

Planning for the Passing of Reservation Lands to Future Generations



March 2009

FACT SHEET #8

What is a *life estate*?

Under the American Indian Probate Reform Act of 2004 (AIPRA),* effective for individuals who pass away on or after June 20, 2006, certain *beneficiaries* cannot inherit *undivided interests* in trust properties. Instead, they may only be allowed to receive a *life estate* in trust land or the home on trust land.

The purpose of this fact sheet is to explain what a *life estate* is and the circumstances under which AIPRA may require property to be held in a *life estate* for a surviving spouse.

The fact sheet also describes situations where individuals may wish to use a *life estate* for certain individuals in their wills.

Definition of a *single life estate*

A *life estate* allows a person to use and possess, but not have ownership of property (typically land, a home, or other buildings) during his or her lifetime. When the person passes away, the *life estate* ends and the title holders (*remaindermen*) have full benefit of the land and income.

Example 1: Bill wants to leave his land and home to his wife so she can live in the home and can receive income from the land after his passing. After his wife's passing, Bill

wants the land and the home to be his children's.

Bill wrote a will leaving his home and his land as a *life estate* for his wife with the *remainder* to their children, Susan and John. This means after their mother passes away, full benefit and income from the land becomes Susan and John's because they were named as *remaindermen* in their father's will.

Definition of *joint life estate*

When several individuals become holders of a *life estate*, the term used is a *joint life estate*.

Example 2: Joe passed away last year. He left his land to his three children as a *joint life estate* with the *remainder* to the tribe. As each child passes away the share of each survivor increases. When the last child passes away, the tribe has full benefit of the interest originally held by Joe.

Definition of *life tenant*

The person who receives property as a *life estate* is known as a *life tenant*. If more than one individual receives a *life estate*, they are called *joint life tenants*.

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

Example 3: Donna has written a will leaving a *joint life estate* in her land to her two daughters and two sons. Donna's four children become *joint life tenants* of the *life estate* at Donna's passing.

Example 5: Eloise, in her written will, left a *life estate* in her house to her husband with the *remainder* to her two children. She required the children (as the *remaindermen*) to pay for major repairs such as a new roof.

Definition of *remainderman*

The *life tenant* has the use and/or the possession of the property for the duration of his or her life. At the passing of the *life tenant*, the *life estate* ends and the *remainderman* has full use and benefit of the property. The *remainderman* can be named in a will. If there is no will, then the *remainderman* is determined under AIPRA rules. (See Fact Sheets #6 and #7).

Example 4: Maria, a mother on the Blackfeet Reservation, has written a will leaving a *life estate* in her home and land to her daughter with the *remainder* to her granddaughter. This means Maria's daughter can live in the family home during her lifetime. When the daughter passes away, the *life estate* ends. Maria's granddaughter (the *remainderman*) has full use and benefit of the family home and land.

Definition of *without regard to waste*

Under AIPRA a *life estate without regard to waste* means the *life tenant* can extract resources to obtain income and royalties to the exclusion of the *remainderman*. For example, a surviving spouse could sell the timber, drill for oil, or mine for minerals even if these activities would deplete the resources on the land. The life tenant does not have authority for "malicious waste." For example, a surviving spouse can cut timber for the purpose of receiving income from the sale of the lumber, but cannot burn down the trees. Burning the trees would be "malicious waste."

Protecting property for heirs

A will can be written to prevent the *life tenant* from harming the property. A will can also limit the amount and type of income or other benefit (sales, proceeds, and royalties), the *life tenant* may receive. Restrictions can preserve the land's value and resources for the *remainderman* by requiring such things as property maintenance or by imposing specific restrictions on use.

When is a *life estate* required under AIPRA?

If you pass away without a will, the American Indian Probate Reform Act of 2004 (AIPRA) has probate sections that became effective for estates of individuals who pass away on or after June 20, 2006. AIPRA requires a *life estate* in several circumstances if you pass away without a will.

If you pass away without a written will and if you have *undivided interests* of **5% or more**, your surviving spouse receives a *life estate* in each interest. Your surviving spouse gets to live in the family home that is located on the allotment where your interests are **5% or more**. Your surviving spouse will also receive any bonuses and royalties paid by others for the use of land in which your interests are **5% or more**.

If you pass away without a written will and if your spouse is living in a home on a parcel where you have *undivided interests* of **less than 5%**, he or she will receive a *life estate* in the home and the parcel where the home is located.

Your surviving spouse gets to live in the family home throughout his or her lifetime. Your surviving spouse will also receive any bonuses and royalties paid by others for the use of the land where the family home is located.

Your surviving spouse does not receive a *life estate* in any other parcels where you own interests of **less than 5%**. The other parcels pass under the *single heir rule* if you pass away without a will (See Fact Sheet #7).

AIPRA allows for the use of trust land by a non-Indian without the land losing its trust status. You may leave a *life estate* in parcels of any size to a non-Indian in a written will. When the *remainderman* is Indian the land stays in trust. The non-Indian can use the land during his or her lifetime and receive any bonuses or royalties paid by others for the use of the land in which the non-Indian holds a *life estate*.

At the passing of the non-Indian, the *life estate* ends. The *remainderman* named in your will retains the land in trust and have full benefit and enjoyment of

the land. Your *remainderman* must be an *eligible heir* or the tribe where the land is located if the land is to retain trust status.

Example 6: Jack and his two children are enrolled members of the tribe. His wife, Susan, is non-Indian. In a his will Jack left his land to Susan as a life estate. Upon her passing the life estate ends. Their two children, who are the *remaindermen* and eligible Indian heirs, retain the land in trust and have full benefit and enjoyment of the land.

Wording in a will to establish a *life estate*

A *life estate* could be worded like this in a will:

Example 7: To John, my son, for his life, with the remainder to Mary, my niece. If Mary should not survive my son John, then remainder to the tribe.

This wording means that the land can be used by John during his lifetime. If John's niece, Mary, does not survive then the *life estate* ends. The tribe then has full benefit and use of the land.

Consecutive *life estates*

Two consecutive *life estates* are allowed under AIPRA. Consecutive *life estates* in a will could be worded as follows:

Example 8: To Floyd, my son, for his life. At Floyd's passing my land passes to Mary, Susan, and Tony, my nieces and nephews for life. After the passing of the last life tenant, remainder to the tribe.

This wording means the land can be used by Floyd, during his lifetime. At Floyd's passing the land is in a joint *life estate* for his nieces and nephews Mary, Susan, and Tony. If Mary passes away, then Susan and Tony continue to be joint tenants of the *life estate*.

If Susan then passes away, Tony is the life tenant. Upon Tony's passing, the *life estate* ends and the tribe has full benefit and use of the land.

Summary

When an individual leaves a *life estate* in a will he/she allows a person(s) to have possession and use of property (typically land, a home, or buildings on the land) during his or her lifetime. After the passing of the life tenant(s) the *life estate* ends. The *remaindermen* then have full benefit and enjoyment of the property.

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