

NF95-228



# Using a Will in Farm and Ranch Estate Planning

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This is one in a series of **NebFacts** providing information on farm and ranch estate planning. Titles in the series are listed at the end. 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, 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 binding document containing instructions for managing your business and personal affairs, caring for your dependents, and disposing of your property after you die. Through the process of Probate, your will is implemented only after your death. You can change your will at any time prior to your death as long as you are of sound mind.

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, signed and properly dated), it's best to have your will written by an attorney who knows Nebraska laws governing inheritance. A will must be signed in the presence of two competent witnesses who attest to knowing who the testator is and that, in their presence, the testator voluntarily signed the will. Witnessing of the testator's signing of a holographic will is allowed, but is not required.

It's very important that all procedural requirements be complied with when preparing a will because an improperly prepared will usually cannot be probated. Also, the will is much more likely to prevail against a contest if it is complete and properly prepared. A contest to the will 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. A contest, even when it is unsuccessful, will delay probate of the estate and increase probate costs. If the contest is successful, the laws of intestate succession will determine who inherits your property.

## **What is included in a typical will?**

A will provides instructions for settling personal and business matters and 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;
- 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 establishing 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 inter-generational succession or lateral succession in property ownership. For the person (family) with a farm or ranch operation, the time of preparing a will (wills) is an opportunity for "thinking through" the present and desired future of the farm or ranch. Since a will often is the primary means of implementing estate planning decisions, it's important that the will reflect the testator's best thinking and planning for the future. When thinking about your will(s) and planning for the future, you may want to consider:

- 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 on and contributed to growth of the farm or ranch;
- goals for the future of your farm or ranch;
- 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 the present and future viability of your farm or ranch operation;
- the feasibility of management by your heirs under each of these inheritance alternatives;
- other considerations unique to your operation.

## **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 to your advantage 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 taxable gifts and taxable estate total. The estate planning tools include: joint tenancy with rights of survivorship, trusts, gifting, sales contracts, life insurance, and business organization approaches to 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.

## 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 of your property (all significant property) 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 your will every few (2-5) years.

Be kind to yourself and to your family. If you do not have a currently appropriate will, act now to develop your estate plan. Then, 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 as specified in 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.

**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 hand-written 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 95-227](#) *Intestate Succession In Farming and Ranching*

[NF 95-228](#) *Using a Will In Farm and Ranch Estate Planning*

[NF 95-229](#) *Joint Tenancy In Farm and Ranch Estate Planning*

[NF 95-230](#) *Tenants In Common Ownership In Farm and Ranch Estate Planning*

[NF 95-231](#) *Using a Trust In Farm and Ranch Estate Planning*

[NF 95-232](#) *Using Gifting In Farm and Ranch Estate Planning*

[NF 95-233](#) *Glossary of Estate Planning Terms*

[NF 95-236](#) *Nebraska Inheritance and Estate Taxes*

[EC 95-819](#) *Estate Planning for Farm and Ranch Families: Information for Your Legal and Tax Advisers*

### Related publications:

[NF 93-143](#) *Federal Estate and Gift Taxes*

[NF 93-144](#) *Determining Property Basis*

[NF 93-145](#) *Special-Use and Alternative Valuation of Estate Property*

[NF 93-146](#) *Delayed Payment of Federal Estate Taxes*

[NF 93-147](#) *Tax Considerations in Selling Farm Property*



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