

**INDIAN WILL UNDER THE ACT OF JUNE 25, 1910 (36 STAT. 855-856)
AS AMENDED BY THE ACT OF FEBRUARY 14, 1913 (37 STAT 678)**

**LAST WILL AND TESTAMENT
OF**

**B.I.A. Identification Number No.
Born**

I _____, of the _____ Tribe, State of Montana, being of sound and disposing mind, realizing the uncertainty of human life, and not acting under any duress, menace, fraud, or undue influence, do hereby make, publish, and declare this to be my Last Will and Testament as follows:

**Article I
REVOCATION OF ALL PRIOR WILLS**

I hereby revoke any and all Wills and Codicils previously made by me.

**Article II
IDENTIFICATION OF FAMILY**

I am single.

I am married to _____, born _____, _____ an enrolled member of the _____ Tribe, ID No. _____, and all references to "my spouse" in this Will are to _____.

I am divorced from _____.

I am divorced from _____ and remarried to _____ and all references to "my spouse" in this Will are to her/him.

I am a widow, my spouse's full name was _____, born _____, died _____, _____ Tribe.

The names and birthdates of my children are as follows:

My _____, _____, born _____, an enrolled member of _____ Tribe, ID No. _____; and

My _____, _____, born _____, an enrolled member of _____ Tribe, ID No. _____.

-or-

My _____, _____, born _____, an eligible, but un-enrolled member of _____ Tribe.

-or-

My _____, born _____, not eligible to be an enrolled member of any Tribe.

All of my children listed in this Article (Article II) are now living. I have no deceased children.

I have _____ predeceased child(ren). The name(s), birth date(s) and date of death of my predeceased child(ren) is/are as follows:

_____, born _____, died _____, _____ Tribe.

I also consider _____, born _____, _____ Tribe, ID No. _____ to be my child, although not my natural or adopted child.

I am the legal guardian of _____, born _____, _____ Tribe, ID No. _____, and I consider him/her to be part of my immediate family.

I have raised _____, born _____, _____ Tribe, ID No. _____, and consider him/her to be my child, although not my natural or adopted child.

The names and birthdates of my grandchildren taking under this, my Last Will and Testament are as follows:

_____, born _____, an enrolled member of _____ Tribe, ID no. _____.

-or-

_____, born _____, an eligible, but un-enrolled member of _____ Tribe,

-or-

_____, born _____, not eligible to be an enrolled member of any Tribe.

All of my grandchildren listed in this Article (Article II) are now living.

Except as provided below, I make no provisions in this, my Last Will and Testament, for any of my children hereafter born to or adopted by me who survive me, nor for the issue of any child who does not survive me.

**Article III
PERSONAL REPRESENTATIVE**

I hereby nominate and appoint _____ to serve as sole Personal Representative of this, my Last Will and Testament. In the event that _____ fails to qualify or is unable or unwilling to so act, or fails to survive me, then and in that event, I appoint _____ as an alternate or successor Personal Representative.

This Will shall be a non-intervention Will to the extent allowable by Federal and State Law. I further direct that my Personal Representative shall act without bond and without intervention of any court, insofar as possible, and shall have the power, whether or not necessary for the administration of my estate, to sell, exchange, lease, mortgage, pledge, trade and otherwise deal with or dispose of the whole or any part of my estate.

Let it be known that the Personal Representative I have nominated in this Article (Article III) will not have the power to sell, dispose of or distribute any of my Indian trust assets, whether real or personal.

I authorize my Personal Representative to pay all just debts for which proper claims are filed against my estate, the expenses of my last illness and funeral, and the expenses incurred in the administration of my estate to be paid by my Personal Representative as soon after my death as is practicable; provided, however, that this direction shall not authorize any creditor to require payment of any debt or obligation prior to its normal maturity in due course. The above payments shall be made from the residue of my estate.

I give to my Personal Representative, in the event any devise is made in this, my Last Will and Testament, to any person who is at the time of my death under a legal disability, the sole authority and discretion to:

- A. Deliver all or any part of the property to such person;
- B. Place any property in safekeeping for such person and pay any fees incurred which fees shall be paid from my estate as an administrative expense;
- C. Sell all or any part of such property and distribute the proceeds to such person or add them to any trust fund established for such person's benefit; or
- D. Deliver all or any part of such property to the guardian of such person and the receipt by such person's guardian shall be a complete discharge of my Personal Representative for the property delivered.

Article IV TRUST OR RESTRICTED LAND BEQUESTS

Single beneficiary:

I hereby give, devise and bequeath unto my _____, _____, provided said person shall survive me by at least 120 hours any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, including, but not limited to the following: (or "I hereby give, devise . . . any and all of my interests in the following specific Trust or Restricted land:")

1. ; and
2. ; and
3. ; and
4. .

In the event that _____ predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath to _____ [if more than one person named here, the user will have to leave to them as either “joint tenants with right of survivor,” or as “tenants in common.”] any and all of my interests in Trust or Restricted land, including but not limited to the following [or “ any and all of my interests in the following specific Trust or Restricted land”]:

1. ; and
2. ; and
3. ; and
4. .

Multiple beneficiaries:

Joint Tenants with the Right of Survivorship:

I hereby give, devise and bequeath unto my children, _____ and _____, as joint tenants with the right of survivorship, any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, including, but not limited to the following::

1. ; and
2. ; and
3. ; and
4. .

Tenants in Common:

I hereby give, devise and bequeath unto my children, _____ and _____, as tenants in common, any and all of my interests in Trust or Restricted land that I have at the time of the execution of this, my Last Will and Testament, or that I may acquire in the future, including, but not limited to the following::

1. ; and
2. ; and
3. ; and
4. .

_____ shall take their interest as tenants in common in equal shares, one share for each who survives me and one share for each who predeceases me leaving descendants who survive me, such descendants shall take by right of representation. In the event that any of my children predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased child’s share of the property described in this Article (Article IV) unto my remaining children who are alive at the time of my death.

Article V
TRUST PERSONALTY BEQUESTS

I hereby give, devise and bequeath unto _____, any and all funds contained within my Individual Indian Money (IIM) Account at the time of my passing. In the event that _____ predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto _____ any and all funds contained within my IIM account at the time of my passing.

Article VI
NON-TRUST PROPERTY BEQUESTS BY SEPARATE WRITING

I hereby give, devise and bequeath such items of tangible (touchable) personal property not otherwise specifically disposed of by this Will to such person or persons as may be indicated by separate writing. If I decide to have such a separate writing, it will be located with my Will. Such writing will be dated and signed by me but may be replaced by a subsequent writing dated and signed by me.

Such tangible property will at most include only items within the following categories: Articles of personal or household uses or ornament, furniture, furnishings, automobiles, boats, jewelry and precious metals in tangible form, such as coins. Such tangible personal property will not include any trust or restricted lands, trust personalty, real property or interests in lands, mobile home, money that is normal currency or legal tender, evidences of indebtedness, bank accounts, monetary deposits, and documents of title or securities. If any such separate writing through inadvertence includes non-qualifying property, it is my intent that the separate writing be given effect to the extent of the qualifying property only.

If no separate writing is found following my death, then any and all property not otherwise specifically provided for shall pass into the residue of this Will.

Article VII
OTHER SPECIFIC BEQUESTS OF NON-TRUST PROPERTY

I hereby give, devise and bequeath unto _____ the following non-trust real property

List the non-trust real property to be given away, make sure to include a legal description of the property.

If _____ should predecease me or not survive me by at least 120 hours, then I give, devise and bequeath unto _____ [description of non-trust real property]

I hereby give, devise and bequeath unto _____ the following non-trust personal property:

List the non-trust personal property to be given away, make sure to include a description of each piece of property so that the item can be easily identified.

If _____ should predecease me or not survive me by at least 120 hours, then I give, devise and bequeath unto _____ [description of non-trust personal property].

**Article VIII
RESIDUE FOR TRUST OR RESTRICTED LAND
AND TRUST PERSONALTY**

Single beneficiary

I hereby give, devise, and bequeath unto _____, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that _____ predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto _____, all of the rest, residue and remainder of my trust or restricted property not otherwise validly devised by this instrument.

Multiple beneficiaries

Joint Tenants with Right of Survivorship

I hereby give, devise, and bequeath unto _____, _____ and _____, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument or separate writing. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

_____, _____ and _____ shall take any trust or restricted land passing hereunder as joint tenants with the right of survivorship. Further, _____, _____ and _____ shall take any trust or restricted personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that _____, _____ or _____ predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article VIII) unto those remaining individuals named in this Article (Article VIII) who are alive at the time of my passing. **OR** 2) Should _____, _____ or _____ predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article VIII) who are alive at the time of my passing.

Tenants in Common:

I hereby give, devise, and bequeath unto _____, _____ and _____, all of the rest, residue, and remainder of my trust or restricted property not otherwise validly devised by this instrument or

separate writing. The residue shall include all trust or restricted property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

, and shall take any trust or restricted land passing hereunder as Tenants in Common in equal shares. Further, , and shall take any trust or restricted personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that , or predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article VIII) unto those remaining individuals named in this Article (Article VIII) who are alive at the time of my passing. **OR** 2) Should , or predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article VIII) who are alive at the time of my passing.

Article IX RESIDUE FOR NON-TRUST PROPERTY

Single beneficiary

I hereby give, devise, and bequeath unto , all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated. In the event that predeceases me or does not survive me by at least 120 hours, then and in that event, I hereby give, devise and bequeath unto , all of the rest, residue and remainder of my non-trust property not otherwise validly devised by this instrument.

Multiple beneficiaries

Joint Tenants with Right of Survivorship

I hereby give, devise, and bequeath unto , and , all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

, and shall take any non-trust real property passing hereunder as joint tenants with the right of survivorship. Further, , and shall take any non-trust personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that , or predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article IX) unto those remaining individuals named in this Article (Article IX) who are alive at the time of my passing. **OR** 2) Should , or predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article IX) who are alive at the time of my passing.

Tenants in Common:

I hereby give, devise, and bequeath unto _____, _____ and _____, all of the rest, residue, and remainder of my non-trust property not otherwise validly devised by this instrument or separate writing. The residue shall include all non-trust property of any kind or nature whatsoever, whether real or personal, tangible or intangible, wheresoever situated.

_____, _____ and _____ shall take any non-trust real property passing hereunder as Tenants in Common in equal shares. Further, _____, _____ and _____ shall take any non-trust personal property passing hereunder in equal shares,/. 1) one share for each who survives me and one share for each who predeceases me with descendants who survive me, such descendants to take by right of representation. In the event that _____, _____ or _____ predecease me leaving no descendants, then and in that event, I hereby give, devise and bequeath such predeceased individual's share of the property described in this Article (Article IX) unto those remaining individuals named in this Article (Article IX) who are alive at the time of my passing. **OR** 2) Should _____, _____ or _____ predecease me or not survive me by at least 120 hours, then the share of the predeceased shall pass to the remaining individuals as named in this Article (Article IX) who are alive at the time of my passing.

**Article X
GUARDIAN**

Should it ever be appropriate to nominate a guardian for _____, I hereby nominate the following persons in the order shown as guardian of the person and estate of such child, each to serve without bond.

1. _____ ; or if she/he is unable or unwilling to serve,
2. _____

**Article XI
BURIAL**

Insert any special request for burial and funeral arrangements in this article.

**Article XII
INVALIDITY CLAUSE**

If any provisions of this, my Last Will and Testament, or if any codicil to it should be invalid, it is my intention that all of the remaining provisions shall continue to be fully effective.

IN WITNESS WHEREOF, I, _____ the Testator/Testatrix, sign my name to this instrument this _____ day of _____, 20____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament.

[_____ name of testator/testatrix]
Testator/Testatrix

Attestation & Declaration of Witnesses

We, the witnesses, sign our names to this instrument and do hereby declare that:

1. I am of legal age and competent to be a witness to a Will.
2. The Testator/Testatrix appears to me to be of legal age and sound mind and not acting under any duress, menace, fraud or undue influence.
3. On the date shown immediately above, in my presence and in the presence of the other witness, the Testator/Testatrix declared this document to be his/her Will, requested the other witness and myself to as act as witnesses to his/her signing of the Will, and then signed the Will.
4. Immediately thereafter and at the Testator's/Testatrix's request, I and the other witness signed the Will as witnesses in the presence of the Testator/Testatrix and each other, on the date shown immediately above the Testator's/Testatrix's signature.

WITNESSES

Signature of Witness #1

Signature of Witness #2

Print Name of Witness #1

Print Name of Witness #2

Residing at:

Residing at:

STATE OF Montana :)
) SS AFFIDAVIT TO ACCOMPANY INDIAN WILL
County of _____ :)

I, _____ being first duly sworn, on oath depose and say: That I am an enrolled member of the Tribe of Indians in the State of Montana; that on the _____ day of _____, 20____, that I requested _____ and _____ to act as witnesses thereto; that the said witnesses heard me publish and declare the same to be my last Will and Testament; that I signed said Will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; and that said Will was read and explained to me (or read by me), after being prepared and before I signed it; and it clearly and accurately expresses my wishes; and I further state that I am 18 years of age or older, and no person has influenced me to make the disposition of any part of my property in any other manner than I myself of my own free will desire and wish to dispose of it, and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

[name of testator/testatrix]
BIA ID No.

We, _____ and _____ each being duly sworn, on oath depose and state; That on the _____ day of _____, 20____, _____, a member of the _____ Tribe of Indians of the State of Montana published and declared the attached instrument to be his/her last Will and Testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that to the best of our knowledge the testator/testatrix is 18 years of age or older, that said testator/testatrix was not acting under duress, menace, fraud or undue influence of any person, so far as we could ascertain and in our opinion was mentally capable of disposing of all his/her estate by Will; and that neither of us is named as a beneficiary in said Will or are in any wise interested in the distribution of the estate of said testator/testatrix.

Signature of Witness #1

Signature of Witness #2

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____, by _____ testator/testatrix, and _____ and _____, attesting witnesses.

Notary Public State of Montana
Printed name: _____
Residing in _____
My commission expires: _____

Want more in-depth training on Indian Wills?

Indian Wills CLE

Friday, April 15, 2016

8:30 a.m.-4:30 p.m.

University of Montana School of Law, Room 101

8:30 Introduction: Janis Doggett/John McCrae

History/Importance: Deb DuMontier

9:30 Nuts and Bolts: Lynnette Verlanic, Carrie Hugs, Frances Skare

11:00-11:30 Break/grab lunch

11:30-1:30 AIPRA: Judge Earl Waits

1:30-3:15 Drafting the Will: Joe Hardgrave, MLSA

3:15-3:30 Break

3:30-4:30 Ethics: Rule 6.1 Professional Responsibility: Janis Doggett, Betsy Brandborg

Registration through the State Bar in early March.

Want to put your new-found knowledge to work?

Volunteer for Indian Wills Clinic

with John McCrea

DPHHS, Aging Services Bureau, Legal Developer

jmccrea@mt.gov or 444-7783

Questions: Contact Lisa at the State Law Library
Lmecklenberg-jackson@mt.gov, 444-1979

