

Planning for the Passing of Reservation Lands to Future Generations



Community Outreach
and Assistance
Partnership Program

March 2009

FACT SHEET #5

Who is eligible to inherit your trust lands and retain trust status?

If you pass away without a written will on or after June 20, 2006, the American Indian Probate Reform Act of 2004 (AIPRA) determines who is eligible to inherit your trust property and retain its *trust status*.*

Trust or restricted property

AIPRA affects only property that is held in trust or restricted status in the United States.* Interests in allotted land and Individual Indian Money (IIM) accounts are examples of *trust or restricted status* property (See Fact Sheet #13).

Non-trust property

AIPRA does not affect any property you own that is not in trust or restricted status. Examples of non-trust or restricted status properties include:

- A checking or savings account in your name at a local financial institution,
- Vehicles with your name on the title, or
- Land not held in trust such as *fee* land (See Fact Sheet #3).

If you pass away without a written will, your non-trust property would be distributed to your heirs under state

law or tribal law (depending on location), not under AIPRA (See Fact Sheet #1).

Definition of *eligible heir* under AIPRA

Under AIPRA, your trust land can retain its *trust status* if it passes to *eligible heirs*. AIPRA defines *eligible heirs* as your:

- Children
- Grandchildren
- Great-grandchildren
- Brothers and sisters
- Half brothers and sisters by blood
- Parents

Any of the above are *eligible heirs*, as long as they are *Indian* (defined this fact sheet, page 2), or lineal descendants within 2 degrees of an Indian, or trust owners of the same parcel for purposes of inheriting by descent.

Under AIPRA, *eligible heirs* do not have to be enrolled members of the tribe. Aunts, uncles, and cousins are not considered eligible heirs under AIPRA because they are not within two degrees of *consanguinity*. *Consanguinity* is a legal term that describes a blood relationship or biological kinship among relatives.

* Except Alaska, the Five Civilized Tribes, and Osage.

Definition of Indian under AIPRA

Eligible heirs must also meet the AIPRA legal definition of *Indian* if they are to inherit your interests in *trust* or *restricted status*.

Under AIPRA a person who meets any **one** of the parts of the definitions of *Indian* below can inherit land and IIM accounts in trust or restricted status on June 20, 2006 and thereafter. * Under AIPRA, an Indian:

- Is a member of a federally recognized Indian tribe.
- Is eligible to become a member of a federally recognized Indian tribe.
- Was a trust owner of an *undivided interest* in trust or restricted land on October 27, 2004.
- Meets the definition of *Indian* under any one of the following parts of the Indian Reorganization Act (IRA) of 1934:
 - Is enrolled in an IRA tribe.
 - Is an aggregate of 1/2 Indian blood (from any tribe).
 - Is a descendent of an IRA tribal member who was living on a reservation in 1934.
- Is a person of any degree of Indian ancestry who owns trust or restricted land in California. (A California Indian must meet the AIPRA definition of *Indian* to inherit land on reservations outside California).

Written wills and *trust status* land

Your lineal descendents and any trust co-owners in an allotment can inherit land in trust if it is left to them in your written will whether or not they meet the definition of *Indian*. In other words, you can leave your *undivided interest* in trust land to your children, grandchildren or great-grandchildren by naming them in a written will. They will inherit the land in trust regardless of whether they are enrolled tribal members.

A non-Indian cannot inherit any of your *undivided interests* in allotments in trust status. Even if you write a will naming a non-Indian as a beneficiary, he or she will not be permitted to inherit the land in *trust*. You can, however, write a will and leave a *life estate* in

* Except Alaska, Five Civilized Tribes, and Osage

COPYRIGHT 2009

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410, or call (202) 720-5964 (voice or TDD).

trust land to a non-Indian with the *remainder* to someone who meets the AIPRA definition of Indian.

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.