Indian Affairs - Office of Public Affairs

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WASHINGTON, D.C. – Assistant Secretary – Indian Affairs Kevin K. Washburn today announced that he has approved the Northern Cheyenne Tribe's probate code and that the Department of the Interior's Office of Hearings and Appeals (OHA) will now apply the code when probating trust or restricted lands within the Northern Cheyenne Reservation in Montana. Codes such as the Northern Cheyenne's allow tribes to determine how trust or restricted land within the reservation passes to heirs upon an individual's death.

This is one of the many steps the Obama Administration is taking within a larger effort to empower tribes in restoring tribal homelands while addressing the historical problems of land fractionation. Additional elements of this strategy include the implementation of the Land BuyBack Program, which implements the land consolidation provisions of the Cobell Settlement, HEARTH Act approvals, which allow tribes to negotiate and enter into leases without further Secretarial approvals where the tribes' leasing regulations have been approved, and prioritizing the land-into-trust process. The combination of these actions, including tribal probate codes, has the potential to unlock millions of acres of fractionated lands for the benefit of tribal communities.

Application of tribal probate codes helps to shorten the lengthy process of probating Indian trust estates. Other crucial elements for streamlining the probating of Indian estates include proactive estate planning and increased participation in the probate process. Having a will in place may help ensure that an individual's trust property is distributed according to the person's wishes, and can vitally assist in the administration of the deceased's estate. Also important is the cooperation of family members with Bureau of Indian Affairs (BIA) agency offices in the preparation of probate files, which helps the Department's Office of Hearing and Appeals make progress in reducing its substantial probate caseload.

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"I applaud the Northern Cheyenne Tribe for working with the Bureau of Indian Affairs to develop a probate code that addresses its unique needs," Washburn said. "The implementation of tribal probate codes is an important step in giving tribes greater input on the preservation of trust lands within their reservations and enhancing tribal sovereignty by reducing land fractionation and encouraging land consolidation."

Under the American Indian Probate Reform Act federally recognized tribes have the ability to present the Department with their own tribally enacted probate codes that govern the descent and distribution of trust properties within their jurisdictions. The Northern Cheyenne Tribe is only the second federally recognized tribe to gain approval of its own probate code.

Lands allotted to individual American Indians in the 19th and early 20th centuries now have hundreds and sometimes even thousands of individual owners, making it difficult to lease or develop the parcels.

As a result, highly fractionated allotments lie idle, unable to be used for any economically beneficial purpose. Because fractionation often increases when an allotted landowner dies without a will, individual landowners and tribes can address the fractionation problem in part through careful attention to wills and probate issues.

Interior holds about 56 million acres of land in trust for American Indians, with more than 10 million acres held for individuals and nearly 46 million acres for federally recognized tribes. The Department holds this land in more than 200,000 tracts, of which about 92,000 (on approximately 150 reservations) contain fractional ownership interests subject to purchase by Interior's Land Buy-Back Program for Tribal Nations. This program implements the land consolidation component of the historic Cobell Settlement, which provided $1.9 billion to purchase fractionated interests in trust or restricted land from willing sellers, at fair market value, within a 10-year period.

For more information on the probate and estate planning process, please visit www.bia.gov/yourland/. For more information on the Land Buy-Back Program for Tribal Nations, please visit http://www.doi.gov/buybackprogram/index.cfm.

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