

Planning for the Passing of Reservation Lands to Future Generations



July 2021

FACT SHEET #3

How Reservation Land is Owned by Individuals

Different kinds of **individual** Indian land ownership are explained in this fact sheet. Your Individual Trust Interest (ITI) report or your deed will indicate whether your ownership of reservation land is:

1. *Individually Owned Trust or Restricted Land* and/or,
2. *Fee Land (also known as Fee Simple Land or Fee Patent Land)*

You may own a combination of trust lands and fee lands on one or more reservations.

Individually owned trust and restricted land

The General Allotment Act of 1887 divided American Indian treaty lands into individually owned parcels of land known as *allotments*. Upon the passing of the original *allottees*, ownership was and has continued to be distributed among their heirs as *undivided interests*.

Any *undivided interest* in allotted land is held in trust by the United States for the benefit of its Indian owner. Individually owned trust and restricted lands are **not** subject to any type of city, county, state or federal taxes such as property taxes. Most financial institutions do not accept an

undivided interest in trust lands as collateral for a loan.

Under AIPRA's technical amendments of December 2, 2008, IRA tribes have been given the authority to enact resolutions, codes, or laws to permit owners the ability to write a will and leave trust property to a non-Indian person and have the land converted from trust status to fee status. Without tribal action AIPRA prohibits the leaving of IRA lands in fee to a non-Indian. Non-IRA tribes already had this authority.

Passing of trust and restricted land

Upon an owner's passing, individually owned trust or restricted land passes in one of two ways:

1. If the owner has a written will, he or she names the individuals to receive his or her *undivided interests* in trust lands.
2. If the owner does not have a written will, his or her *undivided interests* in trust lands are distributed to his/her *eligible heirs* under the American Indian Probate Reform Act of 2004 (AIPRA) that became effective for individuals who pass away on or after June 20, 2006. ^{1*}

^{1*} Except Alaska, the Five Civilized Tribes, and Osage.

AIPRA creates a new nationwide probate code for all reservations.* Prior to AIPRA, state laws determined how trust or restricted lands passed from generation to generation. The federal probate code applies to all individually owned trust and restricted lands* unless the tribe has a Department of Interior approved probate code.

Fee (fee simple or fee patent) land

Unlike trust land *fee (fee simple or fee patent) land* generally means that an individual owns the property outright and that the land **is not held in trust** for a tribal member by the United States government. If there are no restrictions on it, land owners can gift or sell their *fee land* without BIA approval.

Fee (fee simple or fee patent) land is subject to county, state and federal taxes; including annual property taxes. Land in *fee* **can** be used as collateral for a loan.

Example: John needs an operating loan for his ranch. His local bank will accept his fee land on the reservation as collateral. However, the bank **will not** accept his *undivided interest* of 1/8 in an allotment that he inherited from his parents.

Ways property is titled

Typically, *fee* land and *trust* land are titled in one of the following ways:

1. Sole ownership (one owner)
2. Co-ownership (two or more owners)
 - a. Tenancy in common
 - b. Joint tenancy with right of survivorship

Sole Ownership: Sole ownership means there is only one owner. Unless a tribe exercises jurisdiction over *fee* land upon an owner's passing, solely owned *fee* land passes under **state** law (if no will exists) to the owner's heirs or to whomever the owner has named in a written will. **AIPRA does not control the distribution of solely owned *fee* land located on a reservation.** AIPRA does control any solely owned *trust* or *restricted* land.

Example 1: Reese holds *fee* land on the Fort Peck reservation in his name only. If he does not write a will, Montana law controls who receives his *fee* land upon his passing, not AIPRA.

Example 2: Steve owns *fee* land on the Fort Hall reservation in his name only. If he does not write a will, Idaho law controls who receives his property upon his passing, not AIPRA.

Example 3: Sara owns a 1/16 *undivided interest* in a parcel of trust land on the Fort Belknap reservation. She has written a will leaving her *undivided interest* to her son. Sara's written will controls who receives her land, not Montana law or AIPRA.

Example 4: Roger owns an *undivided interest* of 1/8 in a parcel of trust land on the Fort Peck reservation with eight of his brothers. If he passes away without a written will, AIPRA controls how his *undivided interests* in several allotments are passed to his heirs.

Co-ownership: Co-ownership of *fee* and *trust* land exists when two or more persons hold legal title to the same property. There are two types of co-ownership recognized under AIPRA:

1. Tenancy in common
2. Joint tenancy with right of survivorship

Tenancy in Common: Under this method of co-ownership, two or more persons hold an *undivided interest* in the same property with no *right of survivorship* for the surviving tenant in common. No *right of survivorship* means that the surviving co-owner does not inherit (unless named in a will) the other's share. Two or more persons can own land as tenants in common.

Each tenant in common has the right to transfer his or her proportional share by selling it, giving it away, or by transferring it to persons of his or her choice at his or her passing by a written will.

Undivided interest means each tenant in common owns a part of the total value. If two people have a tenancy in common one owner cannot claim to own the valuable parcel of land with an oil well and claim that the parcel without oil belongs to the other owner.

Example 3: Tony and his brother, Don, are ranching together and own land as tenants in common on the Fort Peck reservation. As tenants in common, each owns one-half of the total *value* of the property.

The title for Tony and Don's tenancy in common for the property reads as follows:

Tony Plainfeather and Don Plainfeather as tenants in common.

If Tony passes away, his undivided interest of $\frac{1}{2}$ does not automatically pass to his brother Don because there is no right of survivorship for the surviving tenant-in-common. If Tony passes away without a written will, his wife would inherit his $\frac{1}{2}$ undivided interest in the land. She would then own the land as a tenant-in-common with Don, her brother-in-law.

Joint Tenancy: If *fee land* is held in *joint tenancy with right of survivorship*, the deceased co-owner's interest is eliminated and the last survivor becomes the sole owner.

Example 4: Floyd, LeRoy, and Tamara own *fee land* as joint tenants with right of survivorship on the Blackfeet reservation in Montana. The title for Floyd, LeRoy, and Tamara's joint tenancy would read as follows:

Floyd Plainfeather, LeRoy Plainfeather and Tamara Plainfeather as joint tenants with right of survivorship and not as tenants in common.

If Floyd passes away, his share of the joint tenancy land is vested in LeRoy and Tamara. If LeRoy passes away, his share of the joint tenancy is vested in Tamara. Tamara now owns all the land that was held in joint tenancy with Floyd and LeRoy.

When Tamara becomes owner of the *fee land* she can leave it to whomever she wants by writing a will. If Tamara passes away without writing a will, Montana law controls who receives her *fee land*.

What can you do?

To ensure the passing of your property to those whom you wish, learn how your land is held. Is your land held as:

- *Individually owned trust or restricted?*
- *Fee (fee simple or fee patent)?*

Request your copy of an Individual Trust Interest (ITI) Report from the BIA Realty office to determine the amount of *undivided interests* you own. You can request an ITI Report by using the form in Fact Sheet #4.

Review Fact Sheet #4 to see what all the numbers on the ITI report mean. If you have questions that are not answered in the fact sheet, contact the BIA Realty office.

Once your ownership status is determined, decide how you want your interests to be divided among members of the next generation.

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 on their home reservations. This MontGuide has also been reviewed with the assistance of students from the Alexander Blewett III School of Law at the University of Montana.

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statements in this fact sheet are based solely on the rules and regulations in force on the date of publication.

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.

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