

Planning for the Passing of Reservation Lands to Future Generations



March 2009

FACT SHEET # 12

Ways to avoid further fractionation of reservation land

This fact sheet discusses ways you can avoid further fractionation of your interests in allotted land. For example, you may:

- Give all your interests to one person.
- Leave all your interests to one heir in a will.
- Divide your land into solely owned parcels.
- Gift your interests to heirs.
- Sell your interests to heirs.
- Exchange your interests with other heirs.
- Create a joint tenancy for your interests by will or deed.

Is there such a thing as equal interest?

One of the challenges in avoiding *fractionation* is that there may not be enough land or interests in land to **equally** benefit all family members.

Example 1: Peggy discovered that she has a $1/144$ *undivided interest* in land that was originally owned by her great-great grandmother. She does not want the inconvenience of contacting the other owners to explore consolidating the interest for her three daughters. Peggy wrote a will leaving her $1/144$ *undivided interest* to the tribe where her land is located.

Example 2: Irene has an *undivided interest* of $1/8$ in an allotment that was owned by her father. Her six sisters also own an *undivided interest* of $1/8$ each. Her deceased brother's share of $1/8$ passed to his two children, giving them each an *undivided interest* of $1/16$ in the allotment ($1/8 \div 2 = 1/16$).

Irene feels it is worth her effort to purchase the $1/16$ *undivided interests* that are owned by her niece and nephew so she can then leave those interests to her son who is interested in ranching. She plans to buy out the interests of her six sisters as well so that she will be able to leave the whole parcel to her son.

Structuring an estate plan is a challenge. Dividing land can be difficult because of the differences in land quality and characteristics across a reservation. Some parcels of land may have adequate water access while other parcels may not. Some parcels may be irrigated while others may not be irrigated. Some parcels may be suitable for annual crop production while other parcels are only to be used for grazing.

Benefiting the family *equally* may be impossible! However you may be able to make *equitable* divisions among your family members.

Example 3: A parent who has 100 percent ownership in an original allotment may leave 100 acres of irrigated land to one child and 200 acres of rangeland to another child—different acreages but an *equivalent* value.

Example 4: A grandmother who is an original allottee may leave her land to a grandchild who has an interest in ranching, but leave her two vehicles and life insurance proceeds to another grandchild.

You can consolidate your fractionated land in a variety of ways by carefully considering the consequences of each choice for your individual family situation before deciding. Do the best you can with what you’ve got.

Dividing land into parcels

If you own land in *fee simple* or if you own 100 percent of an allotment, you may choose to divide your land into parcels. You can make a gift of a specific parcel to each child. Each child would thus inherit a specific parcel rather than an *undivided interest* in your large land parcel.

Example 5: Ron owns 100 percent interest in an allotment of 320 acres. He can divide the land into four equal parcels of 80 acres each. In his will he can leave a specific parcel of 80 acres to each of his four children. Parcel A to child A; Parcel B to child B; Parcel C to child C; and Parcel D to child D. Each child would then own a 100 percent interest in an 80 acre parcel (Figure 1).

Figure 1: Four Equal Parcels

Parcel A 80 Acres <i>Child A</i>	Parcel B 80 Acres <i>Child B</i>
Parcel C 80 Acres <i>Child C</i>	Parcel D 80 Acres <i>Child D</i>

If Ron did not divide the land, each child would inherit an *undivided interest* of 1/4 in the entire 320 acre tract of irrigated cropland. This means his children could not build homes on the land because they wouldn’t own a specific parcel nor could they use it for any other purpose unless agreed upon by the majority of heirs.

Ron could also decide to write a will and leave the 320 acre tract of irrigated cropland to only one of his four children, thus leaving the basis for an economically viable operation for farming.

If you want to leave specific parcels of land to different beneficiaries, the land should be surveyed before writing your will. This allows you to provide the legal description for each parcel in your will.

Gifts, selling, or exchanging land to avoid fractionation altogether

Other methods of land consolidation available while individuals are still living include gifting, selling, or exchanging with the tribe or other co-owners in an allotment. Co-owners can concentrate on lands that lend themselves to such consolidation opportunities.

Gift deeds are legal transfers of trust property during your lifetime. With a gift deed you can transfer your interests to another eligible heir or co-owner while you reserve a life estate (Review Fact Sheet #8) in that property. However, gift deeding is not available to everyone. Have your attorney refer to 25 CFR Part 151 – 152.

All gift deed applications must be filed on a form provided by the Bureau of Indian Affairs on the reservation where the interest is located. There are at least two types of forms. One form is for tribes organized under the Indian Reorganization Act of 1934 (Blackfeet, Fort Belknap, Fort Hall). Another form is for IRA tribes who did not vote to accept the IRA.

Gift deeds are not revocable once they are filed with the BIA. You can’t change your mind and “take back” your interests in the land once you have gifted them to your heirs or co-owners.

Example 6: Helen has several interests in allotments she inherited from her parents. She has decided to gift each interest in allotments A, B, and C to her daughter and each interest in allotments in D, E, and F to her son. Once these gift deeds are filed, Helen's daughter and son become the new owners of the interests Helen inherited. If Helen later decides she want to take back her land because her daughter has become irresponsible, she can't! The interests will then appear on the ITI report of Helen's daughter and son.

Selling and buying interests from other co-owners is another option for land consolidation (Example #7).

Example 7: Verna owns an *undivided interest* of 1/6 in land with her sisters and brothers. Verna is the only sibling living on the reservation. The other five siblings are located in other states. Her brothers and sisters want to sell their interests to Verna so she can gift those interests to her son who wants to use the land for ranching.

Selling to a tribe is possible on some reservations. If you own land on another reservation and want to consolidate, you may be able to sell to the Indian Land Consolidation office that is available on some reservations. Contact the BIA Realty office to find out if an Indian Land consolidation program is available on the reservation where your land is located.

Exchanging an *undivided interest* with other co-owners is another method of land consolidation.

Example 8: Tamara owns an *undivided interest* in several allotments on the Fort Hall reservation. Her cousin owns an *undivided interest* in several allotments on the Blackfeet reservation. Because Tamara lives on the Blackfeet reservation she has approached her cousin about exchanging so Tamara and her cousin will each own their interests on reservations where they live.

Writing a will

Another method of land consolidation is writing a will that leaves all your land to one person.

Example 9: Joel, who is not married, has written a will to leave his *undivided interests* in trust lands to his nephew who lives on the reservation and who wants to expand his farming operation. Joel's four other nephews and nieces live out-of-state and do not plan to return to the reservation.

Another approach is to leave an interest in different allotments to different people in your written will. This method may work if you have interests in several allotments on several reservations.

Example 10: In his written will, Jack left his interests in allotments 1 and 2 on Fort Peck to Mary, his older daughter; his interests in allotments 3, 4, 5, and 6 on Fort Hall reservation to Barb, his younger daughter; his interests in allotment 7 on Fort Belknap to John, his older son; his interests in allotments 8 and 9 on the Blackfeet reservation to Don, a brother who already owns an interests in allotments 8 and 9.

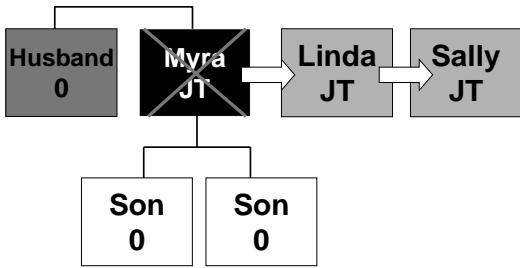
Joint tenancy with right of survivorship

AIPRA provides that interests left in a will to more than one person are presumed to create a *joint tenancy with right of survivorship* unless there is clear language in the will stating that the interests are to pass as a tenancy in common.

If land is owned in *joint tenancy with right of survivorship*, when one of the owners passes away, his or her property interests are vested among the surviving co-owners (See Fact Sheet #3).

Example 11—See Figure 2: Sisters, Myra, Linda, and Sally, inherited land as *joint tenants with right of survivorship* because a joint tenancy is assumed under AIPRA. If Myra passes away, her land interests are vested with Linda and Sally, not Myra's husband or their two sons (Figure 2).

Figure 2: Joint tenancy (JT) with right of survivorship among sisters

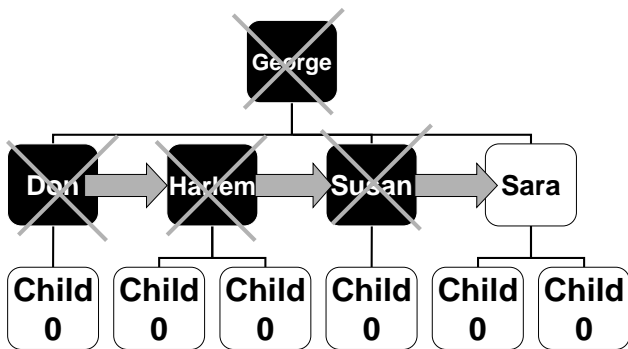


If Linda passes away Sally is the surviving joint tenant. Sally can write a will leaving the land to whomever she wants.

Example 12—See Figure 3: When George passed away, his four children Don, Harlen, Susan, and Sara inherited his land as joint tenants with right of survivorship. Although each of George’s four children also have children, only the last surviving sibling among George’s four children will have the right to decide who eventually receives the land.

If Sara, the youngest sibling, is the final survivor she can decide who receives the land upon her passing (Figure 3).

Figure 3: Joint tenancy with right of survivorship among siblings



Summary

This fact sheet explores several alternatives for consolidating or preventing *fractionation* of whole interests in land by dividing land into parcels, gifting, selling or exchanging land.

Make your decision about the best alternative or combination of alternatives only after careful consideration of the consequences of each choice for your individual family situation.

Acknowledgements

We wish to express appreciation to the Montana and Idaho Reservation Extension agents and Reservation Extension student assistants on the Blackfeet, Fort Belknap, Fort Hall, and Fort Peck reservations for their assistance in reviewing the fact sheets and presenting the information to tribal members on their home reservations.

Co-authors:

- Marsha A. Goetting
Extension Family Economics Specialist
Department of Agricultural Economics and Economics
Montana State University
- Kristin Ruppel
Department of Native American Studies
Montana State University

This publication was supported by the Community Outreach and Assistance Partnership Program of the Risk Management Agency USDA number 051E08310186.

Disclaimer

The information appearing in this fact sheet is presented for informational purposes only. The objective of the fact sheet is to help you develop an understanding of the American Indian Probate Reform Act (AIPRA). The contents should not be considered as legal advice or be used as such. For legal information specific to your situation, contact appropriate legal counsel with your tribe or an attorney.

Future change in laws cannot be predicted and statements in this fact sheet are based solely on the rules and regulations in force on the date of publication.