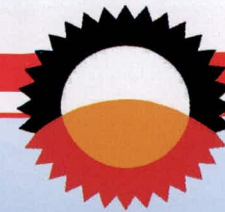


**Your Land Your Decision**  
**INITIATIVE**



U.S. Department of the Interior



**Your Land Your Decision**  
**INITIATIVE**

**Do You Know Who Will Inherit Your Land?**

Protect those that matter most

Plan your estate now and ensure your family  
doesn't lose their inheritance



**Estate Planning**

## Your Land, Your Decision

The *American Indian Probate Reform Act of 2004* (AIPRA) was signed into law on October 27, 2004.

AIPRA made many changes to the way trust or restricted land and property is inherited, plus other changes about land management and purchases. This brochure highlights the effects of AIPRA on wills and inheritance. We also recommend that you read the “*What is a Probate*” brochure so you may become familiar with the Federal probate process.

AIPRA affects trust or restricted property owned by American Indians (AI). It does not affect trust or restricted lands located in Alaska. It also does not affect property owned by Indians if that property is not held as trust or restricted property.

This brochure is not intended to provide legal advice. However, because of AIPRA, people should consider wills for their trust or restricted property. If you would like to make a will, or if you would like to change an existing will, we recommend speaking with an attorney. Attorneys and legal aid organizations may be willing to write wills and provide legal advice for Indian trust or restricted property owners and we recommend you dis-

Your BIA Agency may provide information regarding an explanation of testate and intestate provisions of AIPRA, and assist in the preparation and approval of conveyance documents where appropriate, for the transfer of trust assets during the lifetime of an individual landowner of IIM account holder.

## NOTES:

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- If none of your eligible grandchildren are living, then your oldest living eligible great-grandchild will receive everything.
- If you have no living eligible children, grandchildren, or great-grandchildren, then the Indian tribe with jurisdiction over the land will receive the interest in the land.

To avoid the application of the Single Heir Rule, you must write a will or dispose of your property prior to your death.

### **Where can I get more information about estate planning tools?**

If you would like to talk with someone about your options, including the importance of creating a will, making gifts, creating life estates, or selling your property, contact your local BIA Agency to make an appointment.

If you want to write a will or have a will written for you, you should contact a lawyer or a legal aid society.

Also, the Office of the Special Trustee for American Indians has set up a special toll-free telephone number for Indian trust beneficiaries to ask questions.

***To talk with the Trust Beneficiary Call Center, call:  
1-888-678-6836, ext. 888.***

Discuss your legal issues with an attorney who is familiar with AIPRA and Indian trust or restricted property.

### **What happens to my trust or restricted property after my lifetime?**

Your trust or restricted property will pass to, or be inherited by, the person or persons you name in your will through the probate process. If you do not have a will, your property will pass to your eligible Indian heirs at probate. The probate judge will use AIPRA or a tribal probate code, approved by the Department, to determine how your trust or restricted land is inherited. During the probate proceeding, the probate judge will determine the heirs and beneficiaries to your estate. Your heirs may include your spouse, your children, certain relatives, or the tribe with jurisdiction over your trust and restricted land. For Alaska Native (AN) estates, the probate laws of the State of Alaska will govern who will inherit trust or restricted property located in the state.

### **What are some Estate Planning Options for my trust and restricted property?**

You should consider various estate planning options, such as the following:

- Write a will to direct who will receive your trust or restricted property.

- Sale, exchange, or give your trust and restricted land to others during your lifetime. If the new owner will not be holding the land in trust or restricted status, the Tribe with jurisdiction over the land will have the opportunity to acquire the land by paying the new owner fair market value.
- Consider gift conveyances of trust or restricted property (must be approved by the BIA). With either a gift or sale, you may keep a life estate. You should contact your local BIA Agency for assistance and information regarding such conveyances.

### **What is a life estate?**

A life estate means a person has the right to the use the land during his or her lifetime. The life estate holder will receive the income from that land.

### **What are wills?**

A will is a written, legal document detailing a person's wishes regarding the disposition of his property or estate after he dies. A will must be signed and dated by the individual and must be witnessed by two or more individuals who also sign and date the will. The laws of each state vary as to who may be a witness to the signing of a will and also the number of witnesses who must be pre-

there is a surviving spouse, your trust or restricted property will pass as follows:

- If you have living eligible heirs, plus your surviving spouse, your spouse will receive 1/3 of your IIM account and a life estate without regard to waste in your trust or restricted lands.
- If you do not have eligible heirs in addition to your spouse, your spouse will receive the full balance of your IIM account and a life estate without regard to waste in your trust or restricted land.

### **What is the Single Heir Rule?**

The Single Heir Rule is a provision contained within AIPRA that limits the fractionation of trust or restricted lands. It applies when:

- There is not a valid will, and
- Your interest in land is less than 5% of the entire parcel, regardless of the value of that land.

The single heir rule allows a surviving spouse to retain a life estate in that ownership interest in land, if the surviving spouse resides on that interest. The remaining interest will be distributed as follows:

- Your oldest living eligible child will receive everything.
- If none of your eligible children are living, then your oldest living eligible grandchild will receive everything.



an “Indian” is a person who:

- Is a member of a federally-recognized Indian tribe, or
- Is eligible to become a member of a federally-recognized Indian tribe, or
- Was an owner of trust or restricted land on October 27, 2004, or
- Meets the definition of “Indian” under the Indian Reorganization Act of 1934, or
- Owns trust or restricted Indian land in California.

### **Who is an eligible heir?**

Only eligible heirs may inherit intestate. Anyone who is an Indian is an eligible heir. In addition, certain people who are not Indians may inherit trust or restricted property if they are any of your children, grandchildren, great-grandchildren, parents, or siblings who are:

- Your lineal descendants within two relations of any Indian, or
- Someone who already owns an undivided trust or restricted interest in the same parcel of trust or restricted land.

### **If I am married and I do not have a will, what will my spouse inherit?**

Under AIPRA, if you do not have a will, and there is not a tribal probate code approved by the Department, and

sent. You should consult an attorney if you would like to write a will.

### **Who can I give my property to with a will?**

You may give your property to anyone under the terms of a will. The person named in the will does not have to be an Indian or a person that is enrolled with a federally recognized tribe. If the person is not an Indian, the property may not stay in trust and the Tribe with jurisdiction over the interest will have an opportunity to purchase the devised interest from the non-Indian. Additionally, if there is a tribal probate code, approved by the Department, that applies to trust or restricted property detailed in the terms of your will, the tribal probate code may contain provisions regarding the devise of interests to persons who are non-members of the tribe or persons not eligible to become members of the Tribe.

### **Do I need more than one will?**

It is not necessary to have more than one will, as one will may contain provisions for the decedent’s trust and non-trust property.

## **Who can I give my property to if I want it to stay in trust?**

Property will remain in trust or restricted status if the property is devised to a person defined as an “Indian” under AIPRA. In certain cases, your parents and siblings who are not Indian may be able to inherit your property in trust if they are closely related to an Indian. AIPRA states that persons may inherit in trust status if they are within two degrees of relation of an Indian as defined under AIPRA.

## **What happens when someone inherits and the property would go out of trust?**

If you want to leave your property to someone who is not eligible to own property in trust status, you may do that. You may also leave your property to your family or heirs in fee, whether the person is Indian or not. If you devise an interest in trust or restricted property to someone in fee status, meaning “out of trust” the Tribe with jurisdiction over that interest may elect to purchase that interest from the devisee. The devisee will be paid the fair market value of the interest.

## **Who inherits my trust or restricted property if I do not have a will?**

For persons who die on or after June 20, 2006, without a will, AIPRA *directs* who will inherit your trust and restricted property. If you do not have a will, AIPRA contains a requirement that allows only certain “eligible heirs” to inherit your interests in trust or restricted status.

For persons who died without a will prior to June 20, 2006, the probate laws of the state in which the trust or restricted land is located will be followed in distributing the property.

AIPRA permits tribes to adopt Tribal Probate Codes. If a tribe has its own Tribal Probate Code that has provisions dealing with trust or restricted property, approved by the Department, the laws contained in the tribal probate code will control the distribution of the estate. Your BIA agency can tell you which tribes have a tribal probate code approved by the Department.

## **Who is an “Indian” under AIPRA?**

AIPRA changed the legal meaning of the word “Indian” for purposes of its provisions. It does not change the meaning of “Indian” for other purposes. Under AIPRA,