

More on Land Trust

Why can't tribes purchase and own land like everyone else?

Tribes and individual tribal members can purchase and own land in the same way as any other individual. When tribes or individual tribal members own land in fee patent title the power of the federal fiduciary responsibility is reduced.

Why have this land to trust process?

The fee to trust process provides tribes with some very important benefits not available to other US citizens. By converting the land to federal ownership (title), the land becomes exempt from state and local government taxes and local land use regulations. In most states, trust lands are removed from local law enforcement jurisdictions as well.

Avoiding the jurisdiction of local and state governments is the primary reason Indian tribes apply to the Bureau of Indian Affairs to convert fee land into federal trust title.

What are the laws that govern the fee to trust process?

Technically, there are no laws governing this process. The process is set out in the Code of Federal Regulations (CFR). These regulations can be found at CFR Title 25 Part 151. The 1934 IRA authorizes the Department of Interior (DOI) to create these regulations. Neither the President nor the Congress of the United States created or directly approved these regulations. The process is entirely the internal policy of the DOI and more specifically the BIA.

How can changing local jurisdictions occur with so little oversight?

Technically it should not. In 1990, the State of South Dakota filed suit against the US Department of the Interior (DOI) in federal court to oppose a land to trust application near a non-Indian community. In the case, STATE OF SOUTH DAKOTA; City of Oacoma, South Dakota, Plaintiffs-Appellants, v. UNITED STATES DEPARTMENT OF THE INTERIOR; Eddie F. Brown, Assistant Secretary-Indian Affairs; Jerry Jaeger, Acting Area Director, Bureau of Indian Affairs, Defendants-Appellees. No. 94-2344. (Submitted Feb. 15, 1995. Decided Nov. 7, 1995.) a three-judge panel ruled that the Congress had unconstitutionally delegated their authority to the DOI in the 1934 IRA. The case appeared headed to the US Supreme Court. To prevent the Supreme Court from throwing out the fee to trust procedures as unconstitutional, federal lawyers petitioned the Court for time to amend the fee to trust regulations that appeared to violate the Constitution.

Following this court case, the regulations were rewritten by the DOI to provide better notice to local jurisdictions facing fee to trust land acquisitions. The problem remains that the BIA can modify and rewrite these regulations, as often as they like, and there is today, still no direct oversight from Congress. Also, the question of the constitutionality of the fee to trust process remains pending in federal courts.

Why should I care about this fee to trust process?

This nation was founded on the principal of assuring its citizens "life, liberty and the pursuit of happiness". To fulfill this pledge, the founders felt the need to restrict the powers of the federal government. One way in which this was done is using a process called "checks and balances." The government was divided into three branches, the Executive, Legislative and Judicial. Each branch was given unique powers and responsibilities to prevent any single part of the federal government from usurping the authority of another. Additionally, the Constitution further restricts federal authority by providing constitutional authority to state governments. (The US Constitution (10th Amendment, " The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.")

The fee to trust process removes land from local jurisdiction and places the land under federal authority, reducing the balances intended in the Constitution. Then federal agencies, using administrative powers of questionable legal authority, allow these federal lands to be used exclusively by quasi-sovereign tribal governments which often exhibit interests which conflict with local governments and their neighbors.

What if a tribe puts land into trust near me?

Most property owners take zoning and land use planning for granted. We purchase our homes or businesses assuming that local governments will protect our real estate investment from conflicting development in our neighborhoods. Read the "Pequot Tribe Lands and the Neighbors" story. Throughout this nation we have adopted a policy of allowing local authorities to create zoning restrictions on our private property in exchange for the assurance that our life style choices will be protected.

Lands converted from fee to federal trust title are immune from zoning regulations and therefore there is no assurance that federal trust land will conform to the same regulations as neighboring fee land.

For a perfect example of this see letter and photos from a concerned citizen living next to Indian lands.

I live miles away from any Indian lands. Do I need to be concerned about fee to trust?

Yes. Indian land claims can arise anywhere. Tribes and their lawyers are constantly scouring the records of old treaties, court cases and federal legislation looking for questionable language or new interpretations of these documents in order to reclaim land. Recently, the Miami Tribe sued land owners in Illinois, a State that has no recognized Indian tribes or reservations, over a treaty signed 150 years ago, to reclaim land.

If your state allows any type of gaming such as charitable bingo or state lottery, any land in your state could be a target for an Indian gaming casino site. Indian gaming has provided some tribes with great wealth while other tribes remain poor. The rich tribes are competing with each other to locate tribal casinos closer to major population centers, even if these sites are many miles away from their reservations. The poor tribes, unable to mount successful gaming businesses due to their remote location, are hoping to acquire trust lands near cities as well.

Even if a tribe has trust land in my area, if it's not near me, why should worry?

Federal regulations require local communities to provide fire protection, road maintenance and other municipal services to these trust lands despite the fact the trust land is immune from property taxes, building codes and property regulations. Most communities will find federal trust land will create additional expenses while reducing their tax base. Trust lands will likely create jurisdictional disputes in law enforcement, land use planning, social service delivery and emergency services. Most communities dealing with federal trust conversions have had found the process disruptive and divisive.

Do all fee to trust conversions create problems?

No. There are communities and tribes that co-exist to the mutual benefit of all. Tribes that develop a strong relationship with the non-Indian community and have entered into mutually beneficial agreements for payments in lieu of taxes, services, jurisdictional dispute resolution and mutual land use planning. These agreements can result in good working relationship based on mutual respect.

Tribes that exhibit a hostility or bitterness toward non-Indians will make government-to-government relations with your community very troublesome. See the Pequot Story.

It is important to remember that agreements need a forum to resolve disputes. Under federal law, Indian tribes have sovereign immunity which has been used to break otherwise valid contracts with non-Indian entities. All agreements with tribal governments should be reviewed as to their enforceability outside tribal courts. Community/tribal agreements should include a "limited waiver of sovereign immunity" from the tribe.

What can I do if I want to oppose the fee to trust process?

Your primary efforts should be directed to the federal government. You should contact your Congressman and your Senator expressing your concerns. You should also write the Secretary of the Department of Interior and to the head of the Bureau of Indian affairs expressing your comments. These are federal policies that require federal solutions.

If a fee to trust application impacts you directly, you can enter the appeal process. A trust land conversion may impact your property value, right of way or other property rights. If you suffer a direct personal harm you may have “standing” to enter the appeals process individually.

Can local governments do anything?

Yes. Local and state governments have an obligation to be aware of these issues and be prepared to respond to them. Read Nixon press release. You should ask your local officials to obtain a copy of the fee to trust regulations and have your city or county attorney review them in the event a fee to trust acquisition is attempted. The fee to trust regulations provide for an appeal process. Your local authorities should be familiar with this process.

Your state government can pass legislation to require a public hearing whenever a fee to trust application has been received by a local jurisdiction. This legislation would ensure local officials are prepared to face fee to trust actions and the public hearing would be the vehicle to educate your community over the issues they may face and their options to oppose it if they choose.

Many state attorneys general are reluctant to press legal action against tribes due to tribal sovereign immunity and our current social concerns over political correctness. You must remind your state law enforcement offices they are bound by your state’s constitution to protect the sovereignty of your state. If your state attorney general is unwilling to assist in opposing fee to trust conversions, you can appeal to your governor or legislature to authorize the hiring of special outside counsel on these issues.

Local governments can encourage tribes to enter into agreements which specifically define responsibilities for jurisdiction and cost sharing. It is important to remember that tribes exercise sovereign immunity so any city/county/tribal agreement should include a waiver of sovereign immunity for the purposes of the agreement.

Indian Gaming Regulatory Act land to trust information