

Estate Planning for Tribal Members

By: Erica R. Mackey, Esq.

Prior to Oklahoma Statehood

Oklahoma is currently home to 39 federally recognized American Indian Tribes.¹ The Removal Act brought about the forced removal of thousands of American Indians from their land in the Southeastern US to the West to a designated area that eventually became known as Indian Territory.²

Indian Intercourse Act also known as The Nonintercourse Act is the collective name given to six statutes passed by the Congress between 1790 and 1834 which generally created the boundaries of American Indian reservations as well as regulating commerce between the states and the Native American tribes.³ The original Act as well as its successors, invalidated the purchase of lands made by any person, persons or states of Indian Land unless approved by the United States through a treat or convention.⁴

The Oklahoma organic act of 1890 created an organized incorporated territory of the United States of Oklahoma Territory, with the intent of combining the Oklahoma and Indian territories into a single State of Oklahoma.⁵ The citizens of Indian Territory tried, in 1905, to gain admission to the union as the State of Sequoyah, but this ultimately didn't gain enough traction with either Congress or the Roosevelt Administration which did not want two new Western states, Sequoyah and Oklahoma⁷. Theodore Roosevelt then proposed a "compromise" that would join Indian Territory with Oklahoma Territory to form a single state. This resulted in passage of the Oklahoma Enabling Act, which President Roosevelt signed June 16, 1906.⁸

General Allotment Act

Also known as the Dawes Act, named after Senator Henry L. Dawes of Massachusetts.⁹¹⁰ The Act authorized the President of the United States to subdivide Native American tribal land into allotments for Native American heads of families and individuals.¹¹ The Dawes Act was a departure from the reservation system which at the time allowed for the perpetuation of tribal governments' traditional concept of communal land ownership to continue.¹² Instead a government-imposed system of private property with restrictions on alienation¹³. One of the goals of allotment was to open up Indian lands to non-Indian development and settlement.¹⁴

Under the Dawes Act, the head of a family would receive a grant of 160 acres, a single person or orphan over 18 years of age would receive a grant of 80 acres, and persons under the age of 18 would receive 40 acres each.¹⁵ The allotments would be held in trust by the U.S. Government for a period of 25 years.¹⁶ Eligible Native Americans had four years to select their land; afterward the selection would be made for them by the