

Planning for the Passing of Reservation Lands to Future Generations



July 2021

FACT SHEET #6

Your *undivided interest* of 5% or more: What happens if you pass away without writing a will?

If you pass away without writing a will, any trust or restricted land you own* is inherited by your heirs under the American Indian Probate Reform Act of 2004 (AIPRA).

State laws no longer determine how trust lands on reservations pass from one generation to the next for individuals who pass away on or after June 20, 2006.

AIPRA has created a uniform probate code for all reservations across the United States.* This act applies to all individually owned trust and restricted lands* unless a tribe has its own probate code. All tribal probate codes pertaining to trust property must be approved by the Secretary of Interior. The Fort Hall, Fort Peck, Fort Belknap and Blackfeet tribes do not have approved probate codes enacted as of the publication date of this fact sheet.

Percentage of *undivided interest*

AIPRA passes trust land to your heirs under different rules depending on whether you own an *undivided interest* of **5% or more** in an allotment (this Fact

Sheet #6) or whether you own an *undivided interest* of **less than 5%** in an allotment (see Fact Sheet #7). To determine your ownership interest you will need to examine your Individual Trust Interest (ITI) report from the Bureau of Indian Affairs (BIA). Review Fact Sheet #4 to learn how to obtain your Individual Trust Interest (ITI) report and how to read it.

This fact sheet explains how AIPRA will divide your interests among your heirs if you own an *undivided interest* of **5% or more** in an allotment and if you pass away without writing a will.

Marital status and children

Your marital status and whether you have children will have an effect on the division of your *undivided interest* of **5% or more** among your heirs.

First, find a situation that is similar to yours in the descriptions on pages 2 and 3 of this fact sheet. Then, refer to the appropriate illustrations on pages 4 – 17 of this fact sheet for information about the distribution of your interests to your beneficiaries.

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

What is your marital and child status? Check one.

- Single-*No* Children**
- Single-*With* Children** (legally adopted or biological)
- Married-*No* Children**
- Married-*With* Children** (legally adopted or biological)

The term *single* means that you are legally divorced (not just separated), or that your spouse has passed away, or that you have never been married.

- If you checked **Single-*no* children** see questions 1 – 4 (this page).
- If you checked **Single-*with* children** see questions 5 – 9 (this page).

The term *married* includes couples who are legally married, who are separated, or who have a legal separation. Separated couples are still legally *married*. Common law marriages are not recognized under AIPRA or by Montana and Idaho tribes.

- If you checked **Married-*no* children** see question 10, page 3.
- If you checked **Married-*with* children** see question 11, page 3.

SINGLE-No children, no will

Question 1: Are you *single* and do not have any living children, grandchildren, or great-grandchildren, but one or both your parents are living?

- Yes (See pages 4 - 5, Illustrations 1a, 1b, 1c, and 1d)
- No (Go to question 2)

Question 2: Are you *single* and do not have any living children, grandchildren, or great-grandchildren, your parents are not living, and **all** your brothers and sisters are living?

- Yes (See page 5, Illustration 2)
- No (Go to question 3)

Question 3: Are you *single* and do not have any living children, grandchildren, or great-grandchildren, your parents are not living, and you have one or more brothers or sisters who have passed away?

- Yes (See page 6, Illustrations 3a & 3b)
- No (If you are single without children, grandchildren or great-grandchildren review questions 1 - 2. If no, go to question 4.)

Question 4: If you are single and do not have any living children, grandchildren, or great-grandchildren, parents, brothers or sisters, your *undivided interest* of **5% or more** in an allotment passes to the tribe where the allotment is located (if you pass away without writing a will) (See page 7, Illustration 4).

SINGLE-With children, no will

Question 5: Are you *single* and **all** of your children are living, but you do not have any grandchildren?

- Yes (See page 8, Illustration 5)
- No (Go to question 6)

Question 6: Are you *single* and **all** your children are living and you also have living grandchildren?

- Yes (See page 8, Illustration 6)
- No (Go to question 7)

Question 7: Are you *single* with one or more children who have passed away and they are survived by living children (your grandchildren)?

- Yes (See pages 9 – 12, Illustrations 7, 7a, 7b, and 7c)
- No (Go to question 8)

Question 8: Are you *single* and **all** of your children have passed away and they are survived by living children (your grandchildren)?

- Yes (See pages 13 - 14, Illustrations 8a & 8b)
- No (If you are single with children, review questions 5 - 8. If no, go to question 9)

Question 9: If you do not have any surviving children, grandchildren, parents, brothers or sisters, your *undivided interest* of **5% or more** in an allotment passes to the tribe where the allotment is located (if you pass away without a written will) (See page 15, Illustration 9).

Write a will

If you are single and want your *undivided interest* in trust property to pass to individuals other than those described in questions 1 - 9, you need to write a will to distribute your land the way you desire.

Married-No children or grandchildren, no will

Question 10: Are you *married* with your spouse living and you have no living children or grandchildren?

- Yes (See page 16, Illustration 10)
 No (Go to question 11)

Married-With children, no will

Question 11: Are you *married* with your spouse living, and you have living children, grandchildren, and/or great-grandchildren?

- Yes (See page 17, Illustration 11)

As long as your spouse is living he or she inherits all of your *undivided interest* in trust land of **5% or more** as a *life estate*. Your children inherit a *remainder interest* in your estate. They are called *remaindermen* (See fact sheet #8). Your children have full ownership of your *undivided interest* in trust land after the passing of your spouse.

- No (If you are married without children review question 10)

Fee

Under the technical amendments of December 2, 2008, IRA tribes have been given the authority to enact resolutions, codes, or laws to permit owners the ability to write a will and leave trust property to a non-Indian person and have the land converted from trust status to fee status. Without tribal action AIPRA prohibits the leaving of IRA lands in *fee* to a non-Indian. Non-IRA tribes already had this authority.

Thus if you are married and if you have an *undivided interest*, the interest can pass to your non-Indian spouse in **fee** if you make a written will and if the tribe has enacted a resolution allowing for such a transfer. However, the land will lose its trust status.

Write a will

If you are married and want your *undivided interest* in trust property to pass to individuals other than those described in illustrations 10 and 11, then you need to write a will to distribute your land the way you desire.

Acknowledgements

We wish to express appreciation to the Montana and Idaho Reservation Extension agents and Reservation Extension student assistants on the Blackfeet, Fort Belknap, Fort Hall, and Fort Peck reservations for their assistance in reviewing the fact sheets and presenting the information to tribal members on their home reservations. This MontGuide has also been reviewed with the assistance of students from the Alexander Blewett III School of Law at the University of Montana.

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Disclaimer

The information appearing in this fact sheet is presented for informational purposes only. The objective of the fact sheet is to help you develop an understanding of the American Indian Probate Reform Act (AIPRA). The contents should not be considered as legal advice or be used as such. For legal information specific to your situation contact, appropriate legal counsel with your tribe or an attorney.

Future change in laws cannot be predicted and statements in this fact sheet are based solely on the rules and regulations in force on the date of publication.

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

| SINGLE* INDIVIDUALS WITHOUT CHILDREN | | |
|--|--|---|
| Surviving Family Members** (<i>Descendants in order of priority</i>) ↓ | Description of Distribution ↓ | Distribution Illustration ↓ (assume heirs meet the AIPRA definition of Indian) |
| <div style="border: 1px solid black; padding: 2px; display: inline-block;">Illustration 1a</div> Indian Father <u>and</u> Mother. | Equally divided between parents. <i>Example:</i> Tony, who is single, passed away. His Indian mother and father each received 1/2 of the <i>undivided interest</i> he owns on the Fort Peck and Fort Belknap Reservations. | Survivors: Indian Parents |
| <div style="border: 1px solid black; padding: 2px; display: inline-block;">Illustration 1b</div> Indian parent and Non-Indian parent | A non-Indian parent cannot inherit under AIPRA. <i>Example:</i> Tony's <i>undivided interests</i> of 5% or more in each parcel would pass to his Indian father. | Survivors: Indian and Non-Indian Parents |
| <div style="border: 1px solid black; padding: 2px; display: inline-block;">Illustration 1c</div> Father <u>or</u> Mother. | The surviving parent receives all undivided interest. <i>Example:</i> Lisa, who is single, passed away. The only surviving parent was her Indian mother. Her mother received all of Lisa's <i>undivided interests</i> in trust lands she owns on the Fort Hall and Blackfeet Reservations. | Survivor: One Indian Parent |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

| SINGLE* INDIVIDUALS WITHOUT CHILDREN (cont'd) | | |
|--|---|--|
| Surviving Family Members** (<i>Descendants in order of priority</i>) ↓ | Description of Distribution ↓ | Distribution Illustration (<i>assume heirs meet the AIPRA definition of Indian</i>) ↓ |
| <p>Illustration 1d</p> <p>Non-Indian Father <u>or</u> Mother. (one parent survives)</p> | <p>A non-Indian parent cannot inherit under AIPRA.</p> <p><i>Example: Lisa's undivided interests in land on the Blackfeet Reservation would pass to her heirs listed in illustrations 2 and 3.</i></p> | <p>Survivor: Non-Indian Parent</p> |
| <p>Illustration 2</p> <p>Brothers and Sisters (<i>if parents of the deceased person aren't living or if surviving parent is non-Indian</i>).</p> | <p>Equally divided among brothers and sisters.</p> <p><i>Example: Walter, who is single, passed away with three sisters who survived him. Walter's parents passed away years ago. Each of Walter's sisters received 1/3 of his undivided interests in trust lands his ITI report shows he owned on several reservations.</i></p> | <p>Survivors: 3 Siblings</p> |

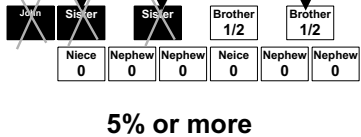
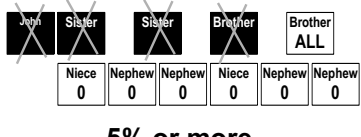
* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITHOUT CHILDREN (cont'd)

| Surviving Family Members** (Descendants in order of priority) ↓ | Description of Distribution ↓ | Distribution Illustration ↓ (assume heirs meet the AIPRA definition of Indian) |
|--|---|--|
| <p>Illustration 3a</p> <p>Brothers, Sisters, Nieces and Nephews of deceased siblings of decedent. (if parents and some siblings of the deceased person aren't living).</p> | <p>Divided equally among living brothers and sisters.</p> <p><i>Example 3a:</i> John passed away with two brothers who survived him.</p> <p>John also had two sisters who passed away before he did.</p> <p>Each living brother received 1/2 of John's <i>undivided interests</i> in trust lands his ITI report shows he owned on several reservations.</p> <p>John's deceased sister's only daughter (his niece) did not inherit any of his <i>undivided interests</i> in trust land. John's other deceased sister's two sons (his nephews) also did not inherit any of his <i>undivided interests</i>.</p> | <p>Survivors: 2 Siblings</p>  <p>5% or more</p> |
| <p>Illustration 3b</p> <p>One surviving brother or sister, nieces and nephews of deceased siblings of decedent. (if parents and some siblings of the deceased person aren't living).</p> | <p>Living brother or sister receives all.</p> <p><i>Example 3b:</i> If John had only one brother who survived him, that brother would receive all of his <i>undivided interest</i> in trust lands his ITI report shows he owned on several reservations.</p> | <p>Survivor: 1 Sibling</p>  <p>5% or more</p> |

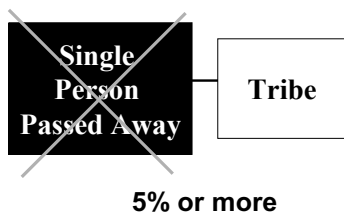
* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITHOUT CHILDREN (cont'd)

| Surviving Family Members ** <i>(Descendants in order of priority)</i> | Description of Distribution | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> |
|--|--|--|
| <div style="border: 1px solid black; padding: 5px; width: fit-content; margin-bottom: 10px;">Illustration 4</div> <p>No eligible heirs</p> | <p>If you pass away without a written will and if you do not have any surviving children, grandchildren or great-grandchildren, parents, brothers or sisters, then your <i>undivided interest</i> of 5% or more in an allotment passes to the tribe where the allotment is located.</p> <p>However, during probate co-owners of the allotment can purchase a deceased person's <i>undivided interest</i> at fair market value.</p> | <p>No eligible heirs</p>  |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:
(Effective for individuals who pass away on or after June 20, 2006)

| SINGLE* INDIVIDUALS WITH CHILDREN | | |
|--|--|--|
| Surviving Family Members** <i>(Descendants in order of priority)</i> ↓ | Description of Distribution ↓ | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> ↓ |
| <p>Illustration 5</p> <p>Children of the person who passed away <i>(includes legally adopted children)</i>.</p> | <p>Divided equally among the children.</p> <p><i>Example:</i> Tamara, a single parent, passed away with three living children.</p> <p>Tamara's <i>undivided interests</i> in trust lands she owns on the Fort Hall Reservation are divided equally among her three children; 1/3 to each.</p> | <p>Survivors: 3 children</p> |
| <p>Illustration 6</p> <p>Children and grandchildren of the person who passed away.</p> | <p>Divided equally among children only. Grandchildren do not inherit when their parents are alive.</p> <p><i>Example:</i> Lloyd passed away with three living children and six living grandchildren.</p> <p>Lloyd's <i>undivided interests</i> in trust land he owns on the Fort Belknap Reservation are divided equally among his three children; 1/3 to each child.</p> <p>The grandchildren do not inherit any of Lloyd's <i>undivided interests</i> because each child has a parent living who received the 1/3 interest from Lloyd, their grandfather.</p> | <p>Survivors: 3 children</p> |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

| Surviving Family Members** <i>(Descendants in order of priority)</i> | Description of Distribution | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> |
|---|---|---|
| <div style="border: 1px solid black; padding: 5px; width: fit-content; margin-bottom: 10px;"> Illustration 7 </div> <p>Living children and one or more living grandchildren from a deceased child who passed away before you.</p> | <p>Divided among living child(ren) and the deceased child's child(ren) by <i>right of representation</i>.</p> <p>If a child passes away before a parent, the grandchild steps into the shoes of the deceased parent and takes the parent's share.</p> <p>If there is more than one deceased child with children, the children share the parent's share equally. This is called <i>right of representation</i>.</p> | <p>See Illustrations:</p> <ul style="list-style-type: none"> • 7a on page 10 • 7b on page 11 • 7c on page 12 |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:
 (Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

| Surviving Family Members** (<i>Descendants in order of priority</i>) | Description of Distribution | Distribution Illustration (assume heirs meet the AIPRA definition of Indian) |
|---|---|--|
| <p>Illustration 7a</p> <p>One adult child passed away before his or her parent with a surviving child.</p> | <p>Divided among living child(ren) and the deceased child's child(ren) by right of representation.</p> <p><i>Example 7a:</i> Eunice had three children. One of her daughters passed away before Eunice. This daughter had one child, a son.</p> <p>If Eunice passes away without writing a will, her deceased daughter's son (Eunice's grandchild) receives the 1/3 share of <i>undivided interest</i> in Eunice's trust lands that his mother would have received if she had survived Eunice. This is called <i>right of representation</i>.</p> <p>Eunice's two living children each receive a 1/3 share of <i>undivided interest</i> in her trust land.</p> <p>Eunice's remaining five grandchildren do not inherit because each parent received the 1/3 share from Eunice.</p> | <p>Survivors: Children and Grandchildren</p> <p>The diagram shows Eunice at the top. She has three children: a daughter who has passed away (marked with an X), and two living children (each with a 1/3 share). The deceased daughter has one son (a grandchild) who also has a 1/3 share. Below this, there are five boxes representing other grandchildren, each with a 0 share. A label '5% or more' points to the grandchild with the 1/3 share.</p> |

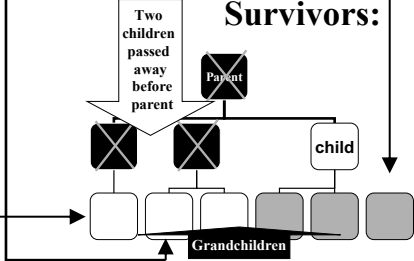
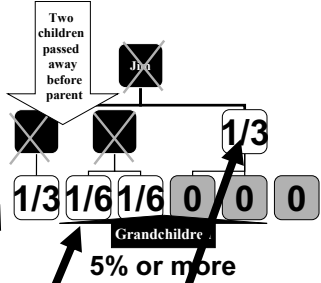
* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

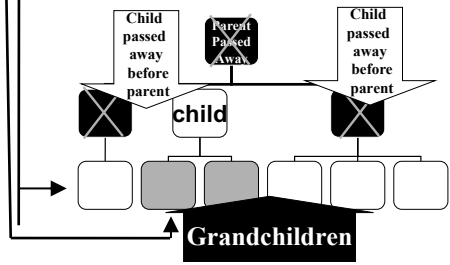
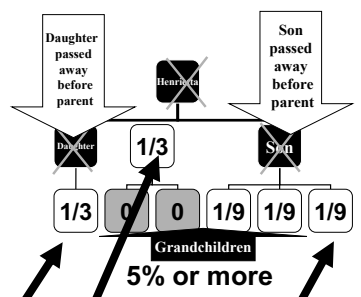
| Surviving Family Members** (Descendants in order of priority) | Description of Distribution | Distribution Illustration (assume heirs meet the AIPRA definition of Indian) |
|--|--|---|
| <p>Illustration 7b</p> <p>Two adult children passed away before their parent.</p> <p>One deceased adult child had one child.</p> <p>Another deceased adult child had two children.</p> <p>The third living adult child had three children.</p>  <p>Survivors:</p> | <p>Divided among living child(ren) and the deceased child's child(ren) by right of representation.</p> <p><i>Example 7b:</i> Jim had three children. Two children (a daughter and a son) passed away before Jim. Jim's deceased daughter had one child, his deceased son had two children, and his living son had three children.</p> <p>If Jim passes away without a written will, his deceased daughter's child (Jim's grandchild) receives the 1/3 share of <i>undivided interests</i> in trust land that his mother would have received if she had lived. This is called <i>right of representation</i>.</p> <p>Jim's deceased son's two children (Jim's grandchildren) split the 1/3 <i>undivided interest</i> in trust land that their father would have received, each receiving 1/6. This is called <i>right of representation</i>.</p> <p>Jim's living son receives the remaining 1/3 of his father's <i>undivided interest</i> in trust land. The three children of his living son (Jim's grandchildren) do not inherit because their parent received the 1/3 share from Jim.</p> | <p>Survivors: Children and Grandchildren</p>  <p>1/3 1/6 1/6 0 0 0</p> <p>Grandchildren</p> <p>5% or more</p> |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:
(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

| Surviving Family Members** (<i>Descendants in order of priority</i>) | Description of Distribution | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> |
|--|---|---|
| <p>Illustration 7c</p> <p>Two adult children passed away before their parent.</p> <p>A deceased daughter had one child.</p> <p>A living son had two children.</p> <p>A deceased son had three children.</p>  <p>Grandchildren</p> | <p>Divided among living child(ren) and the deceased child's child(ren) by <i>right of representation</i>.</p> <p><i>Example 7c:</i> Henrietta had three children. Two children (a daughter and son) passed away before Henrietta. Henrietta's deceased daughter had one child, her living son had two children, and her deceased son had three children.</p> <p>If Henrietta passes away without a will, her deceased daughter's child (Henrietta's grandchild) receives 1/3 of Henrietta's <i>undivided interests</i> in trust lands by <i>right of representation</i>.</p> <p>Henrietta's living son receives the remaining 1/3 <i>undivided interests</i> in her trust lands. Henrietta's two grandchildren from her living son do not inherit because their parent received the 1/3 share from Henrietta.</p> <p>Henrietta's deceased son's three children (Henrietta's grandchildren) split 1/3, so each receives 1/9 by <i>right of representation</i> of Henrietta's <i>undivided interests</i> in trust lands.</p> | <p>Survivors: Children and Grandchildren</p>  |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:
(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

| Surviving Family Members** <i>(Descendants in order of priority)</i> | Description of Distribution | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> |
|---|--|---|
| <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> Illustration 8a </div> <p>One or more grandchildren <i>(no living children)</i>.</p> | <p>If all the children passed before a parent, then the living grandchildren inherit shares by <i>right of representation</i> from their grandparent.</p> <p><i>Example 8a:</i> Ronald, a grandfather, passed away with six living grandchildren. None of Ronald's children were living at the time of his passing.</p> <p>Because Ronald's three children passed away before him, his six grandchildren inherit Ronald's <i>undivided interests</i> in trust lands by <i>right of representation</i>.</p> <p>The child of Ronald's deceased daughter receives 1/3.</p> <p>The two children of Ronald's deceased son receive 1/6 each.</p> <p>The three children of Ronald's remaining deceased son receive 1/9 each.</p> | <p>Survivors: Grandchildren</p> <p style="text-align: center;">5% or more</p> |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:
(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

| Surviving Family Members** (<i>Descendants in order of priority</i>) | Description of Distribution | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> |
|---|--|---|
| <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> Illustration 8b </div> <p>One or more grandchildren <i>(no living children).</i></p> | <p>If a grandchild passed before a great-grandparent, then the living great-grandchildren do not inherit.</p> <p><i>Example 8b:</i> George, a grandfather, passed away with five living grandchildren and one grandchild who passed away during George's lifetime. None of George's three children were living at the time of his passing.</p> <p>Because George's children passed away before him, his five grandchildren inherit George's <i>undivided interests</i> by <i>right of representation</i>.</p> <p>The child of George's deceased daughter receives 1/3.</p> <p>The two children of George's deceased son receive 1/6 each.</p> <p>The two living children of George's other deceased son receive 1/6 each.</p> <p>George's great-grandchildren do not inherit under AIPRA.</p> | <p>Survivors: Grandchildren and Great-grandchildren</p> |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

SINGLE* INDIVIDUALS WITH CHILDREN (cont'd)

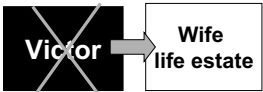
| Surviving Family Members** <i>(Descendants in order of priority)</i> | Description of Distribution | Distribution Illustration <i>(assume heirs meet the AIPRA definition of Indian)</i> |
|---|--|--|
| <div data-bbox="115 621 370 688" style="border: 1px solid black; padding: 2px; margin-bottom: 10px;"> Illustration 9 </div> <p>No eligible heirs</p> | <p>If you do not have any surviving children, grandchildren or great-grandchildren, parents, brothers or sisters, then your <i>undivided interest</i> of 5% or more in an allotment passes to the tribe where each interest is located if you pass away without a written will.</p> <p>However, during probate co-owners within the allotments can purchase a deceased person's <i>undivided interests</i> at fair market value.</p> | <p>No eligible heirs</p> <div data-bbox="1138 667 1479 835" style="text-align: center;"> </div> <p style="text-align: center;">5% or more</p> |

* **Single** means you are divorced, widowed or that you have never been married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:

(Effective for individuals who pass away on or after June 20, 2006)

| MARRIED* INDIVIDUALS WITHOUT CHILDREN | | |
|--|---|--|
| Surviving Family Members ** (<i>Descendants in order of priority</i>) ↓ | Description of Distribution ↓ | Distribution Illustration ↓ <i>(assume heirs meet the AIPRA definition of Indian)</i> |
| <div style="border: 1px solid black; padding: 5px; width: fit-content; margin-bottom: 10px;">Illustration 10</div> <p>Spouse</p> | <p>All undivided interest in trust lands pass to the surviving spouse as a life estate.</p> <p><i>Example:</i> Victor who was married passed away without a will, his interests of 5% or more in each allotment passes to his wife as a <i>life estate</i>.</p> <p>The tribe where the land is located is the <i>remainderman</i> because Victor has no surviving parents, siblings, children, grandchildren, great grandchildren, or parents.</p> | <p>Survivor: Spouse</p> <div style="text-align: center;">  </div> <p>5% or more</p> |

* If you are separated or legally separated you are still considered legally married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).

Who receives your *undivided interest* of 5% or more in trust lands if you pass away without a written will:
(Effective for individuals who pass away on or after June 20, 2006)

MARRIED* INDIVIDUALS WITH CHILDREN

Surviving Family Members ** *(Descendants in order of priority)*

Description of Distribution

Distribution Illustration
(assume heirs meet the AIPRA definition of Indian)

With Children from Present Marriage & Spouse

Illustration 11

Spouse and children

All to surviving spouse in a life estate. All undivided interest in trust lands pass to the surviving spouse as a life estate.

Example: Michael passed away without a written will. He was survived by his wife and three children.

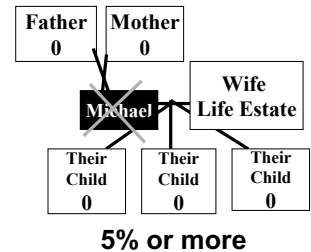
Michael's interests of 5% or more in allotments pass to his surviving wife as a life estate.

Michael's parents do not inherit as priority is given to the surviving spouse.

Their three children inherit a *remainder interest* in Michael's trust land. They own the land although their mother receives income (if any) from it and the mother may live in the home on the land during her lifetime (Review Fact Sheet #8 on life estates).

Upon the passing of Michael's wife (the children's mother) the life estate ends. The three children have complete use and enjoyment of the interests in Michael's allotments.

Survivor: Spouse & Children, Deceased Person's Parents



* If you are separated or legally separated you are still considered legally married.

** Illustrations assume heirs meet the definition of Indian unless otherwise noted (see Fact Sheet #5).