

AMERICAN INDIAN PROBATE REFORM ACT

INTRODUCTION AND OVERVIEW

The American Indian Probate Reform Act (AIPRA) of 2004 was enacted on October 27, 2004. The Act amends the Indian Land Consolidation Act and amendments made in 2000 and this notice replaces the notice provided in 2001. **This Act affects your ownership rights in trust or restricted land, unless the land is located in Alaska. Most of the provisions do not take effect for one (1) year.**

AIPRA changes the way trust estates are distributed to your heirs after your death. This increases the importance and benefits of writing a will or doing an estate plan. AIPRA also improves your ability to consolidate your interests in trust or restricted land.

SECTION 1: PROPERTY DISTRIBUTION, WILLS, AND ESTATE PLANNING

The Act creates a new nation-wide probate code that changes how your trust property will be distributed among your heirs if you die without a will. Other changes include amended definitions of "Indian" and "eligible heirs" for purposes of inheriting in trust. The changes also provide opportunities for Indians or the tribe to purchase your interest in trust or restricted land at probate. In order to give you time to plan, the inheritance changes take effect after one (1) year. To help you understand some of the most important changes, you need to know what happens if you do not have a will or an estate plan.

SHOULD YOU WRITE A WILL?

The new law protects your rights as a property owner to transfer your property by will. By writing a will, you can designate how your trust land will be transferred in trust to any Indian person or to your descendants even if they are not tribal members. You can control how your trust property is passed by creating an estate plan, such as a will or deed. There are also new provisions on wills. If you have already written a will, you should review it to make sure the will says what you currently want.

WHO CAN RECEIVE YOUR PROPERTY AT DEATH IN TRUST?

Without a Will:

If you do not write a will, your trust property will pass under the new federal probate code or approved tribal probate code, rather than under the state laws that currently govern Indian probate. Your trust land will continue to be inherited by your immediate family – first to your children or grandchildren or possibly great grandchildren, and if you have none, then to your parents or brothers and sisters. All of these people will be eligible to inherit your trust property as long as each meets the definition of Indian below, or are your descendants within two generations of an Indian, or they already are co-owners in the same parcel. Land not passing to one of the people above will then pass to the tribe where the land is located. If

you have a spouse and other eligible heirs, your surviving spouse will inherit 1/3 of any money in your IIM account at the time of your death, and all of the money produced from your interest in trust or restricted land during your spouse's lifetime. Your other heirs get the remaining 2/3 of any money in your IIM account at the time of death, and the remaining ownership interest in the trust or restricted land. Your spouse may also continue to live in a family home located on allotted land. If your spouse but no other eligible heirs survive you, the spouse gets your IIM account, and during the spouse's lifetime, the money produced from your land interest. The spouse may also continue to live in a family home located on allotted land. The remaining ownership interest in land goes to the tribe where the land is located. If you do not write a will and your ownership interest is less than 5% of the total, your spouse may continue to live in the family home on the parcel and then the new probate law will limit inheritance to the oldest eligible child, and then oldest eligible grandchild or oldest eligible great-grandchild.

Additionally, the Department of the Interior may purchase interests in land that are less than 5% of the total, for fair market value during the probate proceeding without the consent of the heirs. However, this authority to purchase small interests without the heirs' consent DOES NOT APPLY IF THE INTEREST IS PASSING THROUGH A VALID WILL, or if the heirs were living on the land. Spouses living on a parcel also are protected.

With a Will:

By writing a will, your land can be transferred in trust to any Indian person, the tribe that has jurisdiction, or any Indian co-owners. You can also transfer your land in trust to any of your descendants (children, grandchildren, great grandchildren, and great-great grandchildren) even if they are not Indian. You can control how your trust property is passed by creating an estate plan, such as a will or deed. You can transfer your interests out of trust to anybody. Even if your spouse is not mentioned in a will, your spouse may inherit some of your trust property.

WHO MAY INHERIT LAND IN TRUST UNDER AIPRA?

There is an amended definition of Indian that helps determine who can inherit an interest in land in trust, particularly where there is no will. Under AIPRA, an "Indian" is a person who: is a member of an Indian tribe, or is eligible to become a member of an Indian tribe; or was an owner of an interest in trust or restricted land on October 27, 2004; or meets the definition of "Indian" under the Indian Reorganization Act, or in California, any person as in 1, 2, 3, and 4, or who owns trust or restricted land in California. This will not affect your eligibility for other federal Indian programs. Your heirs who are not Indian may be able to inherit in trust if they meet the statutory requirements for "eligible heirs."

If you have heirs who are non-Indian, be sure to seek information at the toll-free number below or at your local agency office. The provisions of AIPRA are complex. Be sure to seek information for any questions you may have.

SECTION 2: CONSOLIDATING OWNERSHIP INTERESTS

One of the main purposes of the Act is to preserve the trust status and reduce the number of small, fractionated interests in Indian lands. The Act does this by providing individuals and tribes with more opportunities to consolidate fractionated interests and by removing some restrictions on what tribes and individuals can do with their lands.

WHAT IS THE PURCHASE OPTION AT PROBATE?

Certain people can purchase your interest in the parcel during probate. Your heirs, other co-owners, and the tribe where the land is located will be able to purchase your interest in the parcel. The purchase price must equal or exceed the fair market value. Your heirs would receive the money paid for your interest in the parcel instead of a share of your interest in the parcel. If your heirs are to receive 5% interest or more in the parcel, or if they live on the parcel, your heirs' consent to the purchase is required.

WHAT ARE CONSOLIDATION AGREEMENTS?

Heirs can decide how they want the trust estate distributed at the probate hearing. For example, they may decide whether they wish to inherit their share, or sell it to other co-owners or the tribe where the land is located. Heirs may also give their share to another named Indian person instead of inheriting it.

HOW CAN A PERSON ACQUIRE OTHER FRACTIONATED INTERESTS?

The Act contains a number of provisions that are important to Indian landowners. Some examples are: Land consolidation options for landowners, Partition by sale of Indian lands, Continuation and expansion of the federal "buy back" program, and Greater flexibility for landowners to consolidate and acquire interests during the probate process.

HOW CAN YOU TRANSFER AN INTEREST IN PROPERTY DURING YOUR LIFETIME?

Please seek information from your trust officer, your local BIA office or the toll free number below for information on estate planning options during your lifetime such as: Negotiated sales, Gift deeds, Land exchanges, and other transactions.

For more information about this notice or the Act, call 1-888-678-6836 ext 888