

Estate planning empowers Tribal Members

By Savannah Worman

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Estate planning isn't just for the wealthy, it's a vital step for everyone, especially Tribal Members seeking to protect their property, honor cultural traditions and ease future burdens on loved ones.

Tribal staff attorneys Vanessa Jackson and Rohan Hiatt, both bring deep expertise in probate law and culturally sensitive planning to this important conversation.

Vanessa, a Siletz Tribal Member and CTSI Staff Attorney, has a strong foundation in Trust and Estates and has represented tribal interests in probate cases since 2023. Rohan, with nearly three years of experience at the Native American Program of the Legal Aid Service of Oregon (NAPOLS), has helped low-income Native client's draft wills, powers of attorney and navigate probate across tribal, state and federal courts.

Together, they offer practical steps and trusted resources, from wills to regalia, to help you begin your estate plan with confidence.

What is Estate Planning? What is your experience in this field?

Vanessa - Estate Planning is not just for people with a lot of money or assets; it's for everyone, and it helps distribute your belongings, as well as any cash or assets you may have. This service enables you to prepare for the future and have a say when you are unable to be physically present to express your wishes. Estate Planning is a huge benefit for loved ones, helping to ease some of the stress when you pass away while also honoring your wishes.

Rohan - Estate planning is the thoughtful and intentional planning for the end of life. Estate planning ensures that your wishes are apparent to those handling the legalities, as well as to your friends and family. It also helps to ensure that any services held after death meet your standards. Ensuring that your wishes are honored is especially important if someone is incapacitated (old age, illness, etc.) or if someone is disabled.

Why is Estate Planning important in general?

Vanessa - Making these decisions while you're alive truly benefits those you leave behind and has the potential to make the mourning process smoother for your loved ones by reducing stress, as they know precisely where and what goes to whom.

Rohan - The main reason Estate Planning is important is to allow certainty upon your death and for you to be honored at the end of your life. When you turn 18, you should consider creating an estate plan because you never know what the future may hold. While we all expect to live long, fulfilling lives, accidents can happen.

Not having an estate plan can lead to tension and conflict among family members you leave behind because there is no certainty about who gets what and how you want things to be distributed. An estate plan enables individuals to grieve in peace, avoid conflict with others and then move forward.

There are two types of estates to understand:

- **Intestate Estate:** When a person dies without a will, their estate is called an intestate estate. The law determines how the assets are distributed, depending on jurisdiction.
- **Testate Estate:** If a person dies with a valid will, their estate is called a testate estate. This provides clear instructions for the distribution of assets.

Testate estates are far easier to handle because the belongings, assets and finances are likely already accounted for. When you die without a will and have an intestate estate, the government typically determines what happens to your property, handling this by following laws that outline where your property is distributed. You may agree with how the government distributes your belongings. However, if you don't, it will be too late to have a say, and that's another reason you may want to consider doing an estate plan.

Another aspect to consider is that estate planning can also help if you are in a coma or on life support for any reason. An advance directive can clarify if you would like to remain on life support or not and relieve your family of difficult healthcare decisions.

Why is Estate Planning important for tribal members?

Vanessa - As Tribal Members, we receive certain benefits, such as Per Capita distributions and Elders' stipends. The tribe retains jurisdiction over these funds after our passing, and the tribe establishes a mechanism to ensure that these funds are distributed appropriately.

Rohan - Tribal Members, in particular, have more complex considerations to be aware of during Estate Planning. Typically, in Estate Planning, you consider how much property you have and how that affects your taxes. However, Tribal Members also must consider jurisdictional issues that arise because their property can reside in more than one jurisdiction, such as Tribal Jurisdictions, Trust land or state jurisdictions.

The good news is that you can plan for this and include preferences in your will based on the jurisdictions in which you expect your Estate to be handled. If you prefer to have your Estate handled through Tribal Court, you can arrange for that to happen in various ways.

When it comes to Trust Property, the Federal Government has a separate process and set of laws and regulations governing the distribution of Trust property upon death, which includes your Individual Indian Money account and Trust property land. There are resources available to help you identify if you have any of these property pieces, such as calling the Bureau of Trust Funds Administration's Trust Beneficiary Call Center for assistance at 888-678-6836.

Another aspect that can be overlooked is the distribution of your regalia. After death, if you do not have a testate estate, the distribution of your regalia may be out of your control. Someone who may not have the cultural knowledge to determine the value of these items can put a price on them, but they won't know the true worth of a cultural item like that.

If you die with debt, that debt still needs to be satisfied in some way, and the court may have to decide which property to use to settle it. This leaves the potential for your regalia or other cultural items to be sold via auction to random people to help settle debts. It is better to determine on your own where these things go and what they're worth.

Where can Tribal members start?

Vanessa - Tribal Members should read the Probate Ordinance, a relatively new ordinance implemented in 2021 that could easily slip under the radar for many Tribal Members. Additionally, we encourage members to take advantage of a new addition to the existing Designation of Death Beneficiary form, which Angela Martin and I worked on together. This allows you to designate individual(s) as your payable-on-death beneficiary (POD), made possible by the new Probate Ordinance.

Rohan - You should think about who you can trust to handle your wishes and where you want your property to go. This is not a single-day or single-evening venture and takes time to do correctly. When I worked with NAPOLS, I often heard clients say they want to create an Estate Plan but need time to think about it.

This is completely fine, as it is a big decision and ultimately the final one in your physical lifetime. Take your time to think about it now so that in the future, you have a clear idea of how you want everything to be handled.

You can also start distributing property that you are currently able to manage. If you know you have something you want to give to someone specific and you aren't using it,

nothing stops you from giving it to them now. That helps simplify the process and avoid future complications. Almost all financial institutions allow you to designate beneficiaries on your accounts, and you can do so now. Allowing yourself ample time helps you avoid some of the end-of-life scrambling that often occurs.

You can also look for legal resources. If you can afford an attorney, it is beneficial to have a consultation. Many attorneys offer free consultations, providing you with costs and informing you about what they can and can't help you with. If you qualify for legal aid, that's another avenue to consider, and many affordable legal services are available to people.

What resources are available for estate planning assistance?

Vanessa - I recommend that if you have resources available, you prioritize Estate Planning. Consult an attorney, and if you can afford to do so, offer their services to your parents for their estate plan. This benefits not only them but also provides you with peace of mind.

Rohan - Estate planning is accessible to everyone, regardless of their financial means. Fortunately, trusted resources are available to help:

The Modest Means Program, offered through the Oregon State Bar, connects individuals with attorneys who provide legal services on a sliding scale. This program is designed for those who can't afford full-priced legal support but still need professional guidance. You can reach the Modest Means Program at 503-684-3763 or 800-452-7636.

The Native American Program at Legal Aid Services of Oregon (NAPOLS) has a long-standing history of assisting low-income Tribal Members with estate planning. If you qualify based on income, this is a valuable and culturally informed resource. You can reach NAPOLS at 503-223-9483.

I also stress the importance of being cautious when seeking help. While there's plenty of good information out there, misinformation is common, especially from individuals who may misrepresent themselves online. This is particularly concerning for elders, who are often targeted by scams. Be wary of anyone offering estate planning services through social media or claiming to be a lawyer without proper credentials.

Whenever possible, consult a verified professional and avoid navigating these decisions alone. Taking the time to find trustworthy support ensures that your legacy is protected and your wishes are honored with care.

Resources to explore:

- www.lasoregon.org/locations/native-american-program/
- www.osbar.org/public/modest-means.html