

NATIVE ALLOTMENTS:

How the process works

In the August newsletter, Ms. Karen Honey of the BIA Realty office wrote on the topic of processing Native allotments. She continues her article with the following, entitled "Probates, Relinquishments and Agencies responsible for Native Allotments", to inform our people what happens to allotment land when a landowner dies, why relinquishments are sometimes necessary, and in what part of processing allotments that the different government agencies become responsible for them.

Probate

When an Alaskan Native dies his/her restricted property (Native Allotment and Restricted Townsite Lot) is probated by the Department of the Interior, Office of Hearings and Appeals. That process of verifying legitimate claims begins when we learn an allottee or owner of a Restricted Townsite Lot has died. AVCP contacts the allottee's family to obtain a family history and a copy of a will, if any. This information is then sent to the Administrative Law Judge in Sacramento who will hold a hearing in Alaska where the family can then testify. The Judge will also determine if the will is valid. After the Judge has held the hearing and returned to his office he will issue a decision instructing the Agency Superintendent to

applicant or where the applicant was pressured into giving up their land.

Alaska Legal Services Corporation (ALSC) is looking into all the relinquishments statewide to determine if the applicant made them "knowingly and voluntarily." If the applicant did not fully understand they were giving up their land or they were pressured into signing, ALSC will request a reinstatement.

Proving Use of the Land

In many of the BLM Decisions, not all of the parcels applied for are approved at the same time. In addition to lands within Wildlife Refuges and where conflicts exist with other Native Allotments, some parcels conflict with land Patented or Tentatively Approved (TA'ed) to the State of Alaska or the Interim Conveyance (IC) has been issued to a Village Corporation.

When land claimed for an allotment has been Patented or TA'ed to the State, the applicant must prove he/she began using the land at least one day before the State applied for it. If the land was IC'ed to a village corporation, this proof is not necessary since village corporations did not select their lands until after the allotment applications were filed. Where the land was TA'ed or Patented to the State, BLM is required to recover the land from the State for the allottee. BLM, the State of

A certified Native Allotment or Restricted Townsite Lot may be leased, sold, given as a gift, and mortgaged under certain circumstances with the BIA's approval. If the owner or owners of restricted land want to convey an interest

proval. Land approved under ANILCA are Legislative Approvals. Following approval, the survey will be ordered.

The BLM is required to survey all the Native Allotments. Because of the number of Allotments to be surveyed, it may be

"...BIA and AVCP will represent the allottees in negotiations with the state..."

in the land the owner(s) should contact AVCP who will arrange to have the property appraised and will prepare all the necessary legal documents. The regulations governing conveying an interest in restricted property are quite lengthy and will not be addressed at this time.

Who Works on Native Allotment Problems?

One last thing that should be covered is who actually works on Native Allotments. With so many agencies involved, it can be very confusing.

The Bureau of Land Management has several offices working with allotments. When the application is filed or the location changed, the Branch of Cadastral Survey puts it on a map called the Master Title Plat (MTP). In this region, the McGrath Resource Area employs Realty Specialists who conduct the field exams. The Realty Specialists go out to the allotment to check the accuracy of the location, write the legal description and, if the allotment must be adjudicated under the 1906 Act, will document evidence of use. When they return to their office in Anchorage, the Realty Specialists will write the Field Report and make a recommendation based on the exam.

Until the application is approved, the BLM is the agency responsible for investigation of trespasses and issuing of right-of-ways, permits and leases. When the land is located within a National Park or Wildlife Refuge, the agency administering the Park or Refuge is responsible.

The BLM's Native Allotment Section will determine if the allotment can be legislatively approved under ANILCA or adjudicated under the 1906 Act. This is the office that issues the Decision letters on Approvals, conflicts and the need for Witness Statements. When the land is approved following adjudication under the 1906 Act, it is called Administrative Ap-

many, many years before a certain allotment is surveyed. The allottee may hire a private surveyor, but he must then pay for it himself. The Surveyor must follow special instructions issued by the BLM for the survey to be acceptable.

Finally, the BLM will issue the Certificate of Allotment and their involvement with the allotment ends at that time.

All the villages in the Calista Region passed resolutions to have the BIA Realty services performed by the Association of Village Council Presidents (AVCP) under the Indian Self-Determination Act (PL 93-638). AVCP is contracted to perform the Realty duties of BIA up to the point where approval of the Secretary of the Interior or his authorized representative acting under delegated authority (BIA Area Director or Agency Superintendent) is required. The final approval authority can not be contracted.

Under the contract, the BIA is responsible for providing technical assistance to AVCP. Where AVCP is uncertain on how to interpret a law or regulation the BIA will advise them. Once a village has voted to contract, the BIA no longer provides direct services to the allottees in that village unless AVCP requests our assistance. The BIA also reviews all the transactions completed by AVCP and makes recommendations to the Agency Superintendent as to approval.

Alaska Legal Services Corporation (ALSC) also has a contract with the BIA to assist Native Allottees. Under this contract, ALSC is not inhibited by income restrictions but can help all the allotment applicants. As stated earlier, ALSC is currently involved in obtaining the documents to support the *Fanny Barr* claimants. ALSC also helps applicants with Witness Statements and most importantly represents allottees in court in class action suits and at the hearing when an application is rejected.

"...When an Alaska Native dies...restricted property is probated..."

distribute the property to the persons named in his decision. The Judge uses the Alaska State Statutes on distribution as a guideline and Federal Indian Probate Law in making his determination. Also, the Judge does not probate nonrestricted property such as share of stock in the village corporation.

The decision is sent to all the family members listed in the decision and in the family history who then have 60 days to file an appeal if they think any of the facts are wrong.

Relinquishments

Approximately 70 relinquishments were filed on all or part of Native Allotments in this region. Some of the relinquishments were filed for good reasons such as when someone applied for two allotments. There are other cases where the relinquishment was not explained to the

Alaska, and BIA Juneau Area Office are currently working on an agreement on how to go about it.

When the land is recovered from the State and conveyed to the allottee, it will include any improvements the state made to the land. BIA and AVCP will represent the allottees in negotiations with the State on these lands. The applicant may want to lease or sell the land to the state or he may want to exchange it for other land.

Trespass

AVCP Realty, under contract to the BIA, is also responsible for investigation of trespass complaints on restricted land. When a trespass is reported, AVCP will interview the land owner to determine if he/she wants to have the trespasser removed from the land or if they want to arrange for a lease or permit.