

## **How A Will Lets You Decide**

If you die without a will, or “intestate”, a court will decide who inherits your property. The best way to ensure your wishes are carried out is to write a will. Dying “intestate” is when someone dies without writing a will. Writing a will is another way for tribal people to choose what happens to your property after you walk on.

### **What Goes in a Will?**

- Land (on- or off-Reservation)
- House
- Personal property (cars, household items, etc.)

### **What Happens to Trust Assets Without a Will?**

Without a will, decisions about your trust land and IIM account will be made by an Indian Probate Judge. This judge must follow the American Indian Probate Reform Act.

Your trust land will be inherited by your immediate family. First to your children or grandchildren, possibly great-grandchildren, and if you have none, then to your parents or brothers and sisters.

In order to inherit your land, your heirs must be descendants of yours within two generations, or be an “Indian” as defined

by AIPRA. This generally means that they are enrolled or eligible to be enrolled in a tribe.

AIPRA has some special rules about land you own that you have less than a 5% interest in. That land will go only to your oldest eligible child, grandchild, or great-grandchild. Also, the Department of the Interior will have the option to purchase your interest during probate, even if your heirs don’t agree. These special rules when you own less than 5% interest don’t apply when you write a valid will. But in general, you must still leave your trust land to your heirs who are enrolled or eligible to be enrolled in a tribe even when you write a valid will.

### **What Happens to Non-Trust Assets Without a Will?**

Any of your non-trust property like a house, car, bank account, or personal belongings located on the Reservation will be distributed by the Fort Peck Tribal Court.

If your spouse survives you, half of your property will pass to your spouse, and half will pass to your children.

If your spouse does not survive you, your property will be split equally among your children.

For other situations, you should seek the

advice of an attorney.

### **What Should I Do?**

The only way to guarantee your wishes is by drafting a will. Although you should talk to a lawyer, you can also make a “holographic will”, or a will written in your handwriting.

### **How Can I Write a Will?**

Montana Legal Services Association (MLSA) drafts wills for tribal members across the state. MLSA can also draft powers of attorney, advanced healthcare directives, and gift deeds.

#### **Qualifications:**

- You don’t need to own trust land
- MLSA considers many factors when determining eligibility. The best way to find out if you qualify is to apply.

#### **Costs:**

All MLSA services are free of charge.

#### **How to Apply:**

Apply by calling (406) 442-9830 ext. 149, emailing [triballaw@mtlsa.org](mailto:triballaw@mtlsa.org), or online at [www.mtlsa.org](http://www.mtlsa.org).

## More Free Legal Help

MLSA's Tribal Law Practice Group provides legal information, advice and/or representation to low-income Native Americans with civil legal issues on and off Montana's Indian Reservations. All services provided by MLSA are free and individuals can apply in person, online, or by phone. Examples of some of the types of cases MLSA can help with include:

- Divorce, custody, and adoption issues
- Domestic violence
- Public benefits issues (SNAP, TANF, SSI, and more)
- Debt and money problems
- Landlord / Tenant Issues
- Tribal Court probates
- Tribal employment issues
- Agricultural workers' legal issues
- Tax problems
- Contract and leasing Issues

## How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at [mtlsa.org](http://mtlsa.org);
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited);
- Email [triballaw@mtlsa.org](mailto:triballaw@mtlsa.org); or,
- Leave a message at 1-800-666-6899, ext. 149.

## Where Can I Find More Help?

**[www.MontanaLawHelp.org](http://www.MontanaLawHelp.org)**

Need legal information or forms? Visit [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org).

Can't find what you want? Use LiveHelp. Click on the LiveHelp icon and get help finding the information you need.

**[www.MTLISA.org](http://www.MTLISA.org)**

Find copies of all our brochures online. They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.

## Montana Legal Services Association

**Your Land, Your Decision:**

**Wills for Fort Peck Tribal Members**



*Providing, protecting, and enhancing access to justice*



Rev. 3/21