

## Getting Started

If you plan to draft a will, there are steps you can take now to make the process easier and faster.

1. Gather documents related to any real property (land and buildings fixed to the land) you own. If you own Indian trust property, you will need your Individual Trust Interest Report. If you don't have a current copy, you can request one from the local or regional Bureau of Indian Affairs (BIA) realty office or through the Office of the Special Trustee for American Indians.
2. Consider who you would like to leave your property to and who you would like to handle your estate after you pass.
3. Try to meet with a lawyer who specializes in Indian or estate planning law before you draft a will. If you cannot afford to have a lawyer prepare your will, talk at least once with one for advice.

***The Native American Unit at Northwest Justice Project drafts a limited number of wills for trust property owners. Our contact information is described on the back of this brochure. Call us to apply for assistance.***



## Contacting Northwest Justice Project

The Northwest Justice Project's Native American Unit (NAU) provides free civil (non-criminal) legal services for people who cannot afford a lawyer in Washington.

**In King County:** Call 2-1-1

**For all other counties:** Call the CLEAR hotline toll-free at 1-888-201-1014, between 9:15 a.m. and 12:15 p.m., Monday through Friday.

General Information Line: 1-888-201-1012

[www.nwjustice.org](http://www.nwjustice.org)

Executive Director  
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# Estate Planning Information for Native American Trust Property Owners

Information provided by:



**Northwest Justice Project**

Serving the Legal Needs of  
Washington State's Native  
American Communities



## **Background: Special Problems for Trust Land**

*When the United States first established the allotment system, reservation land was divided and assigned to individuals. The land was to be held in trust by the United States for the benefit of tribes and individual Indians. The United States determined the heirs and distributed the property of deceased Indians.*

*However, because many Indians died without wills, property was often shared equally among the heirs. For example, if a person was allotted 80 acres and had four children when he died, that piece of land was shared equally by the four heirs. When those four children died, if they each had three children, their one-fourth piece was divided among their three children. The original 80 acre piece of land now has 12 owners, each owning about six and one-half acres, though the parcel remains undivided. Eventually, this piece of trust property might have hundreds of owners.*

*The problem with having a piece of land owned by many different people is that a single owner cannot develop or even live on the property without obtaining permission from a majority of the other owners. This means Indian landowners find it very difficult to use and control their own land.*

## **What is “AIPRA”?**

The American Indian Probate Reform Act (AIPRA) is a law enacted by Congress which became effective June 20, 2006. AIPRA sets the rules for distributing Indian trust property through a will or without a will.

## **Why was AIPRA created?**

One of AIPRA's main goals was to help reduce the fractionation of Indian trust land ownership through inheritance. Some allotments have hundreds of co-owners, which makes it almost impossible for anyone to use the land.

**“A will allows you to provide clarity about your wishes and prevent conflict among family members.”**

## **Why is Estate Planning Different for Indians?**

Indians often own both trust land and trust funds. State courts and tribal courts are generally not allowed to participate in the probate of trust property. This means that there will often be two probates for the property of an Indian who owns trust land; one by the U.S. Department of the Interior (DOI) for trust property, and one in state or tribal court for everything else. Normally, AIPRA's uniform probate rules apply to the probate of trust property, unless the property is located

within the jurisdiction of a tribe whose probate code has been approved by the DOI. In that case, the judge will apply tribal law.

## **What This Means For You**

**Writing a Will is Very Important.** With a will, you control which of your heirs receives property and how much. If you have minor children, you can nominate guardians and make arrangements for their care and education. 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.

**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, state, tribal or federal laws will determine who inherits your property.

## **Other Estate Planning Documents**

**Living wills** and other advance directives state your preferences regarding medical treatment in the event of a serious accident or illness. These legal documents speak for you when you're not able to speak for yourself.

**Health Care Powers of Attorney** allows you to appoint someone to make medical treatment decisions if you are no longer able to make them yourself. This document can be combined with a will.