

SOUTH DAKOTA LEGAL NOTES

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Three Tips Business Owners Should Ignore

Three tips South Dakota business owners should ignore:

1. Just get the business going and worry about legal issues later
2. Bypass an attorney and go online
3. Non-compete agreements are worthless



Mike Henderson Featured on KSFY-TV Segment on Defamation Issue

On May 25, 2016, Swier Law Firm attorney Mike Henderson was featured on KSFY-TV.

Henderson served as KSFY's expert legal commentator for the story - "Letter Criticizes Car Memorial."

<http://www.ksfy.com/home/headlines/Letter-criticizes-car-memorial-380910481.html>

2016 South Dakota Sales and Use Tax Increase

Effective June 1, 2016 the South Dakota state sales tax and use tax will increase from 4.0% to 4.5%.

The new tax rate applies to the following:

- The sale, lease, or rental of tangible personal property, products transferred electronically, and services.
- Excise tax on the purchase of farm machinery.
- The amusement device tax.



South Dakota Estate Planning - A Personal Representative's Checklist

More than 70% of adults avoid preparing for end-of-life realities. They don't have wills or trusts, advance medical directives or pre-need funeral planning in place before there's a death in the family. One way to convince people to make these arrangements is to examine the many responsibilities an estate's personal representative has to carry out.

An personal representative can be a spouse, adult child, a legally-appointed friend or relative, or a trust company named by the decedent in their will or trust (decedent means the person who has died). The personal representative's job is made much harder if information hasn't been pulled together nor decisions made in advance.

Here is a practical checklist for a personal representative's duties:

- Obtain copies of death certificates.
- Make copies of dated obituary notice and/or newspaper articles, to serve as further proof of death.
- Meet with the decedent's attorney.
- If necessary, obtain letters testamentary for personal representative, issued by the court that proves the authority to administer the provisions of the deceased's will.
- Check the contents of any safe deposit boxes (requires a death certificate, executor's appointment in the will, rental agreement and photo ID).
- Compile a list of heirs, next of kin and beneficiaries.
- Make copies of marriage and birth certificates.
- Review the will with the deceased's attorney to determine whether probate is needed.
- Proceed with probate filing, if no trust was created.
- Assemble life insurance policies.
- Inventory tangible real estate property and locate all real estate deeds, mortgages, leases, and tax information.
- Inventory and secure personal items such as cars, trucks, boats, recreational vehicles, mobile homes, motorcycles, furniture, fine jewelry, art and personal contents of the home(s).
- Inventory intangible financial assets such as stocks, bonds, bank accounts, IRAs, CDs, cash, mortgages, notes, pensions, life insurance, etc.
- File and collect insurance claims as applicable – life, medical, health, disability, travel, accident, homeowners, car and/or credit.



- Notify those organizations providing retirement benefits, annuities and pensions.
- Locate military records, as appropriate.
- Locate recent income tax returns.
- File for Social Security benefits, as appropriate.
- File for veteran's burial and survivor benefits, as appropriate.
- File for fraternal, union and association benefits, as appropriate.
- File for employer benefits, as appropriate.
- Open an estate bank account to hold money that is owed to the deceased, such as real estate rental checks and stock dividends.
- Collect debts due the decedent.
- Notify the Social Security Administration of the death.
- Notify Medicare of the death.
- Notify banks of the death and change information for any jointly held accounts.
- Notify stockbrokers of the death and transfer ownership of jointly or solely owned stocks, bonds and mutual funds.
- Contact credit card companies to close/cancel all individually held cards of the deceased.
- Change all jointly held credit card accounts.
- Notify creditors of the death.
- Examine and approve or reject claims of creditors and make payments, as appropriate.
- Sell or transfer the title for the deceased's automobile to a beneficiary.
- Pass real estate and other assets owned in joint tenancy to the surviving joint tenant.

- Transfer bank accounts and securities registered in “payable on death” form to beneficiaries.
- Transfer funds in IRAs and retirement plans to named beneficiaries.
- Transfer property left to the surviving spouse (in some states), or transfer assets held in trusts (such as living trusts or AB marital bypass trusts) to named beneficiaries, as appropriate.
- Redeem/re-title government bonds, either by the beneficiary or estate administrator.
- If the decedent had his/her own business, arrange for management of the business.
- If the decedent was an artist, author, musician, composer, or other creative person, arrange for the continued management of royalties and ongoing sales.
- Establish management of rental properties, both in- and out-of-state, as appropriate.
- Terminate leases and outstanding contracts on behalf of the deceased.
- Pay continuing expenses, such as mortgage payments, utility bills, and homeowner’s insurance premiums, until a property is sold or re-titled.
- Notify accountant or tax preparer that a final tax return will need to be prepared for the deceased.
- Prepare and file an estate tax return for estate taxes, or any state inheritance return, if necessary.
- Determine whether the estate qualifies for “special use valuation” under the tax laws (IRC § 2032A), deferral of estate taxes (IRC §§ 6161 or 6166), etc.
- Pay any federal taxes that may be due.
- Keep detailed records of all receipts and disbursements made on behalf of the estate, including attorney’s fees and personal representative’s fees.
- Keep detailed records of time spent and activities conducted on behalf of the estate during the administration of the estate.
- When debts and taxes have been paid and all the property distributed to the beneficiaries, the estate may be formally closed by the probate court.
- Take a deep breath and then a well-earned vacation!!



Why is “Stepped-Up” Basis Important for South Dakota Agricultural Producers?

The importance of “stepped-up” basis for South Dakota agricultural producers cannot be overemphasized. To illustrate this point, consider the following scenario.

In 2003, a farmer in Charles Mix County makes a \$100,000 investment in a piece of farm land. In 2015, the farmer’s property is worth \$2 million. The farmer has a favorite grandson and wants to give him the property as a gift. However, the farmer also has a knowledgeable estate planning attorney whose advice is, rather than gifting the farm land now, wait until the farmer’s death.

The next year the farmer dies and the grandson inherits the property. Under this scenario, step-up in basis rules would apply (i.e. property that transfers at death is “stepped-up” to the fair market value at the date of death). Therefore, upon the farmer’s death, the basis of his property is stepped up from \$100,000 to \$2 million. The result is that the grandson (as the beneficiary) can now liquidate that property at its stepped-up basis of \$2 million with no capital gains liability.

On the other hand, if the farmer disregarded his attorney’s advice and gifted the property to his nephew in 2015, “carry-over” basis rules (transfer of basis during life) would have applied. In other words, if the property would have been gifted from the farmer to his grandson, then the grandson “carries over” the basis of the farmer. In these circumstances, the grandson would “carry over” the farmer’s basis of \$100,000 and when the grandson sells the property, the grandson would be responsible for paying capital gains on the asset now worth \$2 million.



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