

PROBATE

**WHAT HAPPENS TO MY LAND
AFTER I DIE?**

The BIA is responsible for determining who inherits land interests and IIM account holdings when an Indian Trust landowner dies.

This process is called

PROBATE.

The probate process begins when the BIA is notified of the death of a landowner. The landowner's title interests and IIM account are converted to an ESTATE status.

Estate accounts will still receive any associated income, but other activity is frozen. The BIA may still conduct routine administration of the land interests, including approving agricultural leases while the estate is pending.

The official verification of death is done by submitting an *original* DEATH CERTIFICATE to Probate staff.

WHO CAN PROVIDE INFORMATION ABOUT AN ESTATE?

The BIA will request information from the NEXT OF KIN. This would be a spouse, child, parent, sibling, or other closely-related individual who would know the details of the DECEDENT's life.

The next of kin is requested to fill out a notarized form called a FAMILY HISTORY AFFIDAVIT. The affidavit asks for information about family, including marriages, divorces, adoptions, and deaths of family members. In some cases, multiple affidavits are submitted, especially when additional information is needed.

OTHER DOCUMENTS

Other documents needed for probate cases include:

- **Birth Certificates**
- **Death Certificates**
- **Marriage Certificates**
- **Divorce Certificates**
- **Adoption Papers**
- **Tribal Enrollment Documents**
- **Last Will and Testament**

WHAT HAPPENS WITH ALL OF THESE DOCUMENTS?

Once the case file is complete, it is sent to the OFFICE OF HEARINGS & APPEALS, where it is assigned to an Administrative Law Judge or an Indian Probate Judge. The judge will use information contained in the case file as well as information from any hearings conducted to determine who inherits the decedent's land interests as well as any money in the decedent's IIM account.

This process can take anywhere from several months to several years.

HOW DOES THE JUDGE DECIDE WHO GETS WHAT?

There are two kinds of probate:

**TESTATE
and
INTESTATE**

TESTATE PROBATE

A TESTATE probate occurs when a person has made a LAST WILL & TESTAMENT directing how their assets are to be distributed after their death.

In most circumstances, the judge follows the will closely when issuing a decision. Exceptions can occur, such as when an heir is not eligible to hold a title interest in trust or when a decedent no longer owns an allotment listed in the will.

INTESTATE PROBATE

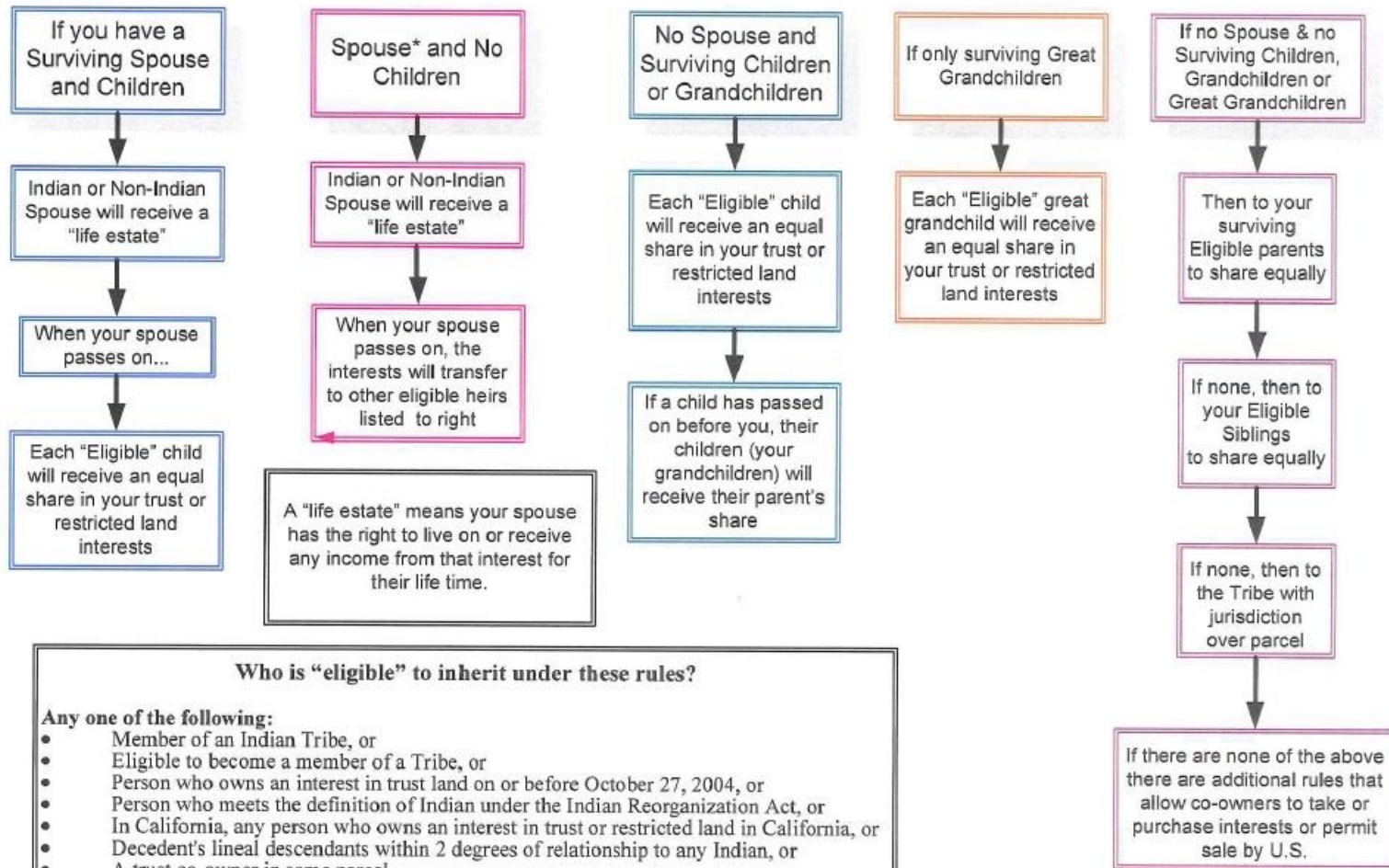
An INTESTATE probate occurs when a person has NOT made a LAST WILL & TESTAMENT.

In an INTESTATE probate, the American Indian Probate Reform Act (AIPRA) determines who inherits a decedent's Indian trust land.

The rules are different depending on whether the share of a particular tract is at least 5% of the total tract.

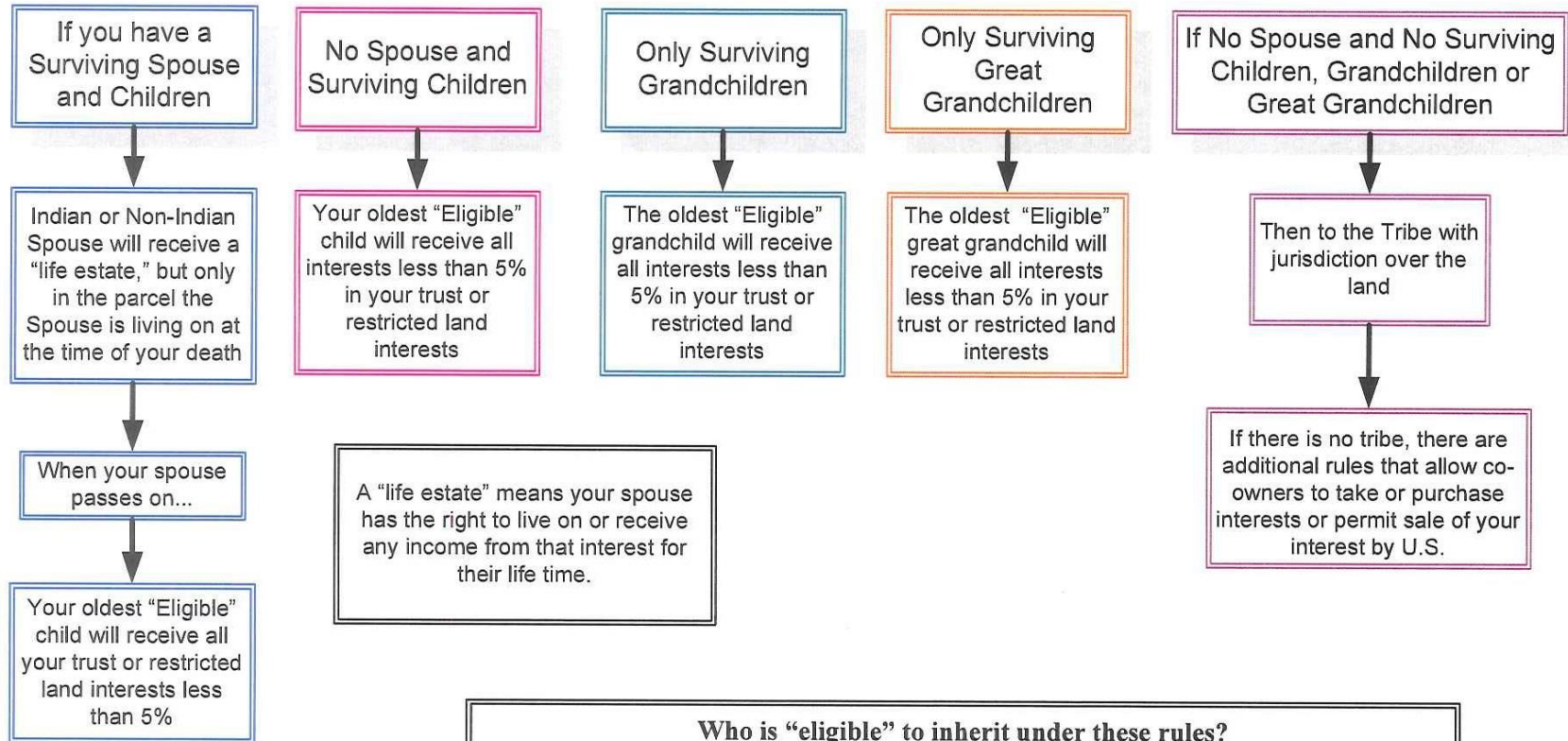
Without a valid will, your Trust Land Interests
5% or greater will be divided as follows:

Chart by Cecelia Burke, Institute for Indian Estate Planning © 2006



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