

ESTATE PLANNING QUESTIONS & ANSWERS

PROBATE? ESTATE TAXES? WILLS?

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Estate Planning is the process of choosing among many available alternatives for property use and disposition before and after death. Estate planning should be of concern to every property owner. To assist you in thinking about your estate plan, a few of the more frequently asked questions on estate planning are presented and answered.

Q. What happens to a person's property when he dies intestate (without a will)?

A. North Dakota law referred to as the Uniform Probate Code (UPC) governs property distribution. An example of a UPC provision is as follows: If the deceased leaves a surviving spouse and children, then the first \$50,000 plus half the remainder goes to the surviving spouse. The other half of the remainder is given to the children.

Q. Who can make a will in North Dakota?

A. Any person of sound mind 18 years of age or over may make a will.

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Q. Can children be disinherited by their parents?

A. Yes. The author of a will has the right to disinherit. This intention must be clearly stated in the will.

Q. How soon after a person's death do federal estate taxes have to be paid?

A. If taxes are due, the Federal Estate Tax Return is due nine months from the date of the person's death. Extensions may be obtained under certain circumstances. If 50 percent or more of the taxable estate is in a closely held business,

estate taxes on that portion of the estate can be paid over a 15-year period. An extension of up to 10 years can be obtained by showing reasonable hardship.

Q. How soon after a person's death must North Dakota estate taxes be paid?

A. North Dakota estate taxes, if due, must be paid within fifteen months of the person's death. Taxes unpaid after fifteen months will bear interest at the rate of 12 percent per year.

Q. How much property can a person give away tax free?

A. Each individual still can give away \$3,000 to as many persons as receive gifts free from federal estate tax. Beyond this amount the unified federal estate tax credit available for transfers before or after death will be used. There is no North Dakota gift tax.

Q. What other credits (direct reductions in taxes due) are allowed against federal estate taxes?

A. The federal government allows estate tax credits for estate taxes paid on prior estate transfers which included the same property. If, for instance, a wife dies shortly after her husband her estate is given a credit for taxes paid on the husband's estate. This credit decreases to zero over a 10-year period. Another partial credit is given every estate for state estate taxes paid.

Q. Can a spouse be disinherited?

A. No, not completely. The Uniform Probate Code contains a provision called "the spouse's

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elective share". Under this provision the spouse can elect to claim one-third of the augmented estate even if there is a valid will disinheriting the spouse. The augmented estate is the net estate plus property transferred during the marriage for less than fair market value plus certain properties owned by the surviving spouse received from the decedent (deceased person). NOTE: The elective share is not an automatic right. The surviving spouse must petition the probate court within six months or the elective share may not be allowed.

Q. What is the relationship between North Dakota and federal estate taxes for calculating the taxable estate?

A. The federal taxable estate is the gross estate value at the date of death minus debts, settlement expenses and, for married persons, a marital deduction. The marital deduction is the greater of one-half the adjusted gross estate (gross estate minus debts and expenses) or \$250,000 and applies only to the amount that actually passes to the surviving spouse. The North Dakota taxable estate (assuming all assets are in North Dakota) is the federal taxable estate minus the federal estate tax paid and a \$200,000 North Dakota exemption for each individual.

Q. How does a divorce affect provisions of a will?

A. All provisions in the author's will favoring the divorced spouse are no longer valid after the divorce. However, the will itself remains valid for provisions not concerning the divorced spouse.

Q. What happens to a bank account when a spouse dies?

A. If the account is held jointly by husband and wife all the proceeds pass to the surviving spouse with minimum delay regardless of terms of the will. If the account is solely owned then it will be distributed according to terms of the will or the intestate succession laws.

Q. Is a double probate required if husband and wife are killed as a result of the same accident or disaster?

A. No. The Uniform Probate Code grants protection of a 120-hour survival clause to persons who die without a will or with a will without a survival clause. This means only one probate is necessary to transfer the property from the parents to the children.

Q. Can an heir be automatically disinherited for challenging the validity of a will?

A. No. Provisions in a will disinheriting heirs that challenge the will are void when the challenging party shows reasonable cause for his challenge.

Q. Can a person write his own will?

A. Yes. Such a will is called a "holographic" will and requires no witnesses. To be valid in North Dakota it must be dated, signed by the person making out the will, and the material provisions granting inheritance must be entirely in the decedent's handwriting.

Q. Is it recommended that every adult have a valid will?

A. You may not need a will if you agree with the following statements:

- 1. The UPC provisions concerning intestate succession are satisfactory for the distribution of my estate.*
- 2. I have no children and am not concerned who gets my property.*
- 3. My estate isn't large enough to be affected by estate taxes.*
- 4. There will be no family arguments when my heirs divide my personal items such as jewelry, antiques, art, etc.*

Q. Who bears the burden of state and federal estate taxes?

A. The deceased's personal representative is responsible for making the payments from the estate's assets. If the will does not specify which property to use for tax payments the Uniform Probate Code provides a procedure. Exclusive of property passing under the marital deduction, the tax payment is apportioned among heirs according to the estate share each received. The surviving spouse is not required to pay estate taxes out of liquid assets or the marital deduction if not specified in the will.