

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter establishes the procedures for correcting title defects on Indian trust or restricted land arising from specific mistakes or errors in deeds. Additionally, this chapter identifies circumstances when it is acceptable to use an affidavit to correct a deed.

1.2 Scope. This policy applies to programs and offices under the authority of the Assistant Secretary-Indian Affairs (AS-IA), including the Bureau of Indian Affairs (BIA), Office of Trust Services (OTS), Division of Real Estate Services (DRES) and the Division of Land Titles and Records (DLTR) staff at central office, regional offices, agencies, or field offices involved in correcting title defects on Indian trust or restricted land. This part does not apply to deeds approved by the Oklahoma State Courts pursuant to the Stigler Act of August 4, of 1947, 61 Stat. 731, as amended.

1.3 Policy. It is the policy of IA to:

- Maintain accurate and up-to-date ownership information on Indian trust or restricted land;
- Comply with all applicable Federal laws and regulations; and
- Implement practices to protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, depletion, and to make decisions concerning trust lands that are in the best interest of the landowner.

1.4 Authority.

A. Statutes and Regulations.

- 1) 25 U.S.C. § 5, Record of Deeds by Indians requiring approval
- 2) 25 U.S.C. § 6, Seal; authenticated and certified documents; evidence
- 3) 25 U.S.C. §5108, Acquisition of Lands, water rights or surface rights
- 4) 25 CFR Part 150, Land Records and Title Documents
- 5) 25 CFR Part 151, Land Acquisitions
- 6) 25 CFR Part 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands
- 7) 25 CFR Part 115 Subpart E, Hearing Process for Restricting an Individual Indian Money (IIM) Account

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B. Guidance

- 1) 51 IAM 2, Recording and Custody of Land Title Documents
- 2) 51 IAM 3, Filing and Custody of Non-Land Trust Asset Documents
- 3) 51 IAM 4, Examination and Certification of Land Title
- 4) 3 IAM 4, Delegations to the Deputy Bureau Director, Field Operations and to Regional Organizational Levels
- 5) 3 IAM 6, Delegations to the Deputy Bureau Director, Indian Services and the Deputy Bureau Director, Trust Services
- 6) 3 IAM 11, Delegation to the Director, Land Buy-Back Program (BBP) BIA Acquisition Center

1.5 Responsibilities.

- A. Director, BIA** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the OTS DRES program. The DBIA serves as the Senior Accountable Office for this program and has primary responsibility for implementing and executing the BIA programs in accordance with statute, regulation, and Departmental policy affecting Indian trust ownership and resources.
- B. Deputy Bureau Director (DBD), Field Operations, BIA** is responsible for overseeing the Regional Directors (RDs) and disseminating policy relevant to the regions.
- C. DBD, Office of Trust Services (OTS)** is responsible for ensuring that statutory and regulatory timetables for excess real property transfer requests are met, and guidance is available to regional and agency staff tasked with processing land transfer applications; initiating periodic program reviews of regional and agency programs; and assisting in the development and dissemination of trust resource policies to the RDs.
- D. Division Chief, DRES** is responsible for overall policy and guidance development within the division, including establishing realty program policies and standards to comply with statutory and regulatory requirements; day-to-day oversight of the realty program; ensuring technical assistance and training is provided to BIA regions as needed; conducting program reviews; managing BIA's federal reporting requirements as they relate to the realty program and producing or preparing data quality reports related to deeds, corrective deeds, and affidavits.

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- E. Chief, DLTR** establishes the land titles and records program policies, guidance, and standards for complying with statutory and regulatory requirements. The Division Chief also maintains oversight of the land titles and records program throughout BIA; provides technical assistance and training to BIA regions; and manages BIA's responsibilities including meeting federal reporting requirements and producing or preparing data quality reports related to trust or restricted title, deeds, correction deeds and affidavits.
- F. Land Titles and Records Office, OTS** is responsible for recording Indian land title documents, including review and determination, maintenance and certified reporting of land title ownership and encumbrance on Indian trust and restricted lands.
- G. Chief, Division of Trust Land Consolidation (DTLC)** is responsible for management and oversight of the acquisition of fractional interests in trust or restricted land pursuant to and in accordance with applicable statutory authority. The DTLC Division Chief is the designated authority to accept and approve transactions transferring trust or restricted land interests from individual Indian sellers to the Tribe with jurisdiction. Upon approval, the deed and supporting documents are automatically recorded in the land title system of record, Trust Asset and Accounting Management System (TAAMS).
- H. Regional Directors (RDs)** serves as the Senior Accountable Official for the realty program in the respective region and is responsible for reviewing and acting on Tribal or individual land transfer requests that are not otherwise delegated to the BIA agency level to ensure appropriate action to address internal and external findings. RDs serve as Approving Officials (AOs) for deeds, corrective deeds and affidavits.
- I. Agency Realty Officer** is responsible for the preparation of deeds, correction of deeds, preparation of affidavits and working with the Land Titles and Records Manager to record these transactions.
- J. Land Titles and Records Manager** is responsible for providing for the custody, maintenance, use, certification of land title documents, and issuance of Title Status Reports (TSR) for Indian Trust lands for use by the following list of users that includes, but is not limited to: region and agencies, other governmental offices, Administrative Law Judges, private attorneys, landowners, mineral owners, Tribal officials, or Tribal staff.
- K. Agency Superintendents** is responsible for managing their respective organization's Realty program compliance in day-to-day operations and coordinating reviews of land transfer requests. Superintendents oversee the Agency Realty Officer and ensure

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appropriate action to address any finding of errors in conveyance documents. Superintendents serve as AOs for deeds, corrective deeds and affidavits.

1.6 Definitions.

- A. **Affidavit** is a voluntary written declaration of facts being true to the best of a person's knowledge sworn before an officer authorized to administer oaths, such as a notary public.
- B. **Approving Official (AO)** refers to an individual to whom decision-making authority for the agency or jurisdiction has been delegated. For the purposes of this policy, an AO such as a Superintendent or RD, may correct a deed by either a corrective deed or an affidavit.
- C. **Conveyance** is the transfer of an interest in real property from one party to another party, by means of an instrument such as a deed.
- D. **Trust land or land in trust status** is land, or any interest in land, where legal title is owned in trust by the United States for the benefit of one or more individual Indian(s) or Tribe(s).
- E. **Land** is trust real property, including any interests, benefits, and rights inherent in the ownership of the real property. Land may include surface and/or subsurface interests.
- F. **Deed** is a written instrument, which has been signed and delivered, by which a party, the grantor, conveys title to real property or an interest in real property, to another party, the grantee. A deed must describe with reasonable certainty the interest and land that is being conveyed and contain a recital documenting that consideration was given for the interest or land.
- G. **Grant** is a formal transfer of real property or interest in real property by deed or other writing.
- H. **Grantee** is one to whom property or an interest in a property is conveyed.
- I. **Grantor** is one who has an interest in real property, can make application to convey property or an interest in property to another, and executes a deed to convey their real property interests.
- J. **Indian Landowner** is a Tribe or individual Indian who owns an interest in trust or restricted land.

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- K. Kennerly Letter** is the notice of intent to the account holder that a decision has been made by the Officer in Charge (OIC) to supervise or encumber the IIM account. This process ensures due process, including notification of the right to appeal the decision.
- L. Restricted Indian Land** is land or an interest in land, in which title is held by one or more individual Indian Landowner(s) or Tribe(s), and which can only be alienated or encumbered by the owner with the approval of the United States due to limitations described in the conveyance or by operation of law.
- M. Title Status Report (TSR)** is a report issued after title examination that provides the proper legal description of a tract of Indian land, and current ownership including any applicable conditions, exceptions, or encumbrances of record. The report can be uncertified, or it can be certified by the Land Titles and Records Manager.
- N. Tribe** is any federally recognized Indian Tribe.
- O. Trust Assets and Accounting Management System (TAAMS)** is the BIA's system of record for trust and restricted trust title ownership and Indian trust land resource management within the Department and BIA.

1.7 Standards, Requirements, and Procedures

A. Conveyance Correction Procedures

BIA will implement the following steps in order to provide consistent and standard application of conveyance correction procedures across regions and program offices.

BIA staff may not make unilateral changes to deeds after they have been executed. Corrective deeds prepared by the Real Estate Services program should always be the first resource for correcting a deed that has been executed and approved; however, in limited cases, an affidavit may be used to correct title defects arising from mistakes or errors in a deed but only where the grantor either refuses or is unable to execute a corrective deed and the value of the transaction is minimal, as defined below. For Fee-to-Trust, it may require recording a correction deed at the local county recording office.

The Real Estate Services, Acquisition and Disposal staff, or other unit that manages real estate transactions, must retain documentation in the permanent records management file of efforts made to contact the grantor to obtain a corrective deed.

B. Use of an Affidavit

The limited circumstance in which an affidavit is appropriate exists when an error has

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been discovered in the deed and the grantor cannot be found or efforts to convince the grantor in writing to execute a corrective deed were unsuccessful. The only situations in which an affidavit may be used to correct a deed or title issue arising from mistakes or errors in a deed are as follows:

- 1) **Incorrect Fractional Share (Sample Affidavit 1):** When a deed recites the incorrect fractional share and the fractional share recited is larger than that owned by the grantor, the deed is recordable and title will transfer in accordance with the share owned by the grantor, who may only convey what they own. The LTRO will add a critical defect notice to title and notify the office of origin of the title defect for immediate corrective action.
- 2) **Wrong County or State (Sample Affidavit 2):** When a deed recites the wrong legal description, acreage, Section-Township-Range (S-T-R), County, State and Meridian it is recordable, and title will transfer. The LTRO will add a substantive defect notice to title and notify the office of origin of the title defect for corrective action. An affidavit executed by the Agency Realty Officer and the AO that carefully references other documents in the file with the correct legal description including county and state names and explains that the error is a simple transcription error is sufficient to correct this error and remove the defect.
- 3) **Discrepancy in the Grantor Name (Sample Affidavit 3):** When the signature of the grantor does not match the typed name in a deed, the deed is recordable and will transfer title. The LTRO will add a substantive defect notice to title and notify the office of origin of the title defect for corrective action. To correct the deed and remove the defect, an affidavit of identity can be used to clearly state that the person who signed the deed is the same person whose name is typed on the deed. The Real Estate Services program employee who swears to the affidavit must personally know the grantor. This affidavit may also be used to correct the grantor name.
- 4) **Wrong Statutory Authority or Delegation of Authority (Sample Affidavit 4):** When the deed contains the wrong statutory authority or the wrong delegation of authority, the deed is not recordable, and title will not transfer. Either of these citation errors will result in a fatal defect notice, and LTRO will notify the office of origin. An affidavit signed by the Agency Realty Officer and the AO may be used to correct the statutory authority or the delegation of authority to approve. An affidavit correcting the authority resolves this defect.
- 5) **Individual Who Signed the Deed Does Not Own the Property (Sample Affidavit 5):** If the actual owner/grantor applied for the transfer, but the wrong person signed the deed and the deed was approved, a new deed must be prepared,

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executed by the actual owner, and approved by the AO. (Example: there may be two individuals with the same name resulting in the original error.) The LTRO will add a fatal defect notice to title and notify the office of origin of the title defect for immediate corrective action. The new deed is sufficient to correct title.

The erroneous deed signed by the wrong person/grantor must be declared null and void. To accomplish this, an affidavit signed by the Agency Realty Officer and the AO should be prepared stating that the wrong person signed the deed and that the deed is null and void. The affidavit must clearly recite the facts relied upon to conclude that the person who signed the deed is not the person who owns the property.

If the actual owner executes a new deed, but the consideration was paid to the person who signed the deed but was not the actual owner, the grantor (actual owner) must be made whole. The *Kennerly* process¹ will be used to attempt to recoup any money paid in error to the incorrect owner if that individual has an IIM account. If the person who erroneously received the consideration does not make immediate repayment, payment to the actual owner may be paid using program funds.

- 6) **Duplicate Deeds (Sample Affidavit 6):** the deeds must be reviewed by the appropriate AO to determine which deed is valid. If the AO has not taken action and both deeds were recorded, the LTRO will identify the two deeds and notify the originating office to provide clarification. When there are duplicate deeds approved on different dates (same grantor, same land description and interest), normally, the first deed approved should be recorded and will transfer title. The second deed has no legal effect, but should remain as part of the record and appropriately notated. An Affidavit should be prepared that lays out the history of the transaction and documents which of the deeds is the valid and transfers title.

Please note all Sample Affidavits are available on the Online Forms website:
<https://www.bia.gov/policy-forms/online-forms>

C. Affidavits are not acceptable in the following situations.

- 1) If the fractional share described in the deed is smaller than what is actually owned by the grantor or smaller than the interest that the grantor intended to convey, a new

¹ The notice of intent to restrict an Individual Indian Money (IIM) account (*Kennerly* letter) is issued by the home agency and sent to the account holder (or responsible person) by the United States via certified mail or personal delivery. The *Kennerly* letter process and appeal procedures are detailed in 25 CFR 115, Subpart E – IIM Accounts: Hearing Process for restricting an IIM Account. The examples of letters in part 70 IAM are for the supervision of an account, not the encumbrance of an account. This type of action falls into the encumbrance category, which is not the responsibility of the human services staff.

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deed is required to be executed and approved to convey the remaining share or a corrective deed may be used to convey the correct share. If the grantor is unable, or unwilling, to execute a new or corrective deed, the grantor will retain the unconveyed interest on title not included in the deed.

- 2) If the legal description in the deed is incorrect and the error is not due to a specific and identifiable transcription error, a corrective deed is necessary. The LTRO will add a substantive defect notice to title and notify the office of origin of the title defect for corrective action. A new deed is sufficient to correct title and remove the defect when submitted to the LTRO for recordation.

D. Cases where a Corrective Instrument (Deed or Affidavit) is not necessary.

- 1) Typographical errors (i.e., misidentification of his/her/their, grantor marital status), that do not affect or change any material term of the deed should simply be left uncorrected. Title will transfer without defect. The LTRO will not issue a defect but will notify the office of origin.
- 2) When the Tribal or individual Indian ID number is not cited on a deed, the deed is recordable without the ID number and title will transfer. The ID number is not required to make the deed valid.

E. Title Document Recording Requirements

Upon receipt by the LTRO the title document will be reviewed to determine whether it meets the minimum requirements for recording as outlined in 51 IAM 2. Documents not meeting the minimum recording requirements will not be recorded and notification of the fatal defect to the document's office of origin and return of any hard copy documents will be provided.

F. Processing Corrective Deeds and Affidavits in Trust Assets and Accounting Management System (TAAMS)

Corrective deeds and affidavits submitted to LTRO under the specifications described above will be reviewed and recorded. Where applicable the defect notice will be removed from title.

- 1) LTRO will use Conveyance Document Class Code – 40, Class Description – Affidavit, Document Type Code – AF, and Type Description – Affidavit to correct the conveyance by affidavit.
- 2) The related conveyance document number will be entered in the “Reference

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Number Field” on the Document General Screen in TAAMS. This will provide notification of a cross reference affidavit to the conveyance document.

- 3) LTRO will enter comments in Remarks and X-Ref to cross reference the original conveyance document number.

Approval

Darryl LaCounte

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LaCounte
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10/14/22

Darryl LaCounte
Director, Bureau of Indian Affairs

Date