



July 2021

FACT SHEET #5

Who is eligible to inherit your trust lands and retain trust status?

As of June 20, 2006, if you pass away without a written will, the American Indian Probate Reform Act of 2004 (AIPRA) determines who is eligible to inherit your trust property and retain its *trust status*.*

Trust or restricted property

AIPRA affects only property that is held in trust or restricted status in the United States.* Interests in allotted land and Individual Indian Money (IIM) accounts are examples of *trust* or *restricted status* property (See Fact Sheet #13).

Non-trust property

AIPRA does not affect any property you own that is not in trust or restricted status. Examples of non-trust or restricted status properties include:

- A checking or savings account in your name at a local financial institution,
- Vehicles with your name on the title, or
- Land not held in trust such as *fee* land (See Fact Sheet #3).

If you pass away without a written will, your non-trust property would be distributed to your heirs under state law or tribal law (depending on location), not under AIPRA (See Fact Sheet #1).

Definition of *eligible heirs* under AIPRA

Under AIPRA, your trust land can retain its *trust status* if it passes to *eligible heirs*. AIPRA defines *eligible heirs* as your:

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

Any of the above are *eligible heirs*, as long as they are *Indian* (defined this fact sheet, page 2), or lineal descendants within 2 degrees of an Indian, or trust owners of the same parcel for purposes of inheriting by descent.

Under AIPRA, *eligible heirs* do not have to be enrolled members of the tribe. Aunts, uncles, and cousins are not considered eligible heirs under AIPRA because they are not within two degrees of *consanguinity*. *Consanguinity* is a legal term that describes a blood relationship or biological kinship among relatives.

Definition of *Indian* under AIPRA

Eligible heirs must also meet the AIPRA legal definition of *Indian* if they are to inherit your interests

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

in *trust* or *restricted status*.

Under AIPRA a person who meets any **one** of the parts of the definitions of *Indian* below can inherit land and IIM accounts in trust or restricted status on June 20, 2006 and thereafter. * Under AIPRA, an Indian:

- Is a member of a federally recognized Indian tribe.
- Is eligible to become a member of a federally recognized Indian tribe.
- Was a trust owner of an *undivided interest* in trust or restricted land on October 27, 2004.
- Meets the definition of *Indian* under any one of the following parts of the Indian Reorganization Act (IRA) of 1934:
 - 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.
- Is a person of any degree of Indian ancestry who owns trust or restricted land in California. (A California Indian must meet the AIPRA definition of *Indian* to inherit land on reservations outside California).

Written wills and *trust status* land

Your lineal descendants and any trust co-owners in an allotment can inherit land in trust if it is left to them in your written will whether or not they meet the definition of *Indian*. In other words, you can leave your *undivided interest* in trust land to your children, grandchildren or great-grandchildren by naming them in a written will. They will inherit the land in trust regardless of whether they are enrolled tribal members.

A non-Indian cannot inherit any of your *undivided interests* in allotments in trust status. Even if you write a will naming a non-Indian as a beneficiary, he or she will not be permitted to inherit the land in *trust*. You can, however, write a will and leave a *life estate* in trust land to a non-Indian with the *remainder* to someone who meets the AIPRA definition of Indian.

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* Except Alaska, Five Civilized Tribes, and Osage.

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Disclaimer

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