Knowledge for Life

Preparing to Meet with an Attorney:

Basic Estate Planning Concepts for Farm Families

Presentation for:

Coffey County Extension

"Transitioning the Family Farm – Initial Considerations"

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K·STATE Research and Extension

12 Step Transition Planning

- K-State Research and Extension and KSU Department of Agricultural Economics
- "Transition Planning: 12 Steps to Keep the Family Farming" MF-3074
  - Dr. Bryan Schurle, Agricultural Economist KSU
  - Dr. Rodney Jones, Agricultural Economist OSU
  - Duane Hund, KSRE Farm Analyst Program

Federal Estate and Gift Tax Exemption Amounts

(American Taxpayer Relief Act of 2012)

	Estate Tax Exemption	Gift Tax Exemption	Top Rate
2013	$5,250,000	$5,250,000	40%
2014	$5,340,000	$5,340,000	40%

Gift Tax Exclusion

- Annual gift tax exclusion $14,000 per donee per year indexed for inflation.
- Gifts above the exclusion amount can be deducted from the Unified Estate and Gift Tax Exemptions to avoid paying a gift tax; however, that reduces the overall amount of the exemption available for federal estate tax exemptions.

Getting Started—Basic Steps

- Initiate the discussion
- Take stock of the present
- Develop objectives
- Choose professional advisers
- Consider alternatives and implement plan
- Review and modify
- Educate yourself on basic concepts and terminology

Develop Estate Planning Objectives

- Pass property to desired parties
- Minimize estate and inheritance taxes
- Avoid probate and settlement costs/delays
- Care for minors/ management of assets
- Assure continuity of farm or ranch
- Asset protection

Selecting an Estate Planning Team

- Inquire with your CPA, bank, trust officer
- Ask attorney what part of their practice is devoted to estate planning, years of experience, professional organizations, articles published, special recognition.
- Attorney is advisor—client has final say
- Interview more than one attorney
- Team approach—attorney coordinates

Consider Alternatives and Implement Plan

- Ask your professional advisers to explain alternatives.
- Understand advantages / disadvantages of each option– Educate yourself.
- Talk about them with trusted family and friends.
- Implement the plan timely.

Review and Modify Plan

- Circumstances, objectives, tax laws, extent and nature of your property, family dynamics and needs, may all change over time.
- General rule of thumb is to review your estate plan every three to five years.

What your attorney should know:

- Personal information
- Real estate- title, year acquired, basis, value
- Personal property- cost, title, value
- Bank and Savings accounts- title, value
- Life insurance
- Trusts, wills and other documents
- Liens, mortgages, other debts
- Retirement benefits
- Where important papers are kept

Property Ownership Concepts

- Sole Ownership
  - Fee Simple Absolute
  - Life Estate
- Tenancy in Common
- Joint Tenancy w/ Rights of Survivorship
- Ownership in Trust
- Transfer on Death Deed
- Contractual Types of Ownership

Sole Ownership

- *Fee simple absolute* means full power to sell, borrow against, lease, receive income from or transfer to others during life or at death.
- One person on the deed or title.
- Property passes on death under the terms of a will, trust or intestate laws.

Life Estate

- The *life tenant* shares property interests with *remaindermen*, those designated to receive the property after death of the life tenant.
- Life tenant manages and receives income during lifetime but generally may not sell or mortgage the property without permission of the remaindermen.

Co-ownership

Tenancy in Common

- Multiple owners.
- Partial undivided interest.
- On death of co-owner undivided share passes to beneficiaries in will or by intestate succession.
- Probate needed.

Joint Tenancy WROS

- Multiple owners.
- Partial undivided interest.
- On death of a co-owner the undivided share passes immediately to surviving tenant.
- Probate not needed. Will or intestate laws do not apply.

Joint Tenancy-- Advantages and Disadvantages

Advantages

- Property passes without need for probate.
- Minimal cost/paperwork needed to complete transfer.

Disadvantages

- Tenants full co-owners.
- May result in unintended consequences.
- Sale of property may require all tenants consent.
- Property subject to the claims of all tenants' creditors.

Ownership in Trust

- Trust owns property which is managed by a *trustee* for the benefit of another.
- Trustee has no personal ownership rights in the property.
- *Grantor* is the person who creates the trust and transfers property to the trust
- *Beneficiaries* are recipients of income and property from the trust.

Types of Trusts

- **Living** trust (*inter vivos*) is established by the grantor during his or her life.
- **Testamentary** trust is established by a will and becomes effective on the death of the grantor.
- A living trust may be either **revocable** (can be changed or terminated by the grantor) or **irrevocable** (cannot be revoked or altered by the grantor).

Transfer on Death Deed (TOD)

- Transfer of property listed in the deed only upon death of the owner.
- TOD may be revoked or beneficiary changed at any time during the owners lifetime.
- Title automatically vests in beneficiary on death of the owner.
- If beneficiary predeceases owner then TOD lapses.

Contractual Types of Ownership

- **Annuity.** Payments to an individual for life under a contract. May or may not include provision for continuing payments to heirs.
- **Pensions, IRAs, Payable on Death (POD) Accounts.** Ability to designate beneficiaries by contract with the company. Usually done outside of will, trust or probate.
- **Life insurance.** Proceeds may be used for:
  - Estate expenses if made payable to estate;
  - Liquidity to equalize division of property;
  - Fund a trust set up for beneficiaries.

Probate

- Legal mechanism under state statute for establishing succession of ownership to a decedent’s property.
- Establishes what property the decedent owned, its value, what debts are owed.
- Assigns title of the decedent’s property to rightful owners.
- Determines and pays death taxes.

When Probate Necessary

- **Testate.** Person dies leaving a will.
- **Intestate.** Person dies without a will and no other legal options have been used to transfer title (i.e. trust, joint tenancy, etc.)
- **Descent and Distribution.**
- **Not necessary for:** Trusts; joint tenancy; life insurance; TOD/POD assets; other beneficiary designations by contract.

Intestate Succession

- State of Kansas sets rules on succession of property interests, for example:
  - Spouse only no children, then all to spouse
  - Spouse and children, then ½ to spouse and ½ to children
  - Children only, then all to children equally with the issue of a predeceased child taking that child's share.
  - No relatives at all, then property escheats to the State of Kansas.

Wills

- Must be in writing, signed at the end and witnessed by two witnesses.
- Person of sound mind and of majority age may execute a will.
- A will cannot be admitted to probate if the testator was under “undue influence” from another person.
- Gives testator choice in distributing property different from intestate laws.

Advantages of Wills and Trusts

- Choice in who will receive assets
- Designate guardian for minor children.
- Defer distribution to heir until desired age.
- May choose personal representative to administer a will (executor) or trustee.
- Provide for continuation of business
- Authorize sale of assets to pay expenses
- Reduction or avoidance of taxes

Providing for Minor Children

- Guardianship and Conservatorship
  - Guardian—Personal care of child
  - Conservator—Manages assets of child
  - Will or revocable trust may establish person
    - Avoids limitations and costs of court established
      - Age, annual accounting, costs, bonding requirement
    - More flexibility in provisions
  - Priority given to person named in will or trust
  - Different persons each role/Name one not two

Providing for Minor Children

- Proportions / Separate or joint trusts
- Clear guidelines for trustee
  - Carry out parents' wishes
  - Avoid conflicts between child and trustee
- Distribution outright or held in trust
  - Length of time to financial maturity
  - Spendthrift provisions

Business Organizations in Estate Planning

- Trusts or wills are good for passing and protecting property but not for operating a business.
- A business entity is often part of the plan.
  - Organizational structure: how decisions made
  - Financial structure: who or what owns the assets, where does the income go
  - Business structure: Tax implications, continuity, liability protection

Business Organizations in Estate Planning

- Can be a way of dealing with off-farm heirs
  - Value given without title to a farm asset
  - Gives on-farm heir flexibility
- Valuation of a closely held business organization may be less than the value of the owned assets if valued separately.
- Educate yourself on the various options.

Power of Attorney

- General POA
  - Written authority for named agent to act for a person.
- Special POA
  - Authority limited to specified situations.
- Durable POA
  - “Not affected by subsequent disability or incapacity.”
- Health Care POA
  - Decisions for medical treatment and care.

Resource: KSRE Adult Development and Aging
http://www.aging.ksu.edu/p.aspx?tabid=78

Estate and Succession Planning Resources

- Center for Agricultural Law and Taxation
  - http://www.calt.iastate.edu/eppubs.html
- National Agricultural Law Center
  - http://nationalaglawcenter.org/readingrooms/estateplanning/
- K-State Agmanager.info
  - http://www.agmanager.info/farmmgt/planning/default.asp

Farm Transition Mediation

- Program of the Kansas Agricultural Mediation Services.
- Explanation of process on “Farm Family Transition Mediation” information sheet.
- Role of Financial/Legal Resource Persons.
- Role of Mediators.
- Costs

Contact Information:

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