Drafting Indian Wills

Joe Hardgrave
Montana Legal Services Association
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History of the Indian Wills Project

Why is having an Indian will so important?

• AIPRA
• Trust Land
What is Trust Land?

• Land held in trust by the federal government
• Trust responsibility and fiduciary duty
Allotment and Its Consequences

- General Allotment Act or Dawes Act, 1887
  - Land held in trust for 25 years
  - 80-160 acres
  - Assimilation and to protect Indians’ interest
- Indian Reorganization Act, 1934
  - Extended trust period indefinitely
- Fractionation
The American Indian Probate Reform Act (AIPRA)

- Enacted in 2004, effective in 2006
- Many of the provisions are designed to address fractionation
  - Single heir rule
  - Joint tenancy assumption
- AIPRA is considered a will “friendly” law
Explaining Undivided Interests
Limitations in Devising Indian Land

- Definition of “Indian” is most expansive under federal law
- Non-Indian cannot inherit trust property (life estate)
Ways to Facilitate Consolidation

• Single person, single interest
• Joint tenancy with right of survivorship
• Life estate

Vs.

• Tenants in common
What is an Individual Trust Inventory (ITI) Report?

- Easiest to read BIA report
- Clients can get a free ITI report at their local BIA office
- It identifies allotment number, size, percentage of ownership, location and original allotee
Example Individual Trust Inventory (ITI) Report
The Nuts and Bolts of Writing an Indian Will

The most important thing about drafting a will is that it is clear
Step 1: Title and Identification of Testator

Step 2: Revocation of All Prior Wills (Article I)

Step 3: Identification of Family (Article II)

Step 4: Personal Representative (Article III)
Step 5: Trust or Restricted Land (Article IV)

Blackfeet Allotment 201 249, located in Glacier County, Montana
Step 6: Trust Personality (Article V)

Step 7: Non-Trust Property Bequests (Article VI)

Step 8: Other Specific Bequests of Non-Trust Property (Article VII)

Step 9: Residue for Trust Land (Article VIII)

Step 10: Residue for Non-Trust Property (Article IX)
Step 11: Guardian (Article X)

Step 12: Burial (Article XI)

Step 13: Invalidity Clause (Article XII)

Step 14: Signature of Testator and Attestation of Witnesses

Step 15: Self-Proving Affidavit
Proofread and Meet with Client

Executing an Indian Will

• Showing testator’s competency
• Two disinterested witnesses
• Notary
Storing an Indian Will

• BIA no longer stores wills
• Advise client of importance of original, to store in a safe place and let someone know where it is at
• Revoking or amending an Indian will
QUESTIONS?

Would you like to volunteer at an Indian Wills Clinic with DPHHS, Aging Services Bureau?

Please contact John McCrea, Legal Developer, at:

444-7783
Joe Hardgrave
(406) 442-9830 ext. 141
800-666-6124 ext. 141
jhardgrave@mtlsa.org