

Planning for the Passing of Reservation Lands to Future Generations



March 2009

FACT SHEET #1

What is AIPRA and how does it affect you?

The American Indian Probate Reform Act (AIPRA) was enacted on October 27, 2004. The Act amends the Indian Land Consolidation Act (ILCA) of 1983 and ILCA amendments of 2000. Most parts of AIPRA that pertain to probate took effect on June 20, 2006. Technical amendments were signed into law December 2, 2008.

AIPRA creates a uniform probate code for all reservations* across the United States. The Act applies to all individually owned trust lands* unless a tribe has its own probate code. **All** tribal probate codes pertaining to trust property must be approved by the Department of Interior. State laws no longer determine how trust lands on reservations* pass from one generation to the next for individuals who pass away on or after June 20, 2006.

This is the first of 14 fact sheets explaining parts of AIPRA. They have been developed with funding from the Community Outreach and Assistance Partnership Program of the Risk Management Agency of USDA.

Fact Sheet #1—What is AIPRA and how does it affect you

This fact sheet (#1) provides a brief summary of

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

each of the fact sheets in the series. A chart that illustrates tribal, state and federal jurisdiction on the various types of individually owned property is provided on page 4. Included in the chart are *trust property (undivided interests in land and Individual Indian Money (IIM) accounts)* and *non-trust property (checking or savings accounts and vehicles)*.

Fact Sheet #2—Fractionation: Inheriting undivided interests

Many allotments can have more than 500 co-owners because with the passing of each generation, the number of persons who inherited *undivided interests* in these allotments has increased dramatically. This is known as *fractionation*.

Fact Sheet #2 explains how fractionation occurs and defines *undivided interest*. Illustrations show the *fractionation* that could occur when an *undivided interest* in trust lands is inherited by six generations of family members.

Fact Sheet #3—How reservation land is owned

Fact Sheet #3 explains the typical ways **individuals** own reservation land: individually owned trust/restricted land or fee status land (also known as fee

simple or fee patent land). The various ways land can be titled by individuals is also described: *sole ownership, joint tenancy with right of survivorship and tenancy in common.*

Fact Sheet #4—Your Individual Trust Interest (ITI) report: How to read it

Fact Sheet #4 explains the meaning of the numbers and terms on an Individual Trust Interest (ITI) report. You can obtain a copy of your ITI report from your local Bureau of Indian Affairs (BIA) Realty office or from a BIA Regional office. Use the form in Fact Sheet #4 to request your ITI Report from the appropriate regional office.

Fact Sheet #5—Who is eligible to inherit your trust lands and retain trust status?

Under AIPRA your trust land can retain *trust* or *restricted* status if it passes to *eligible heirs*. Your heirs must meet the federal definition of *eligible heirs* and *Indian* if they are to inherit your land in *trust* or *restricted status*. Fact Sheet #5 provides definitions of *eligible heirs* and *Indian* that are included in the AIPRA law.

Fact Sheet #6—Your *undivided interest* of 5% or more : 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 on any reservation* in the United States passes to your heirs under AIPRA. This federal law passes trust land to your heirs under different rules depending upon whether your *undivided interest* of an allotment is **5% or more** (Fact Sheet #6) or **less than 5%** (Fact Sheet #7).

Fact Sheet #6 explains how your *undivided interest* of **5% or more** in *trust* or *restricted* land is distributed to your heirs depending upon your marital status and whether you have children.

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 a written will and if you own an *undivided interest* of **less than 5%** in trust

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land your *undivided interest* would pass under the *single heir rule*. More details about the *single heir rule* are provided in Fact Sheet #7.

Fact Sheet #8—What is a life estate?

Under AIPRA there are circumstances where your *beneficiary* receives a *life estate* in your trust property. Fact Sheet #8 explains what a *life estate* is and the conditions under which AIPRA requires a life estate for trust property for a surviving spouse.

Fact Sheet #9—Writing a will

A will is a written instrument that describes how you want your land and other property distributed after your passing. Under AIPRA, writing a will becomes very important for Indians. Your will gives you control over who receives your property and avoids a “forced sale” of an *undivided interest* in a parcel of **less than 5%**.

A written will is not effective during your lifetime. Only upon your passing does your will become effective. You can change your will as many times as you want throughout your life. Fact Sheet #9 answers several important questions about written wills.

Fact Sheet #10—Purchase options at probate

Under AIPRA, if you pass away without a will, one of your co-owners or tribe, may petition the *probate* court to purchase your *undivided interest* in *trust* or *restricted* land. Fact Sheet #10 explains the process if co-owners want to purchase your interest during probate.

Fact Sheet #11—Partitioning an allotment

AIPRA allows tribes or a co-owner to request the *partition* of a highly fractionated parcel.* A *highly fractionated parcel* is defined as one that has:

- 50 - 99 co-owners with none holding an *undivided interest* greater than 10%; or,
- 100 or more co-owners.

A *partition* under AIPRA removes all co-owners, consolidating 100% interest in the parcel back to the

individual or tribe seeking the *partition*. Fact Sheet #11 explains partitioning rules under AIPRA.

Fact Sheet #12—Ways to avoid further fractionation of reservation land

Tools to reduce fractionation of *trust* or *restricted* lands include gifting, selling, or exchanging interests with co-owners. Fact Sheet #12 describes ways to use these tools.

Fact Sheet #13—Your Individual Indian Money (IIM) account: What happens to your money if you pass away without writing a will?

Individual Indian Money (IIM) accounts are administered by the Office of the Special Trustee. IIM accounts contain money that allottees and co-owners receive for leases, timber sales, or other activities on land in which they may have an interest. Fact Sheet #13 describes who will receive the money in your IIM account (if you have one), should you pass away without a written will.

Fact Sheet #14—Definitions

Fractionation, partitioning, eligible heirs, Individual Trust Interest (ITI) report, Individual Indian Money (IIM) account, life estate, tenancy in common, joint tenancy and many other terms that are used in the Fact Sheets are explained in Fact Sheet #14. Words that are defined in Fact Sheet #14 are in italics in Fact Sheets # 1 – 13.

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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.

What laws control the distribution of your personal and real property when you pass away without a written will*?

Description	Location of Property	Influencing Factors	Specific Law
Personal Property*			
Individual Indian Money (IIM) Account	Anywhere	Whose name is on the account?	Federal Law (AIPRA)
Checking/Savings Accounts/ Certificates of Deposit	Financial institution on reservation	Whose name is on the account? (sole ownership, joint tenancy)	Tribal Probate Code, if in existence, if not, State law
Checking/Savings Accounts/ Certificates of Deposit	Off reservation, in state of residence	Whose name is on the account? (sole ownership, joint tenancy)	State law where owner is considered a resident
Checking/Savings Accounts/ Certificates of Deposit	Off reservation, out-of-state	Whose name is on the account? (sole ownership, joint tenancy)	State law where owner is considered a resident
Vehicles	Registered in state of residence and if you live on the reservation	Whose name is on the title?	Tribal Probate Code, if in existence, if not, State law
Vehicles	Registered in another state and if you live off the reservation	In what state does the owner reside?	State law where owner is considered a resident
Other: furniture, jewelry, quilts, heirlooms, etc.	In your home on the reservation	Verbal promises, Written directions, Cultural traditions	Tribal Probate Code, if in existence, if not State law
Other: furniture, jewelry, quilts, heirlooms, etc.	In your home off the reservation	Where are the items located?	State law where the owner is considered a resident
Real Property			
Fee/Fee Simple/Fee Patent Land	On any reservation in Montana or Idaho	Whose name is on the deed?	Montana law for Montana fee land Idaho law for Idaho fee land
Fee/Fee Simple/Fee Patent Land	Off reservation, in what state is the property located?	Whose name is on the deed?	State law where land is located
Individually Owned Trust Land	On any reservation in the United States, (except in Alaska, the Five Civilized Tribes, and Osage.)	The name on the ITI report.	Federal Law (AIPRA) for individuals who pass away on or after June 20, 2006 (except in Alaska, the Five Civilized Tribes, and Osage) <i>unless the tribe has probate code</i> . For estates with date of passing before June 20, 2006 state law where the property is located or tribal law as appropriate.

* For individuals who pass away on or after June 20, 2006. Use this information as a guide only. For specific legal advice about your situation contact an attorney whose practice includes Indian law.