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## NF96-291 Intestate Succession as an Estate Planning Tool

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Gessaman, Paul H. and Aiken, J. David, "NF96-291 Intestate Succession as an Estate Planning Tool" (1996). *Historical Materials from University of Nebraska-Lincoln Extension*. 675.  
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# NebFact



Published by Cooperative Extension, Institute of Agriculture and Natural Resources,  
University of Nebraska-Lincoln

## Intestate Succession as an Estate Planning Tool

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This is one in a series of **NebFacts** providing information on the use of estate planning "tools" — mechanisms that can be used in attaining desired estate planning outcomes. Titles in the series are listed following the last narrative section of each document. Reading the documents in this series will improve your understanding of estate planning tools and alternatives, and make it easier to communicate with your attorney, accountant, and other helpers when your estate plan is prepared.

**Your need for legal and tax advice:** While the information contained in this document is thought to be accurate, it should not be used as a substitute for legal advice on matters related to business organization, taxation, estate planning, gifting of assets, life insurance, or other business and financial management matters. Consult with your legal and tax advisers before making decisions.

What happens if you die without a will? If you have property held in single ownership (often called fee simple ownership) and you die without leaving a valid will, succession of ownership of your estate will occur under the laws of intestate succession. If you have prepared a will and it is successfully contested, the laws of intestate succession will determine succession of ownership of your property. In either case, intestate means that you died without leaving instructions (a will) that the probate court finds acceptable as a guide for the probate of your estate .

When the laws of intestate succession determine who will inherit, and in what proportions each will inherit, only by chance will the distribution of your estate be what you would have preferred. The duty of the court will be to carry out the statutory instructions for disposal of your property. It is not allowed to make exceptions even when relatives or friends know what the person who died intestate wanted to have done with his or her property.

If you have an operating business and die intestate, continuing business operations and maintaining profitability are likely to be very difficult or impossible. Business transitions following the death of the business owner are filled with opportunities for disaster. Delays and uncertainties associated with the search for a valid will, lack of knowledge about who will inherit business assets, and eventual

distribution of business assets in accordance with the statutes can cause overwhelming barriers to successful business operations.

## The Rules for Intestate Succession

The process by which your estate will be identified, valued, estate tax determined and paid, and title to your property transferred to your heirs is called Probate. Under intestate succession, probate and distribution of your estate is directed by the court in accordance with rules contained in state statutes. The probate process is started by a petition to the court that asks for appointment of an administrator of your estate and a ruling that the probate of your estate be carried out as an intestate succession. In the typical situation, this petition is filed by an attorney retained for that purpose by a closely related survivor or a friend, or by your personal attorney.

Rules for estate distribution under intestate succession include:

- **If a spouse and children or grandchildren survive:** The spouse receives the first \$50,000 of the estate value, the balance is divided one-half to the spouse and remaining half is evenly divided among the children with the share of any child who is deceased being evenly divided among his or her children.
- **If a spouse and the parents of the deceased survive (no surviving children):** the spouse receives the first \$50,000 of the estate value, the balance is divided one-half to the spouse and one half to the parents of the deceased.
- **If only the spouse survives:** the spouse receives the entire estate.
- **If only children or grandchildren survive:** the surviving children receive equal shares of the estate with the share of a deceased child being equally divided among his/her children, if any.
- **If only relatives other than children and grandchildren survive:** the surviving blood relatives receive the estate in accordance with distribution instructions contained in the statutes. (The instructions are not described in this document.)
- **If no surviving relatives,** the estate will escheat (go to) the state.

Intestate succession provides no flexibility in the distribution of assets from the estate of the deceased. While this may be a suitable approach for the person with a very small estate and/or for the person with one or very few living relatives, intestate succession is not recommended. When the estate is sizeable, and/or where there are several to many surviving relatives, and/or where death or divorce and remarriage have modified and enlarged the pattern of family relationships, intestate succession may result in outcomes (i.e. ownership patterns, estate tax liabilities, etc.) that the survivors find very difficult to accept.

When intestate succession occurs as a result of successful contest of a will, the contest usually is initiated by a person who can expect to inherit more under intestate succession than under an existing will. A will contest usually is very damaging to family relationships, and often is very costly for the estate and for all survivors.

The expenses and problems of intestate succession can be avoided if you prepare a complete, up-to-date, and valid will. When that will is prepared, be sure it is in a safe and secure location known to your

survivors.

## **Glossary:**

### **Administrator**

An individual or an entity (for example, the trust department of a bank) that is appointed by the court to handle the affairs of a person who has died without leaving a will.

### **Escheat**

Assignment of property to the state because there is no verifiable legal owner — typically, where there is no heir to the property.

### **Estate**

Everything of value (all property) that a person owns while living or at the time of death.

### **Heir**

A person entitled by law to inherit part or all of the estate of an ancestor who died without leaving a valid will.

### **Probate**

A court procedure for settling the personal and business affairs of a decedent by formally proving the validity of a will and establishing the legal transfer of property to beneficiaries, or appointing an administrator and supervising the legal transfer of property to heirs if there is no valid will.

### **Will**

A person's written declaration of desires for disposal of his or her property after death.

## **Documents in This Series:**

- NF 95-236, *Nebraska Inheritance and Estate Taxes*
- NF 96-292, *A Will As An Estate Planning Tool*
- NF 96-293, *Joint Tenancy As An Estate Planning Tool*
- NF 96-294, *Tenants In Common Ownership As An Estate Planning Tool*
- NF 96-295, *A Trust As An Estate Planning Tool*
- NF 96-296, *Gifts As An Estate Planning Tool*
- NF 96-297, *Life Insurance As An Estate Planning Tool*
- NF 96-298, *Charitable Remainder Trusts and Charitable Annuities As Estate Planning Tools*
- NF 96-299, *Estate Planning Glossary*

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***File NF291 under: HOME MANAGEMENT***

***B-8a, Estate Planning***

*Issued September 1996*

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*Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Elbert C. Dickey, Director of Cooperative Extension, University of Nebraska, Institute of Agriculture and Natural Resources.*

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