



Law Offices of Kate Jones

Wills & Estate Planning Services

Wills & Estate Planning for Tribal Communities

With Attorney Kate Jones

About the Law Offices of Kate Jones, PLLC

Kate has been practicing tribal estate planning since beginning her career as a summer law school intern for Seattle University School of Law's Center for Indian Law & Policy in 2012.



Law Offices of Kate Jones is a husband-and-wife team. Luke joined the practice as Office Manager/CFO in 2018.

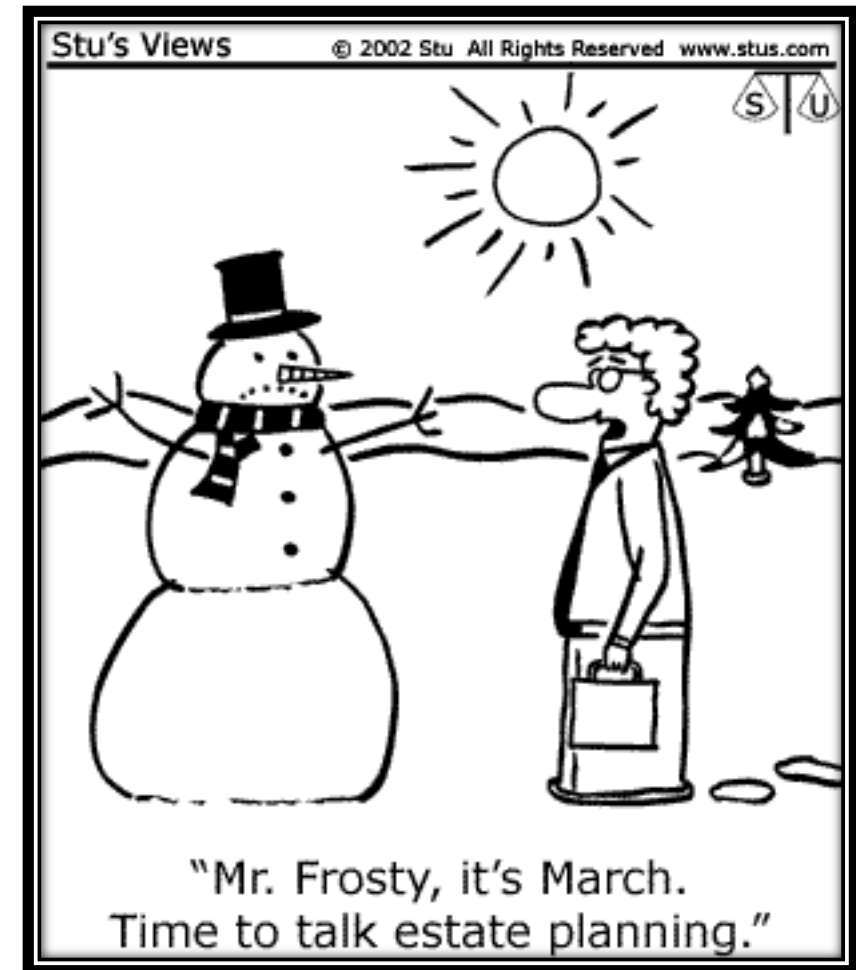


Law Offices of Kate Jones now serves 7 tribal communities in the Puget Sound region and has two office locations in West Seattle and Tacoma.

Most recently, Law Offices has contracted with ILTF to further serve Washington resident tribal clients with tribal trust land ownership interests.

Session Agenda

- Who Needs Estate Planning?
- Estate Planning Basics: Four Core Documents
- Unique Concerns for Tribal Member Estates
- Overview of the American Indian Probate Reform Act of 2004 (AIPRA) and “Eligible Heirs”
- Estate Planning Solutions for AIPRA
- Common Tribal Estate Planning Mistakes



When is it especially important to seek estate planning advice?

A tribal member and/or tribal descendant owns or expects to inherit Trust or Restricted Allotment land.

A tribal member owns highly fractionated Trust or Restricted Allotment land.

A tribal member is married to a non-tribal spouse and wants to provide for their care in the event of their death.

An individual wants their property to go to someone other than direct lineal heirs (i.e. want to disinherit an immediate family member)

An individual has minor children or a beneficiary with special needs.

A family dispute over property is expected.



Ultimately, everyone over 18 should have a will!



FOUR CORE ESTATE
PLANNING
DOCUMENTS:

#1 Last Will and Testament

A “Last Will and Testament” is a legally binding document that details how property should be inherited after an individual’s death

- Designates an individual in charge of settling the estate (i.e. executor)
- Creator of the document must have “testamentary capacity”
- A valid execution of a Will requires two disinterested witnesses attesting to viewing the individual sign the document without any duress or undue outside pressures
- May include contingent provisions for spouses or minor beneficiaries
- Can be amended or revoked at any time



Important Legal Terms to Understand for Last Will and Testament

- “Testator” = creator/signer of the Will
- “Testamentary capacity” = the testator must know:
 - The property they own; AND
 - The heirs of their body; AND
 - Who will inherit the property; AND
 - That a Will passes property after their death.
- “Executor” = an individual appointed by a Will or Probate Court to oversee the administration of an estate and/or carry out the terms of a Will (commonly also referred to as a “Personal Representative”)
- “Real Property” = real estate or parcel of land
 - “Trust and Restricted Real Property” = Allotment or Tribal Trust Lands
 - “Fee Land” = Property not held in trust by the Federal Government
- “Personal Property” = physical, tangible items (i.e. vehicles, household belongings, jewelry, etc.)
- “Heir” = a person legally entitled to the property of another upon that person’s death
- “Descendant” = a person that originates from a particular ancestor
- “Beneficiary” = an individual that you name to inherit property from your estate (does not require any familial relation)

#2 Power of Attorney

- A Durable Power of Attorney (DPOA) is a document that is created to plan in advance for incapacity or disability of the Principal and specifies for a trusted individual to make financial and/or healthcare decisions on their behalf
- Principal/Grantor (creator of the document) must be competent and have “contractual capacity”
- **DPOA is only effective while the Principal is ALIVE and does not continue after death**



Important Legal Terms to Understand for DPOA Document

- “Power of Attorney” = the document used to appoint an individual to serve as Attorney-in-Fact on behalf of the Principal
- “Attorney-in-Fact” = individual appointed to serve as fiduciary (commonly called the “Power of Attorney”)
- Immediate vs. Springing effectiveness
- “Contractual capacity” = the ability of the individual to enter into a binding legal contract AND understand the obligations and consequences that flow from that contract
 - Not fleeting, must be continual
 - An individual **lacks** contractual capacity when:
 - Lacking mental ability
 - (1) Mentally incapacitated (2) A minor (3) Intoxicated
 - Lacking signatory authority

#3

Healthcare Directive AKA Living Will

- Specifies wishes regarding end-of-life care and life support
- Provides direction for surviving family members and Attorney-in-Fact to aid in healthcare decisions
- Explicitly expresses “Do Not Resuscitate” preferences in the event of a terminal illness or permanent incapacitation

#4

Disposition of Remains AKA Burial Directive

- Specifies wishes regarding disposition of bodily remains
- Provides direction for surviving family members for wishes regarding funeral or services
- Can appoint an individual to serve as decision-maker in the event of a dispute

Special Concerns for Tribal Estate Planning

- Choice of Jurisdiction
- Avoiding Rules of American Indian Probate Reform Act (AIPRA) and Intestate Probate Purchase Options
 - Dealing with Highly Fractionated Allotment Lands
 - Tribal-Provided Housing and Leases
 - Providing for A Non-Tribal Spouse

Creating a Will Allows the Testator Choice of Law and Probate Jurisdiction

Tribal Jurisdiction

- Tribal trust lands located within tribal reservation lands where that tribe has an established probate code
- Improvements/buildings on trust land for tribal-provided housing

State Jurisdiction

- Any fee land/non-tribal real estate interests
- Most tangible, physical personal property and vehicles
- Any intangible monetary accounts that do not have valid Pay on Death Beneficiary designations (i.e. bank, retirement, life insurance)

Federal Jurisdiction

- Lands subject to Federal Probate
- IIM Accounts
- Trust and Restricted Lands
 - Limitations on how these lands can be passed and still remain in trust status
 - Trust Real Property vs. Trust Personalty

American Indian Probate Reform Act of 2004 (AIPRA)

AIPRA was enacted in 2004 by the US Federal Government and provides intestacy rules that govern the passing of tribal trust property. The Act has been widely rejected by tribal communities due to its unforgiving provisions for highly fractionated lands.

- Difficulties with AIPRA:
 - “Eligible heir” definition
 - Single Heir Rule for interests of less than 5%
 - Intestate Probate Purchase Option
 - Delineation between trust realty and trust personalty

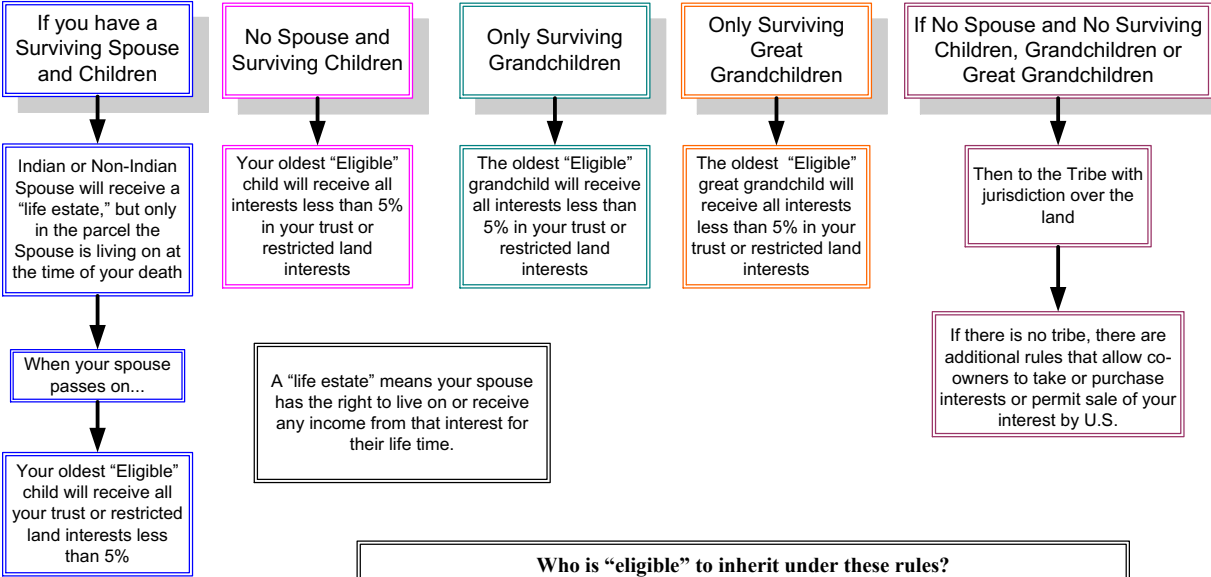


“ELIGIBLE HEIR”

A beneficiary is only an “eligible heir” (i.e. eligible to receive tribal lands in trust) if:

1. They are a lineal descendant of the decedent;
2. They are already a co-owner on the property interest;
3. They are a tribal member enrolled in any Tribe; or
4. They are the Tribe with jurisdiction over the land; or
5. They are none of the above, but they are designated by an estate planning document to receive a life estate followed by eligible remaindermen.

Without a valid will, your Trust Land Interests
less than 5% will be divided as follows:
A SINGLE HEIR RULE
Chart by Cecelia Burke, Institute for Indian Estate Planning © 2006



- Who is "eligible" to inherit under these rules?**
- Any one of the following:**
- Member of an Indian Tribe, or
 - Eligible to become a member of a Tribe, or
 - Person who owns an interest in trust land on or before October 27, 2004, or
 - Person who meets the definition of Indian under the Indian Reorganization Act, or
 - In California, any person who owns an interest in trust or restricted land in California, or
 - Decedent's lineal descendants within 2 degrees of relationship to any Indian, or
 - A trust co-owner in same parcel

**SINGLE
 HEIR RULE
 (INTEREST
 LESS
 THAN 5%)**

Intestate Probate Purchase Option

- Tribal option to purchase property at Probate
 - Consent is **ONLY** required from heirs with greater than 5% interest or those currently living on the property
 - Co-owners on property interest may consolidate to avoid purchase option
 - Problems with this:
 - Litigation and probate delay
 - Inability to locate all owners because some lands are so highly fractionated, it would be impossible to get permissions from all other owners

Solutions for AIPRA and Planning for Highly Fractionated Trust Land

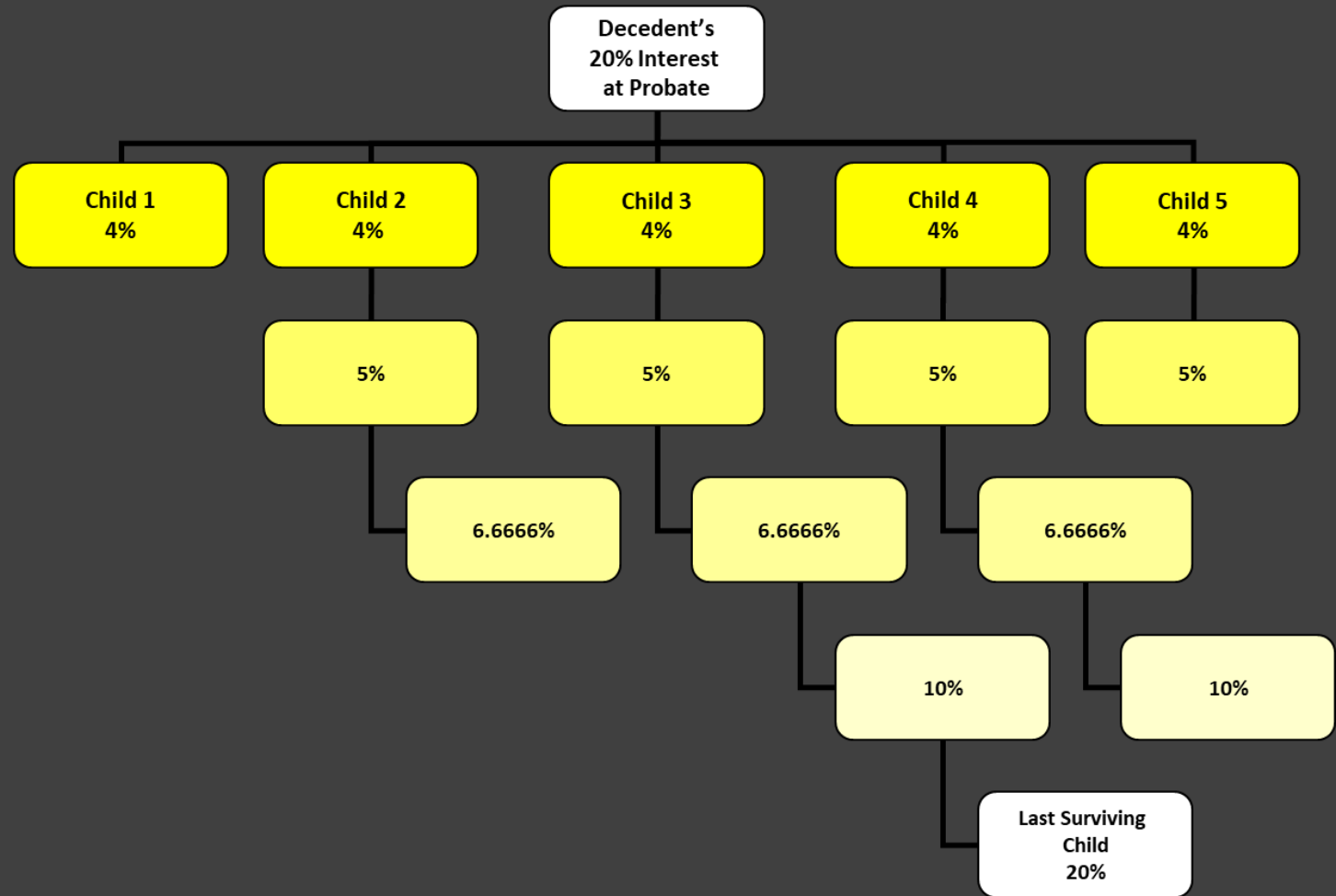
Complete a Gift Deed and file with the BIA during their lifetime

- This should only be used if the landowner no longer wants to retain any control over the property. Once the property is gifted, the newly designated owner has full control over use and potential sale of the interest.

Create a Will with provisions to reduce fractionation

- A Will gives the landowner freedom to plan for their wishes for their property after death (except leave trust land to a non-Indian that is not a direct lineal descendant unless they want to remove the property from trust status).
- Ways to avoid fractionation:
 - Designate a single beneficiary to inherit specific individual lands.
 - Bequeath trust property to more than one individual as “joint tenants with the right of survivorship.”

EXAMPLE OF A
DEVISE TO
MULTIPLE
BENEFICIARIES AS
JOINT TENANTS
WITH THE RIGHT
OF SURVIVORSHIP



Commonly Encountered Issues for Estate Planning with Tribal Trust Land

1

A Will that does not specify tribal trust land inheritance for multiple beneficiaries as tenants in common or joint tenancy with the right of survivorship

2

A Testator tries to subdivide an individual trust land tract in a Will document

3

A Will that does not properly provide a life estate to a non-tribal spouse with eligible heir remainderman

4

A Will that gifts an improvement on trust property (“personalty”) without the real estate interest or a valid lease

5

Future issue to consider: tribal blood quantum requirements and “eligible heir”

ANY QUESTIONS
OR COMMENTS?



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