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## NF96-292 A Will As An Estate Planning Tool

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# NebFact



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## A Will As An Estate Planning Tool

*Paul H. Gessaman, Extension Economist*

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 Is a Will?

Your will is a legally recognized and legally binding document that typically contains instructions that will guide the actions of your personal representative in the period following your death as he or she manages your business and personal affairs, cares for your dependents, and implements the succession of ownership of your property. Your will is implemented only after your death through the court-supervised probate of your estate. As long as you are of sound mind, you can change your will at any time prior to your death.

The person signing the will is called the "Testator." In Nebraska, the testator must be of legal age (age 18 or older), of sound mind, and the owner of property, or a person with valid expectations of owning property. A will can be written (drawn) in anticipation of an inheritance. While Nebraska law gives validity to holographic wills (wills entirely hand-written by the testator and properly dated — witnessing is optional), it's best to have your will written by an attorney who knows Nebraska laws governing inheritance. When your will is not a holographic will — typically, when it is written by an attorney — it must be signed in the presence of two competent witnesses who attest to knowing: (1) your identify as the testator, and (2) that you voluntarily signed the will in their presence.

The proper preparation, signing, and witnessing of your will is very important. A will with preparation, signature, or witnessing deficiencies usually cannot be probated. Even if your will has been accepted for probate, a contest may be filed if one or more heirs are dissatisfied with the will, or there is disagreement among heirs over the terms of the will. Having a properly prepared will with no deficiencies is the most effective means of reducing the risk of its being contested. It's important to avoid a contest, as even if the contest is unsuccessful, it will delay the probate process and will increase probate costs. If the contest is successful, the laws of intestate succession will determine who inherits your property. (See *NF 96-291, Intestate Succession as an Estate Planning Tool*, for information on the rules for intestate succession in Nebraska.)

## **What Is Included in a Typical Will?**

A will provides instructions for settling personal and business matters and specifies how succession of property ownership is to occur. In a typical will, the testator:

- gives instructions for disposal of his or her body and for the funeral or memorial service — these instructions also should be included in a letter to survivors that you write and place in a location known to family members and/or close friends;
- authorizes payment of final expenses (medical and other costs) and funeral or memorial service expenses;
- provides directions for the care and support of minor children;
- designates a person or persons to serve as guardian(s) of minor children;
- designates the person to serve as personal representative during probate of the estate;
- directs how property is to be distributed to beneficiaries (this can include instructions for establishment of a testamentary trust);
- provides other instructions to the personal representative and probate court as the testator considers to be appropriate.

## **How Is a Will Used in Estate Planning?**

A will is the most frequently used estate planning "tool" for setting up intergenerational succession or lateral succession in property ownership. For the person or family with an operating business, it's important to "think through" the present and desired future of the business before a will or wills are prepared. Since a will often is the primary means of implementing estate planning decisions, it's important that it reflects the testator's best thinking and planning for the future. Here are several issues that can be important to consider when thinking about your estate planning and deciding on the provisions of your will:

- the special needs of minor children;
- the needs of any family members with disabilities;
- the needs of family members who have experienced difficulty and/or are disadvantaged for any of a number of reasons;
- the situations of persons who may have received gifts of money or property at some previous time;
- the contributions of family member(s) who have worked in and contributed to growth of the family business;
- goals for the future of your business and for your personal life;
- the estimated cost of estate and inheritance taxes under each alternative for distribution of assets to your heirs;
- the estimated effects of each of these inheritance alternatives on present and future family

- relationships and on the viability of your business;
- the expected business management capabilities of your heirs under each of the inheritance alternatives;
- other considerations unique to your family and business.

## **Is a Will All That's Needed For My Estate Planning?**

While a will is the basic and most frequently used estate planning tool, it may be best to use it in combination with other estate planning tools. By doing so, you may be able to more effectively use the unified federal tax credit of \$192,800 that tax shelters the first \$600,000 of each person's total of taxable gifts and taxable estate. Estate planning tools in addition to a will include: joint tenancy with rights of survivorship, tenants in common ownership, trusts, gifting, sales contracts, life insurance, and business organization alternatives. (Each has its advantages and limitations for inter-generational asset transfers.) Depending on your situation and the outcomes you seek, you may be able to reduce your legal and tax costs of succession by using other estate planning tools in combination with your will. For information on the other tools, read other NebFacts in this series. A list of titles appears at the end of this document.

As a supporting document, it's highly desirable to prepare a letter addressed to your family or to close friends who will take responsibility for your well-being in the final days of your life. In this letter, you can provide instructions for your funeral or memorial service and burial or other disposal of your body, give directions for disposal of incidental personal property, and express whatever personal thoughts you wish. When completed, this letter can be delivered to the intended recipients with instructions regarding its being opened and read, or it can be placed for safekeeping in a location known to the intended recipients. The letter will provide guidance and comfort to your survivors and will help to ensure that your wishes are known and carried out.

## **Who Should Have a Will?**

Every person of legal age should have a will that reflects his or her intentions for succession in asset ownership. Even if most or all of your property is in a living trust, or in joint tenancy with rights of survivorship, or in other arrangements suitable to your estate plan, a valid will can be very important in providing direction for the care of other family members, appointment of guardians, the type and nature of your funeral service, and other personal matters. It's important to ensure that your will is current and appropriate. Review and update it every few (2-5) years.

Be kind to yourself and to your family. If you do not have a current and appropriate will, act now to develop or update it and all other parts of your estate planning. Have your attorney prepare a will and any other legal documents that will ensure your plans are carried out when you are no longer living. Be certain the will and other documents are signed and witnessed in accordance with Nebraska statutes and that their location is known to your attorney and to family members or close friends. When these documents are properly prepared, signed, and available to persons who will carry out your wishes, you can be confident that upon your death your estate plan will be implemented in the manner you intended.

## **Glossary:**

### **Assets**

Things of value owned by a person, family, or business — everything of value that's owned — property.

### **Beneficiary**

A person named in a will to receive certain property of the testator. Also, a person who

receives income or assets from a trust — a person who benefits from the existence and operations of a trust.

**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.

**Holographic will**

A will entirely handwritten by the testator. The date and all words in the will including the signature must be in the handwriting of the testator. The signature of the testator can be, but need not be, witnessed.

**Intergenerational succession**

Succession in property ownership in which the property is transferred from one generation to another; usually from members of an older generation to members of a younger generation.

**Intestate succession**

The distribution of property to heirs according to the statutes of the State of Nebraska upon the death of a person who owned the property but did not leave a valid will.

**Lateral Succession**

Succession in property ownership in which the property is transferred between members of the same generation.

**Personal representative**

An executor, administrator, or anyone else who is in charge of a decedent's property.

**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 to property to heirs if there is no valid will.

**Testator**

One who writes or has written and signs a 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 96-291, *Intestate Succession 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, *Gifting 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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