

What are your estate planning options?

One of the main purposes of the Act is to preserve the trust status and reduce the number of small, fractionated interests in Indian lands. The following chart is a brief overview of your estate planning options.

Estate Planning Options for Beneficiaries under AIPRA

Without a Will

Trust interest 5% or more - trust property goes to the eligible descendants and surviving spouse in order:

- Surviving spouse in a life estate, then to children equally or to grandchildren, great grandchildren
- If none, then to parents.
- If none, then to siblings
- If none of the above, land goes to Tribe
- If no tribe, to co-owners or Secretary

If Surviving Spouse, spouse receives life estate and

- Gets 1/3 of IIM account at date of death
- Gets all income produced by the trust interest during spouse's lifetime
- Other eligible heirs will get the remaining 2/3 of the IIM account at date of death

Trust interest less than 5% - goes to Descendants and surviving spouse in this order:

Single heir rule- goes to one person as follows:

- Oldest surviving, eligible child
- Oldest surviving, eligible grandchild
- Oldest surviving, eligible great-grandchild or
- If none of the above, land goes to the Tribe

If surviving spouse is living on that parcel at the time of death, the spouse gets life estate in that parcel only (including the home) with remainder to oldest single heir above

Ways to avoid Probate:

- Gift deed to family members
- Negotiated sale or land exchange
- Gift deed with life estate
- Gift deed to co-owner or other Indian
- Sell land to the Tribe
- Gift deed land to the Tribe

With A Will

- With a will the trust land owner can decide who gets the land and IIM monies
- If trust interest is passed to another Indian or eligible non-Indians (see below), the land stays in trust
- If non-IRA trust interest is left to a non-Indian, the land passes from trust to fee status. The tribe will also have the right to purchase before fee transfer is complete in probate.
- IRA lands may not be given in a will in fee to anyone, the transfer will fail. IRA lands must remain in Trust or Restricted status under AIPRA and IRA (25 USC § 2206(b)(2)(B) and 25 USC § 464)

Stopping Purchases at Probate

Heirs must give their consent to sell if one of the following applies:

- Interest to be received by heir is 5% or greater
- There is a valid Will
- Heir to receive interest lives on that parcel at time of death
- Heirs agree to voluntary consolidation agreement during the probate proceeding

Who is eligible to inherit land in trust?

Any one of the following:

- Member of an Indian Tribe
- Eligible to become a member of a Tribe
- Person who owns an interest in trust land on October 27, 2004
- Person who meets the definition of Indian under the Indian Reorganization Act
- In California, any person who owns an interest in trust or restricted land in California
- Decedent's lineal descendants within 2 degrees of relationship to any Indian (without a Will)
- Any children, grandchildren or great grandchildren (lineal descendants of testator) who are given an interest in a Will, even if non-Indian
- A co-owner in same parcel