

Planning for the Passing of Reservation Lands to Future Generations



March 2009

FACT SHEET #7

Your *undivided interest* of *less than 5%:* What happens if you pass away without writing a will?

If you pass away without writing a will, any trust or restricted land you own in the United States* passes to your heirs under a new federal law called the American Indian Probate Reform Act of 2004 (AIPRA). Most sections regulating probate became effective for the estates of individuals who pass away on or after June 20, 2006.

Different rules apply depending on whether you own *undivided interests* of **less than 5%** in an allotment or *undivided interests* of **5% or more** in an allotment (Fact Sheet #6).

This fact sheet explains how your *undivided interests* are distributed if you pass away without a written will and own **less than 5%** in an allotment. It also describes who qualifies as an *eligible heir* and explains the one exception to the *single heir rule*.

Individual trust interest (ITI) report—

To determine what percentage of an *undivided*

interest you own in an allotment you will need to examine your Individual Trust Interest (ITI) report from the Bureau of Indian Affairs. Review Fact Sheet #4 that explains how to read and understand your ITI report. Pay particular attention to the aggregate decimal that is provided for each *undivided interest* listed on your ITI report (for example, 0.016543211 is equal to 1.65%).



In this example, the *undivided interest* of 1.65% is **less than 5%**, so the interest passes under the *single heir rule* that is discussed in this fact sheet.

AIPRA single heir rule

The *single heir rule* applies if you pass away without a will and if you own **less than 5%** of an *undivided interest* in an allotment. An *undivided interest* of **less than 5%** in an allotment passes to only **one** heir.

However, there is an exception if the deceased person's spouse is living on the parcel (See page 3).

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

Priority under the *single heir rule* of an *undivided interest* of less than 5%

Under AIPRA’s *single heir rule*, only your children, grandchildren or great-grandchildren qualify as *eligible heirs*.

The first person in line to receive your *undivided interest* of **less than 5%** in an allotment is your *oldest surviving child* (if you have one) who meets the definition of *eligible heir* (See Fact Sheet #5).

If you do not have a surviving child, then your *undivided interest* of **less than 5%** in an allotment passes to your *oldest surviving grandchild* (if you have one) who meets the definition of an *eligible heir* (See Fact Sheet #5).

If you do not have a surviving child or grandchild, then your *undivided interest* of **less than 5%** in an allotment passes to your oldest surviving great-grandchild (if you have one) who meets the definition of an *eligible heir* (Fact Sheet #5).

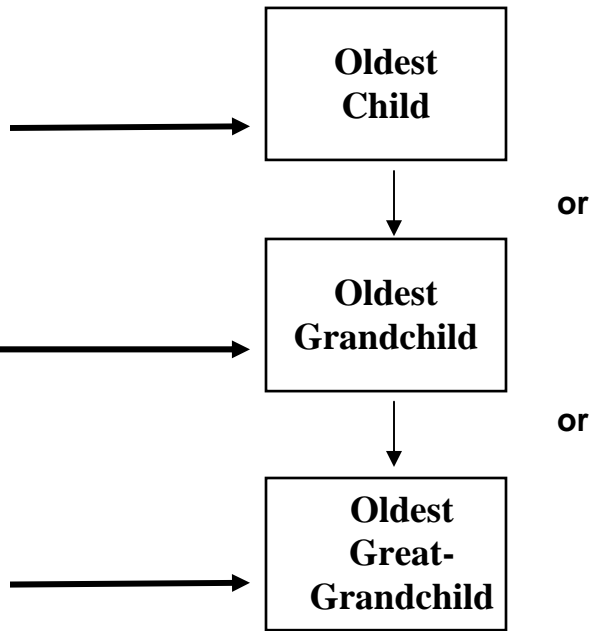
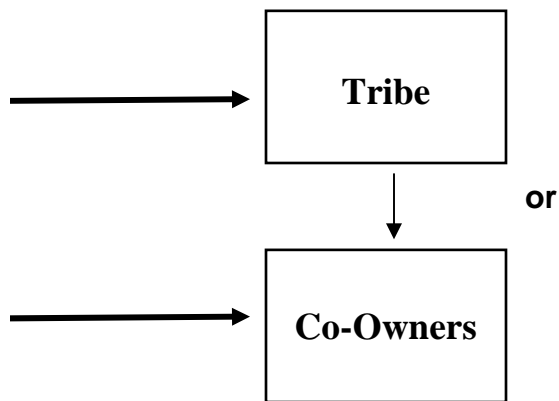


Figure 1: Priority order under the *single heir rule* of an *undivided interest* of less than 5%

Priority under the *single heir rule* if there are no *eligible heirs*

If you do not have a surviving child, grandchild, or great-grandchild, then your *undivided interest* of **less than 5%** in an allotment passes to the tribe where the allotment interest is located, without payment to your estate.

If there is no tribe with jurisdiction over your *undivided interests* of less than 5%, then your interest passes in equal shares to the other co-owners of the trust parcel.



Benefit of writing a will

If you do not wish your *undivided interests* in allotments to pass under the *single heir rule* to those listed on page 2 then you need to write a will. With a will you can leave each *undivided interest* of **less than 5%** to whomever you wish.

An additional benefit of writing a will is that an *undivided interest* of **less than 5%** that is left to an heir in a written will is not subject to a *forced sale* without consent (See Fact Sheet #10).

Exception to single heir rule:

Married with spouse living in a home on the allotment

If you pass away without a will and are married at the time of your passing, your spouse has certain rights. If your spouse is living in a home on an allotment where you have a **less than a 5% undivided interest**, he or she receives a *life estate* in the home.

A *life estate* means the surviving spouse gets to live in the family home during his or her lifetime. Your surviving spouse can also receive any lease income, bonuses and royalties paid for the use of the land where the family home is located (For further information on life estates see Fact Sheet #8).

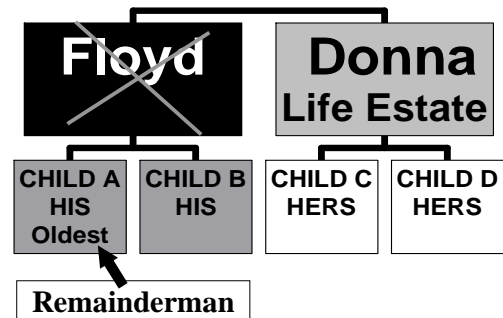
After your surviving spouse passes away; the *life estate* ends. The title holders called *remainderman* (who could be your oldest child, grandchild, or great-grandchild who meets the definition of *Indian* under AIPRA) have full benefit of the land and income.

If your spouse has children from a prior marriage, your *undivided interest* does not pass to your surviving spouse's children at his/her passing. Instead, your children as the *remaindermen* have full benefit of use of the land and income (for further information about *remainderman* see Fact Sheet #8).

Example: Floyd had two children from a prior marriage. He married Donna who

also had two children from a prior marriage (Figure 2). Floyd passed away without writing a will. His wife, Donna, received a life estate in the family home because it was built on a parcel in which Floyd owned a **less than 5% undivided interest**. Floyd's oldest child has a remainder interest in the family home under the *single heir rule*. When Donna passes away, Floyd's oldest child has full benefit of the use of the home and income. Donna's children and Floyd's younger child do not inherit under the *single heir rule* (Figure 2).

Figure 2: Married couple with children from a previous marriage



Renouncing an interest to reduce fractionation

During probate, any heir who inherits under the *single heir rule* may share his or her inheritance by *renouncing* or *disclaiming* in favor of certain other individuals or the tribe as described below.

Renounce means “I do not wish to inherit the interest.” This renunciation can be a directional disclaimer that will pass the *undivided interest* to:

- Another *eligible heir*, but only to one such person.
- Any co-owner of a trust or restricted interest in the allotment.
- The tribe with jurisdiction over the *undivided interest* in the allotment.

Writing a will

If you do not want your land to pass under the *single heir rule* to your oldest child, grandchild, or

great-grandchild, co-owners, or a tribe where the *undivided interest* is located, then you need to write a will. With a written will you can leave your property to any individual or individuals you desire.

Reservations that were organized under the Indian Reorganization Act (IRA) have individually owned trust lands that cannot be transferred out of trust. This means trust land on the Fort Hall, Fort Belknap, and Blackfeet reservations cannot be transferred as *fee* property in a written will. However, land on the Fort Peck reservation can be transferred in a will as *fee* because the tribe did not vote to accept the IRA.

Summary

If you pass away without a written will any *undivided interest* of **less than 5%** you own in an allotment will pass under the *single heir rule* to only **one** heir.

If your spouse is living in a home on an allotment where you have **less than a 5% undivided interest** at your passing, he or she will receive a *life estate*. After your surviving spouse passes away, the life estate ends. Under the *single heir rule* your oldest child, oldest grandchild, or oldest great-grandchild then has full benefit of the house and any income from the interest. If none of these heirs meet the definition of Indian, then the property passes to the tribe on the reservation where the decedent's *undivided interest* is located.

Acknowledgements

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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

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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.