



# Implications of AIPRA

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# AIPRA Mechanisms

- ▶ Uniform Probate Code
- ▶ Uniform Probate Procedure
- ▶ Highly Fractionated Interests
  - ▶ Less than 5% Rule
- ▶ Presumption of Joint Tenancy

# Client Concerns- Highly Fractionated Interests

- ▶ Less than 5% Rule in Intestacy
  - ▶ Oldest Eligible Heir Rule
  
- ▶ Fix?
  - ▶ Write a will!

# Client Concerns- Joint Tenancy

- ▶ Presumption of Joint Tenancy
  - ▶ Equitable Distribution of Property
- ▶ Fix?
  - ▶ Write a will and specify Tenancy in Common
  - ▶ Or
  - ▶ Write a will that equitably divides trust land

# Client Concerns- Testamentary Trusts

- ▶ Found at 25 USC 392

- ▶ Whenever, in any law or treaty or in any patent issued to Indian allottees for lands in severalty pursuant to such law or treaty, there appears a provision to the effect that the lands so allotted cannot be alienated without the consent of the President of the United States, the Secretary of the Interior shall have full power and authority to consent to or approve of the alienation of such allotments, in whole or in part, in his discretion, by deed, will, lease, or any other form of conveyance, and such consent or approval by the Secretary of the Interior on and after September 21, 1922, had in all such cases shall have the same force and legal effect as though the consent or approval of the President had previously been obtained: Provided, however, That the approval by the Secretary of the Interior of wills by Indian allottees or their heirs involving lands held under such patents shall not operate to remove the restrictions against alienation unless such order of approval by said Secretary shall specifically so direct.

- ▶ Fix?

# Client Concerns- Probate Process

- ▶ 25 CFR Part 15- Probate Regulations
- ▶ 43 CFR Part 30- Probate Hearings and Procedures
- ▶ Indian Trust Assets MUST be Probated through ADMIN process at Interior.

# Probate Procedure Requires...

- ▶ That the agency complete a probate file.
- ▶ A dozen categories of documents, many with subcategories of related documents.

# Probate Backlog and Cost

- ▶ A few years ago...
  - ▶ DOI received 4,000 probate cases a year
  - ▶ DOI completed approximately 2,500 probates a year
- ▶ Completion time ranges from 3 months to 7 years- average is 3 years.
- ▶ Additional ALJ's were hired to clear the backlog
- ▶ Average cost of a formal probate (whether testate or intestate)= \$3,800.
- ▶ Average cost of an expedited/abbreviate probate= \$1,000.
  - ▶ Typically only done on estates where a small IIM account is the ONLY asset= NO LAND

# Transfer on Death Deeds

- ▶ Transfer on Death Deed or “Beneficiary Deed” allows owner to execute and file a deed that names the person who should receive the property upon the owner’s death.
  - ▶ Revocable during owner’s lifetime
  - ▶ Eliminates the need for a probate of the property after the owner dies.
  - ▶ Allows owner to record testamentary wishes without a formal will.

# 27 Jurisdictions that Allow TODD's for Non-Indian Property

- ▶ Alaska
- ▶ Arizona
- ▶ Arkansas
- ▶ California
- ▶ Colorado
- ▶ D.C.
- ▶ Hawaii
- ▶ Illinois
- ▶ Indiana
- ▶ Kansas
- ▶ Minnesota
- ▶ Missouri
- ▶ Montana
- ▶ Nebraska
- ▶ Nevada
- ▶ New Mexico
- ▶ North Dakota
- ▶ Ohio
- ▶ OKLAHOMA!!!- 58 O.S. §1253
- ▶ Oregon
- ▶ South Dakota
- ▶ Texas
- ▶ Virginia
- ▶ Washington
- ▶ West Virginia
- ▶ Wisconsin
- ▶ Wyoming



# Client Concerns

## Non-Testamentary Transfers

- ▶ Transfer on Death Deeds
  - ▶ No mechanism available
  - ▶ Fix?
    - ▶ Gift Deed
    - ▶ Gift Deed with Reservation of Life Estate?
- ▶ Beneficiary Designations
  - ▶ No mechanism available
  - ▶ Fix?
    - ▶ None available!

# Other Concerns?

- ▶ Brainstorm!