

Farm Estate and Succession Planning: Failing to Plan is Planning to Fail

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In the words of Alan Lakein, “[f]ailing to plan is planning to fail.” About 90% of farming operations do not survive the transition to the next generation. There are many possible reasons why a family farm does not succeed to a future generation; however, poor estate and succession planning is a prominent concern among the agricultural industry.

In way of background, the term “estate planning” involves how the *farm assets* will be distributed to the heirs while “succession planning” delves into how the *agri-business* will continue to the next generation. After reading this article, I hope that readers will feel a sense of urgency with estate planning to better understand that it is a complicated, life-long process that needs revisited periodically over the years.

Estate planning isn’t just for the elderly and the ultra rich – younger families with smaller estates may have a greater need for estate planning. It’s also more complicated than just getting a Last Will and Testament drafted. Estate planning requires a thorough evaluation of the big picture and hard look at the farm family’s goals to best strategize on the smartest game plan.

Estate Planning Isn’t Just for the Elderly and Ultra Rich

Let's face it. Estate planning is easy to push off. What's another week... another month... another year... another five years... “After all, I'm healthy. My spouse is healthy. We don't have kids. We don't have a lot of assets. I cannot afford to pay an attorney. Estate planning is for the elderly or for the ultra-rich-- it's not for me (or at least not right now).”

But you couldn’t be more wrong. Even though someone who is over the age of retirement may be in a better financial position to hire an estate planning lawyer, a much younger person/couple with a significantly smaller estate may have a greater *need* for an estate plan. In the words of Neil Harl in his book titled Farm Estate & Business Planning (16ed):

"[a] young couple with minor children is generally least able to afford a breakup of property interests among heirs, the complications of property ownership by minors and erosion of family capital to pay debts and estate settlement costs in addition to ownership interests in a family business that are likely to pass to their off-farm brothers and sisters."

I urge farm and ranch families in all age groups to speak to an estate planning attorney licensed in their jurisdiction. It's not just for the elderly or ultra-rich. Estate and succession planning is a life-long process that will morph along with the changes that life brings both to you and your family members.

Estate Planning is More Than Just a Last Will and Testament

Many people think that "estate planning" is really just hiring a lawyer to draft a Last Will and Testament (or worse—download a will drafting program from the Internet). However, it's more complicated than that. A good estate planning attorney will have you complete a questionnaire giving him/her information on your family tree, assets and liabilities in order to help see the bigger picture.

Not only will the estate planning lawyer look at *what* property is held but *how* it is held (e.g., individual name, business/corporation/partnership/trust name, joint tenants with rights of survivorship, tenancy in common). Furthermore, an estate planning attorney will also look at whether the client lived or obtained property in a community property state and the client's insurance program (e.g., life insurance). Keeping in mind the client's objectives, the estate planning lawyer will help guide the client through the myriad of options available to decide the best strategy at that particular juncture in time.

Determining Your Goals For the Estate Planning Process

Your objectives will help guide the entire estate planning process and will be a guidepost to your estate planning attorney in helping formulate the correct game plan. As a caveat, it might not be possible to fully meet all of your goals; therefore, when you meet with your estate planning lawyer, make sure to emphasize your priorities.

It's important to stress that the estate planning process is very individual process. No two farm families are the same -- nor are their objectives. Generally speaking, the following are common priorities among farm families that may be of concern:

(1) *To have enough income through the retirement years.* Keep in mind that it is impossible to accurately predict future medical expenses and how long a person will live so liberally plan to have ample cash. Statistically, women live longer than men and should save more for retirement.

(2) *To avoid/reduce the estate tax* (i.e., the "death tax") and/or mitigate probate expenses to help pass on as much wealth as possible to the heir(s). Although not taxable income, keep in mind that life insurance is estate taxable.

(3) *To pass the family farm down to a future generation* -- whether it be the children, grandchildren or extended family. It's paramount for these families to think about transferring the management responsibility of the farm to the future generation (e.g., phasing out period) to properly train the next generation.

(4) *To treat children equally*-- perhaps keeping in mind gifts made during the life of the children (including help with advanced professional degrees, the purchase of a home or other major assets, or starting a business).

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(5) *To give the spouse ownership.* Many women are especially concerned about their ability to manage the finances and or the labor of the farm or agribusiness if her husband predeceases her.

No matter your family dynamics, there is an estate plan for you. Memorialize (and prioritize!) your estate planning goals. Seek the guidance from an estate planning lawyer to quarterback the best possible game plan for your family. And periodically revisit your estate plan every few years or when there is a major life event (e.g., marriage, divorce, death, children, purchase/sale of major assets, bankruptcy).

Finally, don't be afraid to have open and honest conversations with your family about estate and succession planning. "The only thing certain in life is death and taxes," Ben Franklin famously said; so let us not make the topic taboo. In order for a farm or agri-business to successfully pass to the next generation (if that is what you want), clear communication is paramount to devising a successful estate and succession plan. Let's not put it off another day.

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