

Planning for the Passing of Reservation Lands to Future Generations



March 2009

FACT SHEET #10

Purchase options at probate

If you pass away without a will, the American Indian Probate Reform Act of 2004 (AIPRA) provides a process for your heirs, co-owners, or the tribe to purchase your *undivided interests* during probate.* The proceeds from the sale of the land are then distributed to your heirs as designated in your will, or if you don't have a will, by AIPRA.

The purpose of the *purchase option at probate* section of the law is to reduce the fractionation on reservations for future generations (Review Fact Sheet #2).

This fact sheet explains when consent **is or is not required** if the co-owners or the tribe wants to purchase your interests during probate. If you pass away without a written will, one of your co-owners, your heirs, or the tribe, may petition the probate court to purchase your *undivided interests* during probate.

Category of interests

The rules to be followed depend on what category of an *undivided interests* were owned at passing. Is the percentage of *undivided interest*:

- **5% or more** in a parcel? or
- **Less than 5%** in a parcel?

Consent is required for the purchase by a co-owner or the tribe if your *undivided interest* is **5% or more**.

Example 1: John passed away with ownership of 15% in allotment A, 20% in allotment B, and 10% in allotment C.

If the tribe, co-owners or other heirs want to purchase John's interests in the three allotments, they must first obtain consent from John's heirs. John's heirs cannot be forced to sell their *undivided interests* in the allotments. They can say no.

No consent is required for purchase by a co-owner or the tribe if your interests are **less than 5%** unless the heir or spouse is residing on the parcel.

Example 2: Helen passed away with ownership of 4% in allotment A, 3% in allotment B, and 2% in allotment C.

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

If a co-owner, other heir, or the tribe wants to purchase Helen's *undivided interests* the heirs may be forced to sell because Helen's interests were **less than 5%** in each allotment.

The buyer, whether a co-owner, other beneficiary or the tribe, is not required to seek consent for the sale of an interest of **less than 5%**.

The purchase price must be at least the fair market value. The proceeds from the sale are distributed to the heirs during probate. However, if these heirs enter into an agreement to consolidate their interests the combined interests cannot be sold without their consent.

AIPRA provides tools for heirs to prevent a "forced" sale on interests of less than 5%

Consent required if heirs are living on property. If an heir lives in a house on a parcel at the time of the decedent's passing, then a purchaser must obtain consent before a sale of the *undivided interest* where the house is located can take place.

Consent required if interests are willed. If *undivided interests* of any amount in allotments are left to heir and surviving spouse in a valid will, then consent must also be sought before any sale can take place. The heirs can say no.

Other Considerations

As a result of reading your ITI Report (Fact Sheet #4) you may have discovered that you are a holder of *undivided interests* in one or more allotments on one or more reservations. If you want to avoid passing an *undivided interest* of **less than 5%** to beneficiaries who may then be "forced to sell" their *undivided interest* during probate, you can do the following:

1. **Write a will.** If an interest of any amount is left to a beneficiary in a valid will, then the co-owner(s) or tribe is required to obtain the heir's consent before the *undivided interest* may be sold.

2. **Arrange for your heir to live on the parcel** where you own an *undivided interest*. If your beneficiary lives in a home on a parcel at the time of your passing, his or her consent must be obtained before the parcel may be sold, regardless of the percentage of *undivided interests* inherited by your beneficiary.
3. **Consolidate** your *undivided interests* by selling, gifting, or exchanging while you are living so that none of your properties are less than 5% upon your passing. See Fact Sheet #12 for more information on these options.

Summary

If you pass away without a will, one of your beneficiaries, co-owners or the tribe may petition the probate court to purchase your interests in trust or restricted land. If the *undivided interest* is **5% or more**, consent must be obtained by the potential purchaser before any sale can go through.

On the other hand, an *undivided interest* of **less than 5%** may be sold without the consent of your beneficiary (unless the beneficiary is living on the parcel where interest is located). The purchase price must be at least the fair market value and the payment distributed to your heirs after the sale.

By writing a will and naming beneficiaries you can avoid the "forced sale" at probate of your *undivided interest* of **less than 5%**.

Another way to avoid a "forced sale" is for the beneficiaries to enter into a consolidation agreement. A consolidation agreement blocks a "forced sale."

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Disclaimer

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