

18. There's More to an Estate Plan Than a Will or Trust

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Abstract/Summary

Agricultural production is an asset intensive business, and farm and ranch families generally accumulate substantial estates over their careers. While an understanding of the legal aspects of an estate plan is important, there are a variety of issues that families should consider before they visit their lawyer and draw up an estate plan. This session explores many of these issues including having an accurate inventory of assets, the differing goals of spouses, treatment of on farm and off farm heirs and the importance of family communications.

There's More to Estate Planning than Getting a Will or Trust

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At the 2013 Risk and Profit Conference, Kent Miller provided an excellent presentation on they use of wills and trusts in estate planning. While an understanding of how these instruments work is important when developing an effective estate plan, there are several issues that need to be considered before the plan can be put to paper.

You first need to realize that everyone in Kansas has an estate plan, and that plan is what the state provides for you. State law governs what will happen to your assets if you have not provided any other instructions. If you don't want the State's cookie cutter plan, then you need to create a plan of your own.

The next step, while tedious, is probably the easiest step to complete in the estate planning process. It is to take a complete inventory of your assets. This includes land, machinery and equipment, grain and livestock, investments, bank accounts, retirement accounts, life insurance contracts and all personal property, both titled and untitled. The list of personal property should include family heirlooms and items of sentimental value. Taking this inventory serves two purposes. First, the inventory process lets you know the asset base with which you are working, and second, it gives you the opportunity to make sure that all titled assets are titled in the manner you wish. Often, as people go through the inventory process, they find an asset such as a tract of land that they thought was titled jointly in both spouses' names, but was instead only in one spouse's name.

Now the hard work can begin. Just what do you and your spouse want to happen to your assets? Most couples first want to make sure that the surviving spouse is taken care of, and so generally most estate plans have provisions to use the assets to provide an income for the surviving spouse.

But what occurs after the surviving spouse passes away? The comment I hear more often than not is, "We just want to be fair." But one person's idea of fair is different from another's, so I try to get people past the idea of being just "fair." I usually tell couples early on in the process that the things they have accumulated over their lifetimes belong to them and they can do with it what they wish. They can split it equally among their children, or they can give it all to

their church or a charity. They could even spend their money on things most of us would deem foolish and leave nothing behind for anyone or anything because again, it is their “stuff” and they can do what they want with it.

While the last example is extreme, I find that it gives couples the freedom to really think about the goals they want to accomplish with their estate plan and what they want their legacy to be. It also gives couples the opportunity to really talk about what each of them wants in an estate plan because often times they have different ideas about what they would like to see happen. And there are so many things to consider that this is really the hard part of the process.

Generally speaking, couples do want the bulk of their assets to go to their children. If this is the case, then how should it be divided? One common way is to divide things evenly. But in certain cases this might not be the most equitable way to proceed. We are all familiar with the scenario of a son or daughter having stayed on the farm and worked for “below market” wages on the “someday this will all be yours” plan. However, upon the death of the parents, instead of inheriting a substantial share of the operation, an equal share was inherited with the siblings that did not stay on the farm and contribute sweat equity, and the one that stayed was not strong enough financially to buy out the non farm heirs. In a case such as this, it might be more appropriate to leave a larger share of the assets to the child that stayed on the farm, in recognition of the contributions made to the operation by that child. Of course there could be other reasons for giving differing shares of an estate to different children, and there is nothing wrong with doing that.

Life insurance policies and beneficiaries should be reviewed. Life insurance can be an important part of the estate plan, as it can provide cash for a variety of purposes ranging from the continuation of a business to providing an income stream to survivors.

People going through the estate planning process might also have individuals outside of the family or groups such as a church, school or charity that they wish to remember through their estate plan. These groups depend on such gifts to continue and bequests to such groups are a good way to remember those causes that have played a significant role in their lives. If there are people outside of family members such as valued employees or good friends that you feel should be remembered in your estate plan, then there is nothing wrong with that.

What about personal property? While in some cases there is personal property that is valuable, often times there is mainly sentimental value to such property, and that value is often

specific to one relative. Whether it is Grandpa's coin collection, Mom's roasting pan or Dad's pocket knife, thought needs to go into how personal property is handled in an estate plan.

One final consideration for the estate plan depends on the stage of life you are in. If you are a couple with minor children, then your needs are different than a couple with grown children or someone with no children. For parents with minor children, the estate plan should include provisions for their care and support if one or both parents should pass away. Guardians should be named, and any assets remaining in the estate could be used towards their support until they reach a certain age. As children grow up and become more self-sufficient, your estate planning goals can progress to the other issues that were previously discussed.

After you have thought through these issues and written them down, you can then go to the lawyer and formalize the plan and its structure. And once that is done and you receive copies of the plan, there are more things to consider.

One thing to consider is whether or not to let family members know about the plan. At one time, it was common to keep the plan a secret until the death of one of the parties. However, I find it is a good practice to hold a family meeting to let everyone involved know what is in the estate plan. That way, you can explain your purposes and goals for your estate plan. Also, there are no surprises and there are fewer chances for hurt feelings among family members when the provisions of the estate plan are out in the open.

Another consideration is to review the estate plan. I recommend that this be done at least every five years or more frequently if life changes warrant a review. This allows you to review the plan on a regular basis and update it as your life and goals change.

These are several issues that I feel should be considered when thinking about your estate plan. As always, you should seek advice on these matters from qualified professionals, including your Economist or accountant, and your lawyer.