

INDIAN AFFAIRS MANUAL

Part 52
Chapter 4
PA Region

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- 1.1 Purpose.** This chapter establishes policy for processing requests for partition of trust or restricted allotments in the Pacific Region.
- 1.2 Scope.** This policy applies to all Bureau of Indian Affairs (BIA) employees within the jurisdiction of the Pacific Regional Director (RD). Tribal Realty Staff may also use this policy as guidance.
- 1.3 Policy.** If the RD finds that any inherited trust allotment(s) is capable of partition to the advantage of the co-owners, the RD may cause such lands to be partitioned among the co-owners with fee patents or trust patents to be issued according to their undivided interest, respectively, or jointly set apart to them.
- 1.4 Authority.**
- A. Statutes and Regulations.**
- 1) 25 U.S.C. § 378 – Partition of allotment among heirs; patents
 - 2) 25 U.S.C. § 379 – Sale of allotted lands by heirs
 - 3) 25 U.S.C. § 405 – Sale of allotment of non-competent Indian
 - 4) 25 U.S.C. § 5108 – Indian Reorganization Act (IRA)
 - 5) 25 U.S.C. § 5134 – Sales by Deed or Fee Patent
 - 6) 25 U.S.C. §2202 – Indian Land Consolidation Act (ILCA)
 - 7) 25 U.S.C. §2216 – Trust and Restricted Land Transactions
 - 8) 25 CFR 2 – Appeals from Administrative Actions
 - 9) 25 CFR 151 – Land Acquisitions
 - 10) 25 CFR 152.33 – Partition
- B. Guidance.**
- 1) This regional policy is established in accordance with the guidance provided in the Pacific Region’s 2015-2019 Strategic Plan, approved July 28, 2015 and located at <http://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/index.htm>.

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1.5 Responsibilities.

- A. **The RD** is responsible for developing and updating policies relevant to the Pacific Region. The RD will review and make decisions regarding all trust to fee transactions and all partitions without 100% consent of the landowners to the proposed partition.
- B. **Agency Superintendent** will review and make decisions regarding all partitions with 100% consent of the landowners to the proposed partition. Further, the Superintendent will render assistance and advice to the owners in order that an equitable and suitable division of the property may be affected, and consider any and all concerns of individual Indian landowners during the course of the transaction.

If 100% consent is obtained for the partition and all the interest is remaining in trust, the Superintendent has authority to sign the deeds to execute the partition. If any of the interests or parcels created by the partition will leave trust status, or in instances where a landowner requests a fee patent, the Superintendent will recommend an appropriate action to the RD.

- C. **Agency and Regional Real Estate Services staff** is responsible for carrying out the procedures within this regional policy in regard to the processing of partitions.
- D. **Office of the Special Trustee (OST), Office of Appraisal Services (OAS)** is responsible for completing, upon request, a valuation or appraisal for the proposed partition, or review of an appraisal submitted by a contracted appraiser to ensure it meets or exceeds the requirements of the Uniform Standards of Professional Appraisal Practices (USPAP) and other applicable laws.
- E. **Bureau of Land Management (BLM)** is responsible for the issuance of patents (trust or fee) at the request of the BIA. The BLM Indian Lands Surveyor (BILS) is responsible for review of legal land descriptions, surveys, and map/plat review in regards to the partition of allotted lands.

1.6 Definitions.

- A. **Aliquot Part** as defined by the BLM is a notation used by a rectangular survey system to represent the exact subdivision of a section of land. Aliquot parts are described as a half or quarter of the largest subdivision of the section, except fractional lots which cannot be described by aliquot parts.
- B. **Allotment** is an allocation of a parcel of public lands or Indian Reservation lands given to an individual Indian for his/her individual use. Such examples include the Act

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of February 8, 1887 (more commonly known as the General Allotment Act), or the Act of February 28, 1891 which allowed for allotments on the Public Domain.

- C. **Allottee** is the original individual Indian who received the allocation of land and is more commonly referred to as the Original Allottee.
- D. **Certified Federal Surveyor (CFedS)** is a state licensed land surveyor who has successfully completed the certification program designed to provide registered/licensed land surveyors with training necessary to execute boundary surveys on or near federal interest lands, to basic federal standards.
- E. **Co-owners** are the owners on an allotment regardless of whether the individual holds his/her individual interest as trust or fee interest. Co-owners may hold title as joint tenants, tenants in common, or a combination of both.
- F. **Fee Interest**, or fee simple, is an interest in land that is in "Fee status," meaning it is held by the owner without restrictions on alienation or encumbrance, and is not held in trust by the United States for that owner.
- G. **Fee Patent** is a land patent issued by the BLM. As it applies here, a fee patent can be requested for individuals owning either a trust or non-trust interest, or fee interest, in a tract of land.
- H. **Heirs and Devisees** An heir, or heir at law, in an allotment is one who inherits his/her interest from a decedent through probate by intestate succession; a devisee is one who receives his/her interest from a decedent through the decedent's last will and testament by devise.
- I. **Heirship** is individual landowners who collectively own an undivided interest in an allotment of land.
- J. **IRA Tribe** is a Tribe that voted to accept the provisions of the IRA or didn't take any action to reject the provisions of the IRA.
- K. **Joint Tenancy** is an undivided interest in property, taken by two or more joint tenants. The interests must be equal, occurring under the same conveyance, and beginning at the same time. Upon the death of a joint tenant, the interest passes to the surviving joint tenant(s), rather than to the heirs of the deceased.
- L. **Non-IRA Tribe** is a Tribe that voted to reject the provisions of the IRA.

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- M. Ownership, Surface, and Subsurface Rights** of an individual owner in an allotment will either be surface, subsurface, or both. Occasionally, there will be instances where the ownership in the surface and subsurface is split. In these "split estate" situations, the surface rights and subsurface rights are owned by different landowners.
- N. Partitions of Inherited** are either voluntary or involuntary. A partition severs, or divides, the unity of possession of the co-owners.
- O. Restricted Fee** is a type of land ownership where the individual holds full right and title to the real property (land) vested in his/her name but contains a restriction against alienation (i.e., gift deed or land sale) or encumbrance (i.e., leasing, right of way, mortgage) which must be approved by the BIA.
- P. Tenants in Common** is a type of co-ownership in which two or more persons hold interests in the same property; the interest need not be equal, with no right of survivorship for the surviving tenant(s) in common. No right of survivorship means that co-owners do not inherit the decedent's share.
- Q. Trust Interest** is an interest held by the United States of America in trust for an individual Indian or Tribe.
- R. Trust Patent** is a land patent issued by the BLM.

1.7 Standards, Requirements, and Procedures.

- A. Standards.** The partition of inherited lands should be executed only when such division is advantageous to the co-owners. It is not feasible to partition the property when it will result in splitting the land into uneconomic or otherwise undesirable units and, as a general rule, it would be impractical to partition a tract of grazing or timber land. For the most part, partitions should be confined to the following:
- 1) Tracts consisting of or capable of being divided into two or more tracts of land, each of such value that it is feasible for one or more of the owners to obtain title to a separate tract and thereby reduce or eliminate fractional interest.
 - 2) Tracts occupied by two or more owners when one or more of them desire to make permanent improvements.
 - 3) Tracts which are suitable for real estate subdivisions such as lands fronting on a body of water or located within or close to a municipality.

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- 4) Tracts in which an undivided interest is held in fee simple.

B. Requirements. Dealing with fractionated allotted lands is complex, and care must be taken to properly advise individual landowners of their legal options. In addition to the guidance provided, we wish to emphasize the following:

- 1) If the initial, or any subsequent proposal, is found feasible, the Agency or regional Real Estate Services staff, as applicable, will initiate compliance with the National Environmental Protection Act (NEPA) and other applicable statutes.
- 2) Legal access to any and all new parcels created must be considered.
- 3) If a fee patent has been issued in the past for a fee simple interest, the fee owner(s) must be a party to the partition. The fee owner's interest must be verified by the preliminary title report issued by a title company. The fee interest conveyance is handled similarly to a "land acquisition" under 25 CFR 151. If it cannot be accomplished by title report, the following shall apply:
 - a. Current evidence of title ownership from the Tribe or individual Indian and how it was acquired, or written evidence that title will be transferred to the Tribe or individual Indian upon acquisition in trust; and
 - b. An abstract of title commitment dating from the time the interest was acquired in fee ownership by the current owner or the current owner's predecessor(s) in title to the present.
- 4) If the partition is to be accomplished by issuance of patents and the proposed lots cannot be described by aliquot parts, a supplemental plat must be prepared by the BLM. The partition applicant(s) should be advised that they may have to cover the costs for the survey and plat preparation.
- 5) When executing the partition, creation of a surface ownership that is different than the subsurface ownership must be avoided. For example, each of the owners conveys his/her respective interests in a specific surface area to the other owners, but each reserves the mineral interests resulting in the subsurface estate being owned as tenants in common, or as co-owners. This results in a split of the surface and subsurface estate. The surface estate is partitioned while the subsurface estate remains in a fractionated ownership status.
- 6) If the owners of an allotment are too numerous, a recommendation should be made to the applicant(s) that efforts must be made to first consolidate interests (by purchase or gift) if at all possible.

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- 7) In the event any of the co-owners do not consent to the partition, and the title is "restricted fee," the partition cannot be executed and the applicant will be so notified and advised of appeal rights under 25 CFR Part 2.
- 8) One (1) landowner can request a Petition for Partition and the BIA must go through all criteria identified in this IAM and render a decision (*Sampson v. Andrus*, 483 F. Supp. 240 (D.S.D. 1980)).

C. Procedure. The following steps are required prior to any partition.

1) Partition with 100% Consent:

- a. When the co-owners of an undivided interest in an allotment want to divide the land(s) to obtain their individual ownership of a portion in the entire tract, they shall execute, in writing, a "Petition for Partition" such as that shown in Attachment 1.

It will be necessary for the petitioners to agree upon division of the property in order that such division may be set forth in the petition. If any Indian owner of an interest in the land desires to obtain title in fee status to be set apart to him/her, such owner should so indicate his/her desire for a fee patent when submitting the Petition for Partition. Agency and/or regional Real Estate Services staff, as applicable, will determine the proper statutory authority, verify ownership, and request title status reports, if necessary. The co-owners will be provided assistance if needed in preparing the application and/or plan.

- b. Agency and/or regional Real Estate Services staff, as applicable, will acknowledge receipt of the application and notify all co-owners of the application and the plan for partition. Notice to the other co-owners will invite their submission of comments/objections and/or alternate plan(s) within 30-business days.
- c. The Agency Superintendent will render assistance and advice to the owners in order that an equitable and suitable division of the property may be completed.
- d. The lands must be appraised by the OAS, or a contracted appraiser who will provide an appraisal report acceptable to the OAS. An appraisal will be furnished that identifies a value for each sub-divided parcel under the cover of one appraisal, unless 100% of the landowners submit signed statements whereby they waive the estimate of value/appraisal.

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- e. After receipt of the appraisal(s), if it is impractical to arrange a partition based upon substantially equal values and these variations exceed 10% of the average value of the partitioned parcel, the variances will be explained to the owners. If the owners decide to proceed with the partition, they must make arrangements to pay the difference in value, or submit signed statements which waive the difference in value.
- f. If the review indicates that the partition is not feasible, the Agency or regional Real Estate Services staff, as applicable, will notify applicant(s) and other co-owner(s): (1) of remedial actions necessary to accomplish the proposal, or (2) disapprove the application and advise the applicants of their appeal rights under 25 CFR Part 2.
- g. The Agency Superintendent, Agency, and/or regional Real Estate Services staff, as applicable, will advise the landowners of any and all equitable proposal(s) and valuation(s), will seek consensus on a plan, and will provide a 30-day response period.
- h. Once all landowners have agreed to the proposal, Agency or regional Real Estate Services staff, as applicable, will: (1) initiate request(s) for appraisals and survey of parcels, and (2) complete NEPA compliance.
- i. A partial partition can be accomplished as long as 100% of the landowners agree.
- j. If all the interest is remaining in trust, the Agency Superintendent has authority to sign the deeds to affect the partition. If the parcel(s) is going out of trust, the Superintendent will submit the package to the RD with a transmittal memorandum containing the Superintendent's recommendation. The partition package must include the documents listed on the partition checklist.
- k. If there is 100% consent, the Agency and/or regional Real Estate Services staff, as applicable, will prepare a decision document based on the Superintendent's decision, and notify the applicant and other co-owners. The notice to the applicant and other co-owners must also advise them of their appeal rights under 25 CFR Part 2.
- l. In executing partition by deeds, title to lands held under the Indian Reorganization Act (25 U.S.C. § 5108) will be conveyed to the United States of America in trust for the grantee, and the Deed Form "Deed to Restricted

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Indian Land” will be used by the Agency or regional Real Estate Services staff, as applicable, for this purpose.

- m. When the lands are not under the Indian Reorganization Act, the Deed Form “Deed to Restricted Indian Land Special Form” will be utilized, as the title conveyed will be the same as that vested in the grantors. However, if any Indian owner applies for a fee simple title and the Superintendent does not deny such application, either Deed Form should be utilized in favor of the applicant as applicable. Agency staff will make the proper determination in the selection of the proper deed for use.
 - n. When the Partition is executed in regard to the requirements found at 25 U.S.C. §2216, the Deed Form “Deed to Restricted Indian Land (AIPRA_PRO)” must be utilized as this deed includes the proper language regarding the limitation that the Secretary will not approve any application to terminate the trust status or remove the restrictions of such an interest for a period of five (5) years.
- 2) Partition without 100% consent:**
- a. When reviewing proposals involving trust and fee interests, partitions may be accomplished without the consent of the owners. In this instance, it will be necessary to execute the partition by issuance of trust or fee patents.
 - b. If there is not 100% consent and the partition is approved, the tenancy in common is extinguished and no partial partition can be accomplished. Each landowner will receive their fair and equitable share through a BLM Trust or Fee Patent.
 - c. When an owner of an undivided interest in an allotment wants to divide the land(s) to obtain his/her individual ownership in a portion of the entire tract, he/she shall execute a “Petition for Partition” application.
 - d. If any Indian co-owner of the subject allotment does not agree to such division, partition will be made under the authority of 25 CFR 152.33(a) - *Partition without application.*
 - e. If any Indian owner of an interest in the land desires to obtain title in fee status to be set apart to him/her, such owner should so indicate his/her desire for a fee patent on the “Petition for Partition” application.
 - f. Upon receipt of the package, supporting documentation, and the

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Superintendent's recommendation, the RD will examine the documentation. If the RD arrives at the same conclusion and an equitable and desirable partition can be executed, the landowners will receive a Notice of Decision. The Notice to the applicant and other co-owners must also advise them of their appeal rights under 25 CFR Part 2.

- g. The RD will issue a request to the BLM for issuance of patents in accordance with the Decision.

1.8 Reports and Forms.


The forms outlined below and as referenced herein are IA deeds and applications that have been modified, notated, and dated for specific use in the BIA Pacific Region. These forms do not conflict with previously approved instruments used within the Pacific Region, and include those requirements for effectuating transfer of land title between and among co-owners.

With the exception of the "Petition for Partition" and any signed and submitted waiver of estimate of value/appraisal statements, the checklists and deeds will be prepared by Agency or regional Real Estate Services staff, as applicable, to ensure proper preparation and that execution has met all requirements of this regional policy. The following forms are located on the IA Online Forms website here:


<http://www.bia.gov/WhoWeAre/AS-IA/ORM/OnlineIAForms/index.htm>

- Petition for Partition Form
- Deed Form "Deed to Restricted Indian Land"
- Deed Form "Deed to Restricted Indian Land (AIPRA_PRO)"
- Deed Form "Deed to Restricted Indian Land Special Form"

Approval



Amy Dutschke
Regional Director, Pacific Region



Date

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Attachment 1

Example – Petition for Partition form

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

PACIFIC REGION

The undersigned heirs of _____, deceased Indian allottee of the _____ Indian Reservation, respectfully represent that said allottee died possessed of allotment No. _____, on the _____ Reservation.

Allotment No. _____, is described as:

Said allotment contains _____ acres, more or less.

The below petitioners are the heirs or assigns of said deceased allottee and are entitled to said lands in common, subject to the trust declared in the initial trust patent; and that the interests of below petitioners of said lands are as follows, respectively:

- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;
- _____ entitled to an undivided _____ interest;

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Attachment 1 continued

_____ entitled to an undivided _____ interest;
_____ entitled to an undivided _____ interest;
_____ entitled to an undivided _____ interest.

The petitioners have agreed to, and by this petition do agree, that the land described herein may be divided between or among them as follows, respectively:

To: _____, the _____
_____, containing _____ acre(s);

To: _____, the _____
_____, containing _____ acre(s);

To: _____, the _____
_____, containing _____ acre(s);

To: _____, the _____
_____, containing _____ acres(s);

To: _____, the _____
_____, containing _____ acres(s);

To: _____, the _____
_____, containing _____ acre(s);

To: _____, the _____
_____, containing _____ acre(s).

The herein petitioners request that appropriate deeds be prepared for their execution, or that patents be issued, to effect the partition as hereinabove intended for the above-described real property. The signatures of the petitioners may be obtained in counterparts and attached hereto and made a part of this petition.

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Attachment 1 continued

Please Print Name & Include Signature(s) of Petitioner(s)

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

Petition for Partition (continued), Allotment No. _____

Please Print Name & Include Signature(s) of Petitioner(s)

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

[Signatures may be obtained in counterparts]

////////

I hereby certify that the effect of this Petition was explained to and fully understood by the landowner(s) and the Petition is hereby accepted as to form.

Acceptance Date

Superintendent
Bureau of Indian Affairs

Pursuant to the authority delegated by 209 DM 8,
230 DM 1, and 3 IAM 4 and Sacramento,
Redelegation Order No. 1 (43 F.R. 30131, dated
July 13, 1978).