



INTERIOR BOARD OF INDIAN APPEALS

Patricia Lafferty LeCompte v. Acting Great Plains Regional Director,
Bureau of Indian Affairs

45 IBIA 135 (08/07/2007)

Related Case:
52 IBIA 274



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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PATRICIA LAFFERTY LeCOMPTE,)	Order Affirming in Part, Vacating in
Appellant,)	Part, and Remanding for Further
)	Consideration
v.)	
)	
ACTING GREAT PLAINS REGIONAL)	Docket No. IBIA 05-57-A
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	August 7, 2007

Appellant Patricia Lafferty LeCompte appeals a February 2, 2005, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director declined to revoke or declare void the October 14, 2003, decision of the Cheyenne River Agency Superintendent (Agency; Superintendent) to approve 13 gift deeds executed by Katherine Lafferty (Katherine) in favor of her son, Duane Lafferty (Duane). The gift deeds covered land totaling 1601.56 acres, more or less, located on the Cheyenne River Reservation in the State of South Dakota, and were recorded by the Great Plains Region Land Titles and Records Office, BIA (LTRO), on November 5, 2003.¹

¹ The lands are described in the gift deeds as:

- 1) Document No. 340 33216 - Allotment Nos. 6163 & M6163 - NW¹/₄SE¹/₄, S¹/₂SE¹/₄, Sec. 16, T. 13 N., R. 30 E., Black Hills Meridian, containing 120.00 acres, more or less.
- 2) Document No. 340 33217 - Allotment Nos. 6178 & M6178 - S¹/₂SW¹/₄, Sec. 25; N¹/₂NW¹/₄, Sec. 36, T. 13 N., R. 30 E., Black Hills Meridian, containing 160.00 acres, more or less.
- 3) Document No. 340 33218 - Allotment Nos. 6198 & M6198 - NE¹/₄NE¹/₄, Sec. 34; N¹/₂NW¹/₄, SW¹/₄NW¹/₄, Sec. 35, T. 13 N., R. 30 E., Black Hills Meridian, containing 160.00 acres, more or less.
- 4) Document No. 340 33219 - Allotment Nos. 6448-A & M6448-A - S¹/₂S¹/₂SW¹/₄, Sec. 19; N¹/₂N¹/₂NW¹/₄, N¹/₂S¹/₂N¹/₂NW¹/₄, N¹/₂N¹/₂S¹/₂S¹/₂

(continued...)

Appellant, Katherine's daughter and an heir to Katherine's estate, argues on appeal that BIA failed to comply with applicable statutory and regulatory requirements in approving the gift deeds, and therefore BIA's approval should be set aside and the deeds declared void.

We have reviewed the record and the parties' briefs. To the extent the Regional Director determined that a proper inquiry was made into the basis and reason for Katherine's decision, we affirm the Regional Director's decision.

¹(...continued)

N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 30, T.13 N., R. 31 E., Black Hills Meridian, containing 105.00 acres, more or less.

5) Document No. 340 33220 - Allotment Nos. 6449-A & M6449-A - S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 19, T. 13 N., R. 31 E., Black Hills Meridian, containing 20.00 acres, more or less.

6) Document No. 340 33221 - Allotment Nos. X798 & MX798 - SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T. 13 N., R. 30 E., Black Hills Meridian, containing 160.00 acres, more or less.

7) Document No. 340 33222 - Allotment Nos. X799 & MX799 - NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 35, T. 13 N., R. 30 E., Black Hills Meridian, containing 240.00 acres, more or less.

8) Document No. 340 33223 - Allotment Nos. X992 & MX992 - W $\frac{1}{2}$ Lot 1 (27.29 acres), Lot 2, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 1, T. 12. N., R. 30 E., Black Hills Meridian, containing 141.81 acres, more or less.

9) Document No. 340 33224 - Allotment Nos. X1435 & MX1435 - NW $\frac{1}{4}$ Nw $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 12 N. R. 30 E., Black Hills Meridian, containing 90.00 acres, more or less.

10) Document No. 340 33225 - Allotment No. MX1435-A - E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 12 N., R. 30 E., Black Hills Meridian, containing 20.00 acres, more or less.

11) Document No. 340 33226 - Allotment No. MX1435-B - W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 12 N., R. 30 E., Black Hills Meridian, containing 70.00 acres, more or less.

12) Document No. 340 33227 - Allotment No. MX1436 - Lot 4, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 2; N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 11, T. 12 N., R. 30 E., Black Hills Meridian, containing 154.75 acres, more or less.

13) Document No. 340 33228 - Allotment No. MX1578 - SW $\frac{1}{4}$, Sec. 2, T. 12 N., R. 30 E., Black Hills Meridian, containing 160.00 acres, more or less.

However, with respect to Appellant's claim that there was noncompliance with 25 U.S.C. § 2216(b),² we remand this matter to the Regional Director. Although the Regional Director concedes that BIA did not comply with subsection 2216(b), the Regional Director and Duane both assert that Katherine knew the value of her trust lands at the time she conveyed her interests to Duane. The Regional Director also asserts that Katherine intended to transfer her interests to Duane regardless of their value. Appellant has not refuted these assertions, although she correctly observes that they are unsupported by the record. Because these allegations are relevant to the question of Appellant's standing to enforce Katherine's rights under subsection 2216(b), which we are unable to resolve on this record, we remand this matter to the Regional Director for further proceedings.

Background

A. Facts Relating to the Gift Deed Transactions

At the time the gift conveyances were completed, Katherine was an enrolled member of the Cheyenne River Sioux Tribe of South Dakota (Tribe). She owned interests in lands located on the Cheyenne River Sioux Reservation totaling 1601.56 acres.

On October 2, 2003, Katherine went to the Agency and met with Realty Specialists Sally Pearman and Rita Shaving. Appellant came into the agency alone and appeared to Shaving and Pearman to be of sound mind. She explained to Pearman that she was scheduled for surgery and wanted to give her lands to Duane before the surgery. She provided the following information in response to questions on the gift deed application forms: She was an 86-year old widow with a high school education and no one was dependent upon her for support. Her annual income consisted of \$19,000 from a pension and from "CRP" (Conservation Reserve Program). She also stated that she received Social Security of an unspecified amount.³ She stated that she had no debts to the United States or to the Tribe. She elected to retain a life estate in her property. Each application stated that the reason for the gift deed was to "keep in family." Several, but not all, of the applications were filled in by Katherine; agency staff apparently filled in the remainder, but

² Prior to conveying their trust interests in land, Indian grantors must be provided with an estimate of the value of the interest(s) proposed for conveyance. 25 U.S.C. § 2216(b). If the conveyance is to a relative, as identified in the statute, the estimate-of-value requirement may be waived in writing by the grantor. *Id.*

³ We cannot determine whether Katherine's social security income is included in the \$19,000 annual income or is in addition to it.

every application was signed by Katherine, including the following certification on each application: “[T]he effect of this application was explained and I fully understand the ramifications of this application.” Acting Realty Officer Florence Halfred recommended each application for approval and, also on October 2, the applications were approved by the Superintendent. BIA then prepared the gift deeds for Katherine’s signature.

Four days later, on October 6, 2003, Katherine returned to the Agency and signed the 13 gift deeds in favor of Duane. Each deed recited “One Dollar Love and Affection” as consideration for the deeds. The Superintendent approved all 13 gift deeds on October 14, 2003. The 13 deeds were then recorded at the LTR0 on November 5, 2003.

At the time Katherine executed the gift deed applications and the deeds, Duane apparently was under federal indictment for certain crimes. The record does not reflect whether Shaving, Pearman, Halfred, or the Superintendent were aware of the indictment.

Katherine died on June 29, 2004. On July 6, 2004, the Cheyenne River Sioux Tribal Court appointed Appellant as the administrator of Katherine’s estate. Order dated Oct. 29, 2004, *In the Matter of the Katherine Lafferty Estate*, No. P-014-04, at 1 (Cheyenne River Sioux Tribal Court).⁴ On July 9, 2004, Appellant sent a written request to the Agency for “a copy of the Gift-Deed from my mother Katherine Lafferty to my brother Duane Lafferty [and] a listing of the property involved.” Letter from Appellant to Agency, July 9, 2004. On August 9, 2004, the Agency provided Appellant with a copy of Katherine’s gift deeds.

By letter dated August 30, 2004, Appellant, through counsel, asked the Superintendent to declare the gift deeds null and void, and to place the property covered by the gift deeds in Katherine’s estate inventory. Appellant argued that BIA “failed to follow the required procedures for ‘Application and Approval of the Gift Deeds.’” Letter from Appellant to Superintendent, Aug. 30, 2004, at 1. Appellant also asserted that BIA failed to make a careful examination of all the circumstances, as required by governing regulations, including 25 C.F.R. § 152.23. In particular, Appellant argued that BIA failed its trust responsibility when it did not consider Duane’s criminal record and that BIA “participated in a manifest injustice.” *Id.* at 2. In addition, Appellant maintained that the gift deeds were the product of undue influence and fraud. Finally, Appellant requested a hearing. No

⁴ The tribal court subsequently affirmed Appellant’s appointment by Order entered October 29, 2004.

response is found in the record from the Superintendent. By letters dated September 23 and 24, 2004, Appellant subsequently appealed to the Regional Director.⁵

B. Regional Director's Decision

On February 2, 2005, the Regional Director affirmed the Superintendent's original decision to approve the 13 gift deeds and, in effect, denied Appellant's request that the approved deeds be set aside and declared void. The Regional Director determined that BIA had followed proper procedures in the processing and approval of the gift conveyances. The Regional Director relied on the memoranda submitted by Shaving and Pearman as evidence that Katherine understood and intended the effect of the gift conveyances, and noted that the gift deeds had been processed quickly to accommodate Katherine's wish that the transactions be finalized before her upcoming surgery. The Regional Director noted that Pearman and Shaving were not "friends [with] or associates" of Katherine and, thus, did not have a basis for influencing her. Decision at 2. The Regional Director stated that Katherine "fully understood the value of the parcels she proposed to gift convey . . . [and s]ince Katherine was retaining a life estate she would still continue to receive the income generated from these properties." *Id.* The Regional Director did not explain how he knew that Katherine "fully understood the value of the parcels." *Id.* The Regional Director also determined that it was not BIA's responsibility to determine whether a grantee was worthy to receive a gift of trust property, and that Duane "fell within the guidelines . . . as an eligible grantee" pursuant to 25 C.F.R. § 152.25(d). *Id.* She concluded that "the Agency staff followed proper procedures in the application and preparation processes of these thirteen deeds." *Id.* at 3.

On February 9, 2005, Appellant wrote the Regional Director, seeking a complete copy of the record on which the Regional Director relied in rendering her decision, particularly "transcripts, tapes, or written statements on which [she] must have relied." Letter from Appellant to Regional Director, Feb. 9, 2005. The Regional Director responded on February 17, 2005, and provided a sanitized copy of the administrative record.⁶ The Regional Director explained that her "original decision was based solely on both the administrative record enclosed herein and conversations with [Agency] staff." Letter from Regional Director to Appellant, Feb. 17, 2005, at 1. The Regional Director

⁵ The September 23 appeal was sent in Appellant's capacity as the Administrator of Katherine's estate while the September 24 appeal was sent in Appellant's individual capacity.

⁶ The Regional Director explained that the information redacted was information protected from disclosure under the Privacy Act.

did not indicate what was discussed in the conversations with Agency staff. There are no notes in the record memorializing any conversations.

Appellant appealed to the Board of Indian Appeals (Board), both “individually as the daughter of Katherine,” and as the Administrator of the Katherine Lafferty estate. Notice of Appeal at 1. Appellant filed a Statement of Reasons along with an opening and a reply brief; the Regional Director and Duane filed briefs.

C. Summary of Arguments on Appeal

Appellant contends on appeal that, in approving the 13 gift deeds, BIA failed to comply with 25 U.S.C. § 2216(b), which requires that prior to a conveyance of trust interests, an estimate of value had to be provided to Katherine or, alternatively, since the conveyance is to her son, authorizes BIA to secure a written waiver of the estimate of value from Katherine. Appellant argues that “[this] failure, standing alone, makes the gift deeds void *ab initio* and removes any discretion Agency personnel may have had to approve the gift deeds.” Reply Brief at 9. Appellant also argues that BIA violated its trust obligations to Katherine when it “completely failed to conduct any examination into the circumstances of Katherine or [Duane].” Statement of Reasons at 1. Appellant asserts that Duane had a significant criminal history, and, had BIA engaged in the proper inquiries in this case, BIA would have delayed approval of the gift deeds “until [Duane’s] true criminal status was researched and discussed with Katherine.” Opening Brief at 8. Appellant also argues that BIA should have investigated Katherine’s motivation for executing the gift deeds to Duane, including the possibility of undue influence and fraud, and that BIA should have advised Katherine of the “ramifications of giving up nearly all her net worth at the very time her son was facing a life in prison sentence.” Statement of Reasons at 4. Finally, Appellant requests a hearing to “fully expose the unusual facts in this case.” Notice of Appeal at 1.

The Regional Director responds that BIA considered the appropriate criteria and appropriately exercised its discretion to approve the 13 gift deeds. The Regional Director noted that the Agency reasonably determined that Katherine was a competent adult with clear intentions about the disposition of her trust property during her lifetime, and that Appellant offered no evidence of fraud or undue influence. The Regional Director argues that Katherine had lived on her land for decades and therefore “knew the extent of her trust land . . . and knew its relative value.” Regional Director’s Answer Brief at 2. The Regional Director acknowledged that BIA “should have [given Katherine an] estimate of fair market value or [obtained] a written waiver of [the] fair market value,” but that the “procedural defect should not lead to a decision to rescind the gift deeds which clearly carry out the intentions of the donor.” *Id.* at 7. The Regional Director asserts that the decision to

convey by gift deed in this case was not “extrinsically tied” to the estimate of value information, and that “[t]his is not a[n] instance in which the waiver of [the] fair market estimate requirement would have made any difference” because it was a gift to a son. *Id.*

Duane also submitted a brief in support of the Regional Director’s decision. First, he argues that documents submitted by Appellant should be stricken from the record because they were not part of the record before the Superintendent or the Regional Director.⁷ On the merits, he argues that BIA used the “proper forms” and “made a careful examination of the circumstances.” Duane’s Answer Brief at 5. He claims that Shaving interviewed Katherine and “determined that Katherine understood the value of the lands that she would be conveying.” *Id.*; *see also id.* at 8 (“It is clear that Katherine knew the extent and value of her land holdings and the same were discussed with her prior to executing the gift deeds”). He does not identify any evidence in support of his contention that Shaving determined that Katherine knew the value of her lands. Duane also asserts that he did not influence Katherine and could not have influenced her as he was incarcerated at the time she executed the deeds. He argues that the deeds were testamentary in nature and substituted in lieu of a will.⁸ Finally, Duane maintains that Katherine wanted him to have her lands because he had taken care of her and she knew he would continue the operations of the farm and ranch as he had done in the past.

Appellant submitted a reply in response to both the Regional Director’s brief and Duane’s brief. As to the merits, Appellant argues that BIA’s admitted failure to comply with 25 U.S.C. § 2216 renders the gift deed void *ab initio* and argues that, per 43 C.F.R. § 4.318, the Board may exercise jurisdiction to vacate the gift deeds. Appellant also reiterates her arguments that BIA did not adequately investigate the circumstances of Katherine’s decision to gift her property to Duane or whether Katherine had sufficient resources to support herself after gifting her property. Appellant makes no response to Duane’s motion to strike.

⁷ Appellant submitted documents supporting her appointment by the tribal court as the administrator of Katherine’s estate as well as documents related to Duane’s prosecution on federal criminal charges.

⁸ However, Duane concedes that the gift deeds were “not a will.” *Id.* at 6.

Discussion⁹

A. Standard of Review

Appellant bears the burden of showing error in the Regional Director's decision. *Birdtail v. Rocky Mountain Regional Director*, 45 IBIA 1, 5 (2007). We determine whether the decision is arbitrary, capricious, or not in accordance with the law. *Id.* In deciding whether to approve gift deed applications, BIA is vested with considerable discretion. *See Barber v. Western Regional Director*, 42 IBIA 264, 266 (2006). The Board's role in reviewing such a decision is to determine whether BIA gave "proper consideration to all legal prerequisites to the exercise of discretion. If it has, and if there is support for its decision in the record, the Board will not substitute its judgment for BIA's." *Smith v. Acting Eastern Oklahoma Regional Director*, 38 IBIA 182, 184 (2002) (quoting *Downs v. Acting Muskogee Area Director*, 29 IBIA 94, 97 (1996)). Questions of law and the sufficiency of the evidence are reviewed *de novo*. *Birdtail*, 45 IBIA at 5.

B. BIA's Duty to Grantor

1. 25 C.F.R. §§ 152.23 and 152.25(d)

Appellant argues on appeal that prior to approving any gift deed, BIA must "make a careful examination to determine whether undue influence, fraud, exploitation, or elder abuse is being perpetrated on the donor." Opening Brief at 5. Appellant goes on at length concerning the criminal background of her brother, Duane, and his unsuitability in light of that background to be the beneficiary of their mother's properties. Appellant argues that Katherine's "advanced age" required BIA to conduct a more searching inquiry into the motivation for the transactions than might be required for a younger grantor. *Id.* at 6. Appellant argues without support that BIA did not discuss with Katherine "where the idea

⁹ With respect to Duane's motion to strike, we observe that he is correct that these records were not before the Regional Director as part of her review and, therefore, are not part of the record for reviewing her decision. Indeed, much of the supplemental documentation submitted by Appellant was generated after the gift deeds were approved and relate either to criminal proceedings involving Duane or tribal court orders concerning Appellant's appointment as administratrix of Decedent's estate. Notwithstanding that the motion to strike was not opposed, we deny the motion as Duane had an opportunity to respond to the documents (and submitted several of his own in response), *see Brown v. Navajo Regional Director*, 41 IBIA 314, 316 n.2 (2005), and because we consider none of the submissions as relevant to our disposition of this case.

for the gift deeds . . . originated,” whether Katherine “had been denied [the] income [from her land by Duane],” whether she had or should consult with an attorney or accountant before executing the conveyances, the pros and cons of conveying her property by gift vis-a-vis by will, and the wisdom of conveying her property to an individual under indictment for serious crimes. *Id.* at 7. Appellant argues that if Katherine were motivated to give Duane her properties because she expected him to reside on the land, BIA should have determined whether it was likely that Duane would do so, given his legal circumstances. Appellant contends that BIA should have determined whether Duane forced Katherine, either personally or through acquaintances, to give him her lands. Appellant continues with a list of similar inquiries she contends BIA did not make, all of which appear directed at her brother’s unsuitability to benefit from their mother’s largesse. What is lacking is any support for Appellant’s arguments that BIA has a duty to make such inquiries into the worthiness of Katherine’s son to receive the gift deeds. Nor do we think that any of the evidence concerning Duane demonstrates that BIA did not make a sufficient inquiry into *Katherine’s* competence, intent, and understanding.

The transfer of trust or restricted lands by gift between a parent and child is governed by two regulatory provisions. First, under 25 C.F.R. § 152.23,

Applications [for the sale, exchange or gift of trust or restricted land] may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 152.25(d).

The second provision, subsection 152.25(d), specifically applies to conveyances for less than fair market value, including gift transactions: “Indian owners may convey trust or restricted land[] for less than the appraised fair market value or for no consideration when the prospective grantee is the owner’s . . . lineal descendant. . . .”

In deciding whether to exercise its discretion to approve the deeds, BIA owes a duty only to the landowner(s) and not to a prospective grantee or the heirs of the grantor. *See Bitonti v. Alaska Regional Director*, 43 IBIA 205, 216 n.13 (2006). That duty includes discerning the grantor’s intent and refraining from approving deeds where a question exists concerning that intent. *See Celestine v. Acting Portland Area Director*, 26 IBIA 220, 228 (1994). BIA also is charged with ensuring that the grantor understands the effect of the conveyance as well as, for Katherine, the effect of retaining a life estate. *See Downs*, 29 IBIA at 97. In its examination of the grantor’s best interest, BIA typically is guided by the grantor’s personal financial circumstances. *See Celestine*, 26 IBIA at 227. For example, it is

appropriate for BIA to determine whether the conveyance will deprive the grantor of a place to live or needed income.

In this case, BIA's examination revealed that Katherine's intent was to give her trust properties to her only son and to keep the property in the family. She did elect to retain a life estate, thus preserving a home for herself as well as the right to receive any income produced by the land, including the CRP payments.¹⁰ BIA determined that Katherine had an independent source of income for her support from a pension as well as from social security. There were no circumstances attendant to Katherine's gift deed transactions that raised a spectre of undue influence or fraud: Katherine came into BIA's offices by herself; the record does not reflect that Katherine exhibited any nervousness, anxiety, or hesitation in explaining her wishes; and the record reflects that Katherine was unequivocal about how she wanted to dispose of her properties.¹¹ There is no evidence in the record that Katherine ever changed her mind or asked BIA to rescind the conveyances during the remainder of her lifetime (approximately eight months). We know of no law, and Appellant directs our attention to none, that requires BIA to consider the "moral fitness" of a prospective grantee; to weigh the respective characters of the grantor's descendants to determine their respective "worth" to benefit from the grantor's generosity or, alternatively, to be deprived of an interest in the grantor's property; or to determine whether a grantee will, in fact, make use of the land as intended by the grantor.

Therefore, we conclude that the Regional Director correctly determined that the Superintendent had conducted a careful examination of the circumstances and that

¹⁰ Although Appellant argues that the gift deed application for the parcel on which Katherine lived failed to note that she lived on it, thus suggesting that BIA was inattentive to the details of Katherine's transactions, it cannot reasonably be disputed that Appellant retained for herself the right to live on any one of the 13 parcels if she so chose regardless of whether she stated that she lived on one or more of the parcels at the time of the gift deed applications.

¹¹ Appellant neither argues nor offers evidence demonstrating that undue influence or fraud played any role in Katherine's decision to convey her trust properties to Duane. Although Appellant offers the declarations of Katherine's sister and a friend, neither adduces any evidence to support a finding of undue influence or fraud.

Appellant's allegations to the contrary provide no basis for BIA to revoke or rescind the conveyances.¹²

2. 25 U.S.C. § 2216

The more difficult issue in this case arises from BIA's admission that it failed to provide Katherine with an estimate of value of the interests she was transferring to Duane or, alternatively, to obtain from her a written waiver of the estimate of value, as required by 25 U.S.C. § 2216(b). Appellant argues that lack of compliance with subsection 2216(b) means that the gift deeds are void *ab initio*. As a threshold matter, however, given the assertions made by the Regional Director and by Duane that Katherine knew the value of her properties and the Regional Director's further assertion that Katherine intended to convey her property to Duane regardless of the value of her trust interests, we are squarely confronted with what is essentially an issue of standing: Does an heir or an administrator/executor of an estate have standing to enforce the rights of a deceased grantor under subsection 2216(b) and have a conveyance set aside and declared void, where it cannot be shown that noncompliance with the statute caused the alleged injury? That is, while the alleged "injury" to Katherine for purposes of standing remains apparent — the loss, for less than fair market value, of any interest in her trust properties greater than a life estate — what is missing from the record is evidence of whether noncompliance with subsection 2216(b) may have caused the alleged injury. If Katherine, in fact, knew the value of her trust interests and/or the value of her interests was irrelevant to her because she unequivocally intended to convey her properties to Duane regardless of their value, then a substantial question exists whether Appellant, seeking to enforce Katherine's rights and interests, has standing to enforce those rights and interests. Because the answer to this question — or even the need to decide it — may depend on an evidentiary record that has not been developed, we remand this matter to the Regional Director to consider his decision further in light of our analysis below.

Congress enacted the Indian Land Consolidation Act (ILCA), of which section 2216 is part, in response to the exponential increase in the undivided fractionation of title to

¹² We note that Appellant does not actually identify any way in which Katherine's own "best interest" was adversely affected during her remaining lifetime. That is, Appellant does not claim, e.g., that Katherine lacked sufficient funds to cover her expenses during the remainder of her life.

Indian trust lands.¹³ To reduce the fractionation, the policy of the United States is “to encourage and assist the consolidation of [Indian trust] land ownership” where the transfer of beneficial interest occurs between individual Indians or between individual Indians and the tribe exercising jurisdiction over the land involved in the transaction. 25 U.S.C. § 2216(a). Pursuant to this policy, Congress sought to clarify that BIA was not required to conduct a formal appraisal for such conveyances. S. Rep. No. 106-361 at 21 (2000). At the same time, however, Congress imposed a minimum requirement that, prior to such a conveyance, the grantor be “provided with an estimate of the value of the interest” being conveyed while allowing the request to be waived in writing by the grantor for conveyances between certain family members. 25 U.S.C. § 2216(b). Thus, Congress acted to ensure that the grantor has some understanding of the value of the interest being conveyed (an estimate) or, alternatively, written assurance that the grantor knowingly intends to convey his or her interest without being provided with an estimate of its value. The first requirement, to be provided with an estimate of value, inures to the benefit of the grantor. The exception, allowing a written waiver, exists to avoid the necessity of preparing even an estimate of value when a grantor considers receipt of an estimate to be unnecessary; it also protects BIA.

Against this statutory backdrop, we now consider the relationship between the protections afforded by subsection 2216(b) and the principles of standing. Although the Board, as an Executive Branch forum, is not limited by the same constitutional and prudential constraints that apply to the exercise of judicial authority, the Board has a well-established practice of adhering to those jurisdictional constraints as a matter of prudence to further administrative economy. *See Quantum Entertainment, Ltd. v. Acting Southwest Regional Director*, 44 IBIA 178, 188 n.12 (2007). These constraints include the requirement that an appellant demonstrate that she has standing. *Arizona State Land Dep’t. v. Western Regional Director*, 43 IBIA 148, 163 (2006). In particular, an appellant may have standing to raise certain claims, but not others. *See, e.g., Skagit County v. Northwest Regional Director*, 43 IBIA 62, 70 (2006).

The Board follows the three elements of standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992): An appellant must show that (1) an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest has occurred; (2) the injury is fairly traceable to the challenged action; and (3) the injury is redressable by a favorable decision. Beyond these constitutional elements of standing lies

¹³ ILCA first was enacted in 1983 and has been amended several times since. *See Estate of Tyrrell S. Willcox*, 43 IBIA 197, 199 n.4 (2006). Section 2216 was added in 2000. *See* Pub. L. No. 106-462, 114 Stat. 2002 (Nov. 7, 2000).

prudential principles of standing: Where an Appellant claims to have been “adversely affected or aggrieved [by agency action,] within the meaning’ of a statute, the [appellant] must establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*) falls within the ‘zone of interests’ sought to be protected by the statutory provision whose violation forms the legal basis for his complaint.” *Quantum Entertainment, Ltd.*, 44 IBIA at 188 n.12 (quoting *Lujan v. National Wildlife Federation*, 504 U.S. 871, 883 (1990)).

Turning now to the case before us, we first note that Appellant is seeking to enforce *Katherine’s* interests and *Katherine’s* rights under subsection 2216(b).¹⁴ If Katherine was, in fact, aware of the current estimated value of her property interests, she had the information that Congress intended her to have under subsection 2216(b) and Appellant cannot claim that the alleged injury to Katherine, i.e., loss of ownership interest for less than fair market value, resulted from (or is “fairly traceable to”) the noncompliance with subsection 2216(b). Similarly, if the evidence demonstrates that Katherine fully intended to convey her interests regardless of their value, it would appear doubtful at best that Appellant is entitled to seek rescission of the conveyance based on the absence of a written waiver of the estimate of value.

The record before the Board contains no evidence concerning Katherine’s understanding, if any, of the value of some or all of her properties. The Regional Director and Duane both claim that Katherine was well aware of her properties’ value, which claims, as Appellant correctly observes, are not supported by the record. By the same token, however, Appellant does not refute the allegations that Katherine knew her properties’ value, but only asserts that BIA did not comply with 25 U.S.C. § 2216(b) by providing Katherine with an estimate of value. Additionally, Appellant has not refuted the Regional Director’s assertion that Katherine intended to convey her interests to Duane regardless of their value.¹⁵ Thus, Appellant has not established on what basis she would have standing to

¹⁴ Appellant has no greater rights to enforce than those possessed by Katherine.

¹⁵ Appellant did provide a declaration from a friend of Katherine’s who attests that sometime in the 1990’s Katherine had stated that “she intended to leave the real estate to her great-granddaughter.” Declaration of Florence Bartlett, at ¶ 9. This statement is too vague and remote in time to be probative as to Katherine’s intentions in 2003, when she executed the subject gift deeds.

enforce Katherine's rights under subsection 2216(b), either in her individual capacity or in her capacity as the administrator of Katherine's estate.¹⁶

Therefore, we remand this matter to the Regional Director for the purpose of determining, in the first instance, whether there is evidence to show that Katherine knew the current estimated value of some or all of her properties at the time of the conveyances or, alternatively, whether Katherine intended to convey her interests to Duane regardless of their value. The Regional Director should then issue a new decision making appropriate findings based on the evidence. On remand, Appellant and Duane may, of course, submit whatever evidence they may have as to whether or not Katherine was injured as a result of noncompliance with subsection 2216(b) and, if so, whether the conveyance must be revoked or declared void *ab initio*.

Conclusion

We conclude that BIA appropriately conducted a careful examination of the circumstances prior to approving the subject gift deed applications. However, in light of the parties' arguments and the record provided to the Board, we conclude that there is insufficient information in the record to determine whether Appellant has standing to enforce Katherine's rights and interests under 25 U.S.C. § 2216(b).¹⁷

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's February 2, 2005, decision, and remands the matter to her to take appropriate action consistent with this decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹⁶ Given the fact that it is Katherine's right that is at issue, it is unclear whether there is any relevant distinction between these two capacities in which Appellant purports to act.

¹⁷ Because we vacate the Regional Director's decision and remand this matter for further proceedings, which shall include affording interested parties the opportunity to submit evidence, we find that Appellant's request for a hearing is moot.