

# American Indian Probate Reform Act of 2004 (AIPRA)

Polson  
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- Department of Agricultural Economics & Economics



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## Thank you ITI Experts

- Dan Decker
- Rose Tellier

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## Thank you

- **Deb DuMontier**
  - Litigation Coordinator
  - U.S. Department of the Interior
  - Office of the Special Trustee for American Indians

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## Special request from planning committee

- Don't be boring
- Don't put people to sleep zzzzzzzz
- Don't be a dud!!!!



5

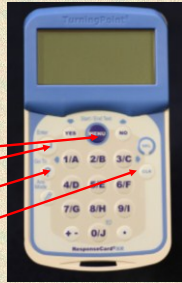
## Marsha's version of



6

## Using response clicker

- Is already ON
- Don't press these buttons
  - Menu
  - Enter
  - Go to
  - Clear

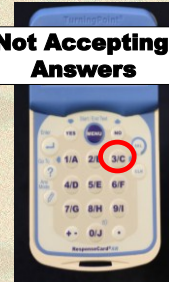


7

## Test your clicker press 3/C

- 1/A
- 2/B
- 3/C
- 4/D

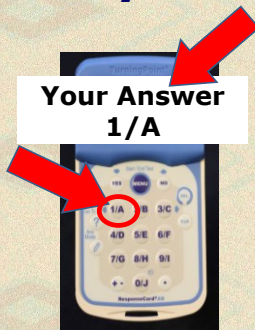
Not Accepting  
Answers



8

## Screen shows your answer

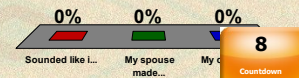
- 1/A
- 2/B
- 3/C
- 4/D



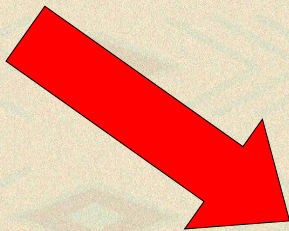
9

## Practice: Why I am attending the meeting

1. Sounded like information I should know
2. My spouse made me here
3. My children suggested I attend



## Must respond before end of time

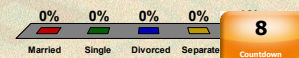


6

Countdown

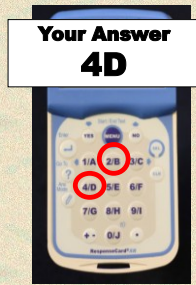
## Practice: At this point in time are you?

1. Married
2. Single
3. Divorced
4. Separated
5. Widowed



### What if I entered a wrong answer? Last response counts

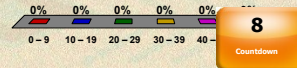
- 1/A
- 2/B
- 3/C
- 4/D



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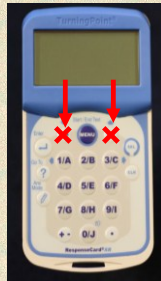
### Practice: Number of years living in Montana

1. 0 – 9
2. 10 – 19
3. 20 – 29
4. 30 – 39
5. 40 – 49
6. 50 & over



### For Yes No questions

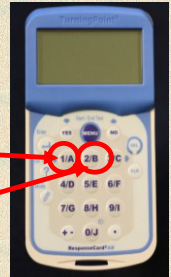
- Do not use these keys:
- "Yes" or
- "No"



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### For Yes or No questions

- Use
- 1, if yes
- 2, if no



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Have you previously attended a session explaining the American Indian Probate Reform Act (AIPRA)?

1. Yes
2. No



### Purpose of AIPRA

- To Prevent Further *Fractionation* of Trust Lands
- To Encourage *Consolidation* of Indian Land Ownership



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## Fractionation:

- Each owner has an *undivided interest (ownership)* in the entire parcel
- Increasing number of owners with each passing generation



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## Fractionation

- 6 generation family



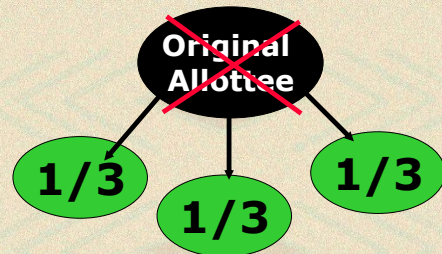
20

### 1<sup>st</sup> generation



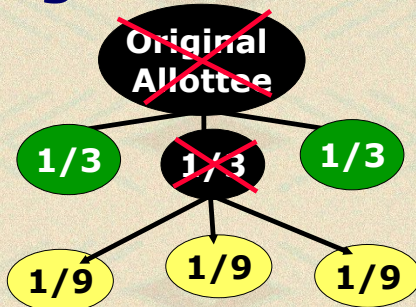
21

### 2<sup>nd</sup> generation



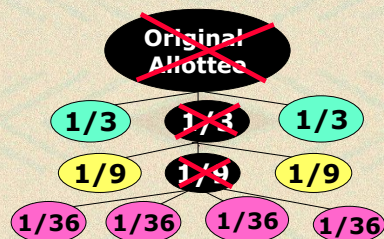
22

### 3<sup>rd</sup> generation



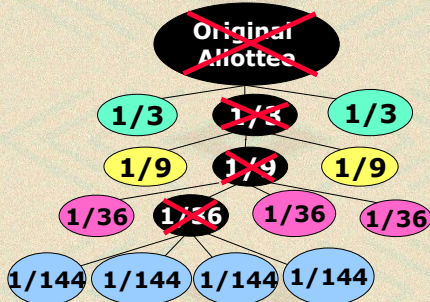
23

### 4<sup>th</sup> generation



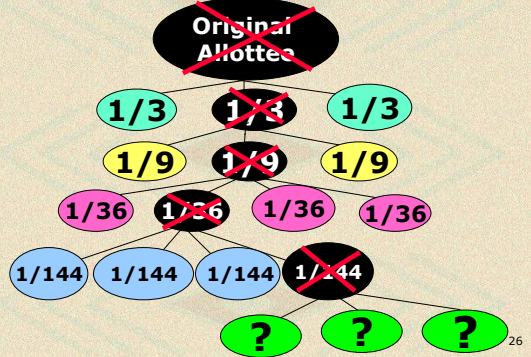
24

## 5<sup>th</sup> generation



25

## 6<sup>th</sup> generation



26

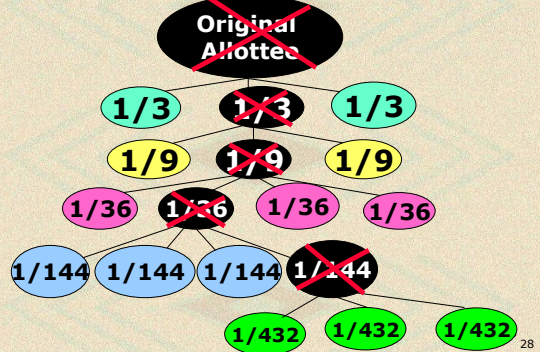
## 6<sup>th</sup> generation with 3 children

$$\frac{1}{144} \times \frac{1}{3} = \frac{1}{432}$$



27

## 6<sup>th</sup> generation



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## Fractionation by \$\$\$\$

- Example
  - Lease Dollar Amounts



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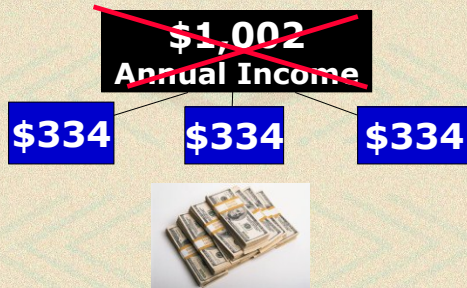
## 1<sup>st</sup> generation

- \$1,002 Annual Income



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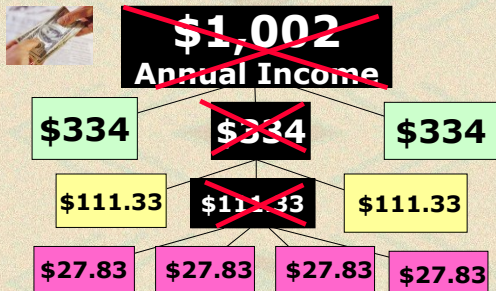
## 2<sup>nd</sup> generation



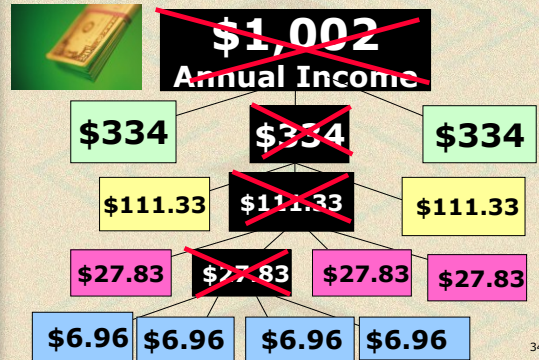
## 3<sup>rd</sup> generation



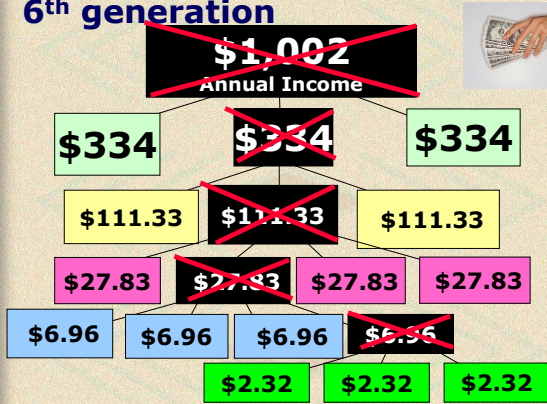
## 4<sup>th</sup> generation



## 5<sup>th</sup> generation



## 6<sup>th</sup> generation



## AIPRA controls Trust Property

- Trust Lands
- IIM Accounts

## AIPRA: Probate Sections

- Effective for persons who pass away on or after June 20, 2006

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## Fact Sheet #3 How is Reservation Land Owned by Individuals?

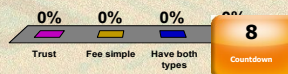
- Trust Status?
- Fee Status?



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### What is the status of your real property on the Flathead reservation?

1. Trust
2. Fee simple
3. Have both types
4. Don't know



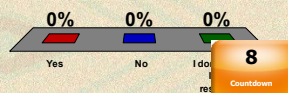
### Do you own land **off** the Flathead reservation?

1. Yes
2. No



### Is your land located in Montana?

1. Yes
2. No
3. I don't own any land off reservation



## Montana



- For fee land, vehicles & financial accounts:
  - *Montana Intestacy Statutes* apply if you pass away without a will & are a Montana resident

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## Fee Status



- Land passes according to law of state where land is located

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## Personal property

- AIPRA *does not* affect:
  - Checking Accounts
  - Saving Accounts
  - Vehicles

Law of State where have domicile controls

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Do you own undivided interests in trust lands on other reservations?

1. Yes
2. No



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## AIPRA requirement



- Interests on all reservation land must pass to:
  - *Eligible heirs* to retain trust status

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## Eligible heirs (Defined under AIPRA)

- Children
- Grandchildren
- Great grandchildren
- Brothers & sisters
- Half brothers & sisters by blood
- Parents



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## AIPRA distribution among eligible heirs:

- Depends on *percentage* of undivided interest owned by the person who passed away



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## Do you own:

- Undivided Interests
  - 5% or more?
  - Less than 5%?



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## Fact Sheet #4

- Your *Individual Trust Interest (ITI) Statement*: How to read it

50

## Where do I get my ITI?

- OST Individual Indian Monies
  - Statement of Account
  - Also includes Real Property Assets

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## Have you received a copy of your ITI statement?

1. Yes
2. No



## Where do I get my ITI?

- Land Title & Records Office
  - CSKT Tribal Lands Department



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## Pablo 406-675-2700 Ext 1240

- George Ducharme
  - LTRO Manager
- Carolee Wendeworth
  - LTRO Assistant



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## Important fact on ITI Statement:

- Amount of *undivided ownership* owned in each parcel



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## List of Real Property Assets


- Left hand side—Trust Land
  - Undivided Ownership
- Decimal to 12 places
  - **0.017361354281**



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## Because AIPRA uses percent

- Convert decimal to % by moving 2 places to the right

.0173611111  
 = 1.7%



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## Ex: ITI Statement

- 0.017366111123 = 1.7% Ft Peck
- 0.156250000243 = 15.6% Flathead
- 0.007812500047 = 0.8% Blackfeet
- 0.114583333345 = 11.5% Ft Peck
- 0.007812500034 = 0.8% Flathead
- 0.026041666756 = 2.6% Ft Hall

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## Use ITI to determine % of ownership

- *5% interest or more?*
- *Less than 5% interest?*



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## ITI Experts will share later

- **Dan Decker**
- **Rose Tellier**

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## Fact Sheet #7



- If your undivided interest in each allotment is: ***less than 5%***
- What Happens If You Pass Away Without Writing a Will?

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## AIPRA Single Heir Rule

- Undivided interest of ***less than 5%***
  - passes to **one person** in following order.....



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## Single Heir Rule (*less than 5% & no will*)



- **First priority:**
  - Oldest surviving eligible child

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## Single Heir Rule (*less than 5% & no will*)



- If no surviving eligible child
  - Oldest surviving ***eligible grandchild***

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## Single Heir Rule (*less than 5% & no will*)



- If no surviving eligible grandchild
  - Oldest surviving ***eligible great-grandchild***

65

## Single Heir Rule (*less than 5% & no will*)

- If no surviving eligible child, grandchild or great grandchild

■ ***Tribe***



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## Single Heir Rule

*(less than 5% & no will)*

- If tribe does not have jurisdiction
  - Equal shares to Co-owners

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## Summary priority

*(less than 5% & no will)*

1. Oldest Surviving Eligible Child
2. Oldest Surviving Grandchild
3. Oldest Surviving great Grandchild
4. Tribe with jurisdiction
5. Co-Owner



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## Example: Single person

### • AIPRA defines Single as

- Never married
- Widowed
- Divorced

*(less than 5% & no will)*



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## Example 1: Sara

- Single Person who has no written will
  - No living parents
  - No Spouse
  - No Children
  - No Grandchildren
  - No Great Grandchildren



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## ITI Statement

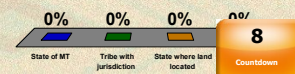
- .0173661111 = 1.7% Ft Peck
- .0156250000 = 1.6% Flathead
- .0078125000 = 0.8% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0078125000 = 0.8% Flathead
- .0260416667 = 2.6% Ft Hall

**(Each is less than 5%)**

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## Who receives her interests in land because Sara has no written will and no heirs?

1. State of MT
2. Tribe with jurisdiction
3. State where land located
4. Federal government



## Single Heir Rule (no will)



- Undivided interest of less than 5% passes to:
  - **Tribe with jurisdiction on each reservation**

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## Tribe on each reservation inherits

- .0173661111 = 1.7% Ft Peck
  - .0156250000 = 1.6% Flathead
  - .0078125000 = 0.8% Blackfeet
  - .0114583333 = 1.1% Ft Peck
  - .0078125000 = 0.8% Flathead
  - .0260416667 = 2.6% Ft Hall
- Because each interest is less than 5%

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## Example 2: Single person, no spouse

- **Has living Children**  
(less than 5% & no will)



75

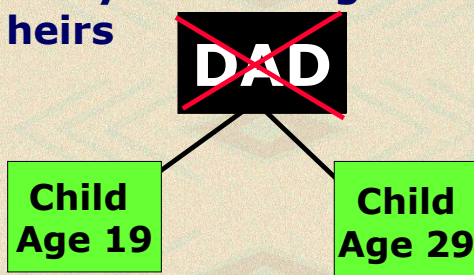
## Children defined (AIPRA)

- **Biological**
- **Must be an eligible heir**



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## Example 2: Dad passes away with 2 eligible heirs



(less than 5% & no will)

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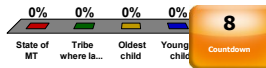
## Dad's ITI Statement

- .0173661111 = 1.7% Ft Peck
  - .0156250000 = 1.6% Flathead
  - .0078125000 = 0.8% Blackfeet
  - .0114583333 = 1.1% Ft Peck
  - .0078125000 = 0.8% Flathead
  - .0260416667 = 2.6% Ft Hall
- (Each interest is less than 5%)

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## Who received the less than 5% interests when Dad has no written will?

1. State of MT
2. Tribe where land located
3. Oldest child
4. Youngest child
5. Federal government



## Single Heir Rule

- All interests pass to oldest surviving eligible child



*(Because each interest is less than 5% & no will)*

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## Child age 29 receives



*(less than 5% & no will)*

Child Age 19

Child Age 29

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## Passes to oldest child – age 29

- .017366111 = 1.7% Ft Peck
- .015625000 = 1.6% Flathead
- .007812500 = 0.8% Blackfeet
- .011458333 = 1.1% Ft Peck
- .007812500 = 0.8% Flathead
- .026041666 = 2.6% Ft Hall



*(Receives interests on each reservation with less than 5%)*

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## Married--AIPRA

- AIPRA definition includes as married
  - Separated
  - Legal separation
  - Common law not recognized under AIPRA



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## Example 3: Married

*(interests of less than 5% & no will)*



- Husband passes away
  - Survivor (wife)
    - Who is not living on any of the parcels
    - No children

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## Husband's ITI Statement



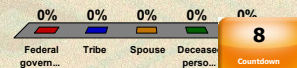
- .0173661111 = 1.7% Ft Peck
- .0156250000 = 1.6% Flathead
- .0078125000 = 0.8% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0078125000 = 0.8% Flathead
- .0260416667 = 2.6% Ft Hall

(Each interest is less than 5%)

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## Who receives the husband's interest no written will?

1. Federal government
2. Tribe
3. Spouse
4. Deceased person's Parents
5. State where land located



## Single Heir Rule (less than 5% & no will)



- There is no surviving eligible:
  - child, or
  - grandchild, or
  - great-grandchild

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## Example 3: Survivor is wife not living on parcel

- All interests pass to Tribe where land located



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## Passes to Tribe where interest is located

- .0173661111 = 1.7% Ft Peck
- .0156250000 = 1.6% Flathead
- .0078125000 = 0.8% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0078125000 = 0.8% Flathead
- .0260416667 = 2.6% Ft Hall

(Each interest is less than 5%)

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## Example 3: Wife not living on parcel



- Spouse receives *none* of the interests.
  - Why????
    - Husband owned less than 5% interests

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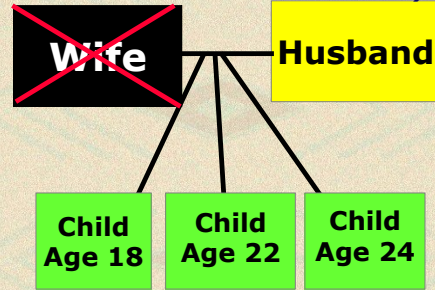
### Example 4:

- Survivors:
  - Husband
    - Not living on the parcel
  - 3 Children



*(interests less than 5% & no will)*

### Example 4: Survivors: Husband & 3 Children *(interests of less than 5% & no will)*



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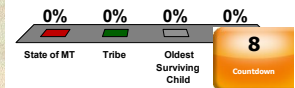
### ITI Statement

- .0173661111 = 1.7% Ft Peck
- .0156250000 = 1.6% Flathead
- .0078125000 = 0.8% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0078125000 = 0.8% Flathead
- .0260416667 = 2.6% Ft Hall

**(Each interest is less than 5%)**<sup>3</sup>

### Who receives the interest if wife doesn't have a written will?

1. State of MT
2. Tribe
3. Oldest Surviving Child
4. Oldest Grandchild

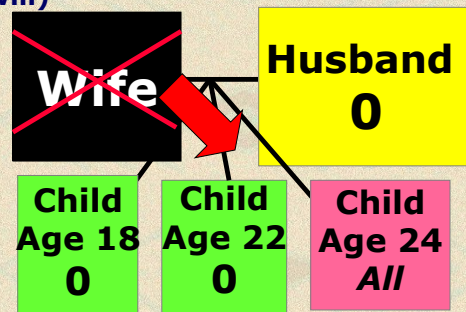


### Single Heir Rule *(no will)*

- Interests of less than 5%
  - pass to *oldest* surviving eligible child

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### Husband & younger children do not inherit *(less than 5% & no will)*



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## 24 year old receives all

- .0173661111 = 1.7% Ft Peck
- .0156250000 = 1.6% Flathead
- .0078125000 = 0.8% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0078125000 = 0.8% Flathead
- .0260416667 = 2.6% Ft Hall

(Because each interest is less than 5%)

## Example 5:

### • Survivors

#### ▪ Wife

- *living on one of the parcels*

#### ▪ 3 children

(Interests of less than 5% & no will)

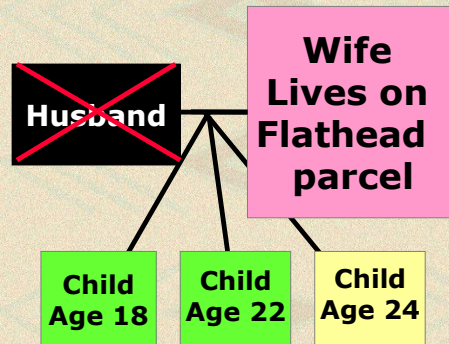


## Spouse lives on parcel

- .017366111 = 1.7% Flathead
- .015625000 = 1.6% Ft Belknap
- .007812500 = 0.8% Blackfeet
- .011458333 = 1.1% Ft Peck
- .007812500 = 0.8% Standing
- .026041666 = 2.6% Ft Peck

(Interests of less than 5% & no will)

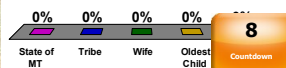
## Husband dies



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## Who receives the interest no will? (*less than 5%*)

1. State of MT
2. Tribe
3. Wife
4. Oldest Child
5. All children inherit



## Exception: Single Heir Rule

### • If spouse living on parcel:

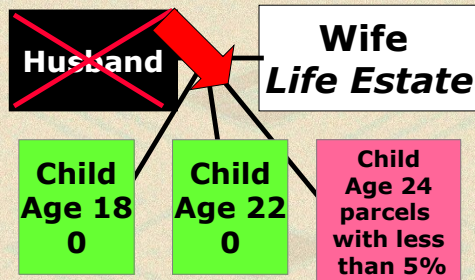
- He/she receives *life estate* on that parcel, including the family home

(Interests of less than 5% & no will)



## Trust Land

(Interests less than 5% & no will)



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## Life Estate

(Interest of less than 5% & no will)

- Allows life tenant to have possession of property during his/her lifetime
  - But not ownership of property



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## Single Heir Rule: No will

- After death of Mom, oldest child (*remainderman*) receives:
  - *Remainder interest*
    - home
    - land



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## Upon Mother's passing oldest child receives:

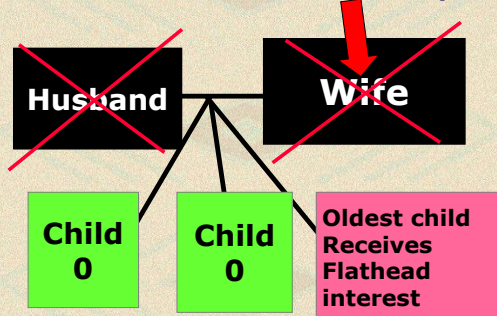


- **Remainder interest**
    - 1.7% parcel Flathead
      - Includes family home
- (less than 5% & no will)

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## Spouse passes away

(Interests of less than 5% & no will)



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## More information:

- **Fact Sheet #7**
  - Your undivided interest of *less than 5%*:
  - What Happens if you pass away *without a written will* ?

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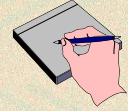
## Fact Sheet #6



- Your Undivided Interest: **5% or more**
- What happens if you pass away without a written will?

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To find out how much interest you own:

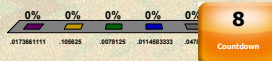


- Check your **Individual Trust Interest Statement**

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## ITI Statement...Which one is 5% or more?

1. 0.0173661111
2. 0.1056250000
3. 0.0078125000
4. 0.0114583333
5. 0.0478125000
6. 0.0260416667



## ITI Statement which is 5% or more??

- 0.0173661111 on Ft Peck
- 0.1056250000 on Flathead = 10.5%**
- 0.0078125000 on Blackfeet
- 0.0114583333 on Ft Peck
- 0.0478125000 on Flathead
- 0.0260416667 on Ft Hall

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## Family Situations

- **Single**
- **Married**



*(Interests of 5% & more, no will)*

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## Example 1: Single Person



- **No Children**
- **Parents are living**

*(Interests of 5% or more, no will)*

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## 5% or more on ITI

.0173661111 = 1.7% Ft Peck  
 .1056250000 = 10.0% Flathead  
 .5078125000 = 50.0% Blackfeet  
 .0114583333 = 1.1% Ft Peck  
 .0878125000 = 8.0% Flathead  
 .0260416667 = 2.6% Ft Hall

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## Both parents alive

Mother

Father

~~Single  
Person  
Passed Away~~

(Interests of 5% or more, no will)<sup>116</sup>

## Parents inherit equally

Mother  
1/2

Father  
1/2

~~Single  
Person  
Passed Away~~

(Interests of 5% or more, no will)<sup>117</sup>

## Example 2: Single Person



- No children
- Mother is only living parent

(Interests of 5% or more, no will)<sup>118</sup>

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## Mother receives all

Mother  
ALL

~~Father  
Deceased~~

~~Single  
Person  
Passed Away~~

(Interests of 5% or more, no will)<sup>119</sup>

## Example : Single Person

- No children
- Parents are alive
- 3 living sisters

(Interests of 5% or more, no will)<sup>120</sup>

120

### Survivors: 3 sisters & parents

**Father**      **Mother**

~~Single person passed away after Father & Mother~~

**Sis**   **Sis**   **Sis**

*(Interests of 5% or more, no will)*      121

### Who receives the interests if they are 5% or more when a single person dies without a will?

1. Mother & Dad equally
2. Sisters equally
3. 1/5 to each (mother, dad, three sisters)
4. Tribe with jurisdiction

### Priority are parents

**Father 1/2**      **Mother 1/2**

~~Single person passed away after Father & Mother~~

**Sis 0**   **Sis 0**   **Sis 0**

*(Interests of 5% or more, no will)*      123

### Example 3: *(Interests of 5% or more, no will)*

- No children
- Parents are deceased
- 3 living sisters

124

### Survivors: 3 sisters

~~Father~~      ~~Mother~~

~~Single person passed away after Father & Mother~~

**Sis**   **Sis**   **Sis**

*(Interests of 5% or more, no will)*      125

### Single Person

*(Interests of 5% or more, no will)*

If parents are deceased, undivided interest passes equally to:

- **Brothers & Sisters**

126

### Equal Amounts to Sisters

~~Father~~      ~~Mother~~

~~Single person passed away after Father & Mother~~

**1/3**    **1/3**    **1/3**

*(Interests of 5% or more, no will)*

127

### Example 4: Single Person

- No children
- Parents are deceased
- 2 sisters are deceased
- 2 brothers are living

*(Interests of 5% or more, no will)*

128

### 2 Brothers survive

Sisters passed away before brother

~~Brother Died 2012~~    ~~Sister Died 1995~~    ~~Sister Died 1982~~    **Brother A**    **Brother B**

Niece    Nephew    Nephew    Nephew    Nephew    Nephew

*(Interests of 5% or more, no will)*

129

### Who receives the interests of 5% or more no will?

1. Brothers equally 1/2
2. Niece & nephews equally 1/6 each
3. Brothers, niece & nephews equally 1/8 each
4. Tribe with jurisdiction

130

### Equally to Living Brothers

~~Brother Died 2012~~    ~~Sister Died 1995~~    ~~Sister Died 1982~~    **Brother 1/2**    **Brother 1/2**

Niece    Nephew    Nephew    Nephew    Nephew    Nephew

**0**    **0**    **0**    **0**    **0**    **0**

*(Interests of 5% or more & no will)*

131

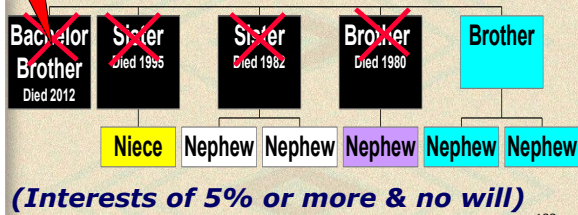
### Example 5: Single Person

*(Interests of 5% or more, no will)*

- No children
- Parents are deceased
- 2 sisters & 1 brother are deceased
- 1 brother is living

132

## Example 5: Single Person



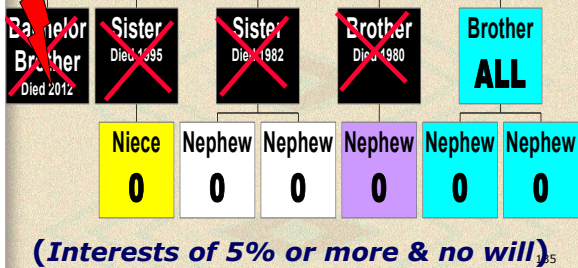
133

## Who receives 5% or more interests no will?

1. Living brother receives all
2. Niece & nephews equally 1/6 each
3. Living brother, niece & nephew equally 1/7 each
4. Tribe with jurisdiction

134

## Living brother receives all



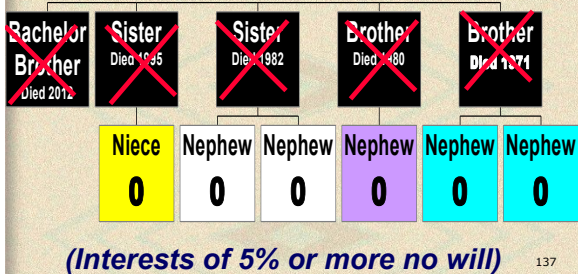
135

## Example 6: *(Interests of 5% or more, no will)* Single Person

- No children
- Parents are deceased
- All sisters & brothers deceased
- Survived by niece & nephews

136

## Nieces & Nephews Do NOT Inherit



137

## Distribution

- Land passes to
- *Tribe where interest in parcel is located*

**(Interests of 5% or more, no will)**

138

## Example 7:

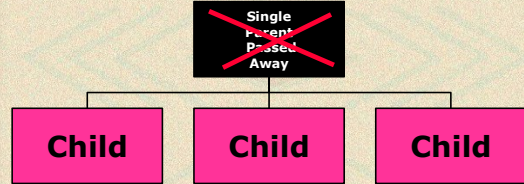
- **Single**
  - **With Children**

*(Interests of 5% & more, no will)*

139

## Survivors : 3 children

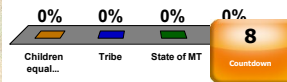
*(Interests of 5% & more, no will)*



140

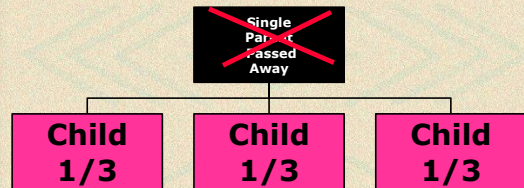
## Who receives interest of 5% or more with no will?

1. Children equally 1/3 each
2. Tribe
3. State of MT
4. Federal Government



## Children Share Equally

*(Interests of 5% & more, no will)*



142

## Example 8:

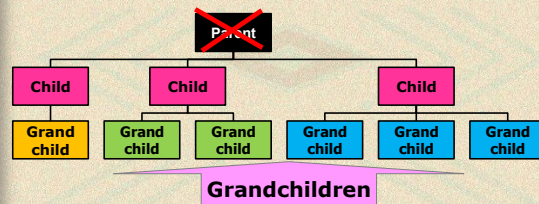
*(Interests of 5% & more, no will)*

- **Single person:**
  - 3 living children
  - 6 living grandchildren

143

## Survivors Children & Grandchildren

*(Interests of 5% & more, no will)*

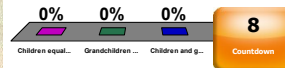


144



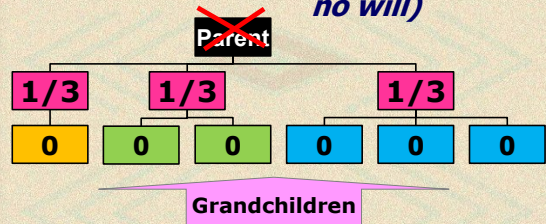
## Who receives interests of 5% or more no written will?

1. Children equally 1/3 each
2. Grandchildren equally 1/6 each
3. Children and grandchildren 1/9 each
4. Tribe



## Children Share Equally

(Interests of 5% & more, no will)



146

## Example 9:

(Interests of 5% or more, no will)



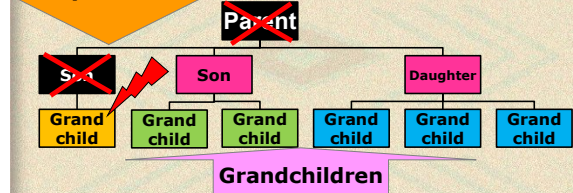
- What if survivors are ?
  - 1 deceased child who is survived by a child
  - 2 living children who have children

147

Child passed away before parent

## What does grandchild receive, if any?

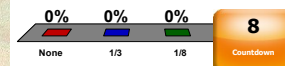
(Interests of 5% & more, no will)



148

## What share does grandchild receive, if any, if parent owned 5% or more and had no will?

1. None
2. 1/3
3. 1/8
4. 1/6

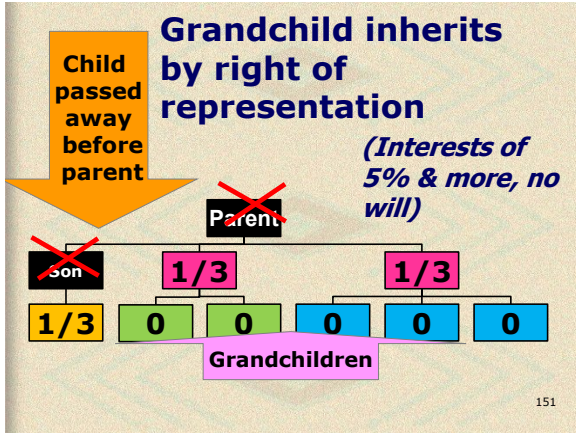



## Legal Term

(Interests of 5% & more, no will)

- **Right of Representation**
- Grandchildren have a right to inherit what their parent would have received if he/she had lived

150

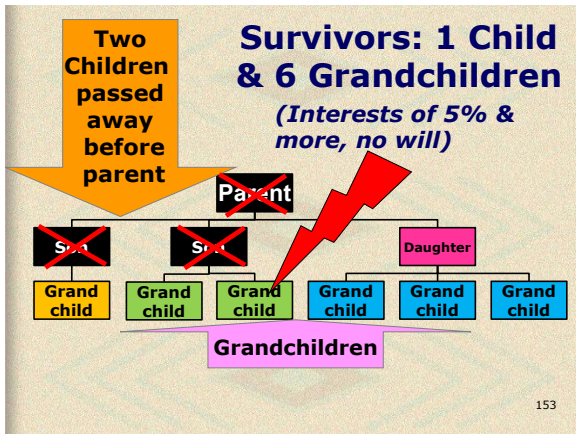


**Example 10:** 

- **What if survivors are?**
  - a deceased son who is survived by 1 child
  - a deceased daughter who is survived by 2 children

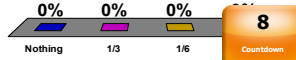
*(Interests of 5% or more, no will)*

152



What will grandchild with red lightning bolt receive, if anything, if grandparent owned 5% more?


1. Nothing
2. 1/3
3. 1/6
4. 1/7



154

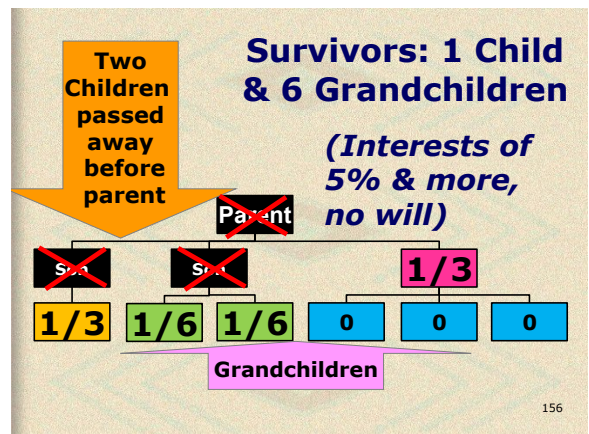
**Right of Representation**

- Grandchildren receive the share their parent would have received if he/she had lived



*(Interests of 5% & more, no will)*

155

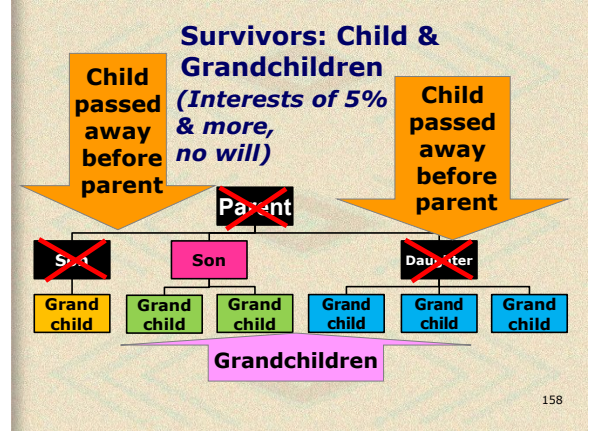


## Example 11:

### • What if survivors are?

- a deceased son who is survived by 1 child
- a deceased daughter who is survived by 3 children
- a living child with two kids

(Interests of 5% or more, no will)



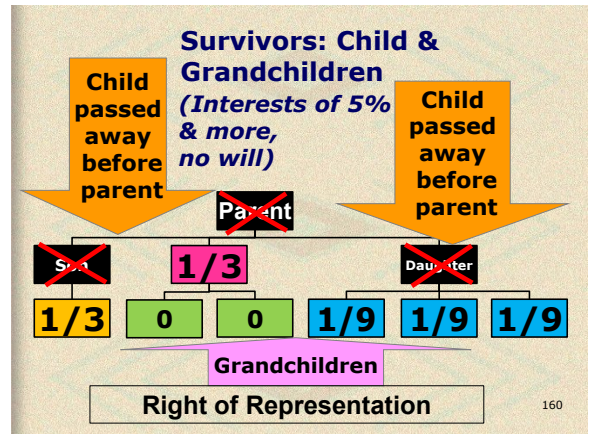
## Right of Representation

- Grandchildren receive the share their parent would have received if he/she had lived.

(Interests of 5% & more, no will)



159



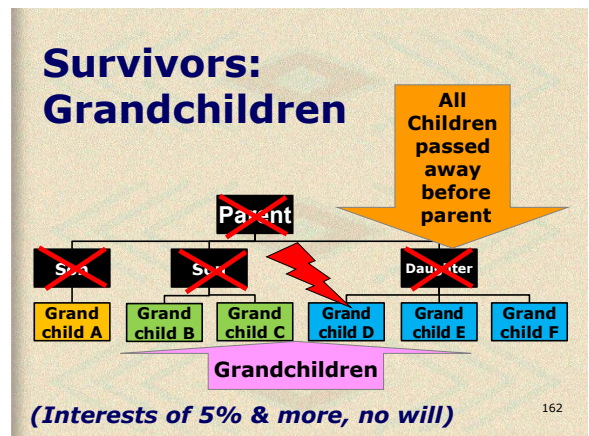
## Example 12:

### • What if?

- All children passed away before their parents & grandchildren are living?

(Interests of 5% or more, no will)

161



**What share, if any, will grandchild D receive if grandchildren are only survivors & Grandparent owned 5% or more?**

1. 1/9
2. 1/3
3. 1/6
4. None, passes to Tribe
5. None, passes to Federal government

0% 0% 0% 0%

1/9 1/3 1/6 None passes

8

Countdown

### Survivors: Grandchildren

All Children passed away before parent

(Interests of 5% & more, no will)

164

### Example 13:

- *What if?*
- survivors are children, grandchildren & great grandchildren?

(Interests of 5% or more, no will)

165

166

### Family situation

- **Married person**

167

### Example 1: Married

- No children
- Parents are alive

(Interests of 5% or more, no will)

168

### ITI Statement ownership



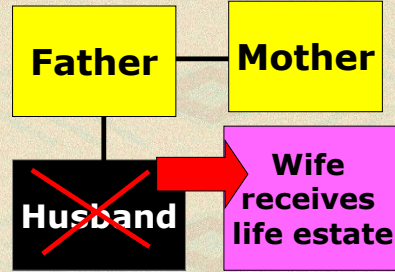
- .0173661111 = 1.7% Ft Peck
- .1056250000 = 10.0% Ft Belknap
- .5078125000 = 50.0% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0878125000 = 8.0% Standing R
- .0260416667 = 2.6% Ft Hall

(Interests of 5% or more, no will)

169

### Husband dies; Wife Has Priority

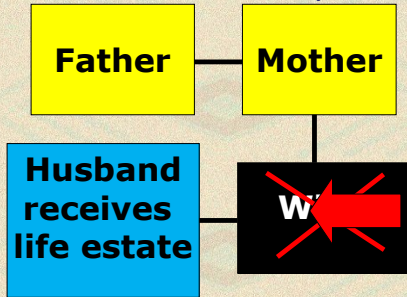
(Interests of 5% & more, no will)



170

### Wife dies; Husband has priority

(Interests of 5% & more, no will)



171

### Example 2: Married

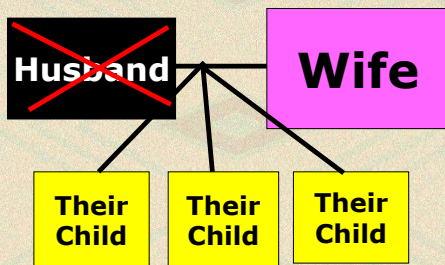


- Husband passes away
  - Wife living
  - 3 living children

(Interests of 5% or more, no will)

172

### Survivors



(Interests of 5% or more, no will)

173

### ITI Statement ownership

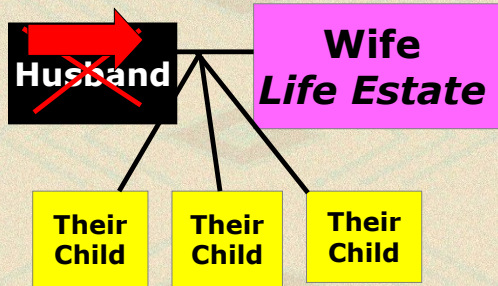


- .0173661111 = 1.7% Ft Peck
- .1056250000 = 10.0% Ft Belknap
- .5078125000 = 50.0% Blackfeet
- .0114583333 = 1.1% Ft Peck
- .0878125000 = 8.0% Standing R
- .0260416667 = 2.6% Ft Hall

(Interests of 5% or more, no will)

174

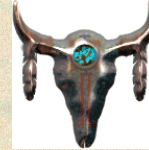
## Wife – Life Estate



(Interests of 5% or more, no will) 175

## Married – no will 5% or more interest

- Trust property passes to surviving spouse as a *life estate without regard to waste*.



176

## Legal Term



- ***Without regard to waste:***
  - Life tenant can do anything to land while the he/she is alive

177

## Life estate for surviving spouse



- **Any income from trust lands during his/her lifetime**

178

## Life estate income

- **Spouse receives**
  - Lease
  - Royalties
  - Mineral income
  - Rent



179

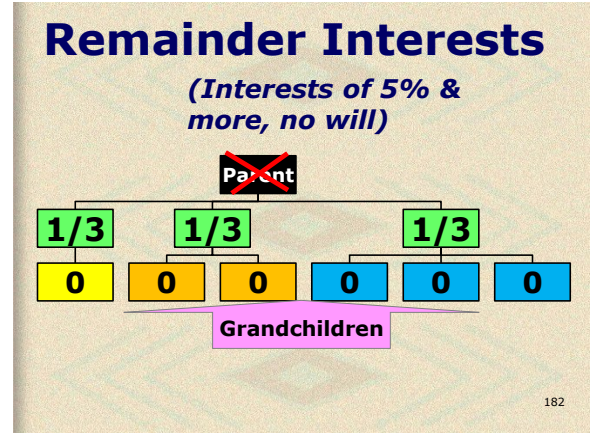
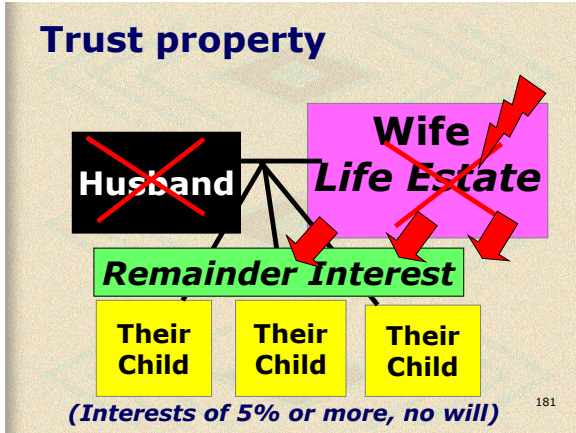
## Passing of spouse



- **Property held in life estate for wife (mother) passes to the *remaindermen***
  - **Children**



180

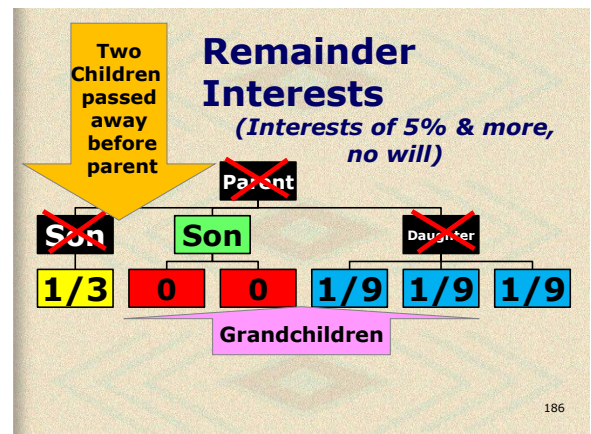
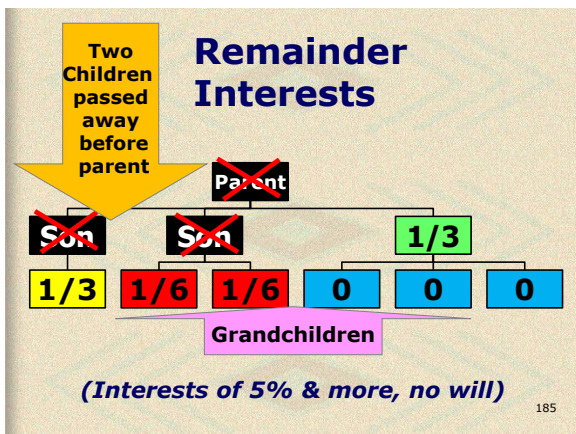
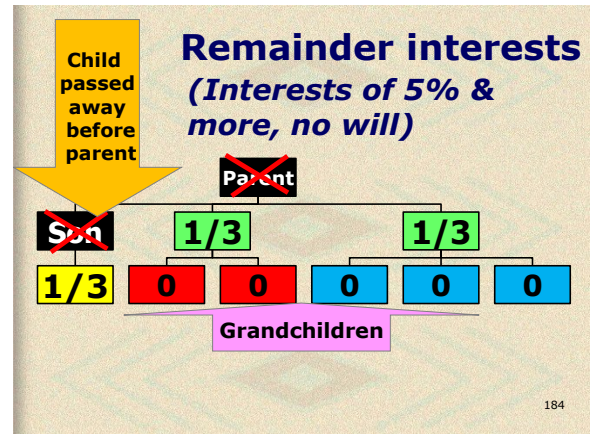


### Legal term

- **Grandchildren inherit remainder interests by**
  - **Right of Representation**

*(Interests of 5% & more, no will)*

183



## Summary

- Retaining & receiving trust land depends on:
  - Eligible heirs
  - % interest owned
  - Family situation
  - Whether a will is written



187

## Writing a will

- Fact Sheet #9



188

## Written will

- Provides you the ability to control where your undivided interests in trust lands & IIM money goes



189

## At what age can I write a will?

- Age 18 & older



190

## Does a will have to be written?

- **YES!!!**
  - Includes
    - Typed
    - Computer software



191

## Does my will have to be witnessed?

- Federal law--YES
- Two disinterested witnesses



192



## HOLOGRAPHIC WILL—AIPRA rules

- Signature & provisions in *handwriting* of the will maker
- 2 disinterested witnesses



193

## Confederated Salish and Kootenai Tribes

- Limited will drafting services
- Also stores wills



194

## AIPRA



- Special Rule
  - If undivided interests are left to more than one person in a written will

195

## AIPRA presumption

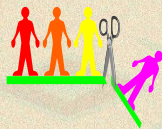


- Heirs Inherit
  - *Joint tenancy with right of survivorship*

196

## Joint Tenancy

- On passing of one
  - survivors take all



197

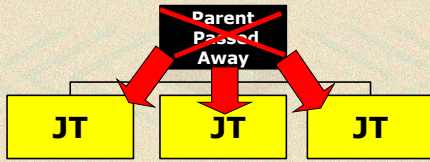
## Example:



- Mary wills her interests in land to her 3 children equally but doesn't mention title

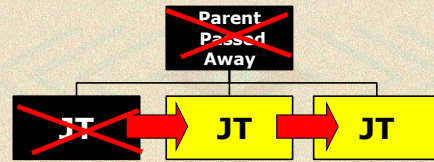
198

## AIPRA assumes joint tenancy among children



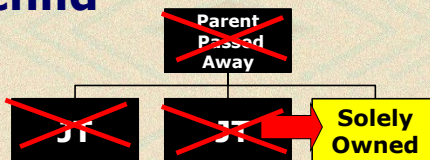
199

## Later one child passes away



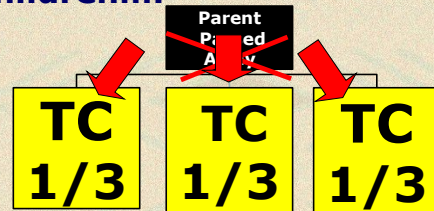
200

## Second child passes away, property owned by surviving child



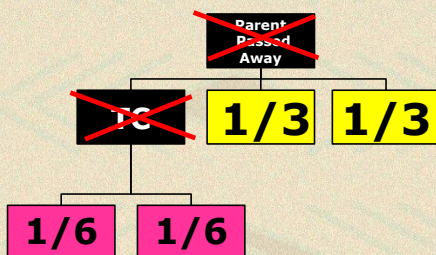
201

## If Mary had left interests as Tenancy in Common among children....



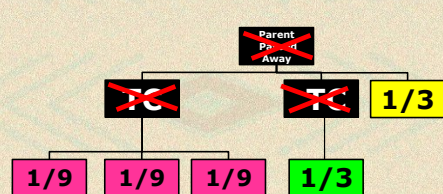
202

## Later one child passes away



203

## Second child passes away



204

## Where to keep your will?

- **Safe Place**
  - CSKT offers will storage



205

## Changing will

- **Can be changed during lifetime as long as you are competent**



206

## Review Will

- **Marriage**
- **Remarriage**
- **Divorce**
- **Birth of child**
- **Adoption of child**
- **Passing of heir (con'd)**



207

## Review will (cont'd)

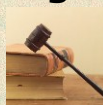
- **Move to another reservation**
- **Acquire additional property**



208

## Adopted Child

- **Tribal adoption Laws**
  - Treated as child of will maker's, not biological parents' child



209

## Pretermitted child (omitted)

- **If not mentioned in will**
  - May be able to inherit same share that he/she would have received without a will



210

## Divorce



- **Under AIPRA**
  - Former spouse does not receive property mentioned in will

211

## Separation-AIPRA



- **Separation is not equivalent to divorce**
  - Still married even if separated for years
  - Spouse receives what you leave to him/her in will

212

## Self proved will

- **Affidavit**
  - Will maker & witnesses sign & acknowledge they were witnessing the signing of will before notary



213

## Self proved will

- **Notary**
  - Also signs & dates the will
  - Use his/her official seal on the will



214

## Residuary clause

- **Last clause**
  - Person to receive any part that may be left after rest of will clauses are carried out



215

## Summary

- **Have residuary clause**
- **Be sure to date & sign signature**
- **Signatures of 2 witnesses are required**



216

## More Information

# Writing a Will



- **Fact Sheet #9**

217

## American Indian Probate Reform Act (AIPRA)



# IIM Accounts are in Trust

218

## Your (IIM) Account

What happens to your IIM money if you pass away without a will?



- **Fact Sheet #13**

219

## IIM accounts

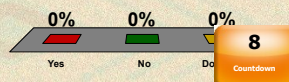
- **Money earned from**
  - Leases
  - Timber/land sales
  - Grazing
  - Mineral royalty payments



220

Do you have an IIM Account?

1. Yes
2. No
3. Don't Know



## ASK

- **CSKT technician for IIM accounts**
  - Debbie Caye
  - 406-675-2700
  - Ext. 1015



222

## How to get my IIM Statement of Account?

- **Toll free**

**1-888-678-6836**

- Enrollment number
- IIM Account number
- Last 4 numbers of SS#
- Date of birth
- Mailing address



223

## Trust Status

- **Indian spouse & eligible heirs**
  - retain *trust status* of money in account



224

## Non-Indians

- **Who are left money in IIM by written will**
- **Secretary of Interior distributes IIM monies directly to them**



225

## IIM distribution

(no will)

- **Depends on family situation**
  - Single
  - Married



226

## Example 1: Single

- **IIM \$5,000 no will**
- **Parents are living**
  - No spouse
  - No children
  - No grandchildren
  - No great grandchildren



227

## IIM account: \$5,000

(no will)

Mother \$2,500      Dad \$2,500

~~Single Person~~



228

**Passes to surviving eligible parent no will**

Mother \$5,000

Father

Single Person

229

**Example 2:**

- If no spouse, no children, no grandchildren, no great grandchildren or no parents

– Brothers & sisters split IIM money

230

**IIM account: \$3,000**

*IIM (no will)*

Father

Mother

Single person passed away after Father & Mother

\$1,000 \$1,000 \$1,000

231

**Example 3: (no will)**

**Single Person**

- IIM \$3,000
- No children
- Parents deceased
- Has brothers & sisters, some deceased some living

232

**2 living, 2 deceased**

Sisters passed away before brother

Brother Sister Sister Brother Brother

Niece Nephew Nephew Nephew Nephew Nephew

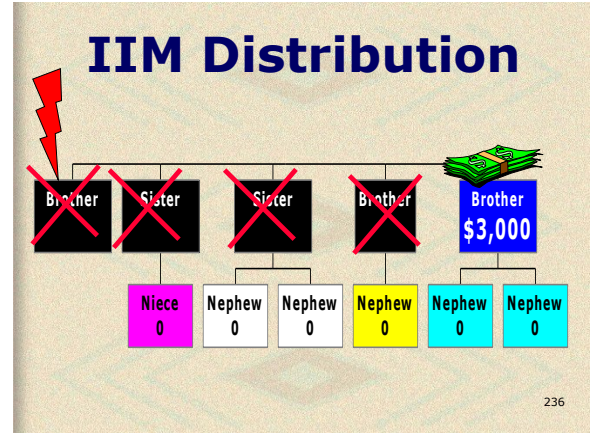
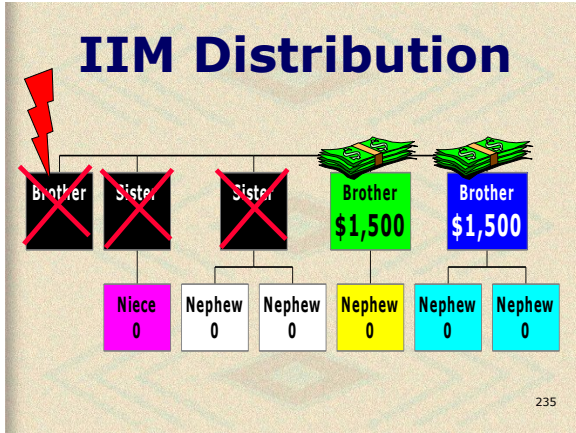
\$3,000 in deceased Brother's IIM

233

**How much will brother with red lightning bolt receive of \$3,000 IIM?**


1. \$3,000
2. \$1,500
3. \$375
4. Nothing

234



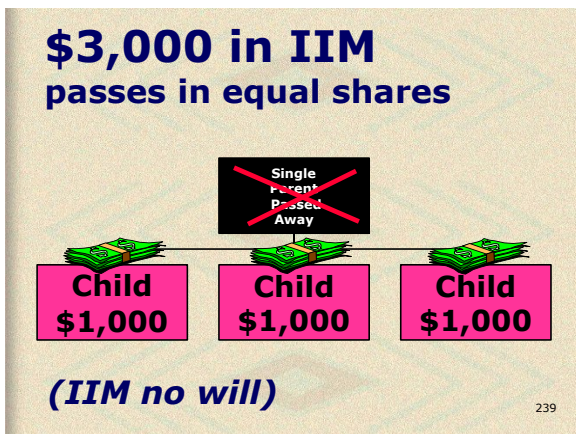
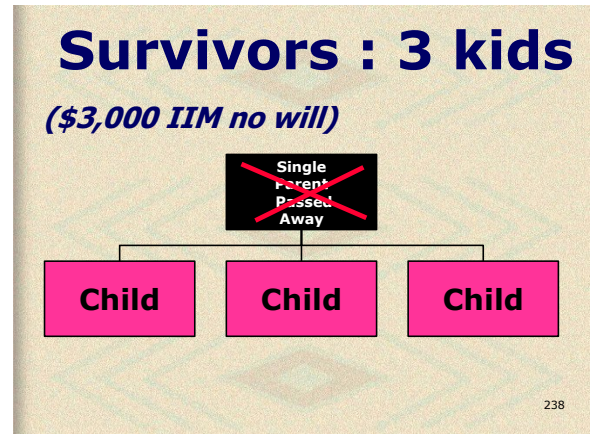
### Example 4:

*(\$3,000 IIM no will)*




- **Single**
- **with children**

237



### Example 5:

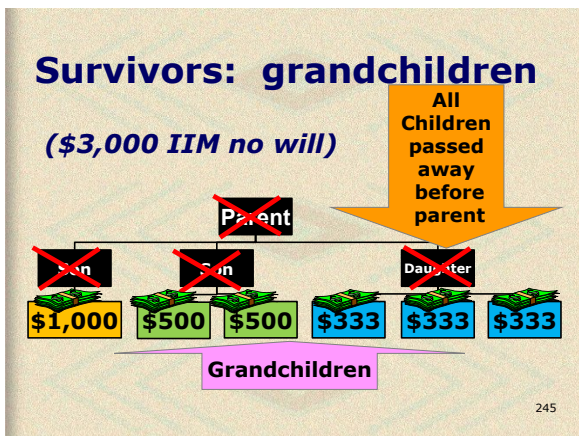
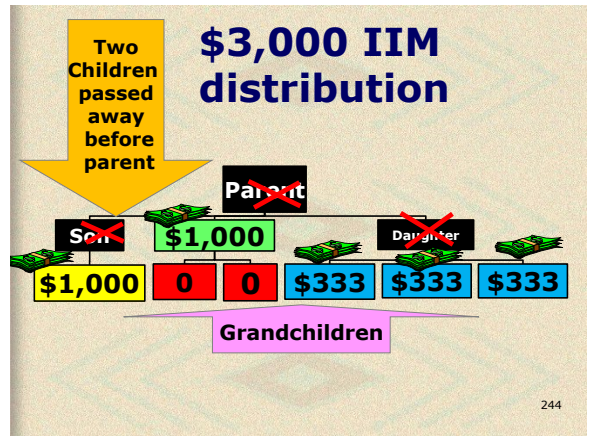
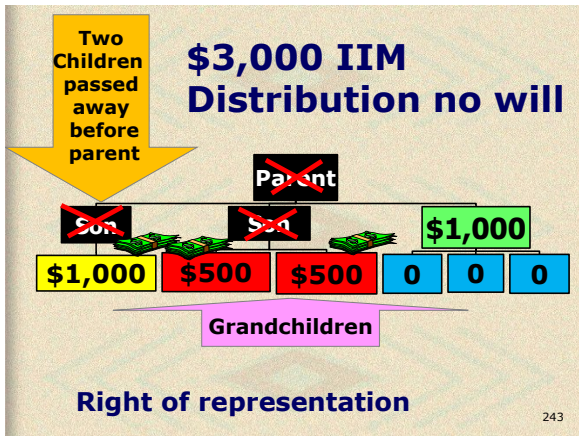
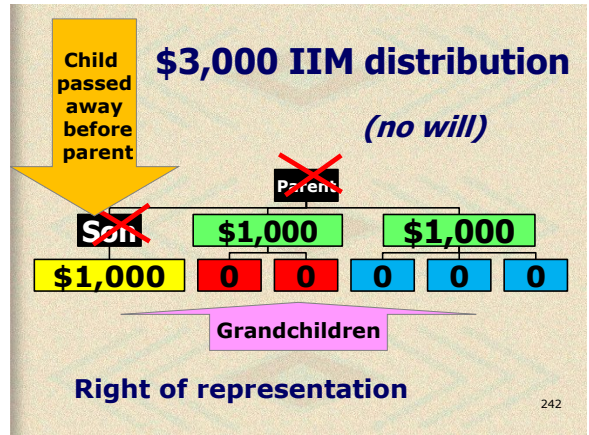
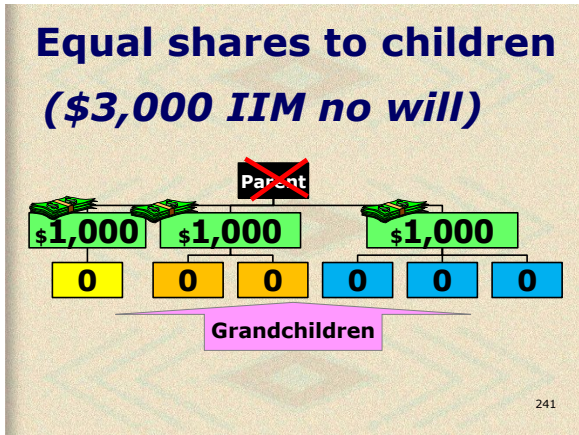


*\$3,000 in IIM (no will)*

- **Single person**
- **3 living children**
- **6 living grandchildren**

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## Summary

(no will)

- IIM Account Distribution
  - depends upon family situation for a *single person*



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## Married Person \$2,000 IIM

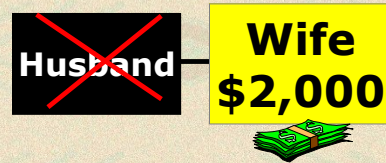
- Survivor
  - Wife
  - No children



(no will)

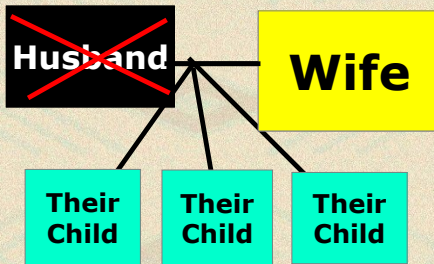
247

## \$2,000 IIM no will



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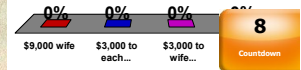
## \$9,000 IIM account



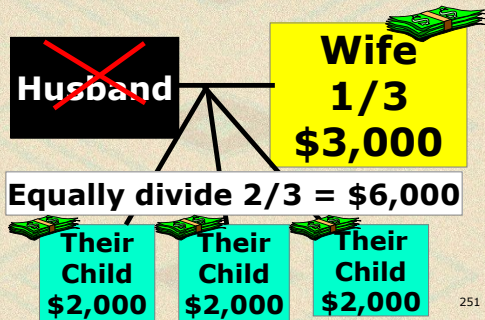
249

## How is the \$9,000 in the IIM account divided?

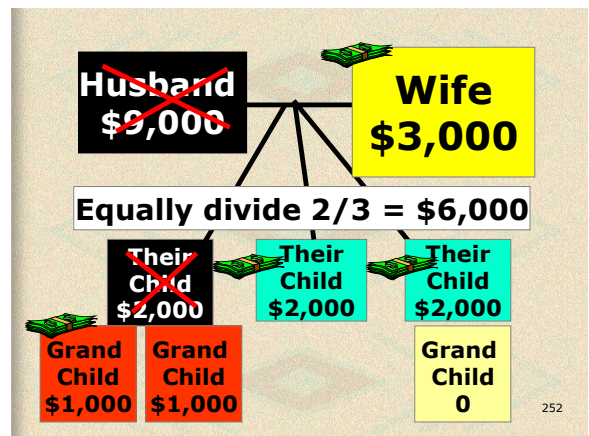
1. \$9,000 wife
2. \$3,000 to each child, 0 to wife
3. \$3,000 to wife, \$2,000 to each child
4. \$4,500 to wife, \$1,500 to each child



## IIM \$9,000 no will



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## Summary

- **If AIPRA rules don't fit your family, write a will**



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## Resources

- **CSKT**
  - George Ducharme
  - Carolee Wendeworth
  - Dan Decker
  - Rose Tellier

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## Resources

- **Indian Land Tenure Foundation**
  - Message Runner Volume 5
  - [www.iltf.org](http://www.iltf.org)
  - 151 East County Road B2  
Little Canada, MN
  - 55117-1523

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## Resources

- **Indian Lands Working Group**
  - [Indianlandworkinggroup.org](http://Indianlandworkinggroup.org)
  - 2401 12<sup>th</sup> Street NW  
Albuquerque, NM 87104

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## Your Opinion Please



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**What is your reaction to using the response clickers?**

1. Like using them
2. Sort of useful
3. So-So
4. Not too impressed
5. Didn't like using them at all

8

Countdown

## How did you learn about this meeting?

1. Newspaper
2. Invited by a friend
3. Radio
4. Newsletter
5. Flyer
6. Other, write on card

8

Countdown

## What area would you like to receive more information?

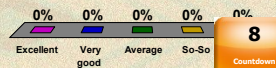
1. Understand my ITI statement
2. Writing a will
3. Provisions of AIPRA
4. Other, write on card

8

Countdown

## What is your opinion of the co-sponsors displays?

1. Excellent
2. Very good
3. Average
4. So-So
5. Not helpful



8

Countdown

## Rank the **knowledge** you gained from today's program

1. Didn't learn anything new
2. Gained a little
3. Neutral
4. Gained some
5. Gained a lot

8

Countdown

## Rank the **level of motivation** that this program provided for you take actions.

1. No motivation
2. A little motivation
3. Neutral
4. Some motivation
5. Lots of motivation

8

Countdown

## Best wishes as you proceed with learning more about AIPRA through the packet of information



*Marsha, Nori, Dan, Rose & the co-sponsors*

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