

guest
article**Wes Argue, Attorney | Hamilton, ND**

A wise man once said that to truly enjoy money you must spend some, save some, and give some away. If you haven't managed to spend or give it all away by the time you die, you need a plan for distributing whatever is left. You can either choose to let the State of North Dakota distribute your property according to the intestate (without a will) distribution laws or make your own distribution by way of a will, trust, joint tenancy, or some other form of beneficiary designation such as T. O. D. (transfer on death), or P. O. D. (payable on death) account.

If you are worried about the expense of a will, you can prepare one online with your computer or prepare what is known as an holographic will. An holographic will is one that is handwritten. For the handwritten will to be valid without witnesses or a notary, the signature at the end and all the material parts of the document should be in your own handwriting. If you want to type portions of the will, you should have two witnesses sign the will attesting to your signature. If you complete your handwritten will after July of 2009, you may use a notary public instead of two witnesses. Presumably, any holographic will completed before July of 2009 that was notarized will be considered valid if death occurs after July of 2009. If you decide to prepare a will yourself, be certain to sign and date it.

If you have minor children, you will want to consider appointing a guardian for the minor children and perhaps a trust to manage the property for them. If you do not use a trust, the children will, in most instances, be entitled to all of the property at age 18. Some children are able to manage property at age 18 - most are not. The trustee can manage the property until the children are older and then distribute

the remaining principal when the children are better able to manage the funds. The age at which the distribution takes place from the trust is controlled by you and not by the state.

If you do draft a will, you should keep it in a safe place so it is available for your heirs after you die. In most counties you can file it with the clerk of court for a nominal one-time fee of \$10.00. Other places wills are normally kept are in bank safe deposit boxes or at home in a safe. By filing the will with the clerk of court you avoid the potential questions of family members or others having access to the will to destroy or tamper with it.

Two other documents you should consider are (1) a durable power of attorney for business and (2) an advanced health care directive. The durable power of attorney for business allows someone you choose to manage your business should you become unable to do so without the expense of appointing a conservator. The advanced health care directive allows someone to make health care decisions for you if you are unable to do so yourself without the expense of appointing a guardian. A conservator takes care of the finances - a guardian takes care of the person.

Any will or other distribution pattern you use should be checked and updated regularly. This is especially true if there is a change in your family circumstances such as a birth, death, or divorce.

If you have a potentially taxable estate (currently over 3.5 million dollars), it is probably time to spend some of your funds to have an attorney prepare an estate plan for you. If you are married, you can double the current 3.5 million dollar estate tax exemption available to your beneficiaries. You get a 3.5 million dollar exemption and your spouse gets the exemption as well. There is probably no other legal fee you can spend that will give you as great a return on your investment. If your estate is over 3.5 million dollars and you have a spouse, you can save about 45% of the next 3.5 million dollars by using properly drafted documents. You can't just give all of your property outright to your surviving spouse and expect to get the additional

exemption. To avoid the tax at the death of the survivor there must be a trust, life estate, or other mechanism used to keep the property out of the estate of the last to die.

Any property that is given to a qualified charitable organization will pass tax free. I encourage clients who have taxable estates to consider gifts to qualified charitable organizations as an alternative to paying estate tax.

The North Dakota Community Foundation offers a broad spectrum of charitable solutions that may fit your needs and interests—below are just some of the types of funds you may establish:

Local Community Endowment Fund

Build a permanent flexible financial charitable resource for your community

Restricted Fund

A permanent endowment to support your favorite charitable organizations with annual grants given in your name.

Donor-Advised Fund

You and/or your family members can recommend grants from this fund

Memorial Scholarship Fund

Remember loved ones and assist deserving students to continue their education

Cemetery Fund

Establish a permanent endowment to care for your local historic cemetery

I realize there is no end to the number of charitable organizations that are after your funds. I also realize how some are willing to "wine and dine" you. In a number of cases there is a large administrative cost paid for those perks. When you choose a charitable organization, find out how much is spent on overhead. Overhead can't be completely avoided, but you should make certain that the biggest percentage of your funds, and the income from the invested funds, are used for the purposes you intend.

Spend some and enjoy yourself, save some for a rainy day, and consider giving the excess to a worthy cause.

Please bear in mind that any of the advice given is very general in nature and cannot be relied upon in a specific instance. Please talk to your own advisor for specific advice.

Charitable IRA Rollover ALERT!

The charitable IRA rollover is scheduled to sunset on December 31, 2009. A brief overview of this wonderful opportunity:

- You must be at least 70 ½ and taking mandatory payouts from your IRA
- You may instruct your IRA Custodian to send a gift directly from your IRA to your favorite North Dakota Community Foundation charitable fund (excluding donor-advised funds)
- The gift counts toward your mandatory distribution for 2009, however, it does not count as income on your tax return
- This means that you get the full benefit of the gift even if you no longer itemize deductions
- It is limited to \$100,000 maximum (no minimum)

Please contact the NDCF office to find out how this can work for you in 2009!

We are pleased to announce that Jordan Neufeld has been appointed to the position of Administrator/Accountant. Jordan holds a B.S. in accounting from Dickinson State University and is working toward his MBA at the University of Mary. He comes to the NDCF from a national healthcare provider where he was overseeing and facilitating the collection of Medicare premiums.



Jordan's main responsibilities are providing efficient, accurate and timely accounting and office management services to the staff and donors/partners of the North Dakota Community Foundation.

Jordan said, "I hope to make connections and build relationships that will further the goals and missions of the foundation. North Dakota is a beautiful place filled with warm and caring people; it is only fitting for the Foundation to build lasting endowments to help keep it that way."

Kevin J. Dvorak, President and CEO of the North Dakota Community Foundation said, "When we advertised the position, we were very pleased with the quality of the applicants. We are doubly pleased that our top pick, Jordan Neufeld accepted the position. Through his first few months, Jordan has already proven that we made the right choice among the talented list of those who applied. We look forward to providing even better donor, grantee and partner service with his help."

www.ndcf.net

Bismarck Office—Headquarters
701-222-8349
North Dakota Community Foundation
309 N Mandan Street, Suite 2
PO Box 387
Bismarck, ND 58502-0387

Kevin J. Dvorak, CFP®
President and CEO
kdvorak@ndcf.net

Kara L. Geiger
Development Director West
kara@ndcf.net

Jordan Neufeld
Administrator/Accountant
jordan@ndcf.net

Grand Forks Office
701-795-1531
North Dakota Community Foundation
PO Box 5155
Grand Forks, ND 58206-5155

Amy N. Warnke
Development Director East
amy@ndcf.net

PO Box 387 • Bismarck, ND 58502-0387

