

SOUTH DAKOTA
LEGAL NOTES

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Estate Planning Seminar for South Dakota Farmers & Ranchers

Swier Law Firm, Prof. LLC and Security National Bank will be holding an educational seminar entitled "Estate Planning for Farmers & Ranchers" on Tuesday, November 19, 2013, from 11:30 a.m. to 1:00 p.m. at the SDSU Extension Regional Center in Winner.

The seminar will focus on:

- Why Do I Need an Estate Plan?
- What Can a Will Do For Me?
- Would a Revocable Living Trust Be Better?

Seating is limited.

Reserve your seats today by

- Calling Penny Faldalen at Swier Law Firm in Winner (605-842-3373);
- Emailing Penny Faldalen at penny@swierlaw.com; or
- Registering on-line.



5 Duties of a Personal Representative in South Dakota

When setting up your South Dakota estate plan, you will be asked to name a Personal Representative (also known as an Executor).

At the time of your death, your Personal Representative will have several duties, including:

Duty #1 - Locating and protecting your assets that will be subject to probate.

Duty #2 - Determining who you owed money to and paying off these debts.

Duty #3 - Obtaining the values of your probate assets.

Duty #4 - Preparing and filing all of your personal and estate tax returns.

Duty #5 - Distributing your assets to the proper beneficiaries.

Serving as a Personal Representative is an important and often time-consuming responsibility. However, with the help of your estate planning attorney, you should be able to choose the right person for the job.



Texts and Instant Messaging - A New Frontier for South Dakota Businesses

Texting and instant messaging should be “on the radar” for any South Dakota business. Email is no longer the only electronic communication that may be used in defending lawsuits. Because of “smart phones,” texts and instant messaging have become an increasingly vital type of evidence in lawsuits.

What is Text and Instant Messaging?

Text messaging originally referred to messages sent using the Short Messaging Service. SMS text messages are limited to 160 characters, are transmitted through cellular carriers’ systems, and are typically stored on those systems for a short period of time (for example, 48 hours to two weeks) in addition to being stored on the sender’s and recipient’s devices.

However, the emergence of mobile Internet access has led to the increasing adoption of IP-based messaging, carried via the Internet and without passing through a carrier’s infrastructure, and usually having no cost to the user. A recent Pew Research Center study found that 91 percent of American adults own a mobile phone and 81 percent use their phone to send or receive text or instant messages. Broken down by age group, 97 percent of those 18-29 and 94 percent of those 30-49 send and receive such messages on their phones. Those in the 50-64 and 65+ age groups bring down the overall average at 75 percent (still high) and 35 percent, respectively.



How Big is Text and Instant Messaging?

Nearly 10 trillion SMS and 10 trillion IP-based messages will be sent in 2013. As of June 2012, Apple’s iMessage service had 140 million users who sent one billion messages a day. Granted, a large portion of these messages, even in the work context, are personal, such as “Where do you want to meet for dinner?” But it would be a mistake to presume that all employee texts and instant messages are unimportant. More people are using instant messaging in place of phone calls and email for work communications. Younger employees are used to communicating by text and instant message and are more likely to use them in their work communication. It is likely that users may be more informal and less careful about the contents of their text and instant messages.

How is Text and Instant Messaging Important in a South Dakota Business Lawsuit?

Text and instant messages can be a factor in lawsuits and investigations. They have been used as evidence in sexual harassment and wrongful termination cases, and often in litigation arising out of industrial and other accidents. Prosecutors appear particularly interested in text and instant messages in building potential criminal cases.

South Dakota businesses must recognize the importance of text and instant messaging and understand that email is no longer the only form of electronic communication that may be used in lawsuits.

Q: In South Dakota, what is a “joint tenancy”?

A: Under South Dakota law, there are a variety of ways to title property. Title is the method in which property is owned. How property is titled impacts the drafting of your estate plan. In South Dakota, title is commonly held in three different ways: sole ownership, tenancy in common, and joint tenancy.

In a joint tenancy, two or more persons own the same property with their right of ownership subject to the other joint tenant’s ownership right. When one joint tenant passes away their interest in the property automatically is transferred to the surviving joint tenant. This is the common ownership form among married couples, and couples often do this to their property to avoid probate. However, when placing property in joint tenancy one must be cautious and contemplate the pros and cons of such an action because a joint tenant cannot leave their interest in the property to someone through their will.

Q: Why would I want to form a South Dakota Limited Liability Company?

A: For many businesses in Sioux Falls and throughout South Dakota, a Limited Liability Company (LLC) is an excellent business entity choice.

First, a South Dakota LLC offers protection from personal liability for business debts (just like a corporation).

Second, unlike a corporation, which must pay its own taxes, an LLC is a “pass-through tax entity.” This means that the profits and losses of the business pass through to its owners, who report them on their personal tax returns just as they would if they owned a partnership or sole proprietorship.

Finally, although setting up an LLC is more difficult than creating a partnership or sole proprietorship, running one is significantly easier than running a corporation.



kids corner

In October we got to paint pumpkins. We painted some pumpkins for our steps and we painted a few pumpkins for Uncle Chris and Aunt Brooke. We got the pumpkins we painted from Grandma and Grandpa Swier’s garden.

For Halloween, we all had a party in school. I got to watch a movie and have caramel apples. Will played “Guess the Ghost” with his class. Kate played games with her class too!

On Halloween, I dressed up as a 1950’s girl, Will was a pirate, and Kate was a witch. We all went trick-or-treating! The first stop we made was at Uncle Chris and Aunt Brooke’s house. We saw Bentley (their puppy) come out in a Winnie the Pooh costume! We went to all of our neighbors and stopped and saw Carol and Dave and Chris from the office. We all got a lot of candy! My favorite was a Hershey bar!

By Sarah Swier



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