

Protect the Farm



“Death comes to all, but great achievements build a monument which shall endure until the sun grows cold.”

Ralph Waldo Emerson

ESTATE PLAN ESSENTIALS

Manage estate taxes with comprehensive succession preparation.

In any business, coming together as partners is the easy part. The hard work is keeping relationships together and working together to achieve success. Family farms that remain a cohesive unit through several generations typically show a competitive advantage over time.

It is not necessarily the imposition of an estate tax that destroys the integrity of an operation. It is usually the incompatible application of estate planning tools—most often designed to mitigate the estate tax—that divide and destroy the operation.

Estate planning professionals rarely account for the dissimilar objectives between the siblings who are active in the farm operation and those who are not. Most advisers are uncomfortable with the “equal isn’t fair; fair

isn’t equal” discussion. They ignore the topic and use off-the-shelf techniques to mitigate the estate tax—a practice that may cause the land and operation to be parceled out and sold in the estate settlement process.

Though the federal estate tax remains in flux, it’s important to ensure that the provisions of your estate plan sync with your succession plan. Whether it’s an estate tax, capital gains tax or other unwieldy provision, obligations to the government can negatively affect your family’s opportunity to continue farming.

In the scheme of things, the estate tax law matters only as one of the elements that must be covered in a comprehensive succession plan. The estate tax law will affect planning, and knowing that estate tax laws are changing means plans must remain flexible.



TRUST BASICS

In the realm of estate planning, a generic succession trust does not exist, nor is it likely to ever come to be. The reason being, there is no typical succession scenario that is common to the majority—or even many—of generational transfers.

A family-owned farm is such a unique blend of people—and their individual personalities, emotions and ideas—history, geographic resources and experience that there is no one-size-fits-all solution to the succession planning puzzle.

Trusts are a legal instrument that can be designed to accommodate almost any situation. Think of a trust as a receptacle for holding property and maintaining instructions for its disposition at some point in the future (subject to a period of time or a triggering event, such as death).

A trust can be designed to achieve almost any legal objective. As a farm owner, you'll want to exercise your individual discretion in regard to the terms and conditions of a trust, so using a boilerplate document might actually undermine your flexibility and compromise your objectives.

Work with a professional adviser who understands succession planning. He or she must also be familiar with the agricultural industry, appreciate the importance of a strong monetary foundation and be familiar with your family dynamics.

There are two types of trusts available:

REVOCABLE TRUST. A revocable trust allows the grantor the opportunity to change his or her mind. The grantor of a revocable trust has the right to amend, cancel or otherwise affect the conditions of the trust.

Due to the revocable nature of this trust, the transfer of property is not a “completed transfer.” Since the grantor retains control over the assets of the trust, the transfer is not complete, so many of the estate tax benefits (such as removing the asset from the estate for estate tax purposes) often associated with trusts are lost.

A revocable trust does offer several distinct advantages:

1. instructions to manage the asset
2. a grantor can direct the performance of a trustee
3. becomes irrevocable at death

IRREVOCABLE TRUST. “Irrevocable” means that the trust cannot be changed, amended, altered or canceled. Once a property is transferred to an irrevocable trust, it is a completed gift, and the transaction reduces the size of the grantor's estate.

The reduction of the estate causes a subsequent reduction in the estate tax, capital gains tax and probate fees.

The biggest disadvantage of an irrevocable trust is relinquishing control of an asset. Most people are very hesitant to give up control of a valuable asset that may have taken years to acquire. The advantages of using an irrevocable trust include:

1. removed from the estate
2. assets protected from creditors
3. cannot be changed, altered or amended

Trust or Will?

If privacy is important to you, a trust may be a better avenue for estate planning than a will. The basic purpose of a will is to avoid intestate succession (dying without directions for the distribution of property). Probate is the process of settling an estate.

Estate plans that use trusts, beneficiary designations, contracts and lifetime gifts make it possible to minimize probate. An estate settled with a will through probate is subject to scrutiny from the public.

Any estate settlement made using a will is subject to probate. The process is lengthy. It can take six months to settle a simple estate—sometimes longer.

CHAPTER 9 EXERCISE

TRUST/WILL REVIEW

This checklist is to be used for discussion purposes only and may not be all-inclusive. Caution: Legal documents should be drafted by a licensed attorney familiar with the laws in the state of residence.

1. INTRODUCTION

Check the box.
YES NO N/A

- a) Does the trust/will reflect your proper name and include aliases?
- b) Does it reflect your current residence?
- c) Does it include a statement of testamentary intent?
- d) Does it include a statement revoking prior wills and codicils?

2. DESIGNATION OF FAMILY MEMBERS

- a) Does it include a proper designation of spouse?
- b) Are all of your children named, including date of birth?
- c) Is there a provision for any unborn children?
- d) Does the trust/will address any stepchildren and distributions?

3. APPOINTMENT OF EXECUTOR

- a) Does the trust/will name an executor?
- b) Does the trust/will name a successor executor?
- c) Does the trust/will require the executor to be bonded?
- d) Have you asked the executor to serve?

4. APPOINTMENT OF GUARDIAN FOR MINOR CHILDREN

- a) Does the trust/will name a guardian?
- b) Does the trust/will name a successor guardian?
- c) Does the trust/will require the guardian to be bonded?
- d) Have you asked the guardian to serve?

5. APPORTIONMENT OF DEBTS, EXPENSES AND ESTATE TAXES

Considering the composition of the estate and the character of the assets, should the obligations and taxes:

- a) be satisfied from the residuary estate?
- b) be divided among the specific bequests?
- c) be satisfied according to tax apportionment provisions?

6. SPECIFIC BEQUESTS

Check the box.

YES NO N/A

- a) Do specific bequests include identity of the beneficiary and a description of the asset?
- b) Is there a provision for disposing of income-producing assets to avoid the acceleration of income in respect of a decedent?

7. MARITAL BEQUEST

- a) Does your surviving spouse receive the marital bequest outright?
- b) Or is the marital bequest given in trust?
- c) Must the trust distribute the income annually?

8. BYPASS (OR CREDIT-SHELTER) TRUST

- a) Does the trust provide income distributions to your spouse?
- b) If distributions are discretionary, should there be other beneficiaries?
- c) Are distributions limited to a standard, such as five-and-five power?

9. OTHER PROVISIONS

- a) Does the trust/will allow the trustee discretion over investment instruments?
- b) Does the trust/will allow the trustee the right to retain assets transferred to the trust?
- c) Does the trust/will protect the beneficiaries from negligence by the executor/trustee?
- d) Does the trust/will provide adequate compensation for the executor/trustee to meet your goals, and is it sufficient to reward a person to serve?
- e) Is there a survivorship provision?
- f) Is there a spendthrift provision?
- g) Is there a perpetuities savings clause?
- h) Does your executor have the discretion to allocate capital gains between income and principal to minimize taxes between the estate and its beneficiaries?

You can also find this tool at
www.FarmJournalLegacyProject.com.

