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Common Estate Planning Mistakes of Farmers and Ranchers (and others)

Roger A. McEowen

Kansas Farm Bureau Professor of Agricultural Law and Taxation
Washburn University School of Law, Topeka, KS
and
Tax Director, Midwest Region, Agribusiness and Cooperatives
CliftonLarsonAllen, LLP, West Des Moines, IA

roger.mceowen@washburn.edu / roger.mceowen@claconnect.com

After 25 years of working with agricultural producers, there are some common mistakes or misunderstandings that I have noticed that farmers and ranchers (and others) have when it comes to estate planning. I have also noticed some common errors in estate plan that may or may not be related to the common mistakes/misunderstandings.

With that much said, what are those common problem areas? Here’s how I see ten frequently encountered ones (in no particular order):

1. **Simply not doing anything.** I remember when I first started practicing in Nebraska that I was assigned to work on an estate plan for an older farm client of the firm. The present will for the couple dated to the late 1960s. That will was seriously outdated, and no longer comported with the couple’s situation or the complexity of their estates. So, when should an estate plan (will or trust) be updated? Anytime there is a birth (or death) of a child, the marriage, divorce or separation of anyone named in the will/trust, major changes in the law (think tax here), significant changes in income or wealth, or a change in objectives.

2. **Title ownership of property that doesn’t comply with the overall estate planning goals and objectives.** This includes the improper use of jointly held property, as well as IRAs and other documents that have beneficiary designations. Sometimes, even lawyers make mistakes on this one. A recent Colorado Supreme Court decision involved an action by kids against the lawyers that did the parents’ estate plan. Everything was to go equally to the kids, but somewhere along the line title ownership to the surviving parent’s residence did not get changed from joint tenancy. That blew the entire estate plan distribution that the parents desired. The kids that got shorted sued the lawyers, but the Court said the lawyers didn’t owe them any duty because they weren’t the clients. Not every state court would come out the same on that issue.

3. **Leaving everything outright to the surviving spouse when the family wealth is "large."** In these types of estates, that strategy fails to optimize the marital deduction. Also, even though "portability" of the unused exclusion at the time of the first spouse's death is available, states that tax wealth at death don't have the same rule.

4. **Simply thinking that there is insufficient wealth to need to do any estate planning.** I can't tell you how many times farm/ranch families have underestimated their wealth once they are forced to start itemizing their assets. Don't forget about insurance proceeds, and remember that asset values could appreciate.

5. **Not accounting for the lack of liquidity of farm and ranch estates.** The biggest asset in the estate for a farmer or rancher is land. Land is inherently illiquid. That means that liquidity planning is typically necessary in a farm/ranch estate – both pre-death and post-death.

6. **Not owning life insurance in the proper manner.** This issue ties into No. 5. Insurance is often used as a liquidity planning tool. It is also an effective strategy for funding a buy-sell agreement. While the death benefit is income tax free, it is potentially subject to estate tax if the policy is owned by the insured at the time of death. For many client, some form of irrevocable life insurance trust will likely need to be utilized. That way the death benefit avoids estate tax.

7. **Not understanding the difference between "equal" and "fair".** In situations where there are both "on-farm" and "off-farm" heirs, the control of the farming/ranching operation should pass to the "on-farm" heirs and the "off-farms" heirs should get an income interest that is roughly balanced to the "on-farm" heirs' interests. At least, that's what many clients will desire. But, they at least have to recognize that "equal" does not mean simply dividing assets up equally.

8. **Improper use of life estate/remainder arrangements.** While these are popular in agriculture, if not used properly, it can result in a non-optimal tax situation at death. It's worth at least making sure it is structured properly.

9. **Not preserving eligibility for special use valuation.** For larger estates where the goal is to continue the farming/ranching operation into a subsequent generation(s), not preserving eligibility for special use valuation is a big mistake. The qualification rules are technical and it takes a great deal of pre-death planning for a certain timeframe before death to get things lined-up.

10. **Not doing the basics in preserving records and key documents.** It is immensely helpful to store key documents in a secure place where the people that will need to find them know where they are. This includes, the will/trust, deeds, tax returns, etc. It's amazing how often this basic step isn't done.

Others that I might list include the following:

- Making the plan too complex;
- Failure to review (and update, if necessary) the plan;
- Failure to check the beneficiary designations on non-probate property;
- Failure to use disclaimers post-death to correct errors in the estate plan;
- Naming only one child as a financial fiduciary (after the spouse) when there are multiple children;
- Making gifts to the children without clarification in the will;
- Making loans to the children without clarification in the will;
- Not understanding the impact of a retained life estate coupled with a gift of the remainder interest;
- Not meeting regularly with advisors;
- Not keeping beneficiary designations up-to-date;
- For clients with small businesses, not having a well drafted buy-sell agreement

Conclusion

Making sure that the issues addressed above are satisfied can go a long way to a successful estate (and business) plan. For sure, the future cannot be predicted with perfect accuracy (or sometimes with much accuracy at all. But, not having a plan in place, or one that is deficient won't do much to deal with the future or anticipated events that can impact an estate plan. For starters, most people will benefit greatly from a will or a revocable trust and power of attorney (both financial and health care). That's at least better than nothing.