



North Dakota

Trusts and Estates

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Objectives

I. Estates

II. Trusts

III. Questions



Basics

- Timing of Transfer
 - Property passes at death
- Uniform Probate Code



Testate vs Intestate

- Testate = Will
- Intestate = No Will



Devisee vs Heir

- Devisee = Testate
- Heir = Intestate



Testacy



Will Requirements

- N.D. Century Code § 30.1-08-02(1)
 - Sound Mind
 - Written
 - Signed
 - Testator
 - Witnesses or Notary Public



Holographic Wills

- Recognized by North Dakota
 - Witnesses not required
 - Signature and material portions in testator's handwriting



Lapse

- What is Lapse?
 - A devises Blackacre to B
 - B predeceases A
 - B has two children – C & D
- Anti-Lapse Statute
 - N.D. Century Code § 30.1-09-05
 - Issue of deceased devisee take in place of deceased devisee



Will Contests

- Grounds for Challenge
 - Lack of Testamentary Capacity
 - Undue Influence
 - Fraud
 - Duress



Will Contests (continued)

- Testamentary Capacity
 - Must be 18 or older
 - Strength and clearness of mind to understand
 - Extent and character of property
 - Names and identity of beneficiaries
 - Appreciate the character of the act
 - Understand and appreciate relations of these factors



Will Contests (continued)

- Undue Influence

- Defined as

- “Substitution of the purpose and intent of one exercising influence for the purpose and intent of the testator” – Estate of Howser, 2002 ND 33

- Elements of Undue Influence

- Testator subject to undue influence
 - Opportunity to exercise undue influence
 - Disposition to exercise undue influence
 - Result that appears to be the effect of undue influence



Elective Share

- Spouse may choose to receive elective share of 50% of the augmented estate
 - N.D. Century Code § 30.1-05-01
- Augmented Estate
 - Value of probate estate (reduced by expenses, homestead allowance, etc)
 - Value of nonprobate assets
- Election to be made within 9 months of date of death



Probate Options

- Informal
 - Most common form of probate
 - Governed by N.D. Century Code § 30.1-14
- Formal
 - Litigation to determine the validity of the will
 - Governed by N.D. Century Code § 30.1-15




Probate Process

- District Court Filing
- Notice
 - Devisees
 - Creditors
- Inventory Estate
- Estate Tax
- Personal Representative Deed
- Letters Testamentary



Intestacy



Intestate Succession (2009 – Present)

- N.D. Century Code § 30.1-04
 - Generally 100% to Spouse
 - Except:
 - No children & surviving parents
 - Children from previous marriage
 - No Spouse
 - 100% to Issue



Intestate Succession (Historical)

- Prior to 1963
 - Spouse and children split estate
- 1963-1975
 - Spousal share increased from 1/3 to 1/2
- 1975-1996
 - No parents or issue then all to spouse
- 1996-2009
 - Mirrors modern statute



Administration Process

- District Court Filing
- Notice
 - Heirs
 - Creditors
- Inventory Estate
- Estate Tax
- Personal Representative Deed
- Letters of Administration



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History of Trusts

- Crusades
 - Faithless Neighbor
 - Trusting Crusader
 - Lord Chancellor
- Statute of Uses (1536)




Types of Trusts

- Express
- Implied
 - Resulting
 - Constructive
- Testamentary



Parties

- Settlor
- Trustee
- Beneficiary



Why do we still use trusts today?

- Privacy
- Spendthrift protection
- Estate planning
- Charities
- Asset protection
- Tax planning



Trust Code

- N.D. Century Code Title 59



Trust Requirements

- Capacity to create trust
- Intention to create trust
- Defined beneficiary
- Sole trustee not sole beneficiary
- Can not be created as a result of
 - Fraud, Duress, Undue Influence



Duties of Trustee

- Administer Trust
 - Act in good faith
 - Control and protect trust property
- Loyalty to Beneficiaries
 - No self dealing
- Impartiality
- Inform and Report



Powers of Trustee

- Powers Enumerated in Trust
- Specific Statutory Powers
 - Acquire/sell property
 - Execute oil and gas leases
 - Grant options



Trust Termination

- Terms of Trust
- Approval of all Beneficiaries
- Cy pres
 - Charitable purpose becomes unlawful, impracticable, impossible to achieve



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Thank You!



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