

Exemptions from Estate Recovery for Property Owned by Native Americans and Alaska Natives

Introduction

This brochure is about property owned by Native Americans and Alaska Natives. You can find information about exemptions for other types of property in our brochure called, "Estate Recovery for Medical Services paid for by the State." That brochure also explains which DSHS medical programs require estate recovery. See www.washingtonlawhelp.org >Aging/Eldercare> Medicaid/Medicare.

What is estate recovery?

An "estate" is the property a person owns when he or she dies. Estate recovery allows a creditor to get money back from someone's estate. Washington State's Department of Social and Health Services (DSHS) has many programs that pay for medical services. Generally, the estate recovery law requires DSHS to recover (get back) the cost of medical services it paid from the deceased person's estate. Some property is "exempt" from estate recovery, meaning DSHS cannot get it.

Must an American Indian or Alaska Native be enrolled for his or her property to be exempt from estate recovery?

Not necessarily, it depends on the type of property. Under Washington State law, non-trust real property is exempt only if the decedent was a member of a federally recognized tribe.¹ However, trust property is exempt from estate recovery under other laws, regardless of the Indian's enrollment status.

What kind of land is exempt from estate recovery?

Both non-trust (fee land) and trust land owned by the deceased are exempt. Improvements to the land, such as a home, are also exempt.

Is Indian income exempt from estate recovery?

Indian income is exempt from estate recovery if it is exempt under other laws. The money is exempt whether it was in the possession of the deceased at the time of death or paid later into the deceased's probate account. Some examples of Indian income are individual lease money, land settlement act judgment funds and government "reparation" payments.

Are items of religious or cultural significance exempt from estate recovery?

Yes. Ownership interests or usage rights to items that have unique religious, spiritual, traditional, or cultural significance are exempt. This includes items like regalia and handwork. Rights that support subsistence (basic needs) or traditional lifestyles are also exempt. This includes traditional fishing and hunting rights and related equipment.

How do I claim these exemptions?

You must call DSHS when you get the notice of estate recovery and tell them that the deceased was an Indian. You probably will not be asked more questions, and the property described above should be exempted. The number is 1-800-562-6114.

¹ WAC 388-527-2754(4)

What if I have questions?

A separate bulletin on exempt Indian income and resources is available on this website. If you have further questions, talk to your tribe's legal department. If you need free legal advice and are low-income, you can

call CLEAR, the statewide Coordinated Legal Education, Advice, and Referral line. CLEAR's toll free number is 1-888-201-1014.

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