

# 2025: Estate Planning Review

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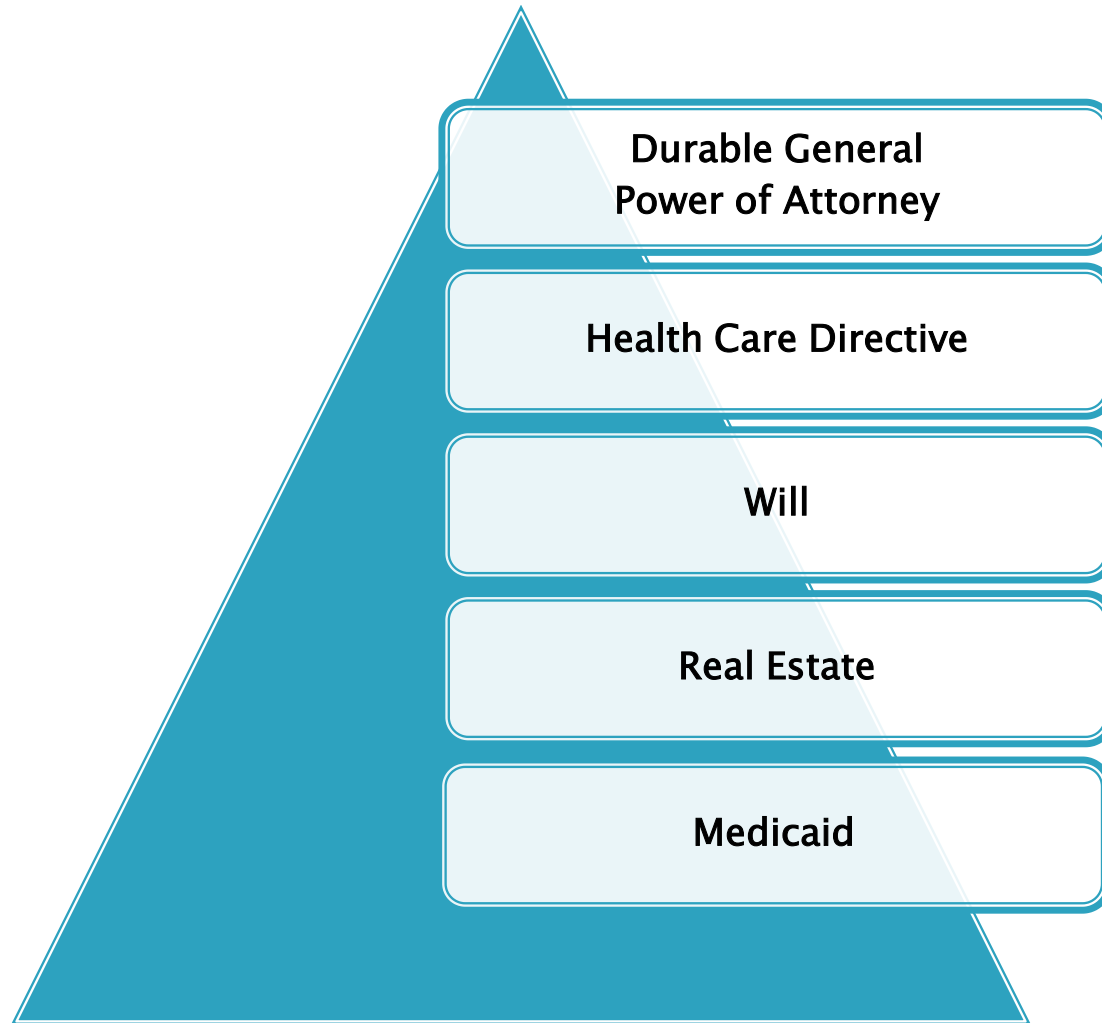


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# IMPORTANT NOTICE

**These materials and the related presentation are intended to provide the participants with guidance in estate planning and administration. The materials and the comments of the speaker do not constitute, and should not be treated as, legal advice regarding the use of any particular estate planning technique or the tax consequences associated with any such technique. Although every effort has been made to assure the accuracy of these materials and comments, the speaker and JD Legal Planning do not assume responsibility for the reliance of any individual on the written or oral information disseminated. You should independently verify all statements made in the materials and in the seminar before applying them to a particular fact situation, and should independently determine both the tax and non-tax consequences of using any particular estate planning technique before using it or recommending it either on your own behalf or on behalf of another.**

# OVERVIEW



# DURABLE GENERAL POWER OF ATTORNEY (POA)

- Name in advance who you want to take care of your affairs: financial; real estate; income tax; banking; etc. when you can no longer do it.
- Every person over 18 should have a POA signed.
- Names alternates.
- Best to sign when you do your Will.
- Be wary of internet forms.
- If no POA is in place before your incapacity, your family must have you declared incompetent in a Court guardianship proceeding.

# POA EXAMPLE

Don Johnson: Single, age 55

- Wrecks his car; has head injury
- Mortgage and car loan are due
- Need someone to file for disability
- Who can sign for him?

# POWER OF ATTORNEY VS. CONSERVATORSHIP

Power of Attorney	Conservatorship
Private	Intrusive
Approximately \$450	\$8,000 +
Sign it once	Annual court filings
Grant permission as you wish	Ask Judge for permission
Can list alternates	Return to court for changes

# POA POINTERS

- Sign before incapacity
- Sign when you do your Will
- Name alternates
- Sign an extra original for each person named
- Best if drafted by a lawyer
- Be very wary of internet forms
- POA power ends at death

# HEALTH CARE DIRECTIVE

- Like a POA over medical decisions
- 2 stage document
  - HIPAA release/name people to make decisions to get you better
  - End-of-life wishes
- Forms are free at clinic/hospital



# HEALTH CARE DIRECTIVE

- Name your decision-makers in advance.
- Make sure your wishes on end-of-life issues are upheld:
  - Tube-feeding
  - IV hydration
  - Ventilator
  - Organ/tissue donation
  - Etc.

# HEALTH CARE DIRECTIVE EXAMPLE

- Vicky suffers a stroke. Vicky is age 75 and single. Vicky has severe mental deficits now. Vicky never signed the free Health Care Directive form.
- Who can sign medical consent now?
- Who can talk to the health insurance office?
- Who can transfer Vicky to a different hospital for special rehabilitation?

# HEALTH CARE DIRECTIVE

- Every person listed on the Health Care Directive should have an original or photocopy
- Your primary doctor should have a photocopy
- You should keep two extra photocopies for yourself
- North Dakota offers a Health Care Directive Registry website

# North Dakota Health Care Directive Registry

- NDCC § 23-06.5-19
- [www.ndhin.nd.gov](http://www.ndhin.nd.gov)
  - Email: [NDHIN@nd.gov](mailto:NDHIN@nd.gov)/ Phone: 701-328-3190
- [www.nd.gov/hdir/login](http://www.nd.gov/hdir/login) - (to upload docs)
- ND IT Technical Support
  - 701-328-4470
  - 877-328-4470

# North Dakota Health Care Directive Registry

A secure North Dakota Registry for North Dakota citizens to store, share and have internet access to their health care directives.

# View Health Directives

Powered by  
NORTH  
**Dakota** Health Information Network  
An Agency of the State of North Dakota

Susan E Johnson-Drenth



URL

[www.nd.gov/hdir/pin](http://www.nd.gov/hdir/pin)



Access ID

[REDACTED]



PIN

[REDACTED]

Share this card with others to view your health directive

# Does A Will Avoid Probate?

- A will does not avoid probate
- A will is a roadmap for the probate Judge to follow in court after you die
- If the Will is used when you die, your family is in probate court
- For Example: Your Family cannot just show your will to the bank when you die to collect your account

# PROBATE IS CAUSED:

- When a person dies as the sole owner of an asset (without a “joint tenant” co-owner, without a beneficiary, and without a trust owning the asset)
- The asset triggers probate because:
  - It is any value of real estate in your name alone
  - It is not real estate and exceeds \$50,000 in value (cumulatively) in North Dakota and \$75,000 in Minnesota



# DO I HAVE MY DEED TO MY REAL ESTATE?

- Your name is on the deed from when you received your real estate, but often times no one give you the deed, so you have to ask for it.
- Your deed is usually 1–3 pages long. Your deed **IS NOT** your abstract, which is the history book of the action on your real estate since the federal government gave a patent on it.
- Everyone should have a photocopy of the recorded deed from when they received their real estate.
- You have a copy of the title to your car, you should have a copy of the title to your real estate.

# HOW DO YOU GET YOUR DEED

1. Bring your property tax statement to the County Recorder's Office.
2. Ask for a copy of the deed in which you received the real estate.
3. It is helpful for the recorder to know the approximate year you took title.
4. You want your deed, **NOT** your mortgage or promissory note.

# HOW TO INHERIT REAL ESTATE WITHOUT PROBATE

- “Joint Tenants” on warranty deed
- Transfer-on-death beneficiary deed
- Life estate deed
- Revocable Living Trust owns real estate

# “JOINT TENANTS” OWNERSHIP

- “Joint Tenants” ownership of real estate:
  - If you are married (or have someone you want to co-own and inherit real estate from you), the most common way is to own your real estate as “Joint Tenants” on your warranty deed
  - Check your deed at home; it has to say “Joint Tenants” in order to avoid probate
    - “as husband and wife” = won’t work
    - “and” = won’t work
    - “as tenants-in-common” = won’t work

# “JOINT TENANTS” OWNERSHIP

- If you find your deed doesn't say Joint Tenants, see your attorney to have a new deed done (usually \$450 or less, plus county recording fee)

# TRANSFER-ON DEATH BENEFICIARY DEED

- Transfer-on-death beneficiary deed to avoid a probate on real estate:
  - A recent law in MN
  - Can be done by a single person or married couple
  - Can be done with a home, land or mineral rights
  - Best option when you don't want to co-own real estate with your heirs, because you retain full control to sell, mortgage or change your mind
  - Revocable, so it does not have nursing home protection

# LIFE ESTATE DEED

- Life estate deed to avoid a probate on real estate:
  - Best option when you want to protect real estate from nursing home costs (has 5-year MA look back penalty waiting period before MA eligibility)
  - Can be done by a single person or married couple
  - Can be done with a home, land or mineral rights
  - You retain the right to live in home, get rental/farm/mineral income and you pay property taxes
  - You lose the right to be able to sell the real estate without the co-signature of the others
  - Irrevocable

# REVOCABLE LIVING TRUST OWNERSHIP

- Revocable Living Trust ownership of real estate to avoid probate:
  - In Minnesota, it may be best for estates exceeding \$3.0 million in value because of estate taxes
  - Common choice for those who own real estate in more than one state
  - Revocable, so it does not have nursing home protection



# MEDICAID (MA)

- Is it your long-term care plan?
- How is MA different from Medicare?
  - 1. You need long-term care in a facility or your home;
  - 2. You (and your spouse) are down to the asset limits legally; and,
  - 3. You (and your spouse) have not given anything away (for free or for less than fair market value) to anyone for any reason in the last 5 years.

# ND MA ASSET LIMITS FOR 2025

- Medicaid asset limits for 2025:
  - Single person – \$3,000 in “available” assets.
  - Married:
    - \$3,000 in “available” assets for institutionalized spouse
    - One-half ( $\frac{1}{2}$ ) of combined marital “available” assets (as determined in an Asset Assessment Form based on asset values on day of admission to hospital or nursing home)
    - In North Dakota, not less than \$31,584 and not more than \$157,920
    - North Dakota community spouse income allowance is \$2,555/month

# MN MA ASSET LIMITS FOR 2025

- Medical Assistance asset limits for 2025:
  - Single person – \$3,000 in “available” assets.
  - Married:
    - \$3,000 in “available” assets for institutionalized spouse
    - In Minnesota, not more than \$157,920 (with no minimum)
    - Minnesota community spouse income allowance is minimum \$2,555/maximum \$3,948

# MA

- What are “available” assets?
  - Assets which are at your disposal
  - Assets which you have a legal ability to make available (**with or without** penalties) – Examples:
    - Bank accounts and investments (not including qualified retirement plans like IRAs in North Dakota)
    - Annuity balances (not including certain single premium immediate annuities)
    - Cash value of life insurance
    - A second vehicle
    - Real estate other than your primary home
    - 529 college plans

# MA

- If you are married, what else can you keep in addition to “available” asset limit?
  - Homestead, which may include contiguous farmland acreage
  - One motor vehicle (unlimited value usually)
  - Personal effects (household goods, furniture)
  - Certain income-producing assets (business assets and some farming assets) with very specific guidelines
  - Funeral accounts and burial plots for both spouses (must meet Medicaid guidelines)

# MA GIFTING EXAMPLE

- On February 1, 2025, Dixie gives each of her 5 children \$2,000, for a total gift of \$10,000.
  - Does the IRS care? No, because she gave less than \$19,000 per child. But Dixie might need MA, and the IRS gifting rules don't apply to MA eligibility.
  - If Dixie needs MA for long-term care services between February 1, 2025 and January 31, 2030, she will not be eligible unless she gets the \$10,000 back from her children first. After February 1, 2030, she is no longer required to get the \$10,000 back.
  - What if Dixie's children won't or can't give it back? Dixie is required to sue the children and get a judgment.

# MA

Any and all uncompensated transfers made by an applicant or spouse to any individual or entity for gifts, presents, church or charitable donations, tuition assistance or political donations after 2/8/06 and within 5 years of a Medicaid application must be reported and will affect eligibility. No federal exception for nominal amounts or charitable intent.

**PROPERTY AND ASSET PROTECTION PLANNING MUST BEGIN 5 YEARS BEFORE YOU NEED MEDICAID AND BEFORE THE INDIVIDUAL BECOMES INCAPACITATED.**

# MA

Tim signs a deed placing his property into a life estate with his children.

**Life Estate** = Rights to live on property, get rent (or mineral income), responsible for property taxes and upkeep



# MA

The value of a life estate is an excluded asset for Medicaid, so a life estate deed is the best way to protect any real estate or mineral rights from having to be sold to pay long-term care expenses. However:

- Still subject to 5 year look back period from date of deed
- Income generated from property must be used toward your nursing home care

# MA

- It is very common for parents in North Dakota and Minnesota to sell their farmland to their farming children on a contract for deed, with favorable terms to the child. This is a Medicaid trap for parents, because contracts for deed are scrutinized for any disqualifying transfer (ie: price, interest rate, term, if payments are current) and if it passes scrutiny, the whole contract must be sold to a company like JGWentworth at a discount

# NORTH DAKOTA MA – COMMUNITY SPOUSE INCOME

- Income rules for community spouse
  - Community spouse allowed all of their own income without limit.
  - If community spouse's income is below \$2,555, then they are allowed all of his or her own income, plus enough of the institutionalized spouse's income to reach \$2,555/month.
  - Community spouse may also purchase a SPIA (Single Premium Immediate Annuity) after the effective date of the Asset Assessment with excess assets.

# MINNESOTA MA – RULE CHANGE FOR COMMUNITY SPOUSE INCOME

- Effective June 29, 2015, community spouse may now purchase an immediate annuity (SPIA) after the effective date of the Asset Assessment with excess assets.

# NORTH DAKOTA MA – RETIREMENT PLANS

- ▶ Effective July 2014, North Dakota Medicaid now considers any retirement plan for community spouse or institutionalized spouse as an excluded asset.
  - IRA
  - 401K
  - SEP-IRA
  - ROTH IRA
  - Etc.
- ▶ Effective August 28, 2015, Excluded retirement plans must be annuitized after your spouse is in the nursing home

# MINNESOTA MA – RETIREMENT PLANS

- Still count as an available asset.

# ND MA EXAMPLE ASSET ASSESSMENT (husband in nursing home)

	<u>Available</u>	<u>Excluded</u>
▶ Home (\$87,000 mortgage)		\$250,000
▶ Wife's IRA		200,000
▶ Checking (joint)	\$ 3,000	
▶ Husband's prepaid funeral		11,000
▶ Old car		500
▶ Household goods		15,000
▶ Investment account (joint)	<u>217,000</u>	-----
▶	\$220,000	- - -

# ND MA EXAMPLE ASSET ASSESSMENT (husband in nursing home)

1. Wife is allowed to keep:
  - a.  $\$220,000 \div 2 = \$110,000$
  - b. House titled in her name only
  - c. Car and household goods
  - d. Name on \$3,000 joint account
2. Husband is allowed to keep:
  - a. Name on \$3,000 joint account
  - b. \$11,000 prepaid funeral (could be more)



# ND MEDICAID EXAMPLE

## ASSET ASSESSMENT

### (husband in nursing home)

3. Need to legally spend excess \$107,000  
(\$220,000 – \$110,000 wife – \$3,000 husband)
  - a. Pay off \$87,000 mortgage
  - b. Buy newer car for \$20,000
4. Need to annuitize wife's IRA  
Age = 70
  - Life expectancy = 15 years (180 months)
  - \$200,000 IRA ÷ 180 months = \$1,111 more income to wife each month
  - Wife also keeps her Social Security

# **I HAVE ENJOYED MY TIME WITH YOU TODAY.**

**If you have any further questions, please call me at  
701-364-9595 or 855-299-9595.**

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