

Estate Planning Glossary

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This publication is a glossary of basic estate planning terms. The glossary can help you learn about some fundamental concepts in farm and ranch estate planning, and help you communicate more effectively with your family and with your team of estate planning professionals.

Advanced health care directives: also called a “living will.” A legal document indicating whether or not e.g. you wish to receive medical care to extend your life when there is little realistic hope of recovery, etc. You can also specify the level of medical care you wish to receive during a fatal illness, such as (1) comfort medical measures only, (2) limited additional medical treatment or (3) full medical treatment.

Buy-sell agreement: commonly used in family farm or ranch corporations or limited liability companies. Allows e.g. a non-operating heir to have their ownership interest in farm or ranch business entity valued and sold to other business entity members or to outside members. Used to give heirs not involved in farm or ranch operation a method for “cashing out” their inheritance but typically on terms that would not threaten the financial stability of the farm or ranch.

Common tenancy: a common form of shared real estate ownership among family members; often used to leave land in shared ownership to children or grandchildren. Has no right of survivorship; when a common tenant dies, their share passes to their heirs, not to any surviving common tenants.

Decedent: a person who has died.

Deed: a legal document used to legally transfer title to real property (land, etc.).

Durable power of attorney: often used to deal with incapacity. A parent concerned regarding financial management of their personal property could give a relative, friend or trusted business associate a durable power of attorney to take effect when the parent chooses or when the the parent becomes incapacitated by illness, advanced age, etc.

Estate taxes (federal): federal taxes assessed when a decedent passes property on to heirs. In 2017 a single person can pass up to \$5.49 million without paying federal estate tax; a married couple can pass up to \$10.98 million without a federal estate tax. This amount is adjusted annually for inflation.

Health care power of attorney: a legal document giving a family member or other trusted person the legal authority to make health care decisions for the (often elderly) person granting the health care power of attorney.

Inherit: to receive property from a deceased person.

Intestate succession: dying owning property without a valid will. Nebraska law determines who inherits the property in the absence of a valid will; somewhat surprisingly a surviving spouse will share the property with any surviving children or with any surviving parents of the deceased. Dying intestate can be avoided by having a will prepared and/or by estate planning.

Joint tenancy: a common form of shared real estate ownership among family members, usually used by a married couple. Has the right of survivorship: when one joint tenant dies, their share automatically passes to the surviving joint tenant (or tenants).

Letter of last instructions: a letter to provide information helpful to your family in dealing with your death. Contents could include funeral wishes and directions, location of important legal and financial papers and documents, and information regarding insurance policies, safety deposit box, financial and investment accounts, etc.

Life estate: a property interest in real property where the life tenant has the right to use the property only for the period of their lifetime. At the death of the life tenant, the property passes to the remainderman.

Living will: see Advanced health care directives.

Medicaid planning: planning for how leave property to heirs without disqualifying oneself and/or one's spouse for Medicaid eligibility for long-term care assistance.

Nebraska inheritance tax: state tax paid by those who inherit property from a decedent. 1% with \$40,000 exemption for close relatives, 13% with \$15,000 exemption for other relatives, and 18% with \$10,000 exemption for non-relatives. Paid to counties.

Partition: legal right of a joint tenant or common tenant to go to court to dissolve the joint or common tenancy even if the other joint or common tenants disagree. Partition can be avoided by putting jointly owned land into a trust, etc.

Personal representative: a person named in a will or appointed by a probate judge to administer the estate of a decedent. Formerly referred to as an executor or administrator.

Portability rule: For married couples, any unused federal estate tax exempt amount remaining after the first spouse dies can be used by the surviving spouse at their death if the proper IRS forms are properly filed. Means a married couple does not need to split their estate in order to receive a double exempt amount.

Power of attorney: a written, notarized document in which one person gives another person the legal authority to conduct certain acts on his or her behalf, e.g. to make certain business, financial, or health care decisions.

Probate: process of settling the estate of the deceased. Personal representative gathers all of deceased property, pays outstanding debts and taxes, and distributes remaining property according to will or the Nebraska intestate succession statute.

Remainderman. In a life estate, the person who succeeds to the property when the life tenant dies. If Dad creates a life tenancy in Mom in his will with Son as remainderman, this mean Mom has the farm and its income as long as she lives after Dad dies. But Mom cannot sell the farm. When Mom dies the farm passes to Son.

Supplemental statement: a document referred to in a will listing who will receive specific pieces of personal property (family heirlooms, etc.). A supplemental statement can be modified without needing to modify the will.

Surviving spouse exemption: a surviving spouse is generally exempt from federal estate taxes and Nebraska inheritance taxes.

Tax-free gifts: the amount of \$14,000 (2017) that can be given each year to any individual or any number of individuals without incurring federal gift tax liability. This amount is indexed for inflation and can change annually. Joint gifts from a married couple up to \$28,000 per year are tax exempt (2017).

Trust: legal relationship where a person (the trustee) holds property put in trust by the property owner (the donor) for the benefit of a third person (the beneficiary) E.g. grandparents establish college fund for grandkids with bank trust office as trustee.

Will: legal document containing a person's wishes and directions as to the distribution of their property after their death.

Sources

Marsha Goettling, *A Glossary of Estate Planning Terms*, Montana State University Extension Service MT200202 HR (2017).

Joe M. Hawbaker & Dave Goeller, *Medicaid: Planning for Long Term Care in the Farm and Ranch Context*.

For Further Information

Montana State University Extension has an excellent series of agricultural estate planning materials, available for download at <http://www.montana.edu/estateplanning/eppublications.html>

Omaha attorney Joe Hawbaker has prepared a series of excellent articles on Nebraska farm and ranch estate planning topics, available for download at <http://farmerandrancher.org/articles/>

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