

Overview of Indian Trust Real Property

What is Indian trust real property?

Generally, Indian trust property refers to land that is held in trust by the United States or otherwise reserved for Indian tribes and individual Indians and is managed by the Bureau of Indian Affairs for their benefit.

Why is it called "trust" property?

Because the federal government is the trustee for the land. A trustee is obligated to manage trust assets in the best interests of the beneficiaries of the trust, in this case the Indian landowners.

What is "restricted" Indian land?

Restricted Indian land is similar to trust land and is land that is held by a tribe or individual subject to a restriction by the United States against alienation (selling or giving the property to anyone else.) The phrase "trust or restricted land" is common in Indian law.

What is fee land?

The term fee land is used to describe the reservation land that is no longer in trust or subject to restriction, and commonly refers to land on a reservation that is owned by non-Indians. However, in some instances a tribe, or individual tribal members, also has land in fee. The term refers to the "fee patent" document that is issued to the individual Indian land owner, which transfers the land out of trust and allows it to be deeded to anyone.

What laws apply when I am on trust land on my reservation?

You will not be subject to many state and local laws and regulations if you live or

travel on trust land on your own reservation. For example, the state or local laws cannot tell you what you can keep in your yard, whether you can have a business in your home, or that you must pay property or other state or local tax. There is an exception for certain civil matters under Public Law 280, which gives Washington State concurrent jurisdiction over legal proceedings involving school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoptions, child dependencies and operation of motor vehicles. The state does not have jurisdiction over civil traffic infractions, such as speeding tickets, on any roads within your reservation. Federal civil and regulatory laws may apply. Tribal civil and regulatory laws will apply. Criminal laws and jurisdiction issues are not included in this discussion.

What laws apply when I am on fee land within my reservation?

You will be subjected to more state and local laws on fee land, but exemptions from sales tax and many state and local regulations will still apply. This is because you are still on your own reservation and your Tribe has exclusive regulatory powers, even if you are on fee land.

Does land have to be within a reservation to be trust land?

No. There are off-reservation trust lands, including off-reservation allotments.

What is allotted land?

Often Indian trust land is referred to as allotted land and describes how much Indian land became trust land. Allotted land is land that was originally set aside for individual

tribal members both on and off reservation. The land was held by the United States in trust or restricted fee status for the benefit of individuals. Soon after the reservations were set aside or created, federal law allowed the reservations to be divided into individual allotments for tribal members, and many were, creating "allotted land."

Who can own Indian trust property?

All tribes in the Northwest which have reservations that have previously been allotted allow their enrolled tribal members to own individual trust property on their reservation, either through inheritance or

purchase. Some tribes allow members of other tribes to inherit land on their reservation. Unenrolled Indians and non-Indians usually can inherit only a life estate in trust land. Under the American Indian Probate Reform Act, which applies to estates of Indians who die on or after June 20, 2006, interests of less than 5% in jointly owned trust land may be purchased by the tribe unless the landowner makes arrangements in a will to consolidate the small interest with other joint owners' interest(s), or transfers the property during his or her lifetime. The reservations of some tribes have never been allotted and thus the property title remains entirely in the name of the tribe itself.

9206EN

This publication provides general information concerning your rights and responsibilities. It isn't intended as a substitute for specific legal advice. This information is current as of the date of its printing, November 2009.

© 2009 Northwest Justice Project — 1-888-201-1014, TTY 1-888-201-9737

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)