

## General Questions and Answers for the Trust landowner

**These questions and answers are provided for general informational purposes only. The answers do not constitute legal advice for your specific situation. The answers should not be relied upon as a correct answer to the questions you may have for your specific situation. A tribe's probate code or federal inheritance acts can alter these answers. Consult your local Office of Special Trustee for American Indians, the Bureau of Indian Affairs, the Tribal Realty/Probate office, or an attorney in your area for specific information. Contact information for these agencies and governments are located under the additional resources area of our website.**

**Question 1:** Who can I leave my trust property and keep it in trust status with a will?

**Answer:** There are four types of people (eligible heirs) who can receive your trust property in a will and the land will remain in trust status.

1. Any lineal descendent. This means you can give your trust land to your children, grandchildren, great grandchildren, etc. Your trust property will remain in trust status, even if that person does not qualify as an Indian.
2. Any other trust land co-owner in that parcel of land. This person also does not need to be an Indian if they are already a trust land co-owner.
3. The tribe where the land is located.
4. Any Indian (see question 2)

**Question 2:** Who is an "Indian" under AIPRA?

**Answer:** Generally, AIPRA defines an Indian as (1) a member of a federally recognized tribe, (2) a person who is eligible for enrollment with a federally recognized tribe or (3) a person who owned an interest in trust lands prior to October 24, 2004, (4) any person who meets the definition of Indian under the Indian Reorganization Act, and (5) any person who owns an interest in California trust lands for purposes of those California lands only

**Question 3:** Can I leave my trust property in "trust" to a Non-Indian?

**Answer:** Yes – but only if they are non-Indian lineal descendent of yours (children, grandchildren, great grandchildren) or a non-Indian who is already a co-owner in that parcel of land. See question 1 for more information.

**Question 4:** Can I leave my trust property in "fee" to an Indian?

**Answer:** Leaving in fee means you remove the land from trust status, making it fee property and potentially open to state taxation. AIPRA does not permit you to write a will that leaves an Indian your trust property in fee status.

**Question 5:** Can I leave my trust property in “fee” to a non-Indian?

**Answer:** It depends on where your trust lands are located. If your trust land is from an Indian Reorganization Act (IRA) Tribe, you cannot leave the lands in fee to anyone.

If your trust land is from a non-IRA tribe, you can leave it in fee status to a non-Indian **but** the tribe where the land is located will have the right to purchase the land before transfer is made at probate. If the tribe decides to purchase your interest, the non-Indian who is to receive your land can renounce their interest in favor of an eligible heir (see question 1) or accept the fair market value purchase amount from the tribe.

**Question 6:** Do I need to have an attorney write my will?

**Answer:** No, you can write your own. BUT it is always best to see an attorney so you can be sure that your will is a valid document that will be accepted by a probate court after your death. Once you die, it will be too late to correct the will or make it legal.

The will should clearly state who you would like to receive your trust property (heirs). When you name the heirs, you need to include as much information about them as possible. This should include their full legal name, their addresses, birthdates and any BIA or tribal membership numbers.

For the will to be valid there are several things you **MUST** do several things shown below. If you do not do these properly, your will is invalid and your property will be given to heirs according to the intestate laws under AIPRA or the tribe’s approved probate code.

**Generally for a will to be valid:**

(1) It must be in writing, either handwritten or typed

(2) You must sign the will and date the will. Also include as much information about yourself as you can provide. This should include your full legal name, your date of birth, your current address, tribal membership or BIA number

(4) You must have two adults witness you signing your will. The witnesses cannot receive anything from your will, they must be disinterested.

(5) Both witnesses must watch you sign the will and then both witnesses must also sign the will, they should also include a current address in case there are questions about the will's execution later.

(6) You must leave your trust property to eligible heirs (see question 1 above for who these people are).

Another thing that you can do to help make sure the will is valid:

(a) There is an affidavit that can be filled out by the witnesses and a notary. This affidavit allows the witnesses to swear under oath to the fact they saw you sign the will, that you stated it was your will, and that the will represented your wishes and that you appeared to be doing it of your own free will and appeared competent. A copy of this affidavit is available at [www.indianwills.org](http://www.indianwills.org) under resources.

Again, it is always best to have an attorney write a will for you or review your handwritten will to make certain it is legal and valid.

**Question 7:** If I don't make a will, what will happen?

**Answer:** When you die without a will, it is called dying "intestate." You don't choose who receives your trust or personal property, the law does. Without a will, your trust property will be given away according to AIPRA's intestacy rules or if your tribe has an approved probate code, by their rules.

Also if you die without a will and hold small interests in trust lands less than 5%, the Tribe or co-owner of your small trust interests may be able to petition the court at the probate of your estate to purchase your interests without permission of any of your family members or heirs. If you have a will, this cannot happen.

**Question 8:** What is a gift deed?

**Answer:** A gift deed is a legal document that transfers your trust land interest to another person while you are still alive. The Bureau of Indian Affairs or your local tribal realty office can assist you with making an application for a gift deed. The gift deed process can take months or years, check with your local BIA or tribal office about how long the process takes in your area.

**Question 9:** What are the benefits to a gift deed?

**Answer:** The benefit of a gift deed is that you can give your land to another while you are alive, keeping your land out of probate. A gift deed application begins the legal transfer of your trust land interest to another person and once the Secretary approves it your title is transferred to the person you have chosen.

**Question 10:** What are the potential problems with a gift deed?

**Answer:** The downside to a gift deed is that you cannot change your mind once the transfer becomes final. You cannot decide later that you want your land back. Another problem is that the gift deed process can take a long time and if you pass away before the gift deed process is final, your land will go through probate and be distributed according to your will or the laws of AIPRA if you do not have a will.

**Question 11:** What can I give my non-Indian spouse?

For IRA lands, you may only leave your spouse a life estate. A life estate allows your spouse to use, live on, and receive any income from the interest for as long as he or she lives. When the spouse dies, the trust lands can then go to another person or persons you choose who are eligible heirs (see question 1 for eligible heir)

For non-IRA lands, you can leave your spouse a life estate or give the spouse your trust interests in fee status. If the land is left in fee, the Tribe will then have the right at probate to purchase your spouse's interest before the fee transfer is made.