

Native American and Alaska Native Property Owners: Exemptions from Estate Recovery

Is this for me?

This is about property owned by Native Americans and Alaska Natives.

[Estate Recovery for Medical Services paid for by the State](#) discusses exemptions for other types of property. It explains which DSHS medical programs require estate recovery. Read it at washingtonlawhelp.org.

What is an estate?

It is property you own at the time of your death.

What is estate recovery?

It lets any creditors you have at the time of your death collect from your estate.

When would DSHS be a creditor?

Washington State's Department of Social and Health Services (DSHS) has many programs that pay for medical services. Generally, estate recovery law requires DSHS to recover (collect) from your estate the cost of medical services it paid.

Can DSHS take all the property I own at the time of my death?

It depends. Some property is **exempt** from estate recovery. DSHS cannot take it.

I am not enrolled with my tribe. Does this change things?

It depends.

- Under state law, some **non-trust real property** is only exempt if you were a member of a federally recognized tribe at the time of your death. [WAC 182-527-2746\(6\)](http://wac.wa.gov/182-527-2746(6)).

- **Trust property** is exempt from estate recovery under other laws. Your tribal membership status does not matter.

What land is exempt from estate recovery?

- Most non-trust (fee land) owned by the deceased.
- All trust land owned by the deceased.
- Most improvements to the land, such as a home.

❖ Non-trust land and improvements to non-trust land are exempt IF they are on or near a reservation. If you think this describes your property, and you have concerns, see a lawyer who practices this type of law.

Is Indian income exempt from estate recovery?

Yes, if it is exempt under other laws. Some examples:

- money generated from trust property, such as lease income, or from the sale of natural resources
- land settlement act judgment funds and
- government "reparation" payments

Will income paid into my bank account after my death be exempt?

Exempt Indian income is exempt even if paid into your probate account after your death.

Other sources of income may not be exempt.

Are items of religious or cultural significance exempt?

Yes. Ownership interests or usage rights to items with unique religious, spiritual, traditional, or cultural significance are exempt. [WAC 182-527-2746\(6\)\(d\)](#). This includes items like regalia and handwork.

Are items supporting subsistence (basic needs) or traditional lifestyles exempt?

Yes. This includes traditional fishing, harvesting and hunting tools and related equipment.

How do I claim these exemptions?

Call DSHS at 1-800-562-6114 when you get the notice of estate recovery. Tell them the deceased was an Indian. They probably will not ask more questions. They should exempt property described here.

What if I need legal help?

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.

All other counties: Call the CLEAR hotline toll-free at 1-888-201-1014, 9:15 a.m. - 12:15 p.m., weekdays.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

This information is current as of December 2018.

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