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Creation of the Institute for Indian Estate Planning and Probate Announced.

(Little Canada, MN) Cris Stainbrook, President of the Indian Land Tenure Foundation, Douglas Nash, Director of the Institute, and Dean Kellye Testy, Seattle University School of Law, today jointly announced the creation of the Institute for Indian Estate Planning and Probate. The Institute is a project of the Foundation and is housed at Seattle University School of Law. "We are delighted that the Institute has joined Seattle University School of Law. The Institute is a core part of our mission of training leaders for a just and humane world and we are dedicated to furthering its important work," stated Dean Testy.

The mission of the Institute is to assist Indian people in making informed decisions about their property by establishing estate planning projects and providing information and training to tribal members, government officials and the legal community. These services are particularly important in light of the recently passed American Indian Probate Reform Act which significantly changes the law governing Indian wills and probate. The problems addressed by the Act have roots that extend back over 100 years.

Individual Indian land holdings (allotments) came from the original treaty reservations lands. When these lands were first allotted to individual Indians in the late 1800s, Indians were not citizens of the United States and their lands were distributed at death according to State intestacy laws. The land title is held in trust by the United States Government and the Indian interest holders are prohibited from a mortgaging or leasing their lands without express permission from the United States. This resulted in Indian lands being passed down generation after generation to heirs as undivided interest holders, with no heir having legal title to the land. When Indians were granted citizenship by the United States in 1924, the ability to draft wills was created but their lands remain held in trust by the U.S. Government today.

Lack of knowledge about estate planning, the inability to afford an attorney, and a cultural hesitance to write wills resulted in few wills being drafted by Indians after 1924. As a result, today these lands are often held by hundreds even thousands of undivided interest holders. In some areas of the United States, the number of interests under 2% is doubling every seven years. The Department of Interior estimated the number of fractional shares could increase from 1.5 million in 1994 to 11 million by 2030. These fractionated lands have made land use and management virtually impossible, reduced in some cases to a proverbial spoonful of dirt.

“The formation of the Institute and the services it will provide throughout Indian Country will be a major step forward for Indian people in controlling their most important of assets—their land,” said Cris Stainbrook. “Additionally, the provision of direct legal services to Indian landowners and their heirs through the DOI Estate Planning Pilot Project will allow for the consolidation of the small undivided land ownership interests that many Indian people hold. The combination of the two is quite exciting.”

Congress passed the American Indian Probate Reform Act of 2004 (AIPRA) in an effort to stem the fractionation of Indian lands. The new Act contains a federal probate code that replaces state intestacy laws. However, the Act authorizes tribal governments to establish their own federally-approved tribal probate code to supersede the federal code. The Act also includes provisions for those dying without a Will, including limiting who is an eligible heir of Indian lands, prohibiting more than a single heir from receiving a fractionated interest of less than 5%, and allowing forced sales at probate of fractionated interests to other interest holders.

“With the passage of AIPRA, the creation of the Institute to help Indian tribes, Indian people and the legal community understand the new law and its provisions is perfect timing. Although it is a large task in front of us, the work of the Institute will have long lasting benefits for Indian people and that is very exciting,” commented Douglas Nash.

The Institute will oversee three Indian estate planning programs previously funded by the Foundation and other entities. The newest is a recently awarded \$500,000.00 contract from the Department of the Interior to conduct a pilot project that will provide estate planning and will writing services to tribal members in the Pacific Coast and Great Plains regions.

Nash also notes that while the percentage of Indian people dying with a written will has increased slightly over the past several decades, the percentage is still estimated to be less than ten percent. “This is what makes the DOI Estate Planning Pilot Project exciting. It will allow us to expand our efforts beyond the work done over the past three years by ILTF and we will be able to assist many more Indian landowners in preserving their land assets for the next generation,” said Nash.

More information is available on the World Wide Web at

The Indian Land Tenure Foundation

<http://www.indianlandtenure.org>

The Institute for Indian Estate Planning and Probate

www.indianwills.org

Seattle University School of Law

www.law.seattleu.edu