individual who should have access to a place of safekeeping for holding the bids until the time fixed for the sale. The number of bids received and any information concerning the identity of those who have submitted bids are confidential matters and should not be disclosed to or discussed with other prospective bidders. Disclosure of such information may affect the bidding adversely to the interests of the Indian landowners.

Sealed bids may be withdrawn at any time prior to the time fixed for opening the bids.

All bids must be in the hands of the officer conducting the sale prior to the time fixed for opening the bids. This rule must be enforced without exception, whether the bids are submitted by mail or in person by the bidder or his representative. Delivery of his bid is the sole responsibility of the bidder. Generally, the tardy bidder's reasons are genuine and are not based on an effort to seek unfair advantage. Nevertheless, the only proper procedure in a sealed bid sale is to observe the foregoing rule with no exceptions in any degree.

- F. Opening bids and conducting an auction. Preparation for a bid opening should include, if possible, the arranging for the use of a room of sufficient size to accommodate the anticipated number of interested bidders, landowners,

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and other observers. It should be remembered that a bid opening is a public function and must be conducted in such a manner as to instill confidence in the general public that the procedure is being competently handled. If limitations on physical space make it necessary to use a room normally occupied as office space, the transaction of other business should be deferred until the conclusion of the bid opening to accommodate that procedure with as little interference as possible. Suitable clear desk space should be available to the individual opening the bids to permit the handling of the papers without risk of loss or undue confusion. As each bid is opened, the identity of the bidder, the identification of the property for which the offer is made, and the amount of the bid should be read aloud. The bid should be simultaneously recorded by a clerical assistant on a suitable abstract form. It is advisable to have a representative of the finance function assisting at bid openings to handle the receipt of the deposits submitted with the bids.

At the conclusion of the opening of sealed bids, it is permissible, and within the discretion of the officer conducting the sale, to announce the identity of the apparent high bidders and the amounts of the bids in all cases where it is clearly apparent that the bid is acceptable in terms of its relation to the appraised value or the amount the owners have fixed as the minimum acceptable, if they are asking more than the amount of the appraisal. Any such announcement should be accompanied by an unequivocal statement that it is made for general information purposes only, that it is not an award, and that the authority to accept the bids is vested in the Area Director to whom the record of the bidding must be submitted for determination of the successful bidders and subsequent action.

The deposits submitted with obviously unsuccessful bids may immediately be returned to the bidders if they are present at the bid opening or are there represented by authorized representatives. It is acceptable practice in such instances to require only an informal endorsement of receipt thereof written in any suitable available

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space across the face of the bid and signed by the individual receiving back the exchange.

In conducting an oral auction, following a sealed bid opening, certain additional requirements should be observed. At the outset, it is advisable to include in any one sale no more cases than may reasonably be handled in a day's time. Form 5-114, Invitation, Bid, and Award, provides that the officer in charge may continue the oral bidding to a date and time to be announced upon opening of the sealed bids. Such a continuance should be based on the number of tracts subject to oral bidding, anticipated time needed to complete such bidding and other pertinent considerations. If it is regarded as unlikely that the oral auction may be concluded by the close of business on the date of the sealed bid opening, it should be advertised to be held on the following day. The sale should be scheduled so that the day following the sealed bid opening is a business day. For the convenience of bidders and others interested in being present, the oral auction should be scheduled to begin at an hour reasonably convenient for prospective bidders.

Each oral bid should be repeated aloud by the official conducting the auction and should be immediately recorded in writing on a suitable abstract form so that at the conclusion of the bidding the abstract will show each bid made and the identity of the bidder. In addition, for the convenience of the bidders, suitable black-board space should be available to permit visually demonstrating to the assembled bidders the last bid made. It is not regarded as essential to record on the black-board the complete abstract of the oral bidding.

Oral auction sales will be a new development for many of our field offices. The foregoing comments may be regarded by some offices as unnecessarily detailed. Our effort is to provide as much information as possible based on the collective experience available. It is recognized that there is no substitute for experience and for the development of individual judgment based on that experience. Consequently, it is not possible in this Manual to cover every eventuality.

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It should be remembered that the officer conducting the sale is in a position of authority requiring him to rule on questions of procedure which may arise during the course of the sale. He must be certain that his judgment on questions which may be raised is in accordance with law and regulation. He should not hesitate to call a recess until questions may be resolved by higher authority if necessary. It is his responsibility to maintain orderly procedure to the end that the rules of the sale are strictly observed without partiality and in a manner which will reflect creditably on the conduct of public business.

It is desirable to include in the invitation for bids, preliminary to an oral auction, an announcement that, in the discretion of the officer conducting the proceedings, the auction may be concluded at any time when, in his judgment, sufficient time has elapsed since the last bid was made. In a sale of small tracts, the time allowed for bidding may be shorter. In a sale of large or extremely valuable tracts, such as a heavily timbered acreage, it is not unreasonable to allow bidders a longer time to determine whether they wish to raise the last offer and to calculate the amount of such raise.

Tribal representatives at an oral auction will be expected to carry authority to obligate tribal funds to the full extent of their interest in the auction, and such representatives should not be permitted unreasonably to delay the progress of the auction under the guise of lack of authority.

When the expenditure of tribal funds for the purchase of lands at oral auction is subject to the approval of a duly authorized officer of this Bureau, a determination of the approximate amount which the tribe can afford to pay for the land should be made in advance of the auction. This determination will require that there be considered the special value of the tract to the tribe; i.e., its unique purpose in the tribe's economy, which may result in a determination of a maximum which bears little relation to the appraised value. It must be borne in mind that the appraisal does not fix price, but that it is

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an estimate of the market for the land considering its highest and best use to prospective purchasers generally. Tribal representatives dealing with tribal funds not subject to Bureau approval should, as a matter of good practice, arrive at their own estimates of the amount the tribe may be justified in paying for land in advance of the auction so that unreasonable delay and possible loss of the land may not be occasioned by the lack of such determinations.

- G. Negotiated Sales. The regulations, 25 CFR 121.18, provide broad authority for the approval of negotiated sales. The delegations of authority to the Area Director cover all determinations required to be made within the scope of that section, except the approval of transactions governed by 25 CFR 251.5(c), which has not been delegated.

In considering the justification for a negotiated sale from an Indian landowner to an Indian or to an Indian tribe, recognition must be given to the fact that there is a dual responsibility to both the seller and the buyer. The extent to which those conflicting interests are equitably balanced is the measure of the proper discharge of trusteeship responsibility. The best interests of the seller and of the buyer are not necessarily measurable by the same yardstick. The appraised value of the property fixes substantially the minimum which should be accepted on behalf of the seller, but because an appraisal of the fair market value is made to the uses of the land in general and not to a specific or unique need which may exist for a single purchaser, the appraisal does not necessarily fix the maximum which may justifiably be paid for property by the individual Indian purchaser or by the tribe. Where competitive interest in the land is clearly indicated, advertising is of course desirable.

The record in connection with negotiated sales to non-Indians should contain a documentation of the facts supporting a determination that advertising is impractical. Although other factors may justify a negotiated sale, there will generally be a showing of lack of competition for the land, due to its economic or geographic isolation. The record should also contain the

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written statement of the Indian landowner requesting that the transaction be handled by negotiation.

H. Instruments of conveyance. See discussion regarding authorities for taking trust or restricted title in 54 IAM 2.2.1F. Where such title is being taken both the authority for taking trust or restricted title and the authority for the sale should, except as otherwise indicated, be cited in the deed.

(1) When conveyance is to be made to a tribe or an individual Indian and title is to remain in a trust or restricted status, use:

(a) Deed Form 5-183 for lands on Indian Reorganization Act reservations and on other reservations where there is statutory authority to acquire lands and take title in the United States in trust for a tribe or an individual Indian.

(b) Deed Form 5-185 for lands acquired with the proceeds from the sale of non-taxable trust or restricted lands, or any interest therein, pursuant to the Act of March 2, 1931 (46 Stat. 1471), as amended by the Act of June 30, 1932 (47 Stat. 474; 25 U.S.C. 409a).

(c) Deed Form 5-183b shall be used only in cases where Deed Forms 5-183 and 5-185 are not appropriate. Although there is no specific statutory authority for the use of this form it has been judicially recognized that its effect is to pass to the grantee the same quality and quantity of an estate as is held by the grantor (United States v. Chinburg et al, 224 F. 2d 177). Generally, its use should be limited to gift transactions and cases involving exchanges of land or interests in land. It will not be necessary to cite any authority for acquisitions when this form is used.

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- (d) The use of the "Order Transferring Inherited Interests" is possible as a matter of law where the Secretary of the Interior has the authority to sell and convey lands and there is authority for the acquisition by the grantee of the same quality of an estate as is held by the grantor. The Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), which requires the application of /all/ the Indian owners for the approval of conveyances of lands thereunder, renders the use of the Order Transferring Inherited Interests of no procedural value in such cases. Its use for the conveyance of other lands is likewise of doubtful value as a matter of procedure because of the general policy requirement that all of the Indian owners consent to or approve the sale of land in which they have an interest. However, the order may be used in those cases where a conveyance is in the best interests of the Indian owners, its use is permitted as a matter of law, and it complies with the spirit of 54 IAM 2.23A(1).
- (2) When fee simple title is to be conveyed, Deed Form 5-183 or a patent in fee should be used.
- (3) Conveyancing following advertised sales will be handled as follows:
- (a) When it has been determined that there is an acceptable bid, the Superintendent will submit the offer to the Indian owner or owners for acceptance, except as provided in 2.2.3A(1), and 2.2.3C(f).
- (b) If conveyance is to be made by deed, an original and one copy of the appropriate form shall be executed by the Indian owners, and properly acknowledged. The specific statute authorizing the conveyance should be recited in the deed.
- (c) If conveyance is to be by patent in fee, the Superintendent shall prepare a letter, for the Area Director's signature, to the Director, Bureau of Land Management, through the Commissioner of Indian Affairs, requesting that a

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patent in fee be issued to the purchaser. A suggested form for this letter is in the Appendix to this chapter marked "Exhibit No. 6." See also Illustration No. 12, Check List for Indian Patents. The original and two copies of the letter should be submitted to the Central Office; such other copies should be prepared as are required for Area and Agency purposes.

- (d) Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patent, particularly as to minerals, rights of way, and irrigation liens. See also Illustration No. 15.

I. Sales assembly. After execution of the deed, consents to sale, or preparation for the request for patent, the Superintendent shall submit the following to the Area Director for consideration:

- (1) Application for sale, Form 5-105.
- (2) Written statement of finding that a sale will be in the long-range best interest of the owners and need for assistance in regard to reserving minerals.
- (3) Appraisal report, Form 5-100A.
- (4) Title report with abstract of heirship findings.
- (5) Irrigation statement and water contract (when applicable) in accordance with 25 CFR 121.21.
- (6) Resolution of the governing body approving purchase, if sale is to a tribe.
- (7) Executed deed, consents to sale or request for patent.
- * (8) Report on Sale of Indian Land, Form 5-110n.
- * (9) Highest bid.

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- *(10) Signed statement of preference by grantee (when applicable.)

*Applicable only in advertised sales.

The Superintendent's files, in connection with each advertised sale, must include documentation showing that all proposed sales have been referred in writing to the tribal authorities, and the written statement of tribal interest or waiver thereof from the tribal authorities as required by the statement of policy, supra. If no response is obtained from the tribal authorities, the file should include a statement to this effect, including the date notice was given and the time allowed for expression of tribal interest.

J. Approval by Area Director.

- (1) The award will be indicated in the appropriate block on Form 5-114 and executed by the Area Director.
- (2) One copy of the completed contract will be returned to the successful bidder via certified mail, return receipt requested, with instructions to remit to the Superintendent the balance of the purchase price, as specified in 25 CFR 121.20, within 30 days from receipt of notice.
- (3) The Area Director will approve the deed when a deed is to be used to convey title and return same with an executed copy of the contract to the Superintendent with instructions to deliver the original deed to the purchaser upon receipt of the balance of the purchase price plus sales fees.
- (4) Patents in fee will not be requested until the full amount of the purchase price plus sales fees have been received by the Superintendent.

K. Final action by Superintendent.

- (1) When the balance of consideration plus fees has been paid to the Superintendent, he shall immediately

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transmit a copy of the Official Receipt to the Area Director. A copy of the approved deed shall be submitted to the Central Office and distribution made of such other copies of the deed as is required.

- (2) In the event of forfeiture by the purchaser, the Superintendent will immediately notify the Area Director, who will direct that the approved deed or request for patent in fee be destroyed.

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