



# CALIFORNIA INDIAN LEGAL SERVICES

Spring 2012 Newsletter

## CILS IN THE COMMUNITY: THE AMERICAN INDIAN PROBATE REFORM ACT

In early February of this year, Delia Parr, Directing Attorney of the Eureka office, headed out to the [Yurok Reservation](#). Joined by Jedd Parr, an Advocate in the Eureka office, the two pass large redwoods as they reach their destination. The Yurok Tribe is the largest tribe in California. There are over 5,700 enrolled members with a reservation land base of over 63,000 acres. In conjunction with the Yurok Planning and Community Development Department's Realty Program, CILS has been providing trainings on the [American Indian Probate Reform Act](#) (AIPRA) to the community since 2006, which is the same year that the provisions of the AIPRA became effective.

The AIPRA passed in Congress in 2004, but it did not apply to Indian probates until June 2006. Technical amendments made in 2008 clarified some items that had the potential for multiple interpretations. The AIPRA affects the way individual Indians' interests in trust land allotments are inherited. Allotments differ from tribal reservation land, in that the interest is held by individuals rather than the tribe as a whole. They are similar to tribal reservation lands in that the federal government is the actual title holder, keeping the lands in trust for the benefit of a tribe or individual.

Allotments became common place with the enactment of the General Allotment Act of 1887, also known as the Dawes Act. Some tribes were impacted by reservation specific legislation. The allotment practice generally ended with the Indian Reorganization Act of 1934. In California, some allotments are not located within reservations. These are called Public Domain Allotments, many not affiliated with tribes that are federally recognized today.

The allotting of trust lands created a phenomenon known as "fractionation." Inheritance issues were not addressed in the original allotment acts, so the Secretary of the Interior applied the law of the state in which the land was located to determine heirs. Over generations the number of co-owners exploded. An original allotment of five acres came to be co-owned by 40 individuals. Each co-owner could have a differently-sized interest, but all of the interests in the allotment are "undivided." In lay terms, an undivided interest means that no one person calls the shots when it comes to use. Permission, or consent, from co-owners is required to use the land in ways exclusive to the other co-owners.

Congress attempted to fix the problems this kind of fractionation created by passing the Indian Land Consolidation Act (ILCA). However, there were problems with ILCA and its first amendments. The AIPRA addressed these problems, amending ILCA to create a nationwide probate code applicable to allotment interests of individual Indians.



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The intestate provisions (for estates without a valid will) are heavily weighted to consolidate interests. There are two notable mechanisms at work when an interest is smaller than 5%; the “single heir” rule, and the forced sale provision. (2008 amendments clarified that these rules apply to size of the original estate interest, not the interest to be passed on.)



The single heir rule gives a surviving spouse who is currently living on the land a life estate (the right to use during their lifetime). Otherwise, the entire interest transfers to a single heir. The single heir is selected in order of preference established by the AIPRA. The forced sale rule gives the Secretary of the Interior, in certain situations, the authority to sell the interest for fair market value without any consent from any person. Not just anybody may purchase these interests. The AIPRA establishes who is eligible to buy in a forced sale. Having a will protects your estate from the single heir and forced sale rules.

“The legislation itself is very will friendly, it permits [trust land interest holders] to devise their interests and keep them in trust to a broad definition of eligible heirs and devisees. Without a will it can leave families feeling like the federal government is taking their land again.” – *Delia Parr, Directing Attorney*

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After a short one-hour drive to the north, Delia and Jedd are greeted with a room full of attentive faces, some of them familiar through the years of working out of the Eureka office. CILS has long assisted tribal governments and their memberships. By partnering with tribes on this particular, issue, CILS has been there bridging the gap left when the Bureau of Indian Affairs stopped assisting individuals with will drafting in 2005. CILS staff like Delia and Jedd have dedicated their careers to being there when needed.

“There’s a sense of professional satisfaction when I can help the community come away with an understanding of really complex legal principals and equally complex legislation...” – *Delia Parr, Directing Attorney*

