Farm Succession Planning

Many factors can come into play when planning for retirement and the transition of a family farm to the next generation. Decisions regarding this process can be very emotional with the thought of handing over control of the farming operation to family members.

Farm succession planning should not be done haphazardly as this process should entail careful thought, discussion and planning. Family discussion plays an important part of the succession planning process and should not be put off for fear of creating controversy or hurt feelings among family members. Discussions with your spouse are the first step in this process to determine what both of you envision for the future. Health and physical capability factors play an important part in this process along with an analysis of which family members may be more willing to carry on the farming operation and the skills and capabilities of the family members. This could sometimes result in different treatment of family members regarding distribution of assets that may not be mathematically equal for each individual. Another factor to consider is the need for a continued income source into retirement to maintain a desired quality of life and to cover necessary living expenses.

The need to consult with outside professionals for legal, financial and tax considerations should not be overlooked. Not only can they provide legal guidance to guide you through the succession process but can also contribute unbiased, non-emotional advice.

Tools for Succession Planning

Wills

A will provides you with an opportunity to distribute your estate according to your wishes. It also allows you to name an executor of your choosing to determine oversee and assist in the distribution of your assets according to the provisions of your will and to pay all valid debts from the assets of your estate. The appointment of an executor will also allow for communication between the executor and lenders to resolve any payment issues that may arise after death.

In the absence of a will, property passes by a method known as “intestate succession”. Intestate succession involves a statutory formula for the distribution of property. An example of this method under North Carolina law is if a decedent is survived by a spouse with no surviving descendants but one or more of the descendant’s parents, the surviving spouse takes the first $100,000 of the descendant’s personal property and one-half of the balance of the decedent’s personal property. The remaining real and personal property would go to the decedent’s parents.

Another scenario is if a descendant is survived by a spouse and one child the surviving spouse takes the first $60,000 of the personal property and one-half of the balance of personal property. The remaining personal and real property would go to the surviving descendants.

If there is a surviving spouse and 2 or more children, the surviving spouse receives the first $60,000 of the personal property and one-third of the balance of the personal property with the remaining real and personal property going to the decedent’s surviving descendants.

A surviving spouse would take the entire estate if there were no surviving children or descendants of a deceased child.

Life Estates

A life estate can be an effective tool for passing real property to a family member while retaining the use of the property during one's lifetime. A life estate creates a life time interest in property, allowing the property owner to use and enjoy the property during his or her lifetime. A "remainder" interest is created in another individual or individuals that results in the passing of the entire ownership interest to the holder of the remainder interest at the death of the life estate holder. During the lifetime of the life estate holder, the owner of the remainder interest has an interest in the property but the life estate holder has the right to the use and enjoyment of the property during his or her lifetime.

A life estate can avoid the property being part of the probate of an estate as upon the death of the life tenant, the life interest merges with the remainder interest resulting in the remainderman holding a fee simple interest in the property. This tool can also avoid the 5 year look back period to determine eligibility of Medicaid benefits. A financial or legal professional should be consulted for further elaboration on this topic.

Conservation Easements

A conversation easement can be used to limit non-agricultural development of land while allowing the landowners to maintain ownership of the land. Land under a conversation easement can still be farmed and the owner remains eligible for federal farm programs. The owner can still continue to engage in future construction and development necessary to operate the farm.

Insurance Policies

In an effort to equal out the distributions of assets, insurance policies on the parent's life that can pay out cash to the non-farming heirs upon the parent's death should be explored.

Sale or Transfer of Assets

The sale or transfer of assets that are non-essential to the future farming enterprise is another method that can be used in an attempt to even up the distribution of assets to he farming and non-farming heirs. Presently the IRS allows for the giving of $14,000 per year in gifts without triggering payment of gift taxes.

Business Entity Formation

The use of business entities can be used to transfer assets into a legal entity with corporate bylaws or LLC articles of organization used to set up procedures for the use of property and safeguards on future transfer on interests. This tool should involve the services of an attorney and a tax professional to minimize future problems and insure compliance with the law.

Joint Ownership

Assets such as real property and bank accounts can be jointly owned as tenants in common or with rights of survivorship. Under North Carolina law, real property that is acquired by a husband and wife is presumed to be owned as a "tenancy by the entireties" that results in the surviving spouse maintaining fee simple ownership of the property of the other spouse. Unmarried couples can take property under a deed that provides for a right of survivorship that will result in the fee simple ownership of the surviving individual upon the death of other party.

Bank accounts can be set up so they are jointly owned with a right of survivorship but careful consideration should be given to these types of accounts as the co-owner will have the ability to withdraw funds during the lifetime of both co-owners.

Trusts

A revocable trust can assist in the orderly running of a family farm upon the death of the owner. The farm owner can transfer his or her interest in the farm into the trust and become the trustee under the trust. A successor trustee can be named in the trust document and upon the owners death can continue to operate the farming business pursuant to the terms of the trust.

Individuals who are likely to become incompetent can also benefit from a trust. While still competent, and individual can create a trust that will allow a trustee to manage the trust creator' financial affairs and direct how the trust property should be distributed upon death.

Trusts can make it easier to handle property that is owned in various states allowing the remaining trustee to deal with the property without the need to apply for ancillary probate of the out of state property.

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About the W.K. Kellogg Foundation - The W.K. Kellogg Foundation (WKKF), founded in 1930 as an independent, private foundation by breakfast cereal pioneer, Will Keith Kellogg, is among the largest philanthropic foundations in the United States. Guided by the belief that all children should have an equal opportunity to thrive, WKKF works with communities to create conditions for vulnerable children so they can realize their full potential in school, work, and life.

The Kellogg Foundation is based in Battle Creek, Michigan, and works throughout the United States and internationally, as well as with sovereign tribes. Special emphasis is paid to priority places where there are high concentrations of poverty and where children face significant barriers to success. WKKF priority places in the U.S. are in Michigan, Mississippi, New Mexico, and New Orleans; and internationally, are in Mexico and Haiti. For more information, visit www.wkkf.org.

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