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Agricultural Estate Planning

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Today's Topics

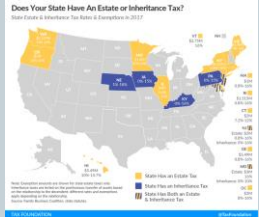
- Estate Planning
 - Taxes
 - Transferring Assets v. Succession Planning
 - Information that YOU must provide
 - Personal Information
 - Financial Information
 - Your Goals/Wishes
 - Estate Planning Tools

Federal Estate Tax...i.e. Death Tax

- \$11.4 million applicable credit for 2019
 - Gift and GST taxes included
 - Indexed for inflation
- Maximum tax rate of 40%
- Annual gift tax exclusion = \$15,000 per person
- 529 college savings plan (5 year gift at once)
- Surviving spouse gets the unused applicable credit (estate and gift tax)
 - Ex. H dies in 2018 and passes \$2 million to kids and the rest to W. W dies later in 2019, may pass on \$20.6 million tax free.
 - When the first spouse passes away then their estate MUST file a Form 706 to use this!

Facts about State Estate/Inheritance Taxes

- What are they?
 - A tax that some states impose on the decedent's estate.
 - In addition to any federal estate taxes that might apply!
- Does every state have a state estate/inheritance tax?
 - No- 20 states + DC have them in some form.



Does Your State Have An Estate or Inheritance Tax?
State/Inheritance Tax Rates & Exemptions in 2019

Tax Foundation – 2017

Talk to the Attorney

- Before making any large gifts or creating a will (or trust) talk to an attorney and the family.
- Let an attorney or CPA worry about the tax aspects
 - There are ways to reduce tax liability that you are probably unaware of.



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The first and most important question...

Estate Planning or Succession Planning

- **Estate Planning** – how to distribute assets to the next generation
- **Succession Planning** – bringing in the next generation so that they know what they are doing when the owner passes away

What are your assets?

It's a lot more than you think!

- Real Property (land and structures)
- Personal Property
 - Equipment, livestock, grain inventory, chemicals, embryos & semen, tools, antique table, grandpa's shotgun, etc...
- Bank accounts
- Business Investments
- Retirement Accounts
- Life Insurance

Transferring Property or the Farming Operation?

- Do you want to transfer assets or do you want to transfer the farming operation?
- Transferring assets is pretty simple:
 - Use a will or a trust to pass property at death
- Transferring the farming operation is MUCH more difficult!!!

Succession Planning

- The vast majority of farming operations do not survive the transition from one generation to the next.
- Reasons for this:
 - Heirs do not have the necessary management experience because parent did everything up to their death
 - The family fights because assets could not be divided in a "fair" manner

Succession Planning

- You **WILL** need an attorney for this and input from family members.
 - This is complex and every family and farm differs so the succession plan must be unique
 - How do you give to family members that do not wish to participate in running the farm?
 - What about your surviving spouse?
 - The next generation needs to learn the ropes while you are still around to teach them which means that they have to take some responsibility...you can't do it all.

After you have made the decision...

- **Talk to family** and make a plan
- Start gathering information
- Find several estate planning workbooks online or at your attorney's office
 - Basically this is a questionnaire that you fill out to tell the attorney what you want to accomplish.



Information that You must Provide: Financial

- Bring your attorney a list of all of your assets (and their estimated values):
 - Real property including legal descriptions
 - Bank and retirement accounts (account numbers)
 - Insurance policies (with the name of the beneficiary on it!)
 - Vehicles
 - Farm equipment
 - Livestock
 - Household items
 - Personal items
 - Things like your grandmother's china

Information that You must Provide: Wishes & Goals

- Sit down and think about what you wish to accomplish.
- Rank your goals because some of them may not work well with others (and some may be outright impossible).
- There are workbooks online (or your attorney may have one) that help with this.

Information that You must Provide: Wishes & Goals

- Put some thought into what you are giving to each individual
 - Giving farmland to a child that has no interest in farming isn't going to keep the family farm going
 - If you give them the farm than shouldn't you give them the equipment needed to run the farm?
 - Do the heirs want what you are giving them and can they use it/store it?
 - Giving the furniture from your 2 story house to a daughter living in a one bedroom apartment isn't going to work very well

The Legal Terminology

- **Decedent** – the person who is dead
- **Testate** – they died with a will
- **Intestate** – they died without a will
- **Executor** – handles the will
- **Administrator** – if they die intestate then this is the person that administers the estate
- **Trustee** – runs the trust and holds legal title and responsibility to the property in the trust
- **Beneficiary** – holds the equitable title to property in the trust and enjoys the benefits of the trust

Estate Planning Tools of the Trade

- **Intestate Succession**, i.e. dying without an estate plan
- **Will** – a person's declaration of how they want their property divided at death.
- **Trust** – an arrangement where a trustee holds the legal title of property for the benefit of another.
- **Life/Long-term Care Insurance**
- **Business Organizations** (Partnerships, LLCs,...)
- **Living wills**
- **Joint tenancy deeds and money accounts**
- **Retirement Accounts**
- **Gifting of assets** (\$15,000 per year per person)
- **Powers of Attorney**
- And more...

How do the Estate Planning tools affect you?

- These “tools” are what the lawyers will use to create the plan that fits **your** goals
- Carpenter example:



Estate Planning Tools

- Are you **REQUIRED** to have an estate plan?
 - No, there are quite a few people out there that don't have wills or estate plans and probably never will have.
- So what happens to your property if you die without any form of an estate plan?
 - The state governments have all created a default set of guidelines for people that die “intestate” (without an estate plan).

Intestate Succession

- Your assets are divided up among your closest living relatives according to state law.

What happens when farm ownership is fractionated?

- If there are a few owners then it may be possible to divide responsibilities and income accordingly.
- If there are multiple owners then it may be necessary for a partition by sale.
- AR also has the AR Uniform Partition of Heirs Property Act that does allow farms to stay in family under certain unique conditions.

Intestate Succession, continued

If there is no legal title conveyed until after probate then:

- How does the family continue receiving operating loans with no collateral?
- How are management and labor decisions made?



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Estate Planning Tools, continued

- **Traditional Estate Planning: The Will**
 - Mental capacity...issues to watch out for
 - Must know the “nature of your bounty”
 - Formalities (each state is different)
 - Writing requirement
 - Signature
 - Witnesses – 2 and disinterested!
 - Probate
 - May not always be necessary...
 - Business organizations can help!
 - Probate can be expensive and time consuming, but not always

Estate Planning Tools, continued

Wills

- **Pros**
 - Can be very simple and cheap
 - Pretty flexible & can use with other tools
 - Great way to divide assets
- **Cons**
 - Short term tool
 - No asset protection from lawsuits
 - Used more often with small or simple estates
 - Or as part of a more complex plan (I use them with every trust)

Will Hypotheticals

- You leave your 2016 F150 to your oldest child, but you sell it shortly before you die
 - Your child receives nothing because you no longer have the truck
- You leave your oldest child all of your vehicles
 - Child receives all vehicles no matter the number or the value

With both wills and trusts it is important that you are **CLEAR** in your intentions.

Trusts: What are they?

- A legal arrangement where one party (the trustee) holds the legal title to property for the benefit of another party (the beneficiary).
- Example: A trustee is given a farm to hold in trust for a child. The trustee would pay the taxes on the land, maintain it, rent it out or sell the land and use the proceeds for the child's benefit...after taking trustee fees from the money that was earned.

Trusts

- Another way to think about them is as a business entity.
 - You "invest" assets into it
 - You create a set of instructions on how you want it to perform similar to corporate bylaws
 - There are costs to maintain it
 - They can provide asset protection in some cases depending on how they are set up.
 - There is a LOT of flexibility!

Trusts

- Who can be a trustee?
 - Basically anybody or organization can be a trustee. A family member, a close friend, or more commonly a bank.
- What keeps the trustee from robbing beneficiaries since they hold the legal title?
 - Fiduciary duty. The trustee is legally required to do what is best for the beneficiaries even if it is against the trustee's own interest!

Estate Planning Tools, continued

Trusts

- Pros
 - Very flexible
 - Can allow the "dead hand" to exert a lot of control
 - Can distribute assets for years
- Cons
 - Can be expensive (to create and run)
 - Usually complicated

There are MANY types of trusts that are either revocable or irrevocable.

Revocable

- Easy to modify
- Provides no or limited tort protection unless paired with other tools
- Can be an issues with health care costs

Irrevocable

- Not easy to change...everybody has to agree to it
- Provides strong asset protection

Common types of Trusts

- “Living” Trusts
- Spendthrift – protect beneficiaries from themselves
- ILIT – life insurance trust
- QPRT – trust to put your residence in
- Medicaid – used to protect assets from nursing homes and hospitals (5 yr Look back)
- Testamentary Trust – created at your death
- Generation Skipping – grandchildren are the heirs

REVOCABLE LIVING TRUST

- Reduces probate cost.
- Does NOT reduce estate taxes of grantor.
- If life beneficiary is named it will reduce estate of beneficiary.
- May reduce income taxes.
- Avoid guardianship.
- Includes property owned in other states.

LIVING TRUSTS

Pros

- Eliminates probate for assets in the trust.
- Eliminate Executor's fees.
- Eliminates court costs for assets in the trust.
- Eliminates the necessity of court appointed guardian for minors or incompetents.
- Trust does not become public information.
- If Trustor is trustee, successor Trustee can be identified in case of incapacitation.
- Nearly eliminates successful contest by disgruntled heirs.

Cons

- Much higher initial cost
- More time and effort needed to get assets transferred into the trust
 - The trust can only deal with property that is in it.
 - It's important that real property all goes in it
- May involve on-going trustee fees.

Spendthrift Trusts

- Set up to take care of a child that cannot manage \$ on their own:
 - Substance abuse problems
 - Irresponsibility
 - Mental Illness
- Typically you will set up a trustee that has a wide range of discretion on when to pay out benefits to the beneficiary.
 - For example: You have a child with substance abuse problems and you do not want to give them \$800 cash for rent and utilities, but you could have the trustee pays those bills directly instead.

Medicaid Trusts

Pros

- Gets you under the threshold to qualify for Medicaid
- Protects assets from nursing homes.
- Many of the other advantages from other types of trusts

Cons

- Irrevocable
- You lose a substantial amount of control over your assets
- 5 yr lookback period for nursing homes
- Lots of hoops to jump through and pitfalls
- Fairly expensive (several thousand dollars at least)

Estate Planning Tools, continued

- Other methods to pass on assets without trusts being needed:
 - Owning property in “joint tenancy with right of survivorship”
 - Joint bank accounts can be set up this way as well
 - Owning property through a business organization and passing that on to heirs
 - Life insurance policies
 - Individual Retirement Accounts (IRAs)
 - If you are receiving distributions and you want to set up a Medicaid trust then you may need a separate trust to put these funds in for you to qualify
 - Gifting of assets while alive

Estate Planning Tools, continued

- Other estate planning tools not tied to passing on assets:
 - Living wills
 - Long-term care/health insurance
 - Durable Power of Attorney in case you lose your ability to make decisions for yourself
 - Be careful with these since you are giving someone a lot of control over your life and property.
- It's good to have these on file with your local hospital and if your plans change then remember to update them!
 - If you get divorced then you may not want your ex to have the power of life and death over you...

Information that You must Provide: Personal

- You WILL be asked for some pretty personal information...do not hide anything!
 - The problem of the unmentioned child
- Have a list of names and relationships
 - Spouse, ex-spouses, children, children born outside of marriage, step children, adopted kids, living parents and grandparents, etc...

Something to think about...

- It is your property and you can do almost anything you want with it.
 - You can give it all away or to only certain people and disinherit the rest (not your spouse however)
- How will your heirs react to your division of the property?
 - This decision can have far reaching consequences for your family long after you are gone.

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