

AIPRA REALTY PARTITION OF ALLOTMENT

Co-owners break single parcel into
multiple parcels

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Issues to consider:

- 1) Partition is approvable if feasible, equitable and beneficial and advantageous to all co-owners, i.e., to owner of each undivided interest. (Some interests may be too small or there may be fee interests involved or minors may hold interests or estate(s) of decedent(s) may be involved.)
- 2) Partitions are based on equitable fair market value of your undivided interest.

Issues to consider:

3. For Example: You own an undivided 1/10 interest in 20 acre allotment with fair market value of \$20,000. You are entitled to a parcel worth \$2,000.

Tricky because partition is determined by appraisal of each of the proposed parcels. (After appraisal, acreages of each could be different)

Issues to consider:

4. All of the co-owners must agree to the partition.
5. Co-owners should obtain map of the allotment.
6. Co-owners should designate locations of each proposed parcel on the map.
7. Write in the name of each co-owner's parcel.
8. Include the locations of access roads on the map.

Issues to consider:

9. Each co-owner should sign and date the map.
10. A survey may be required (funding?)

Forced Partitions

Authorized by 25 U.S.C. Section 2204(c), AIPRA.

Called “Consolidation by Sale”, in AIPRA;
formerly in ILCA “Forced Sale”

(Not to be confused with “Partition” governed by
25 C.F.R. Section 152.33)

Forced Partitionment or Consolidation by Sale

What Lands are eligible for consolidation by sale?

Only parcels of highly fractionated land (on- or off-reservation):

(1) from 55 to 99 co-owners

and no single owner with interest greater than 10% or

(2) 100 or more co-owners .

Consolidation by Sale

Who is eligible to apply?

- 1) Any person owning undivided interest eligible to bid at sale of the parcel and
- 2) Indian tribe with jurisdiction over the land that owns an undivided interest in the parcel

Consolidation by Sale

Applying for Consolidation by Sale:

Should include standard information on applicant and subject parcel and ownership

Include acknowledgment that applicant is responsible for paying costs of posting bond, costs of mailing, appraisal and publishing notice.

Consolidation by Sale

Written Consents required:

- 1) Tribe with jurisdiction owning interest in the parcel, and
- 2) Any owner who has continuously maintained a bona fide residence or operated a bona fide farm, ranch or other business on the parcel for 3-year period immediately preceding application date.

Consolidation by Sale

Additional Written Consents:

If an approved appraisal shows that any one owner's total interest has a value in excess of \$1,500, additional consent of at least 50% of the interests in the parcel.

Consolidation by Sale

Notice: All owners of interests in the parcel and tribe with jurisdiction that owns an interest in the parcel will received notice.

Comment Period: Owners can provide comments or objections to sale and/or the appraisal within 90 days of receipt of notice.

Appeal: An owner can file appeal within 30 days of receipt of notice.

Consolidation by Sale

Bidding:

Sale to be advertised by BIA in local newspaper and tribal headquarters providing notice of sale date.

Who can bid?

- 1) Tribe with jurisdiction over parcel that owns undivided interest in the parcel; or

Consolidation by Sale

Who can bid?

- 2) Person owning undivided interest in the parcel because they are:
 - a) A member or eligible to be a member of tribe with jurisdiction.
 - b) A member or eligible to be a member of an Indian tribe but not the tribe with jurisdiction over the parcel being sold and already ownan interest at the time of sale.

Consolidation by Sale

Who is eligible to bid?

- c) A lineal descendant of original allottee of the parcel who is a member or eligible to be a member of an tribe.

Consolidation by Sale

Rights to match highest bid:

Parcel will generally be sold to highest bidder but subject to rights of following to match:

- 1) Tribe with jurisdiction over the parcel, or
- 2) Owner of at least 20% of interests who holds the largest undivided interest in the parcel or, if none, the owners of equal interest adding up to at least 20% (Right of these owners supersedes the right of the tribe).

Proposed Transfers in Fee

Purchase of Land by Indian tribe (25 U.S.C. Section 2216(f): Before Secretary approves application to terminate trust from a parcel or interest in trust parcel, the Indian tribe with jurisdiction over the parcel will have opportunity:

- (A) To match any offer contained in application or
- (B) To pay fair market value where no purchase price is offered.

Deeds

Issues to consider:

Conveyances to someone other than co-owner:

- 1) Grantee status
 - a) ILCA “Indians” as defined in 2201(2) can take in trust.
 - b) Tribe that exercised jurisdiction over parcel can take in trust.
 - c) Non-Indians would take in fee, but conveyance subject to tribal right to purchase.

Deeds

Issues to consider:

- Definition of an ILCA Indian: (A) Any person who is a member of any Indian tribe, or is an owner (as of the date of enactment of the AIPRA of 2004 [enacted Oct. 27, 2004]) of a trust or restricted interest in land.
- (B) Any person meeting definition of Indian under the IRA and regulations thereunder.
- (C) Special California provision.

Deeds

Issues to consider

Consideration:

- a) Can be gift or any amount if to an ILCA Indian or tribe in trust so long as Estimate of Value is given;
- b) Can be gift or any amount with Estimate of value waived if to ILCA Indian who is related to Grantor or to co-owner or tribe if interest conveyed is 5% or less.

Deeds

Issues to consider

Consideration:

- c) Can be gift or any amount if Grantee meets relationship or special consideration test in 25 C.F.R. Section 152.25 (c) or (d);
- d) All other conveyances must be for at least the fair market value.

Example

Will reads:

- A. I give, devise and bequeath an entire interest in Allotment 1A where my home is located (according to the attached map) and my house to my daughter X.
- B. I give, devise and bequeath an entire interest in in that portion of Allotment 1A lying south of Allotment 1D to my grandson Y. A

Probate Order:

To daughter X, Allotment 1A where her home is located (according to the attached map) and her house. **There was no map attached.**

To grandson Y an entire interest in all that portion of Allotment 1A lying south of Allotment 1D. Before the various devisees of interests in Allotment 1A can enjoy exclusive ownership in any part of the Allotment it will be necessary that a survey be made to identify the areas devised under A and B of the Will.