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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By Forrest Buhler, KAMS Staff Attorney
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)

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<th>Estate Tax Exemption</th>
<th>Gift Tax Exemption</th>
<th>Top Rate</th>
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<tr>
<td>2013</td>
<td>$5,250,000</td>
<td>$5,250,000</td>
<td>40%</td>
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<tr>
<td>2014</td>
<td>$5,340,000</td>
<td>$5,340,000</td>
<td>40%</td>
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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 owner's 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 $\frac{1}{2}$ to spouse and $\frac{1}{2}$ 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/farmmgmt/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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Manhattan, KS 66506-4806
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Email: fbuhler@k-state.edu
Website: http://www.ksre.ksu.edu/kams/