

A Will Lets You Decide

Putting a Will in place now will ensure that your wishes for who inherits your property are respected.

When a person passes on without a will, or “*intestate*”, the Court must decide who will receive his/her property, which often leads to infighting among family members and prolonged litigation. With a Will, however, there is no question about who you want to receive a portion of your estate.

What property does a Will include?

- Land (on- or off-Reservation)
- Home(s)
- Personal property (cars, jewelry, artwork, etc.)

Trust Assets Without a Will

Without a will, decisions about trust land and IIM account monies will be made by a Federal Indian Probate Judge, pursuant to the rules established by the American Indian Probate Reform Act (AIPRA).

For example, under AIPRA, trust land is inherited by immediate family members, in order of priority. First, to the children or grandchildren, possibly great-grandchildren, and if none, then to parents or siblings.

In order to inherit land, heirs must be able to

show they qualify as descendants within two generations, or an “*Indian*” as that term is defined by AIPRA. (Generally-enrolled or enrollable in a federally recognized tribe.)

Also, under AIPRA, if a person owns less than a 5% undivided interest in land, only his/her oldest eligible child, grandchild, or great-grandchild will inherit all of that interest in land. And, the Department of the Interior has the option to purchase that interest, even if the heirs don’t want it to be sold.

If a person has a valid Will in place, however, these special rules don’t apply, except that, generally speaking, trust land must still be left to heirs who are enrolled or enrollable.

Non-Trust Assets Without a Will

Non-trust property like a house, car, bank account, or personal belongings located on the Reservation will be distributed by the Crow Tribal Court.

Crow Tribal Law generally divides the intestate estate into a “community estate” (everything a married couple acquired during the marriage, except gifts or inheritances made to one individually) and a “separate estate” (everything a married couple owned before the marriage).

A surviving spouse will inherit all of the community estate.

Half of the separate estate will go to the children, if there are any, and the other half will go to the surviving spouse.

If there are no children, 3/4th of the separate estate will go to the surviving spouse, and 1/4th will be split among any surviving parents and siblings.

If there is no surviving spouse, then the estate will go to the children in equal amounts, with a portion going to the grandchildren, of the children who had already passed on.

These cases are highly dependent on the unique facts of each specific situation. For questions regarding other situations, please seek the advice of an attorney.

Does any property go to the Tribe?

Yes, but only when there is no will and no surviving spouse, child, grandchild, great-grandchild, parent, sibling, grandparent, aunt, uncle, or cousin.

Review: With a Will

- You have control over how your property is distributed,
- Family disputes and litigation are prevented, and
- Your wishes are respected.

Types of Wills

Wills can be done in many ways, by an attorney, by an individual using a fill-in-the-blank template, or by handwriting, also called “*holographic*”. An attorney will be able to provide you with best options relative to your individual situation and requirements.

Free Legal Help-Wills

The Montana Legal Services Association (MLSA) drafts wills for free for tribal members across the state who qualify for our services. MLSA can also help with drafting Powers of Attorney, Advanced Healthcare Directives, and Gift Deeds.

Qualifying for Services

MLSA considers many factors when determining eligibility. The best way to find out if you qualify is to apply.

How to Apply

You can apply by phone, by calling: (406) 442-9830 ext. 149, or by email, sent to: triballaw@mtlsa.org, or even apply online at www.mtlsa.org.

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.

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.

Contact us to see if you qualify:

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

Other Resources

Montana Law Help

- Need legal information or forms? Visit www.MontanaLawHelp.org.
- Can’t find what you want? Use LiveHelp. Click on the LiveHelp icon and get help finding the information you need.

Montana Legal Services Association

Your Land, Your Decision:

Wills for Crow Tribal Members



Providing, protecting, and enhancing access to justice.



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