

# Indian trust property

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It can be important to know whether a place has Indian land status. There are different types of Indian real property that you might own or have rights to, and different legal consequences for certain issues if they happen on or impact various types of Indian land. Learn more about Indian trust real property and other Indian land status issues.

## **1. Fast facts**

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Knowing whether a place has Indian land status can determine many things, including which laws will apply to you and which courts or governments can help with your issue. It can impact many legal issues, including:

- Indian Child Welfare Act cases
- Estate Recovery exemptions for Native Americans and Alaska Natives
- Violence Against Women Act protections for Native Americans and Alaska Natives
- Missing and Murdered Indigenous Women and People in Washington (MMIWP)
- Other kinds of civil rights and jurisdictional issues in Indian country

## **What is real property?**

This guide discusses real property issues in Indian country. Real property usually means land and structures attached to the land. It can also mean the minerals or resources that come from that land and income made from those resources, including resources like mining, cattle, timber, fish, and crops. There are other protections for different kinds of property like Native American religious items or

arts and crafts.

Native Americans and Alaska Natives face unique real property issues because of how the legal status of their land has changed over time due to colonization. The nation-to-nation relationship between sovereign tribal nations and the U.S. government creates special legal situations for real property that many Native Americans must deal with.

There can be restrictions on other property because of the land's status. Restrictions can also impact income you get from the property, like the money in your Individual Indian Money Account (IIM). That's because the money in your IIM account usually comes from profits related to using, leasing, or selling your Indian land. If you make income off any kind of resource that comes from or uses your trust land, that money could also be trust property.

## 2. Types of Indian real property

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### What is Indian trust real property?

Generally, it refers to land held in trust by the United States, or otherwise reserved for tribes and individual Indians, that's managed by the Bureau of Indian Affairs (BIA). A Native American or their tribe might own the trust land, but the B.I.A. keeps the title to the land. It's supposed to be managed for the "benefit" of the tribe or Native American.

The trust process for Indian land is supposed to encourage tribal self-determination and continuation of Indian land ownership. It also can limit what the owner of the land can do with the land, and attach other restrictions to the land. It can limit:

- Who the land can be passed on to in a Will or in probate
- Who it can be sold to
- If it can be sold at all
- Whether U.S. or state taxes can be imposed on it
- Whether it can be taken from you for a debt

- Whether any laws other than tribal laws can apply to it

Trust property can include the resources or income derived from trust lands. This includes resources like mining, cattle, farming, fishing, timber, and other natural resource use and the money you make from those natural resources. It also includes money made from leasing the trust property that you own.

## **Why is it "trust" property?**

The federal government is the trustee for the land. A trustee must manage trust assets in the best interests of the beneficiaries of the trust. That means the Indian landowners should have their best interests met by the U.S. government trustee.

Usually much of the land within a reservation is (or once was) trust land. But trust land can also be off reservation. And just because land is on a reservation doesn't automatically make it trust land.

What is "restricted" Indian land?

It's like trust land. It is land held by a tribe or person subject to a restriction by the United States against selling or giving the property to anyone else.

The phrase "trust or restricted land" is common in Indian law. It's usually still under tribal jurisdiction. Restricted property shouldn't be taxed by state or local taxes.

## **What is fee land?**

It's reservation land no longer held in trust or subject to restriction. The owner of fee land can do whatever they want with it. It can refer to land within the boundaries of a reservation that's owned by non-Indians. Sometimes a tribe (or an individual tribal member) has land in fee because the land has lost its trust status.

The term refers to the "fee patent" document issued to the individual Indian landowner. This transfers the land out of trust. Then it can be deeded to anyone. It means it no longer has protected trust status or restrictions.

## **Does land have to be within a reservation to be trust land?**

No. There are off-reservation trust lands. This includes off-reservation allotments.

## **What is allotted land?**

Originally, allotted land was set aside for individual tribal members on **and** off reservation. The U.S. held the land in trust or in restricted fee status for the benefit of individuals.

Soon after the U.S. set aside or created reservations, federal law allowed the division of reservations into individual allotments for tribal members. This was the creation of "allotted land." Allotted land has problems and limits similar to trust land.

## **What if I only have a partial interest in Indian property?**

Divided ownership and fractional interests are a problem in Native American communities. It can be challenging to get the group consent needed to use land when it's been fractionated. And if one property has many owners, the income from the property could be minimal due to the number of beneficiaries splitting that income. Divided interest in trust property can affect how you can leave it to heirs. Try to talk to your tribe about your options for dealing with your fractionated property.

When the area within a reservation or owned by the members of one tribe becomes so heavily fractionated, it's often called a "checkerboard" to describe the mixed status of the land. Land can be "checkerboarded" even within a reservation. And checkerboard pieces of tribal land can exist outside of reservation boundaries.

## **How can I find out the status of my property?**

Look at your deed, or your Individual Trust Interest report (<https://www.montana.edu/estateplanning/factsheets/factsheet4.pdf>). Those should list what kind of status (<https://iltf.org/resources/red-tape/>) the land or property has. It will usually say it's Trust Land, Restricted Land, or Fee Land. Fee land is sometimes called Fee Simple Land or Fee Patent Land.

Ask the BIA Realty Office at the Northwest BIA Office  
(<https://www.bia.gov/regional-offices/northwest>)  
(<https://www.bia.gov/regional-offices/northwest>) for your Individual  
Trust Interest report.

### 3. Trust property questions

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#### Who can own Indian trust property?

All previously allotted Northwestern tribal reservations allow their enrolled tribal members to own individual trust property on their reservation, through inheritance or purchase. Some tribes allow members of other tribes to inherit land on their reservation. Tribal members who aren't enrolled and people who aren't Native American usually can inherit **only** a life estate in trust land - they can't inherit the ownership of the land.

Some tribes' reservations have never been allotted. Then the tribe will remain the owner, and it will remain trust land.

#### Can I get trust status back for my land that lost its trust status?

Yes. Land that doesn't have trust status **can** become trust land. Native Americans and their tribes can ask for restricted or fee land to be transferred into trust land status (<https://www.bia.gov/bia/ots/fee-to-trust>). This can help return generational wealth to tribes and Native American communities.

#### Can I lease my trust land?

Yes, usually. Leases on trust and restricted lands are one of the most common ways to make income off your restricted trust property. You also might be able to use proof of your lease income as collateral for a loan.

Tribes often will issue long-term leaseholds to their members to secure home ownership - like rights and homesites for tribal members on trust or restricted lands. Tribes can issue leases for up to 75 years, and lease rights **can** be passed

to your heirs, **but** could be limited to tribal member heirs.

## How do I pass on my protected trust property after I die?

When someone dies, their belongings, property, and debts need to be dealt with and distributed. If the person leaves a valid Will (called “dying testate”) or another legal document that instructs what to do when they die, that document should be followed. If the person dies without a valid Will (called “dying intestate”), then usually Washington State’s intestacy law (RCW 11.04.015 (<https://app.leg.wa.gov/RCW/default.aspx?cite=11.04.015>)) and other probate laws (<https://app.leg.wa.gov/rcw/default.aspx?cite=11>) will apply.

If you own Indian trust property, your Indian trust property will have special rules regardless of whether you have a Will or not. Different probate rules will apply to your Indian trust property (<https://www.tribal-institute.org/lists/understanding.htm>). It is very important for people with Indian trust property to have a Will. Indian Wills are one of the best ways to protect intergenerational tribal resources and statuses.

There are special rules about how protected Indian trust property, including money in your Individual Indian Money account, can pass through inheritance and to whom. If you have protected trust property, you should use a **special kind** of Will to pass on your protected property.

Talk to your tribe about what you should do. See if the tribe can help you make a Will. This gives you the most flexibility about what you can do with your protected Indian property after you die.

The American Indian Probate Reform Act (AIPRA) (<https://www.tribal-institute.org/lists/understanding.htm>) will need to be followed if you don’t make a Will and you leave behind trust or restricted property. The AIPRA also encourages you to make a Will.

It can be complicated to figure out how to do it the right way (<https://www.montana.edu/indianland/factsheets.html>) on your own. Different rules may apply depending on whether your interest in the trust property is an undivided interest and in what amount.

Try to get legal help (<https://www.nwiba.org/tribal-referral-list/>) from an Indian law experienced lawyer (<https://www.nwiba.org/>) if you need to make a Will that leaves an heir any property that has protected or restricted tribal status. You might be able to get legal help with a Will from the Northwest Justice Project's Native American Unit (NAU). The of the NAU aims to address the unique legal needs of Native American communities statewide.

## 4. What laws apply and where

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Not many laws will apply if you live or travel on trust land within your own reservation **where a tribe has jurisdiction**. If you're on reservation trust land where a tribe has jurisdiction, usually state or local laws can't tell you:

- What you can keep in your yard.
- If you can have a business in your home.
- That you must pay property or other state or local tax.

### Which issues have shared jurisdiction between my tribe and the state?

When 2 or more governments share jurisdiction over a person, place or issue, it's called "concurrent" jurisdiction. An exception under Public Law 280 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=37.12&full=true>) (RCW 37.12) gives Washington State concurrent jurisdiction with tribes over legal proceedings if the case involves one of these:

- School attendance
- Public assistance
- Domestic relations
- Mental illness
- Juvenile delinquency
- Adoptions
- Child dependencies
- Operation of motor vehicles

The state doesn't have jurisdiction over civil traffic infractions, such as speeding tickets, on any roads **within** a reservation. Federal civil and regulatory laws **could** apply. Tribal civil and regulatory laws **will** apply.

### What laws apply on fee land within my reservation?

More state and local laws apply on **fee** land than on **trust** land. But exemptions from sales tax and many state and local regulations **still apply** on fee land if it's on a reservation. You're still on your own reservation. Your tribe has exclusive regulatory powers, **even on fee land**.

If you're an enrolled tribal member living on fee land that's **off-reservation**, then the state and local laws of that place **will** apply to you.

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