

Planning the Future of Your (Working) Farm

One Lawyer's Observations on Farm Estate and Succession Planning

Summer/Fall 2013

Keep Your Perspective on Family Land. Land title flows through history. Farms acquire land, and then shed land to be part other farms. Certain families produce a leader who acquires land, and develops the management skills required to keep it. The best leaders control the flow of title to the next generation through good planning and business development, and another generation must then keep it, manage it, and in turn develop their next generation's capacity to receive it. You can't guarantee a farm will stay in your family, but you can give it a fighting chance.

Forget Equal and Embrace Fair. In multi-generation farming, family land is usually the most valuable asset, and its distribution among heirs is certainly a challenge. However, to grant a successor the control they need to keep operating, you may have to attach certain strings to its distribution. Other heirs may be able to own, they just can't sell it on their terms. Be prepared to educate your family on your decisions, and give them every chance to understand.

Avoid heir co-tenancy in Land. Unless you control the disposition of title and control, the law takes care of it for you. Our laws of title and inheritance are relatively inflexible once an event has occurred that disperses title. Such events - death, divorce, disability, disagreement, (financial) disaster - set in motion a system to disperse title among multiple family members or outsiders, who may have different needs and goals for assets.

Probate Is A Dispassionate Process. Probate is a system administered by the county court to ensure heirs get legal shares of your estate (unless you have directed otherwise in your will). The probate system is unconcerned with your goals for your assets, the needs of the family business, or the "fair" ownership of family land. It gives wealth to those who shouldn't get it. It does not impose restrictions or directives on the use of assets as you would

intend. The probate process will not divide your assets, that is left to your heirs to agree. Or not.

Help Me is Cheaper than Fix Me. Your lawyer is a counselor, not a plumber. We like to think of lawyers as people who fix things when they break, but the best lawyer-client relationships prevent things from breaking. You win disputes by anticipating and avoiding them, not by beating the other guy (although this is sometimes necessary). Fighting, whether you win or lose, costs far more money than paying a lawyer to help you anticipate and avoid that fight. The best lawyers do this by taking time to understand your business, your land, and your family.

Forget the Estate Tax. Many trust-based estate plans are designed to minimize federal estate taxes. However many do not adequately address management and distribution of assets, or have good trusteeship wired into them. As such, they probably don't adequately express your intent in creating the trust and therefore leave the trustee vulnerable to challenge by a beneficiary. They may not address issues unique to farming, like the need to grant successor control of land and ownership of machinery. With a historically high estate tax exemption, most farm families are not exposed to the estate tax.

You Can't Make It Perfect, So Make It Flexible. Lay down a foundation plan before you strive for perfection. Don't wait for a perfect distribution solution to emerge before engaging counsel to protect your farm. Distribution decisions can be agonizing, and just the anticipation of an upset heir can cause a parent to avoid decision-making. If this is a concern, plan first, then educate the family later. Estate plans and asset distribution and management contracts (ie. trusts, limited liability companies, etc.) by their very nature are flexible guides that manage risk to the situation as it is now, and are easily changed and modified through amendment and further transactions in assets.

