

SOUTH DAKOTA
LEGAL NOTES

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Five Estate Planning Tips for Young Families in South Dakota

Many young families in South Dakota delay estate planning. If asked, they usually say that they are too busy, too young, or simply can't afford it. Other young parents just don't like thinking about "what could happen" if they would die at a young age. However, everyone should realize that their spouse and small children are depending on them - in fact, that's the exact reason why young families need estate planning.

Here are five tips that will ensure a good estate plan for a young family in South Dakota:

Tip # 1 - Name a Personal Representative or Trustee for Your Estate

Your Personal Representative or Trustee will be in charge of handling your financial affairs - things like paying bills, distributing assets, and hiring an attorney. It goes without saying that this person should be someone that you trust and is capable of handling the job.



Tip #2 - Name a Guardian for Your Minor Children

If something happens to you, your spouse will continue to raise the children. But who will raise the children if something happens to both of you? This is usually the most difficult question young parents face. However, if you do not name a guardian for your children, a South Dakota court will have to appoint someone without knowing your desires, your children, or your family members.

Tip #3 - Provide Instructions for Distributing Your Assets

Most young couples want their assets to go to their surviving spouse. However, if both parents pass away and the children are young, they will want their assets to be used for their children's care.

Tip #4 - Name Someone to Manage Your Children's Inheritance

If you don't name this person in your estate plan, a South Dakota court will name someone to oversee your children's inheritance.

Tip #5 - Review Your Insurance Needs

The estate planning process should also include a review of your life insurance policies. Any income earned by one or both parents would need to be replaced. Additional coverage may be needed to provide for your children until they are grown (even more if you want to pay for their college).

Estate planning requires that young families think about family relationships and make some important decisions. An experienced estate planning attorney will be able to guide you through this process. Also, if finances are tight, start with the most important legal documents, then update your plan as your financial situation improves. Most important, once your plan is in place, you will have peace of mind that your family will be protected if something should happen to you.

Q: I want to make a gift to my grandson in Sioux Falls. What are some of the 2013 changes to the estate and gift tax laws?

A: Now that the uncertainty over estate and gift taxes has finally been clarified, here is a quick update:

Lifetime gift and estate tax exclusions have risen slightly, to \$5,250,000 in 2013, while the estate and gift tax rate has increased, from 35% to 40%. What's more, the applicable exclusion amounts will continue to be indexed for inflation annually, and the popular portability provision that allows couples to take full advantage of each other's unused federal estate and gift tax exclusion amounts, remains effective. Now that the uncertainty over estate and gift taxes has finally been clarified, here is a quick update:

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Q: What are South Dakota Powers of Attorney and Living Wills?

A: Of course, your will does not take effect until your death. However, other estate planning documents (known as "advanced directives") may be useful during your lifetime.

A **Durable Power of Attorney for Health Care** is a document that you, as the "principal," create by appointing another person, the health care "agent" or "attorney in fact," to make health care decisions for you should you become incapable of making them yourself. This type of power of attorney is "durable" because it is effective even if you become incapacitated. It is important to note that your "agent" or "attorney in fact" does not need to be a licensed lawyer. In fact, you can name anyone to serve in this role.

A **Living Will** is a document that instructs your physician and other health care providers as to the circumstances under which you want life-sustaining treatment to be provided, withheld, or withdrawn.

Similar to a Durable Power of Attorney for Health Care, a **Durable Power of Attorney (Financial)** is a document that you, as the "principal," create by appointing another person, the financial "agent" or "attorney in fact," to make financial decisions for you should you become incapable of making them yourself. Once again, it is important to note that your "agent" or "attorney in fact" does not need to be a licensed lawyer. You can name anyone to serve in this role.

You should resist the temptation to use "simple forms" that you may find in a book or on the Internet. South Dakota has particular requirements for advanced directive documents. You should work with your attorney to draft these documents so that they are valid in South Dakota.



Death Tax Increase to Impact Estate Planning for South Dakota Farmers

The death tax is increasing in 2013, and that's making estate planning even more difficult than before for South Dakota farming families. Now, more state farmers are having a tough time keeping their estate in their family after they pass because of the significant financial burden put on family members by the death tax.

For generation after generation, leaving the family-owned ranch to children after the passing of a loved one has been a tradition for many South Dakota farmers. But now, with the promise of a tax increase by Congress in 2013, this could no longer be a possibility.

In 2012, farmers were paying a 35 percent rate in inheritance taxes on an estate handed down to them after the passing of a loved one. With the expiration of the federal tax cuts at the end of 2012, this rate is scheduled to rise almost to 50 percent. This huge boost in the tax burden will make it more difficult for South Dakota farmers to keep their ranches in the family for future generations to work on and enjoy.

State farmers in South Dakota face unique laws concerning estate planning and probate. These laws require the help and special attention from an estate planning and probate attorney in South Dakota who is knowledgeable about the challenges farmers face. With this increase in taxes for farmers, it's become vital to have an experienced lawyer to help with estate planning. The attorneys at Swier Law Firm can explain the options available to the family after a person has passed and what can be done to help keep the farmland that has been around for generations in the hands of family members.

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