

Intergenerational Wealth Transfer

What is it and why is it important? Wills, Trusts, and Alternatives

Wills, Trusts, LifePlans, and Alternatives

- Wills: A legal document that states your final wishes and desires as to the disposition of assets; must go through a probate process that involves the Courts and BIA
- Trusts: A legal instrument created by documents that transfer ownership of the assets on conditions set out by the trustor
- LifePlans: Documentation that allows loved ones to know what your desires are regarding life support, resuscitation, and medical care
- Inter Vivos Gifts, Warranty Deeds, Joint Tenancy, Tenancy in Common, Life Estates

With a Will you can do almost anything. . .except devise your allotment to a non-Indian

American Indian Probate Reform Act

When and how is AIPRA applied?



If you pass away without a will, any trust assets will be probated under AIPRA.



The amount of undivided interests owned in an allotment determines who qualifies as an eligible heir for the distribution.

Less than 5%

5% or more

Without a Will. . .

- The Federal Government will divide your Allotment Interest and IIM in the following manner:
 - Your spouse gets a "life estate" and holds property until death, then it passes to your children. The land is inherited by children, grandchildren, parents, or siblings. If none, it goes to the tribe. Eligible heirs must be Indian or within two generations.
 - If land is less than 5% of the tract, your spouse gets a life estate only if she lives on the land, and it is inherited only by the oldest child or grandchild ("single heir rule", prevents fractionation). If none, it goes to the tribe. The federal government, tribe and co-owners may purchase the land during probate.
 - Consent of the heir is required, but if the interest is less than 5% and passes without a will, no consent is required unless the heirs live on the land.
 - Your heirs may enter a consolidation agreement and avoid purchase without consent.

LifePlans

Written expression of your wishes regarding resuscitation, medical directives, burial plans

Plans help things go smoother when things happen for the living

What About Assets that are not Allotments and IIMs

Asset

n. generally any item of property that has monetary value, including articles with only sentimental value (particularly in the estates of the dead).

- The BIA and Office of Hearing and Appeal will only probate Allotments and Individual Indian Money Accounts
- Assets owned off the Reservation will need to be probated in that Jurisdiction, example: property in Tucson must be probated in Arizona court

Trusts, Life Estates, Tenancy in Common

- There are alternatives that can be utilized to avoid probate, in some situations
- This does not work for Allotments or Individual Indian Money Accounts
- Life Estate: an individual has the benefit of the asset until that person passes on, then the benefit can transfer to someone else
- Tenancy in Common: essentially everyone who owns a benefit in an allotment, up to the 5% rule imposed under AIPRA
- Trusts: figment entities that can hold property and distribute property under specified rules set by the Settlor

How do we create Intergenerational Wealth?

- Invest in off-Reservation Real Estate
- Invest in IRAs, stocks, bonds, and Tax Liens
- Invest in yourself and others (small businesses--friends and family); if you own a business, be thinking about succession plans
- Savings are slow and steady, but not massive growth

Believe in the law of attraction: think about what you want and focus on that