

WHAT IS AIPRA?

The American Indian Probate Reform Act (“AIPRA”) of 2004 changes the way your trust land and Individual Indian Money (“IIM”) accounts, or “trust property,” are distributed to your heirs after you pass away. It only applies to people who die on or after June 20, 2006, and it does not apply to property that is held out of trust, such as checking or savings accounts and vehicles.

AIPRA creates a federal probate code for all Indian reservations in the United States, except for Alaska. Tribes can also write their own tribal probate codes, which will supersede AIPRA’s federal probate code once they are approved by the Secretary of the Interior. In turn, states are no longer involved in the distribution of trust property owned by Indians.

WHAT IS THE PURPOSE OF AIPRA?

The purpose of AIPRA is to combat fractionation of Indian land, encourage consolidation of interests in Indian land, and preserve the trust status of Indian lands.

WHAT IS FRACTIONATION?

Fractionation occurs when interests in land are passed down over many generations, causing the number of owners of a single piece of land to become larger and larger, which results in the size of each share of land getting smaller and smaller. Each owner then possesses only a mere fraction of the original parcel.

FRACTIONATION CONTINUED

Fractionation poses a big problem because the trust land is split up between many owners who may disagree about how the land should be used. As a result, the land is not used efficiently. AIPRA encourages the efficient use of land.

DYING WITH A WILL

New provisions in AIPRA make writing a will very important. A will is a written instrument that describes how you want your property distributed after your passing. Without a will, your property may pass to unexpected people, and your property may even be sold without the consent of your heirs. You should write a will to ensure that your property is distributed according to your wishes.

Under AIPRA, you can draft a will giving your trust property to any “Indian” person, any co-owners of the property, the tribe who has jurisdiction, and any of your children, grandchildren, and great grandchildren, even if they do not meet the definition of an Indian person.

Definition of an “Indian” Person:

Must meet one of the following:

- Member of a tribe that was federally recognized in 1934.
- Eligible to become a member of a federally recognized Indian tribe.
- Trust owner of an undivided interest in trust land on October 27, 2004.

- Meets the definition of Indian under the Indian Reorganization Act (“IRA”) of 1934 by being enrolled in an IRA tribe, have an aggregate of ½ Indian blood from any tribe, or be a descendant of an IRA tribal member who was living on a reservation in 1934.
- Person of any degree of Indian ancestry who owns trust land or restricted land in California.



DYING WITHOUT A WILL

If you own more than 5% of the entire property:

If you die without a will and you own more than 5% of the entire property, your property will be distributed to “eligible heirs” who are either “Indian,” descendants within two generations of an Indian, or co-owners of the same property. Land not passing to one of these people will then pass to the tribe where the land is located.

Who are “eligible heirs”?

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

Whether you are married and have children when you pass away affect the distribution of your trust property when you die without a will.

If you have a spouse and eligible heirs:

Your spouse will inherit 1/3 of any money in your IIM account at the time of your death and all of the money produced from your land during your spouse’s lifetime. The other eligible heirs get the remaining 2/3 of your trust property. Your spouse will also receive a life estate, where he or she is allowed to live in the home during his or her lifetime.

If you have a spouse and no eligible heirs:

Your spouse gets your IIM account and the money produced from your land during the spouse’s lifetime. Your spouse will also receive a life estate, where he or she is allowed to live in the home during his or her lifetime. The remaining ownership interest in land after the spouse passes away goes to the tribe where the land is located.

DYING WITHOUT A WILL CONTINUED

If you own less than 5% of the entire property:

If you die without a will and you own less than 5% of the entire property, only your oldest eligible child may inherit your property. If you do not have a child, then it goes to your oldest eligible grandchild, and then to your oldest eligible great-grandchild. This is called the “single heir rule” because your property only passes to one heir, thereby avoiding fractionation of the land. The only exception to this rule is invoked if your spouse survives you and is living on your land, in which case the spouse will receive a life estate, where he or she is allowed to live on your land during his or her lifetime.

Importantly, if you do not write a will and you own less than 5% of the entire property, your share could be sold without your consent or the consent of your heirs. Co-owners of the property, the tribe, or other heirs have the option of purchasing your share at fair market value. The proceeds from the sale of the land are then distributed to your heirs.



CONSOLIDATION

AIPRA provides individuals and tribes with more opportunities to consolidate, or combine together, their fractionated interests in land.

You can consolidate your interests in land by:

- Gifting all of your interests to the tribe.
- Gifting all of your interests to one person.
- Dividing your land into solely owned parcels for your children instead of passing on fractionated shares of your land to your children.
- Gifting your interest in land to other heirs instead of inheriting it yourself.
- Selling your interest in land to other heirs in exchange for money, instead of inheriting it yourself.
- Creating a joint tenancy for your interests by will or deed.

FOR MORE INFORMATION

Call the Trust Beneficiary Call Center at:

(888) 678-6836, x. 888

Or check out the following websites:

- <http://www.tribal-institute.org/lists/understanding.htm>
- <http://www.colorado.edu/law/academics/programs/aipra>
- <http://www.montana.edu/indianland/factsheets.html>
- http://www.law.seattleu.edu/Documents/indian-institute/UnderstandingAIRPA_ForLandowners.pdf

If you need further help, please call:

Nevada Legal Services, Inc.
204 Marsh Avenue, Suite 101
Reno, NV 89509
775-284-3491

Toll-free within Nevada 800-323-8666
Fax 775-284-3497
www.nlslaw.net
www.nevadalegalservices.org

PLEASE NOTE: This publication provides general information. It is not intended as a substitute for specific legal advice.

**Laws are subject to change.
The information contained in this
publication is current as of the date of
its printing. [July 2013].**



AMERICAN INDIAN PROBATE REFORM ACT of 2004 ("AIPRA")



Nevada Legal Services, Inc.
204 Marsh Avenue, Suite 101
Reno, NV 89509
775-284-3491
Toll-free within NV 800-323-8666
Fax: 284-3497
www.nlslaw.net
www.nevadalegalservices.org