

Estate recovery exemptions for Native Americans and Alaska Natives

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If you use long-term care services that the State must pay for, the State can take your property to pay itself back after you die. This is called “estate recovery.” Learn about the special estate recovery protections you might have if you’re Native American or Alaska Native.

How do I know that this information will apply to me?

If you’re Native American or Alaska Native and you used long term care in Washington that the State paid for, this could apply to you.

If you’re not Native American or Alaska Native, read our other [guide about estate recovery](#). The information in this guide won’t apply to you.

What are long-term care services?

Long-term care usually means extended care that will last for longer than 90 days or is expected to be needed on an ongoing basis. It includes care and services in any of these places:

- Nursing facility
- Adult family home
- Assisted living community
- In your home

What is an estate?

Una **sucesión** incluye todo de lo cual usted es dueño al momento de su muerte. Esto puede incluir su hogar (pero solo la parte de la que usted es propietario, si es dueño con alguien más), cualquier otro edificio o terreno del que sea propietario, vehículos, cuentas bancarias, propiedad personal y bienes muebles intangibles como acciones o bonos.

What is estate recovery?

Several Washington State programs pay for medical services, including Medicaid and other state programs. Here we call all these programs “the State” when they try to recover against your estate.

If the state pays for your long-term care services, then the state can sometimes collect (can “recover”) some of the things you own when you die (your “estate”) to get back some or all of what it paid for. Services paid for by Medicare or private insurance don’t qualify for estate recovery.

Can the state take all the property I own at the time of my death?

It depends. Some property is **exempt** from estate recovery. This means the state can’t take it. There are special exemptions for Native Americans and Alaska Natives.

Is my tribal land exempt from estate recovery?

These types of Indian or tribal land are all exempt from estate recovery:

- Most non-trust (fee land) owned by you
- All trust land owned by you
- Most improvements to the land, such as a home, if you own the land it’s on

Non-trust land and improvements to non-trust land are exempt **if** they’re on or near a reservation. It can be confusing to figure out what status your land has. If you think the State might try to collect your protected tribal property or if the State is trying to collect the property of your deceased Native relative, try to get legal help.

I’m not enrolled with my tribe. Is my property protected?

It depends.

- Under state law (<http://app.leg.wa.gov/WAC/default.aspx?cite=182-527-2754>), some **non-trust real property** is only exempt **if** you were a member

of a federally recognized tribe at the time of your death.

- **Trust property** is exempt from estate recovery under other laws. Your tribal membership status doesn't matter.

Is Indian income exempt from estate recovery?

Yes, if it's exempt under other laws. Here are some examples:

- Money generated from trust property, such as lease income, or from the sale of natural resources
- Land settlement act judgment funds
- Government reparation payments

Will income paid into my bank account after my death be exempt?

Exempt Indian income is exempt even if paid into your probate account after your death. Other sources of income may not be exempt.

Are my items of religious or cultural significance exempt?

Yes. Your items with unique religious, spiritual, traditional, or cultural significance are exempt. (<http://apps.leg.wa.gov/wac/default.aspx?cite=182-527-2746>) This includes items like regalia, beadwork, ceremonial items, and handwork.

Are items supporting my basic needs (subsistence) or traditional lifestyles exempt?

Yes. This includes traditional fishing, harvesting, and hunting tools and related equipment.

How do I claim these exemptions?

When you get the notice of estate recovery, call DHSH's Office of Financial Recovery (<https://www.dshs.wa.gov/ffa/office-financial-recovery>) at 1-800-562-6114. Tell them the person who died was a Native American or Alaska Native. They probably won't ask more questions. They should exempt the property if it's the kind that's protected.

What if I need legal help related to estate recovery?

(The Native American Unit (NAU) of the Northwest Justice Project aims to address the unique legal needs of Native American communities statewide. The NAU might be able to help you with your estate recovery issue.

WashingtonLawHelp.org gives general information. It is not legal advice.
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