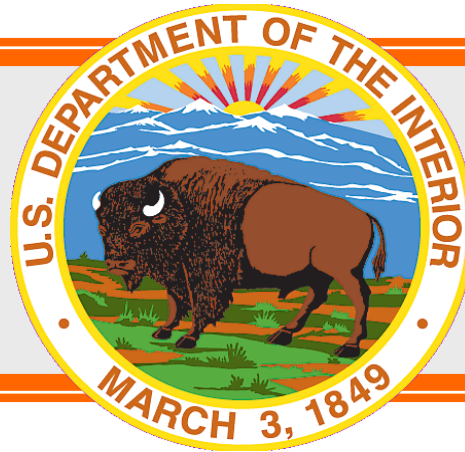


Department of the Interior
Bureau of Indian Affairs



Proposed Rule:
Indian Land Title and Record
25 CFR 150

Background




- Indian land: Land that the United States holds in trust or restricted status for individual Indians and Tribes
- Title documents for Indian land include:
 - Conveyances
 - Probate orders
 - Encumbrances (e.g., mortgages, liens, permits, covenants, leases, easements, rights-of-way)
 - Plats
 - Cadastral surveys
 - Other surveys

Background (cont'd)

- The Bureau of Indian Affairs (BIA) **Land Title and Records Office (LTRO)** maintains title documents for Indian land
- LTRO has several physical offices across the U.S.
 - Established in 1965 as “title plants” to serve BIA “area offices”
 - Each LTRO office is assigned a geographic service area (based on BIA Regions or Tribal reservation) and records title documents primarily within its designated geographic area
- Listed at: <https://www.bia.gov/bia/ots/dltr>



Need for Updates to LTRO Regulation

- Regulations governing LTROs are at 25 CFR 150
- Regulations have not been updated for 40 years (since 1981)
-  LTRO locations are no longer accurate
-  LTRO now maintains title documents primarily through an electronic system: the Trust Asset Accounting Management System (TAAMS)
-  New categories of documents that don't require Secretarial approval need to be recorded in LTRO because they affect who is authorized to use Indian land
 - E.g., leases under Tribal HEARTH regulations

Proposed Rule

- ☑ Refer to BIA's website for LTRO physical locations
- ☑ Address LTRO's electronic maintenance of title documents
- ☑ Address recordation of new categories of documents
- ☑ Clarify LTRO's role as a support office for:
 - BIA Realty staff for land transactions requested by Indian landowners
 - Office of Hearings and Appeals (OHA) for title matters related to probate
- ☑ Clarify LTRO's role with respect to title defects
- ☑ Allow the BIA Director to:
 - ☑ Delegate recording responsibilities to another office for certain transactions on an as-needed basis
 - ☑ Allocate workloads among the LTRO offices for efficiency

Overview of Rule

- 25 CFR 150 – Record of Title to Indian Land
 - Subpart A – Purpose and Definitions
 - Subpart B – Record of Title to Indian Land
 - Subpart C – Procedures and Requirements to Record Documents
 - Subpart D – Disclosure of Title Documents and Reports
 - Subpart E – Records

Subpart A – Purpose and Definitions

- This part describes:
 - The “record of title”
 - BIA’s repository of title documents for Indian land
 - Responsibilities for—
 - Recording title documents,
 - Maintaining the record of title, and
 - Providing reports on title to Indian land.

§ 150.1

Subpart A – Purpose and Definitions (cont'd)

Definitions

- New definitions for:
 - *Certify, Certified copy, and Certifying officer*
 - *Defect or title defect*
 - *I or you*
 - *Office of Hearings and Appeals (OHA)*
 - *Probate Inventory Report*
 - *Record of title*
 - *Region*
 - *Title*

§ 150.2

Subpart A – Purpose and Definitions (cont'd)

Definitions (cont'd)

- Revises definitions of:
 - *Agency*: to clarify that contracting/compacting Tribes are included
 - *Indian land*: to limit to trust or restricted land only (other categories of land now addressed in 150.204)
 - *Recording*: to move a substantive statement as to the significance of recording a document to 150.101
 - *Title document*: to provide examples
 - *Title examination*: to add detail
 - *Tribe*: to refer to the List Act of 1994

Subpart A – Purpose and Definitions (cont'd)

Definitions (cont'd)

- Deletes definitions for terms no longer used:
 - *Administrative law judge*
 - *Commissioner*
 - *Land*
 - *Superintendent*

§ 150.2

Subpart B – Record of Title to Indian Land

- Purpose of record of title (new section)
 - Provides BIA with a record of title documents to Indian land; and
 - Provides the public (including but not limited to future purchasers, creditors, and other interested parties) with constructive notice that the title documents exist
- Who maintains the record of title (no change)
 - LTRO

§§ 150.101 – 150.102

Subpart B – Record of Title to Indian Land (cont'd)

LTRO services to maintain the record of title:

1. Recording title documents submitted by an Agency, Region, or OHA;
2. Providing certified copies of the title documents in the record of title;
3. Examining the record of title and certifying the findings of title examinations;
4. Providing and certifying Title Status Reports;
5. Preparing, maintaining, and providing land status maps;
6. Providing and certifying probate inventory reports; and
7. Providing other services and reports based upon the information in the record of title.

Subpart B – Record of Title to Indian Land (cont'd)

- LTRO generally maintains the record of title electronically
- LTRO offices' responsibility
 - Each LTRO office has primary responsibility to maintain the record of title under its assigned geographic area
 - BIA will keep an updated list of each LTRO office's area of responsibility on www.bia.gov/bia/ots/dltr
 - LTRO offices may assist in maintaining the record of title for other geographic areas as needed

§§ 150.104 – 150.105

Subpart C – Recording Documents

- What is recorded in record of title?
 - All title documents for Indian land **must** be recorded
 - Even if the document reflects a transaction that did not require Secretarial approval, such as
 - Service line agreements
 - HEARTH leases
 - Leases of Tribal land by a 477 corporate entity under a charter
 - Subleasehold mortgages

§ 150.201

Subpart C – Recording Documents (cont'd)

- LTRO may also record:
 - Documents that demonstrate rights of use, occupancy, and/or benefit of certain Tribes to U.S. Government land or other non-Indian lands; and
 - Certain documents regarding Indian lands that are not title documents.

§ 150.201

Subpart C – Recording Documents (cont'd)

- Finding title documents for Indian land
 - Check LTRO
 - In certain circumstances, also check Federal, State, and local records of title
- Requirement to record with LTRO in record of title does not eliminate or supersede any Federal statute or regulation requiring recording in other records of title
 - E.g., title documents for Indian land within the jurisdiction of the Five Civilized Tribes or Osage Nation

§§ 150.201 – 150.202

Subpart C – Recording Documents (cont'd)

- Mechanics of recording
 - Only an Agency, Region, or OHA may submit title documents to LTRO for recording
- LTRO is the designated office to record title documents
 - BIA Director may delegate authority to another office by documenting the types of transactions the delegation applies to

§§ 150.203 – 150.204

Subpart C – Recording Documents (cont'd)

- Minimum requirements for recording
 - Title document must include:
 - Legal description and, if required, the tract number
 - Signature of the parties to the document
 - Proper notarization of signatures, if applicable
 - Signature and citation to authority of approving official
 - Approval date
 - Deemed approved documents need only the first 3 items and
 - A citation to the legal authority for the transaction to be deemed approved

§ 150.205

Subpart C – Recording Documents (cont'd)

- Title defects
 - If LTRO discovers one or more of the minimum requirements for recording is **missing**, then:
 - LTRO will notify the originating office and request correction
 - If LTRO discovers one or more of the minimum requirements for record **has an error**, then:
 - LTRO will record the title document with a notation on title and notify the originating office to request correction (and remove notation upon correction)

continued on next slide...

Subpart C – Recording Documents (cont'd)

- Title defects (continued)
 - If LTRO discovers during a title examination that a **previously recorded** title document contains or creates a title defect, then:
 - LTRO will record the title document with a notation on title and notify the originating office to request correction (and remove notation upon correction)
 - If the defect is in the **probate record**, then:
 - LTRO will notify the Agency or Region to initiate corrective action with OHA

§ 150.206

Subpart D – Disclosure of Title Documents and Reports

- How LTRO certifies copies
 - Affixes an official seal on the copy
 - Means the copy is a true and correct copy of the recorded title document
- Reports the LTRO provides
 - Certified reports
 - Title Status Report (TSR), Land Status Map, Probate Inventory Report
 - Uncertified reports based on information in the record of title

§§ 150.301 – 150.302

Subpart D – Disclosure of Title Documents and Reports (cont'd)

- Who may request/receive copies of title documents or LTRO reports:
 - Owners of an interest in Indian land for the Indian land in which they own an interest;
 - The Tribe with jurisdiction over the Indian land may request title documents or reports for Indian land subject to the Tribe's jurisdiction; and
 - Any person (or their legally authorized representative) or entity who is leasing, using, or consolidating Indian land or is applying to lease, use, or consolidate
- Others must file a FOIA request
- Request copies or LTRO reports from any Region or Agency office

Subpart D – Disclosure of Title Documents and Reports (cont'd)

- Provide:
 - ☑ Name and DOB or ID number (if inquiring about your own interest); OR
 - ☑ Name of reservation where land is located and either the tract number or legal description; OR
 - ☑ Agency name and either the tract number or legal description; OR
 - ☑ A legal description of the tract; OR
 - ☑ A title document pertaining to the tract; OR
 - ☑ The allotment number including the Tribe or land area code; OR
 - ☑ The name of the original allottee.
- Persons or entities leasing, using, or consolidating Indian land (or applying to do so) must also provide documentation that they are entitled to copies or LTRO reports.

Subpart D – Disclosure of Title Documents and Reports (cont'd)

- LTRO may charge a fee for each copy of a recorded title document,
 - But **will not** charge a fee to Indian land owners (or their legally authorized representative) for copies of title documents or reports for the Indian land in which they own an interest
- Fee rate is established by 43 CFR 2, Appendix A (FOIA Fee Schedule)
 - E.g., \$0.15 for single-sided 8.5 x 14” page
 - (See next slide for full schedule)
- LTRO may waive all or part of the fees
- Paid fees are non-refundable

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Subpart D – Disclosure of Title Documents and Reports (cont'd)

APPENDIX A TO PART 2—FEE SCHEDULE

Types of Records	Fee
(1) Physical records:	
Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines or scanned into an electronic format	\$.15 per page (\$.30 for double-sided copying).
Color copies of pages no larger than 8.5 × 11 inches	\$.90 per page.
Pages larger than 8.5 × 14 inches	Direct cost to DOI.
Color copies of pages no larger than 11 × 17 inches	\$1.50 per page.
Photographs and records requiring special handling (for example, because of age, size, or format)	Direct cost to DOI.
(2) Electronic records:	
Charges for services related to processing requests for electronic records	Direct cost to DOI.
(3) Certification	Fee.
Each certificate of verification attached to authenticate copies of records	\$.25
(4) Postage:	
Charges that exceed the cost of first class postage, such as express mail or overnight delivery	Postage or delivery charge.
(5) Other Services:	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them	Direct cost to DOI.

Subpart E – Records Ownership of Records

- LTRO records are property of the U.S. if they:
 - Are made or received by DOI or a contracting/compacting Tribe *in conduct of a Federal trust function*; or
 - Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken *in performance of a Federal trust function*
- Other records that a Tribe or Tribal organization makes or receives in conducting business with DOI are the Tribe's property

§ 150.401

Subpart E – Records (cont'd)

Preservation of Records

- For records that U.S. owns:
 - Tribes, Tribal organizations, and any other organization that makes or receives records that the U.S. owns must preserve the records in accordance with the Federal Records Act
- For records made/received in conduct of business with DOI that the Tribe owns:
 - Tribes and Tribal organizations should preserve those records for the period of time authorized by the Archivist of the U.S. for similar DOI records under the Federal Records Act

§ 150.402

Next Steps

- Comments due **February 9, 2021**
 - To consultation@bia.gov or through www.regulations.gov
 - (No need to send duplicate hard copy)
- Goal: Publication of final rule in late Spring

Questions?

- For further information contact

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