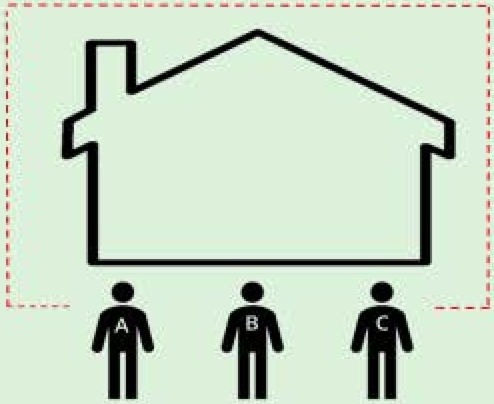
Personal Estate Planning Guide

This Guide Belongs to: ____________________

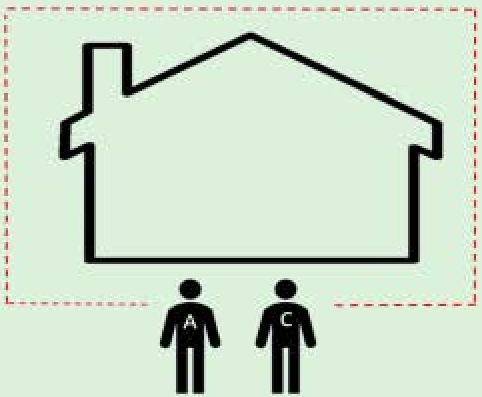
Beausoleil First Nation Lands & Resources Department

www.chimnissing.ca/lands.html

JOINT TENANCY VS. TENANCY IN COMMON

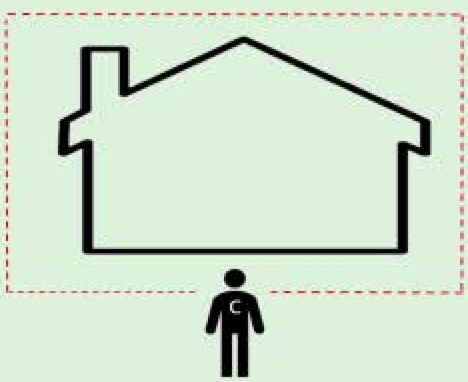


A, B & C band members jointly hold an equal undivided share in the property. I.e., they all own 100%. Each tenant has equal right to make use of and enjoy the entire property.



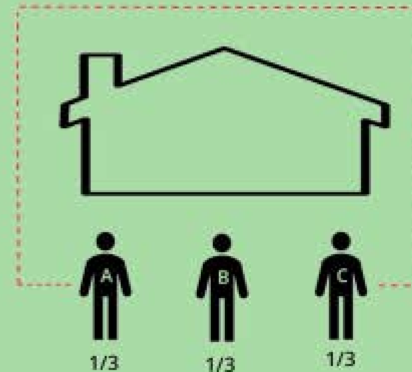
If lawful possessor B passes away, A & C acquire B's portion of the interest.

Note: This is what is meant by **right of survivorship**. The remaining survivors assume the interest of the deceased.



If lawful possessor A now passes away, C acquires all of the interest.

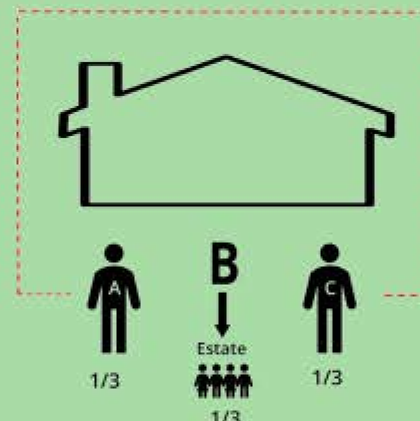
"last person standing"



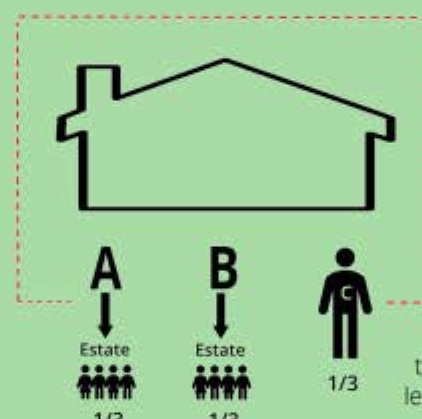
A, B & C band members each hold a 1/3 or 33.33...% undivided interest in the property.

Note: Even though each band member holds a 1/3 interest, it is considered an undivided interest, which means, each tenant has equal right to make use of and enjoy the entire property.

The percentage or fraction becomes important when the division of proceeds from a sale or generated revenues (such as lease fees) need to be calculated and divided.



If lawful possessor B passes away, their interest is passed along to their rightful heirs or beneficiaries through the administration of their estate.



If lawful possessor A now passes away, their interest is also passed along to their rightful heirs or beneficiaries through the administration of their estate.

Note: Tenants in Common is the default type of tenancy if your instrument (transfer, lease etc.) does not specify a type of tenancy.

FORMS OF LAWFUL POSSESSION

(ways to hold interests in land)

Lawful Possession Default

If the Band members do not indicate on a Transfer and there is no agreement signed as to the manner in which they want to hold the property at the time the lawful possession of reserve land is acquired (e.g., silent on the instrument), the interest will be recorded as being held as Tenants in Common.

Joint Tenancy

Joint Tenancy is a form of lawful possession of reserve land in which two or more band members jointly hold equal undivided shares in the whole of a parcel of reserve land.

The distinguishing feature of an interest held in Joint Tenancy is that, upon the death of one Joint Tenant the deceased's interest in the land passes to the surviving Joint Tenant(s) by the right of survivorship.

Tenancy in Common

Tenancy in Common is a form of lawful possession of reserve land in which two or more Band members, or one or more Band members and the Band itself, hold reserve land in equal or unequal undivided shares. Unlike Joint Tenancy, Tenancy in Common has no right of survivorship. Therefore, upon the death of one of the tenants in common, the deceased's interest in the land passes to the deceased's estate or heirs.

OALA ESTATES UNIT

www.oala-on.ca

This information has been extracted from the **INDIAN LANDS REGISTRATION MANUAL,** October 12, 2017. The registration manual can be found online here.

SAMPLE ESTATE INVENTORY WORKSHEET

How to determine the value of an estate?

An Administrator or Executor of an estate must identify and take an accounting of all the **assets** and **debts** the deceased had at the time of death. The **total value of the estate** is determined by; total assets minus the total debts. Use this work sheet to assist in organizing and identifying the assets, debts and determining the total value of the estate. Remember this is a sample guide only, professionals such as appraisers, lawyers and accounts may be needed to assist with more complex estates.

ASSET INVENTORY

Real Property (Land and anything affixed to the land)	
ON-RESERVE LAND	
Description	**Value**
FAMILY HOME:	
Family home (structure only)	
Family home (land only)	
Total Value of Family Home and Land	**A**
OTHER ON-RESERVE LAND/STRUCTURES:	
Total Value of other On-Reserve Land/Structures	**B**
OFF-RESERVE LAND	
Description	**Value**
Total Value of other Off-Reserve Land	**C**
A + B + C =TOTAL VALUE OF REAL PROPERTY	**D**
Personal property (All property that is moveable e.g., money, bonds, vehicles, equipment, personal items)	
Description	**Value**
Cash on hand (bank accounts)	
Vehicles	
Equipment	
Personal effects	
Wages owed to the deceased	
Investments **(payable to the estate)**	
Insurance **(payable to the estate)**	
Lease Revenues	
Canada/Quebec Pension Plan **(payable to the estate)**	
Other:	
Other:	
TOTAL VALUE OF PERSONAL PROPERTY	**E**
D+E = TOTAL VALUE OF **ASSET** INVENTORY (TVA)	

DEBTS INVENTORY

Description	**Value**
Funeral Expenses	**F**
Secured Creditors (The secured creditor has the ability to take back the asset used as collateral in the event that the debtor does not make payments)	
Description	**Value**
Mortgage	
Vehicle loan	
Secured loans/lines of credit	
Other:	
Other:	
Total Value of Secured Creditors Debts	**G**
Preferred Creditors (Preferred creditors are those who receive a preferential right to payment upon the debtor's bankruptcy under applicable insolvency laws. Relevant provincial legislation will list the debts by class)	
Description	**Value**
Unpaid wages to employees	
Taxes	
Estate legal fees	
Band loans	
Other:	
Other:	
Total Value of Preferred Creditors Debts	**H**
Ordinary or Unsecured Creditors (Those creditors that have not received security or collateral for the debt. These creditors will not be paid until all secured and preferred creditors have been paid)	
Description	**Value**
Credit Cards	
Phone Bill	
Hydro Bill	
Personal Loan	
Other:	
Other:	
Total Value of Ordinary or Unsecured Creditors Debts	**I**
F+G+H=I = TOTAL VALUE OF **DEBT** INVENTORY (TVD)	
TOTAL VALUE OF ASSETS **(TVA)** – TOTAL VALUE OF DEBTS **(TVD)** **= Value of the Estate**	

Approval of the Will

- You must send the original Will for approval to an Estate Officer at ISC
- The approval of the Will rests with the Minister of ISC
- Once the Will is approved, it is applicable to all the assets of the deceased, both on and off reserve

Identify/Appoint Executor/Administrator

- An Executor/Administrator is the person who will carry out your wishes, take control of your assets, pay your bills, and distribute your assets to your beneficiaries or heirs
- ISC will either approve the Will naming the executor or appoint an administrator through a process involving the deceased's heirs

Determine Heirs

- If the deceased did not have a Will, all the deceased's heirs will need to be identified
- An accurate determination must be made as to who can and who cannot be classified as an heir to an estate. Heirs are generally the surviving spouse and blood relatives

Notify Organizations

- Its important to notify organizations that the deceased has assets with or dealt with such as: Canada Revenue Agency, Service Canada, Canada Post, Ministry of Health Ministry of Transportation, Employers, Banks, Financial Institutions, Insurance Companies. Etc.

Determine Assets & Debts

- The Executor/Administrator must prepare a comprehensive list of all assets and debts the deceased had
- The Executor/Administrator must post a *Notice to Creditors, Heirs and Other Claimants* in a public setting such as the local post office or band office. The notice must remain posted for a period of (8) weeks in accordance with Section 8 of the *Indian Estate Regulations*

Sale of Assets if Required

- A sale of some of assets may be necessary to settle all the debts
- Keep detailed, accurate records of any assets that need to be sold to satisfy any debts
- Resist the urge to distribute any assets until all debts are settled

Settle Debts

- When paying off all the deceased's debts, obtain a waiver, a discharge, or a release, some type of written statements with respect to the renunciation of a known right by a creditor. I.e., Get receipts for everything and keep them for your accounting/reporting purposes

Distribute the Assets

- Before proceeding with the distribution of assets, a best practice is to list all assets in a proposal for distribution which includes: the asset, the heir or beneficiary its going to, the value and any other explanatory information that may be helpful to provide clarity
- Similar to the settling of the debts, its important to obtain receipts or written statements that the heir has received the asset

Close the Estate File

- Once all of the assets have been transferred to the heirs/beneficiaries, the Executor/Administrator must give a full accounting of the estate administration (Statement of Account) to all heirs/beneficiaries
- Close the estate bank account only when certain no other transaction will take place
- Keep a copy of all estate administration documents in case any complaints arise

Indian Act
Estates Management Process Overview

*Always consult with your First Nation for any FN specific processes

Death of a First Nation Person Occurs:

- Funeral/service arrangements are made
- Traditional services or ceremonies may take place
- Assets are secured

Determine if there is a Survivor and which Matrimonial Real Property Law is applicable to the estate:

- A Survivor may be a "spouse" or "common-law partner" depending on which legislation is applicable
- You can use the OALA **Which Legislation Tool** to determine which MRP Law is applicable to the estate you are working on

If applicable - Inform Survivor about the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA):

- It is important this takes place on the onset because *if* the FHRMIRA Provisional Federal Rules apply, a surviving spouse or common-law partner (whether or not they are a member of the First Nation) who does not hold an interest or right in or to the family home, has an automatic right to occupy the family home for **180 days** after the death of their spouse or common-law partner. Additionally, the survivor has **10 months** after the death of their spouse or common law partner to claim survivor rights under the act.

Send the Notification of Death to Indigenous Services Canada (ISC)

- You can send a copy of the following: death certificate, funeral home directors' statement, burial permit/internment certificate, or a record of death from Vital Statistics
- This will trigger an estate file to be opened up with ISC and the estate administration process will begin

ISC Creates an Estate Record

- Upon notification of death, ISC creates the Estate Record and tracks all actions taken by ISC. This is contained in ISC's Estate Reporting System (ERS)

Establish Jurisdiction

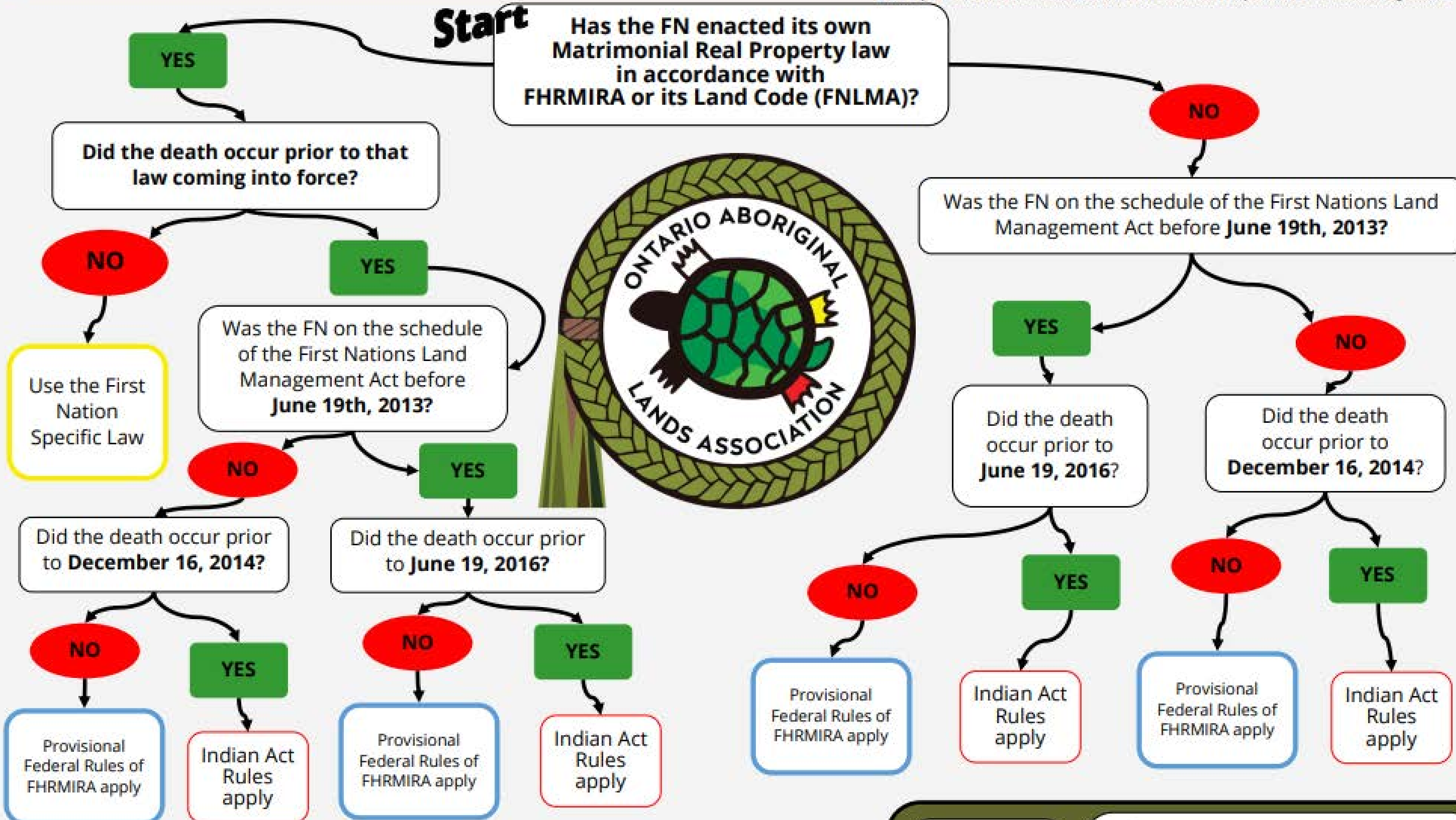
- For the Minister of ISC to have jurisdiction over the estate, the following two conditions must me met:
  - → The deceased must have been a registered Indian pursuant to the *Indian Act*, or be entitled to be registered
  - → The deceased must have died ordinarily resident on reserve or Crown land

Is there a Valid Will?

- For a will to be valid it must meet the following four criteria:
  - → Must be in writing
  - → Express the deceased wishes
  - → To be intended to take effect on death
  - → Signed by the deceased
- If there isn't a Will, the Intestacy Provisions of the Indian Act (Section 48) will apply

WHICH LEGISLATION IS APPLICABLE TO THE ESTATE I AM WORKING ON?

* Ontario specific and does not account for FNs who have entered into Comprehensive Self-Government Agreements



NOTE: If the Matrimonial Real Property law was brought into force after the date that the Provisional Federal Rules came into force for that First Nation (i.e December 16, 2014 or June 19, 2016), the Provisional Federal Rules apply until the date that the MRP Law came into force. Note that the Provisional Federal Rules do not apply and have never applied to FNs with a Land Code in force prior to December 16, 2014.

OALA ESTATES UNIT

SECTION 48: WHO INHERITS WHEN THERE IS NO WILL?

48(1)

If the deceased left a **surviving spouse, and the value of the estate does not exceed $75K**, the spouse inherits everything

100% spouse

48(2)

If the deceased left a **surviving spouse and** 1 or more **children,** the spouse gets the first $75K and the remainder is shared between the spouse and children. (If more than 1 child, spouse gets 1/3 of the reminder and the children split 2/3; if only 1 child, child gets 1/2 of the remainder and spouse gets the other 1/2)

Example:
Estate is worth $100K

First $75,000

1/3 of 25K = $8,334

1/3 of 25K = $8,333

1/3 of 25K = $8,333

Total = $100,000

48(4)

If the deceased left **children** but **no spouse,** children divide entire estate equally between them.

1/3

1/3

1/3

Note: if a child of the deceased died before him/her leaving children of their own, those children (the deceased's grandchildren) share between them the portion of the estate that their parent would other wise have received

48(5)

If the deceased left **no spouse**, **no children**, the deceased's surviving parent(s) inherit everything

100% parents

48(6)

If the deceased left **no spouse, children or parents**, the deceased's siblings inherit everything.

Note: If a sibling of the deceased died before him or her, but had children of their own (the deceased's nieces and nephews), those children share between them the portion of the estate that their parent would otherwise have received.

48(7)

If the deceased has **no spouse, no children, no mother or father, brother or sister**; his/her estate shall go to his/her next of kin.

48(8)

If the only surviving relatives of the deceased are **nieces/ nephews or more distant next of kin**, any interest in reserve land held by the deceased reverts to the Band

Ontario Aboriginal Lands Association

SECTION 48: WHO INHERITS WHEN THERE IS NO WILL?

Deceased

1 SPOUSE

(Legal, Common-Law, Same Sex)

Spouse inherits everything if the deceased had no children; otherwise, spouse inherits first $75,000 and shares remainder with children.

2 CHILDREN

If no spouse, then children inherit everything. If a child predeceased leaving children of their own, those children (the deceased's grandchildren) share between them the portion of the estate that their parent would otherwise have received.

3 PARENTS

If no spouse or children, parents inherit everything

4 BROTHERS & SISTERS

If no spouse, children or parents, siblings inherit everything. If a sibling predeceased leaving children of their own, those children (the deceased's nieces and nephews) share between them the portion of the estate that the their parent would otherwise have received.

5 MORE DISTANT NEXT OF KIN

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