

# Planning for the Passing of Reservation Lands to Future Generations



July 2021

## FACT SHEET #14

### Definitions

- **Affidavit** (Fact Sheet #9) - A written statement under oath that the will maker and the witnesses signed and acknowledged that the instrument being signed is the will. If an affidavit is completed at the time, then witnesses do not have to appear in court during probate unless the will is contested.
- **Allotment** (Fact Sheet #3) – The General Allotment Act and other laws divided Indian lands among individual Indians. These separately held land parcels became known as allotments.
- **Allottees** (Fact Sheet #3) – American Indians who were originally allotted land on reservations were known as allottees. People who have inherited individual interests in allotments are typically referred to as heirs, co-ownership or simply as landowners.
- **Beneficiary** (Fact Sheet #9) – Any individual who receives property or money in a decedent's will or who is named on a payable on death (POD) deposit to receive property is a beneficiary.
- **Co-ownership** (Fact Sheet #3) – Co-ownership of land exists when two or more persons hold legal title. There are two types of co-ownership for individuals: tenancy in common and joint tenancy with right of survivorship.
- **Codicil** (Fact Sheet #9) – A written amendment to a person's will, executed with the same format as a will, that must be dated, signed and witnessed just as a will is required to be. A codicil must reference the will it amends.
- **Collateral** (Fact Sheet #3) – Security pledged against the performance of an obligation. For example, a person may offer a home as “collateral” to borrow money to purchase land. *Undivided interests* in trust land are seldom acceptable as collateral by financial institutions.
- **Consanguinity** (Fact Sheet #5) – Legal term that describes a blood relationship or biological kinship among relatives. For example a grandchild is within two-degrees of consanguinity of the grandparents.
- **Consent** (Fact Sheet #10) – A voluntary agreement to another’s proposition.

- **Decedent** (Fact Sheet #2) – A person who has passed away.
- **Descendant** (Fact Sheet #2) – An individual who descends from an ancestor. For example, a child is a descendant of his or her parents.
- **Devisee** (Fact Sheet #9) – A person who inherits property under a will.
- **Disclaimer** (Fact Sheet #7) – During probate heirs can say they do not wish to inherit whatever has been left to them.
- **Disinterested witness** (Fact Sheet #9) – A person who is not named in or does not financially benefit from a will that he or she has witnessed or represented a beneficiary who does.
- **Eligible heirs** (Fact Sheet #5) – The decedent’s children, grandchildren, great-grandchildren, full siblings, half siblings by blood, and parents who are:
  1. Indian; or
  2. Lineal descendants within two-degrees of consanguinity of any Indian; or
  3. Owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent.
- **Entity** (Fact Sheet #11) – A general term for any institution, company, corporation, partnership, government agency, university or any other organization that is distinguished from individuals.
- **Fair market value** (Fact Sheet #11) – A value based on what a buyer would pay a seller for any piece of property, assuming neither the seller nor the buyer is under any compulsion to complete such a transaction.
- **Fee simple land** (Fact Sheet #3) – The most basic form of ownership in which the owner holds the title and total control over the property. Also known as fee status and fee patent land. An individual can own fee simple off the reservation. Individuals on non-IRA reservations can own fee simple on the reservation.
- **Fractionation** (Fact Sheet #2) – The process whereby heirs inherit *undivided interests* in allotted land already co-owned by other allottees and/or heirs. Co-ownership that increases with each generation is known as fractionation.
- **Highly fractionated parcel** (Fact Sheet #11) – AIPRA defines a highly fractionated parcel as one with:
  - 50 to 99 co-owners with no individual holding an *undivided interest* greater than 10%, or
  - 100 or more co-owners.
- **Holographic will** (Fact Sheet #9) – Based on state law, a will entirely handwritten, dated and signed by the testator (the person making the will) in which no witnesses are required. An Indian will that is handwritten must have two disinterested witnesses, however.
- **Individual Trust Interest (ITI) report** (Fact Sheet #4) – A report that is generated from records held in the Regional Land Record Information System at the BIA Land Title and Records Office. This report shows the number of *undivided interests* in land you own on all reservations in the United States.
- **Individually owned trust status land** (Fact Sheet #3) – Land held in trust by the United States for the benefit of American Indians. There are restrictions on the use and transferability of this type of land and it is tax exempt.
- **Individually owned restricted status land** (Fact Sheet #3) – Land in which an Indian holds fee title but it is subject to restrictions on transfers, liens, and taxation.
- **Indian** (Fact Sheet #5) – Under AIPRA, Persons are Indian if they meet any one of the definitions below:

For estates of people who pass away on or after June 20, 2006, a person who:

- a. Is a member of a federally recognized Indian tribe.
  - b. Is eligible to become a member of a federally recognized Indian tribe.
  - c. Owned an *undivided interest* in trust or restricted land on October 27, 2004.
  - d. Meets the definition of *Indian* under the Indian Reorganization Act (IRA) of 1934 under any one of the following:
    - Is enrolled in an IRA tribe.
    - Is an aggregate of 1/2 Indian blood (from any tribe).
    - Is a descendent of an IRA tribal member who was living on a reservation in 1934.
  - e. Is a person who owns trust or restricted land in California.
- **Indian Will** (Fact Sheet #9) – An Indian will is a will that passes trust or restricted land or money in an IIM account to those named in the written will and is probated through an administrative process by the Department of Interior (DOI). An Indian will must meet the requirements of USC 25 373.
  - **Individual Indian Money (IIM) account** (Fact Sheet #13) - Individual Indian Money (IIM) accounts are federally administered by the Office of the Special Trustee. IIM accounts may include trust income such as money collected from leases, minerals, or timber and land sales from trust or restricted Indian lands.
  - **IRA tribes** (Fact Sheet #5) – Tribes who voted to accept the Indian Reorganization Act (IRA) of 1934. Tribes of the Fort Hall, Blackfeet, and Fort Belknap Reservations voted to accept the IRA. Tribes of the Fort Peck reservation voted not to accept the IRA.
  - **Joint tenancy with the right of survivorship** (Fact Sheet #3) - If you own land with someone else as joint tenants with the right of survivorship, your right to the land lasts as long as you live. As each joint tenant passes away, lands vest in the surviving joint tenant. The last

surviving joint tenant owns the entire interest in the land and only that person can decide who gets the land after the remaining tenant passes away. Joint tenancy can be used to reduce fractionation, because all interests in the land are consolidated with the passing of each joint tenant.

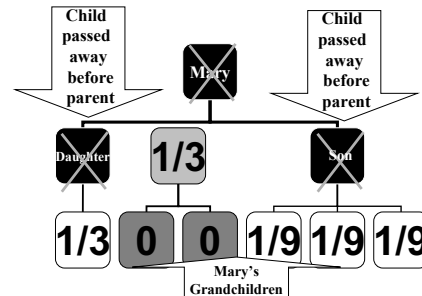
- **Land** (Fact Sheet #1) – Under AIPRA, any real property including improvements permanently affixed to it, such as a barn or house.
- **Life estate** (Fact Sheet #8) – The right to use, occupy, or receive income from real property for the duration of one's life. A life estate is commonly used to benefit those who are not blood relatives, such as spouses to ensure that the property will eventually be owned by specific person (possibly a child or grandchild who can hold the land in trust status) after the passing of the life tenant. A life tenant possess, but does not own, property held in a life estate.
- **Life tenant** (Fact Sheet #8) – The specific person who receives the life estate. The life tenant has the right to receive income and remain in the family home on the land for the duration of his or her life.
- **Non-trust property** (Fact Sheet #9) – Any property that is not held in trust by the United States for an individual Indian or tribe. Examples include checking or savings accounts, vehicles, or land that is fee simple.
- **Notary** (Fact Sheet #11) – A public official who has the power to acknowledge signatures and administer oaths and affirmations.
- **Partition** (Fact Sheet #11) – Under AIPRA, a partition by sale of one or more interests that are highly fractionated.
- **Payable on death (POD)** (Fact Sheet #9) – A designation that can be added to a checking or savings account that indicates who inherits the account upon the passing of the owner.

- **Per capita division** (Fact Sheet #6) – Equal shares to all who inherit in one class of beneficiaries such as grandchildren.
- **Petition** (Fact Sheet #10) – A formal written request made to an official person or organized body, such as a tribal or district court.
- **Primary beneficiary** (Fact Sheet #9) – The person designated the first to receive proceeds of a life insurance policy upon the death of the insured person.
- **Probate** (Fact Sheet #2) – Process by which a will is “proved”, acknowledged as valid by a court. Probate codes consist of legal rules by which property is transferred from a deceased property owner to his or her heirs at law or beneficiaries in a will. As of June 20, 2006, AIPRA created a federal uniform probate code to determine intestate (without a will) inheritance for all trust/restricted status lands.\* Tribal probate codes must be approved by the Secretary of Interior.
- **Real property** (Fact Sheet #1) – Land and whatever is built on, affixed to or growing in land, but not including annual crops.
- **Remainderman** (Fact Sheet #8) – A person who has full rights to property after the life tenant has passed away.
- **Renounce** (Fact Sheet #7) – During probate heirs can indicate they do not wish to inherit whatever property that was left to them in a will or under AIPRA.
- **Residuary clause** (Fact Sheet #9) – A clause in a written will, usually the last clause, that names a person or persons to receive any part of a will maker’s estate that is left after the rest of the clauses have been carried out (the residue).
- **Revoke** (Fact Sheet #9) – To cancel a will. The best way to revoke a will is to make another written document. Typically the first sentence

in a will states that “I hereby revoke all prior wills.”

- **Right of representation (per stirpes)** (Fact Sheet #6) –Inheritance rights in place of a deceased immediate ancestor (see Figure 1).

**Figure 1: Right of representation for grandchildren**



**Example A:** Mary, a mother of three, owned trust lands on the Blackfeet Reservation. Two children (a daughter and son) passed away before she did. Mary’s deceased daughter had one child, her deceased son had three children, and her surviving daughter had two children (see Figure 1).

When Mary passed away, one grandchild (the deceased daughter’s child) received a  $1/3$  *undivided interest* (see Figure 1).

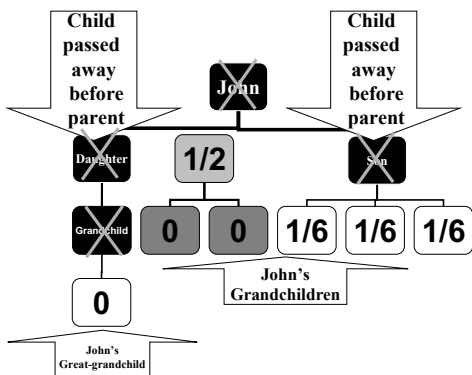
The three children of Mary’s deceased son (Mary’s grandchildren) split  $1/3$ , so each received a  $1/9$  *undivided interest* (a *right of representation* division) (see Figure 1).

Mary’s living daughter received the remaining  $1/3$  *undivided interest* in trust land. Mary’s two grandchildren from her living daughter did not inherit because the living parent received the  $1/3$  share (see Figure 1).

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

**Example B:** John, a father of three, owned trust land on the Fort Belknap Reservation. Two children and one grandchild passed before John did.

**Figure 2: Only grandchildren inherit by right of representation not great-grandchildren**



When John passed away, his living child received 1/2 of John's *undivided interest* in land.

The remaining half was equally split among the three children of his deceased son (John's grandchildren).

John's two grandchildren from his living child did not inherit because the living parent received the 1/2 share (see Figure 2).

John's great-grandchild does not inherit because AIPRA limits right of representation to the grandchild level.

- **Secondary beneficiary** (Fact Sheet #9) – A person's second choice of who should receive the proceeds from a life insurance policy or other property if the primary beneficiary has passed away.
- **Single heir rule** (Fact Sheet #7) – Under AIPRA, *undivided interests* of less than 5% pass to one heir in the following priority: oldest child, oldest grandchild, oldest great-grandchild, tribe, co-owners.

- **Sole ownership** (Fact Sheet #3) – Sole ownership means there is only one owner of a tract land. Under AIPRA, solely owned trust land passes to the deceased owner's eligible heirs or to whomever the deceased owner has named in a written will.
- **Testamentary capacity** (Fact Sheet #9) – The mental ability that is recognized as legally sufficient for a person to make a written will. The standard is that individuals must have the ability to remember, at least in a general and approximate way, the nature and extent of their property and know those who would normally be included in their will. They must also understand the purpose of a will.
- **Tenancy in common** (Fact Sheet #3) – A type of co-ownership in which two or more persons hold *undivided interests* in the same property with no right of survivorship for the surviving tenant(s) in common. No right of survivorship means that co-owners do not inherit the decedent's share. Tenancy in common ownership can result in *fractionation* as the land passes from one generation to the next.
- **Trust/restricted status land** (Fact Sheet #3) – Property held by the United States in trust for an individual Indian or tribe.
- **Undivided interest** (Fact Sheet #2) – Title to real property held by two or more persons. Each person's *undivided interest* in the property is represented by a percentage such as .020468.
- **Will** (Fact sheet #8) – A legal document signed with required formalities and intended to distribute the will maker's property upon his/her passing.
- **Without regard to waste** (Fact Sheet #7) – Under AIPRA, the life tenant of a life estate has the right to do anything on the land for the duration of his or her life. For example, a surviving spouse could drill for oil or dig for minerals even if these activities would deplete or destroy the resources on the land. However, the life tenant does not have authority for "malicious waste." For example, a surviving

spouse can cut timber for the purpose of receiving income from the lumber, but not burn down the trees. That would be “malicious waste.”

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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

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