

**MLTA 2022 Spring Education Seminar**  
**Cindy Guanell, First American Title Insurance Company**  
[cguanell@firstam.com](mailto:cguanell@firstam.com)

Insuring transactions involving Native American land, are unusual and high-risk transactions that require a significant amount of knowledge and underwriting. Native American land is frequently impacted by changing regulations and new interpretation of federal statutes as determined by case law. This presentation will include fundamental information regarding Native American land and will discuss relevant Montana case law addressing certain issues such as access, jurisdiction, and ownership of waterbeds. We will also discuss the necessary components to insuring Fee to Trust transfers.

## **Native American Land**

### **1) Fundamentals**

#### **a. Tribes**

#### **b. Treaties**

#### **c. Tribal Law & Government**

### **2) Sovereign Immunity**

### **3) Indian Reservations**

### **4) Vesting**

5) **Indian Nonintercourse Act (25 U.S.C. §177)**

6) **Access**

a. 25 U.S.C. §323–328

b. 25 C.F.R Part 169

c. Act of March 3, 1915 (38 Stat. 1188) MT

d. Relevant Montana Case Law

- *Confederated Salish & Kootenai Tribes v. Lake Cty. Bd. of Comm'rs*, 2020 U.S. Dist. LEXIS 68250

d. Schedule B Exceptions

## 7) Jurisdiction

### a. Relevant Case Law

- *Montana v. United States*, 450 U.S. 544, 101 S. Ct. 1245, 67 L. Ed. 2d 495- Jurisdiction “The Montana Exception” - Ownership of the Bed of the Big Horn River
  
- *Confederated Salish & Kootenai Tribes of Flathead Reservation v. Namen*, 665 F.2d 951 (1982) - Ownership of the bed and bank; Regulatory authority over non-tribal members use of the bank of Flathead Lake

### b. Schedule B Exceptions

## 8) Fee to Trust Transfers

### a. 25 CFR Part 151

### b. BIA Fee to Trust Handbook, Version IV (rev 1), Issued: 5/16/16

### c. Withdrawal of M-Opinion 37029