

WHAT HAPPENS WHEN YOU DIE WITHOUT A WILL?

Intestate is the legal term for when a person dies without a Will. When a person dies "intestate," AIPRA determines which heirs will receive property and how they will own that property.

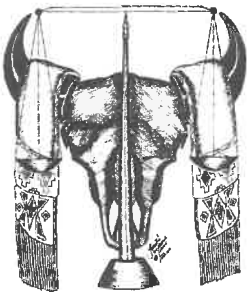
WHAT HAPPENS WHEN YOU DIE WITH A WILL?

Testate is the legal term for when a person dies with a Will. When a person dies "testate," the court will attempt to distribute the property according to your Will.

HOW DO OWNERS SHARE THE LAND?

Unless a Will says that the land is to be divided among the heirs in equal undivided shares ("tenancy in common") AIPRA presumes that the land is to be held as "joint tenants with right of survivorship" (JTWROS).

JTWROS means that the heirs share the land equally, but not in undivided shares. As each owner passes away, his or her share is divided equally among the remaining owners, until the last surviving heir owns the entire parcel of land.



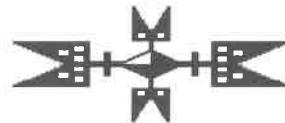
What this means for you!

WRITING A WILL IS VERY IMPORTANT

Without a Will, you lose control over which of your heirs receives property. If a person passes away without a Will, the AIPRA provisions determine who receives your property. Once your Will is written and examined by an attorney with experience dealing with AIPRA, your property is much more likely go to whom you designate.

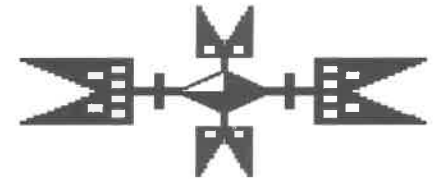
YOU NEED TO KNOW WHAT TRUST LAND YOU OWN

You can request an "Individual Trust Inventory" from the BIA. This inventory lists all trust property you own. Dakota Plains Legal Services has a form letter you can fill out and send to the BIA. The letter may also request the names and addresses of any co-owners of trust property, which may help when designating heirs.



For more information on estate planning and why to have a Will, please refer to the DPLS brochure "Indian Estate Planning."

American Indian Probate Reform Act



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WHAT IS "AIPRA"?

The American Indian Probate Reform Act (AIPRA) is a law created to provide a uniform federal probate code. This code dictates how Indian Trust assets will pass to your heirs should you pass without writing a Will. AIPRA took effect June 20, 2006.

WHY WAS AIPRA CREATED?

AIPRA was created to establish national federal guidelines for the probate of Indian Trust assets (trust land and income held in trust from leases of Indian trust land). AIPRA amends and becomes a part of the Indian Land Consolidation Act (ILCA) of 1983 and its amendments.

Under the original ILCA, State laws determined how Indian trust assets were to be passed on if the owner did not write a Will. Since State laws varied and did not address the specific issues of Indian trust assets, Congress enacted AIPRA. The goal of AIPRA is to prevent the loss of trust land and to promote land consolidation.

- *Please note that the following excerpts are only a few of the new rules under AIPRA. To fully understand what this law means to you, it is important to discuss your individual circumstances with an attorney or a person qualified to correctly interpret this new law.*

How AIPRA Affects Your Trust Assets If You Pass Without A Will

• Spouses and Children Not Eligible for Enrollment

If a trust landowner dies without a Will, their spouse will only inherit a "life estate" in the land. This means that the spouse can use the land during their lifetime and collect income from the land, but when the surviving spouse passes away, the land will go to the remaining eligible heirs. Children who are not eligible for enrollment may sometimes inherit Indian land in trust. If the child is within two generations of an Indian, or if they are already a co-owner on the parcel, then they may inherit the land in trust.

• Single Heir Rule

If there are one or more small, fractionated interests (less than a 5% interest) those interests will pass to the oldest surviving child or grandchild.

• Consolidation:

During probate, heirs can voluntarily agree to consolidate interests in any tract of land left by the person who passed away. This rule works like an exchange of land and fair market value does not need to be established or paid.

• Partition

Under AIPRA, only a majority (at least 50% of the co-owners) must agree to the partition.

• Purchase Option At Probate

Any interest in trust land may be purchased during probate for at least fair market value to an eligible purchaser (any other eligible heir or other person who has an interest in the same parcel).

• Missing Heir Rule

During the probate process, if the Secretary cannot locate an heir within 60 days and neither the Secretary or any of the other heirs have had contact with that heir for 6 years, then that heir *may* be deemed "missing" and may not share in the probate of that estate.

How AIPRA AFFECTS YOUR TRUST ASSETS IF YOU PASS WITH A WILL

• **If you write a valid Will, you may leave your Indian trust assets to anyone you choose. If that person is not eligible to inherit trust assets, the land will pass in fee, become subject to taxation, and possibly State control.**

• **Under AIPRA, trust land may be passed down in trust to:**

- Any lineal descendant of the testator [person who wrote the Will]
- Any child not eligible for enrollment who is within two generations of an Indian
- Any person who owns a preexisting undivided trust or restricted interest in the same parcel of land
- Any Indian who is a member of a tribe or eligible to become a member
- The tribe with jurisdiction over the land

