

Introduction to AIPRA


Indian Estate Planning & Probate



How did we get here?



General Allotment Act (1887) 25 U.S.C. §§ 331 *et. Seq.*

- Development of Reservations
 - Indians declared legally incompetent
 - United States holds legal title to land
 - Indian holds beneficial title to land
 - Trust allotments not subject to state or local laws
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Trust Land

- Real property held in trust by the federal government for the benefit and use of an Indian person or tribe.
- Trust land is administered by the Office of Special Trustee - DOI

Trust Personalty

- Funds held in trust by the federal government, in an *IIM Account*, for the use and benefit of an individual Indian.
- Contains lease income, mineral income, per capita, etc.


Fractionation

□ Subjecting trust lands to state laws of intestate succession resulted in fractionated ownership.

□ Example – one parcel of land with hundreds of owners.



Other Issues Leading to Fractionation

- Concept of private land ownership unknown
 - Some allotments never used
 - Required abandoning traditional culture traditions
 - Easier to rent allotments than farm
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AIPRA

The American Indian Probate
Reform Act of 2004 - 25 U.S.C. 2201
et. seq.


What is the purpose of AIPRA?



Purposes of AIPRA:

- Remedy Fractionation of trust interests
- Provide uniform intestacy code for trust property

Steps for the Estate Planning Attorney

1. Is your client “Indian”?
 2. Does your client have trust land or trust personalty?
 3. Determine what laws govern the estate plan.
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1. Is the client a legally defined “Indian”?

- Member of any Indian Tribe; or
- Eligible to become a Member; or
- Owner of trust land prior to 10/27/2004:
or
- Meets the federal definition of Indian
under 25 U.S.C. 479


2. What trust holdings does the client have?

Send a completed and signed trust inventory report request to the DOI's Office of Special Trustee

3. Does the Tribe have its own probate code?

- What tribe is your client a member of?
 - A tribe may have its own probate code that supersedes AIPRA and governs the descent and distribution of trust land over which it has jurisdiction, as well as all non-trust property and personal property.
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What law governs the estate plan?

- For federal trust lands or IIM accounts, federal jurisdiction applies;
 - For non-trust property within a reservation, tribal law *may* apply if a tribe has a probate code;
 - For property situated outside a reservation, state law applies.
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Important Points about AIPRA



Division of Land Interests

- Land is divided into interests of less than 5% and interests of 5% or greater.
- Interests less than 5% = **highly fractionated**

Single Heir Rule

Highly fractionated interests subject to the “Single Heir Rule”

Any trust interest that is $< 5\%$ will go to the oldest child only.


AIPRA Rules of Intestate Succession:

- Surviving spouse receives a life estate;
- Remainder to “eligible heir” – lineal descendant, parent, or sibling who is:
 1. Indian, or
 2. Lineal descendant within 2 degrees of consanguinity of an Indian, or
 3. Own a trust interest in the decedent’s trust land.

AIPRA Rules of Intestate Succession:

- No Heirs?
- Property passes to the tribe with jurisdiction
- Any co-owner on the allotment can purchase at fair market value

AIPRA Rules Regarding Devise of Trust Interests:

- Default creation of joint tenancy with right of survivorship
 - “Clear and express language” for tenancy in common
 - Only to “eligible heirs” – same rules as intestate succession
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AIPRA Rules Regarding Devise of Trust Interests:

- Devise to non-Indians or those not eligible to inherit in trust results in **life estate** only.
- Any trust interest that is $< 5\%$ will go to the oldest child only - Single Heir Rule

Non-Indian devisees

- May only receive **life estate** in trust land
- May receive any funds from IIM Account

Life Estate

- Can go to ANY person
- Up to TWO consecutive life estates
- Remainder interest must go to an Eligible Heir

AIPRA vs. State Intestacy Laws:

- **State Law**– Attempts to give effect to decedent’s likely desires regarding disposition of estate assets.

- **AIPRA** – Above, *plus*: purpose to reduce or avoid fractionation
 - Maintain trust status
 - Facilitate consolidation of trust land

Presumption of JTROS

- AIPRA differs from common law
- Devise for Tenants in Common must be clearly drafted as such

Land may not include fixtures or improvements

- Devises of land with improvements must be expressly stated

Will Requirements

- Over 18
- Testamentary capacity
- In writing
- Signed and dated
- Attested by two disinterested witnesses
- Self-Proving Affidavits regarding AIPRA compliance at the time of execution.