

Heirs now have some flexibility and can decide how they want the trust estate distributed. Heirs can decide whether they wish to inherit their share or sell it to other co-owners or the tribe where the land is located. Heirs may also give their share to another named Indian person instead of inheriting it.

If a person dies intestate, their trust property will pass under AIPRA or an approved tribal probate code, rather than under the state laws.⁴⁸ If there is a surviving spouse and other eligible heirs, the surviving spouse inherits 1/3 of any money in the decedent's IIM account at the time of death, and all of the money produced from their interest in trust or restricted land during surviving spouse's lifetime.⁴⁹ The other heirs get the remaining 2/3 of any money in the decedent's IIM account at the time of death, and the remaining ownership interest in the trust or restricted land.⁵⁰ The surviving spouse may also continue to live in a family home located on allotted land.⁵¹

If there is a surviving spouse but no other eligible heirs, the spouse gets the entirety of the IIM account, and during the spouse's lifetime, the money produced from the land interest.⁵² The spouse may also continue to live in a family home located on allotted land. The remaining ownership interest in land escheats to the tribe where the land is located.⁵³

If the decedent's ownership interest is less than 5% of the total parcel, a surviving spouse may continue to live in the family home on the parcel and then the inheritance is limited to the oldest eligible child.⁵⁴ Additionally, the Department of the Interior may purchase interests in land that are less than 5% of the total, for fair market value during the probate proceeding without the consent of the heirs.⁵⁵

A person may devise their property in trust to any Indian person, the Tribe, any Indian co-owners, any descendants. They may transfer the property out of trust to anybody. However, once it is out of trust that land is subject to taxation.

Five Tribes Restricted Land

The term Indian of the Five Civilized Tribes means an individual who is either an enrolled member of the Cherokee, Chickasaw, Choctaw, Creek, or Seminole Tribes of Oklahoma, or a descendant of an enrolled member thereof. The term restricted interest is defined as an interest owned in real or personal property subject to restraints upon alienation imposed either by Federal statute or by administrative action authorized by Federal statute.

The Five Tribes Specifically exempted from AIPRA. So Instead the practitioner must look to the Stigler Act and federal regs for guidance. Contrary to AIPRA, the Stigler Act provides the forum for probate is Oklahoma State Courts.⁵⁶

Originally, the Act specified that if land is devised to a person whose blood quantum was less than ½ Indian Blood, the land came out of restricted status automatically.⁵⁷ However, with the 2018 Amendment, if the property is devised to lineal descendants it will no longer be automatically removed from restrictive status.⁵⁸ However,