

Nebraska's Estate Plan for Your Farm

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This article is intended for informational purposes only. It does not constitute legal advice, and it is not a substitute for legal advice. Decisions regarding who inherits your property when you die should be discussed with an attorney.

If you do not have a will or trust, Nebraska laws establish the legal process for transferring your assets to your heirs. The county judge supervising the administration of your estate will appoint a personal representative. The personal representative will follow Nebraska's probate laws to transfer your assets and pay any taxes due.

Personal Representative

The probate judge will appoint a personal representative to oversee the disposition of your estate. The judge would probably appoint your surviving spouse or an adult child as personal representative. If a personal representative is not identified in 45 days of death, a creditor can ask the judge to be appointed as personal representative. The personal representative will be in charge of organizing your assets, paying your debts and any taxes due, and distributing any remaining assets among your heirs according to Nebraska's probate code. The personal representative will require the assistance of an attorney during the probate process.

Transfer of Assets

Without a will or trust, assets remaining after your debts and taxes are paid will be passed to your closest relatives. The laws that govern this transfer are called "intestate succession laws." Who receives these assets depends on their relation to you.

If you only have one surviving heir (a spouse, child, parent, or sibling) and no other living decedents, that person will inherit all of your remaining intestate property. If you have multiple heirs, intestate property transfer becomes more complicated.

In Nebraska, if you have a surviving spouse and children (with that spouse, and only that spouse), the spouse will inherit the first \$100,000 of the intestate property plus half of any remaining intestate property and the children will inherit the rest. If the children are from someone other than your current spouse, the current spouse will inherit half of the intestate property and the children will inherit the rest.

If you have a spouse and parents, the spouse will inherit the first \$100,000 of the intestate property plus half of any remaining intestate property and the parents will inherit the rest.

Assets that are payable or transferred-on-death (life insurance proceeds, retirement accounts, securities, living trusts, beneficiary deeds etc.) are usually not subject to intestate succession laws. They will be transferred according to the parameters of the agreement (unless you do not name a designated beneficiary on these documents and instead only name your estate; if that is the case then it will be distributed through the probate process). Furthermore, jointly owned property will pass to the surviving owner(s).

Nebraska law also includes a survivorship period—an heir must outlive the deceased by 120 hours in order to be eligible for their inheritance.

Inheritance Tax

The state of Nebraska imposes an inheritance tax on property left either by Nebraska residents or by non-residents who died owning real estate in Nebraska. The rate at which someone is taxed is based on their relationship to the deceased.

A surviving spouse is exempt from Nebraska's inheritance tax regardless of the amount inherited.

Close relatives include parents, grandparents, siblings, children, grandchildren, and other lineal descendants including legal adoptions (and spouses of these persons, like a daughter-in-law). Persons in this category who inherit up to \$40,000 are exempt from inheritance tax. If the fair market value of their inheritance is more than \$40,000, they are taxed 1% on the amount exceeding \$40,000. If the decedent died on or after January 1, 2023, the tax free inheritance amount is \$100,000.

Distant relatives include aunts, uncles, nieces, nephews, any lineal decedents of these persons and any spouses of these persons. Persons in this category who inherit up to \$15,000 are exempt from inheritance tax. If the fair market value of their inheritance is more than \$15,000, they are taxed 13% on the amount exceeding \$15,000. If the decedent died on or after January 1, 2023, the tax free inheritance amount is \$40,000 and the tax rate is 11%.

Other persons who inherit up to \$10,000 are exempt from inheritance tax. If the fair market value of their inheritance is more than \$10,000, they are taxed 18% on the amount exceeding \$10,000. If the decedent died on or after January 1, 2023, the tax free inheritance amount is \$25,000 and the tax rate is 15%.

Many people would not choose to have their property distributed in this fashion after their death. Most married couples would choose to leave their all property to their surviving spouse. If they have substantial assets, they might choose to leave their property to their surviving spouse for life with the property going to their children when the surviving spouse dies. But this will not happen unless you work with an attorney to develop a will or trust. To have more control over what happens to your property when you die, you should meet with an attorney to explore your options.

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