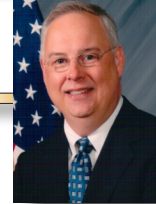




Farm Succession Planning: What We've Learned Since San Antonio

By: Ted Gudorf, J.D. and David Beckett, J.D.



At last year's WealthCounsel symposium in San Antonio, special emphasis was placed on the succession crisis that is looming for farmers nationwide. At the conference, we learned that over one-fourth of all farmers and half of all agricultural landlords are age sixty-five or older. Because the data suggests that only a fraction of the nation's farmers have a succession or estate plan in place, the time to address these issues is now. It is important for all advisors to sound the alarm regarding the need for farmers to work with an estate planning team to properly manage assets and the intergenerational transfer of those assets. In this article, we will address the counseling-oriented, client-centered team approach, which, in the days since San Antonio, we have found particularly appropriate for our farm clients.

A counseling-oriented team will spend at least two hours during the initial client meeting simply listening to the clients' full story. First, we fully develop the family history. We learn about our clients' parents and their siblings. We discuss what it was like growing up in their family and the role played by each person. It is helpful to understand their educational background and their memories of high school. Their eyes will twinkle when we ask them how they met each other and what it was like during the early years of their married life. We ask about the sacrifices made and the long, hard hours worked. It is always interesting to learn how they acquired their first farm and what it meant to them. They start using "farm speak", with references to "farming on the halves" or "cash renting". We quickly move onto a detailed description and analysis of the current operation. More often than not, we will ask our clients to draw a hand sketch of their acreage, so we can better understand how each parcel relates to the other. The sketch always identifies roadways and the various houses on the farm. It is important to develop a detailed description of each of the clients' children and, depending on their age, each of the grandchildren. Normally, we learn very quickly about each child's strengths, weaknesses, and the state of their marriage. The clients will normally volun-

teer information concerning each child's ability to handle finances, as well as their connection to the family farm or ranch operation. It is also helpful to understand the family hierarchy and the relationship amongst siblings.

A detailed discussion concerning our clients' health is of critical importance. Many of the recommendations we will later make will be dependent upon these answers. Time must be taken to explore any significant issues that may impact our recommendations.

Throughout our prospective clients' initial consultation, we are attempting to discuss and identify their articulated planning objectives. Oftentimes we hear that our clients' primary objective is to keep the farmland in the family name forever or at least for the next several generations. Almost in the same breath is a stated desire to treat each child fairly whether they are involved in farming or not. Many are concerned about the high cost of nursing home care, along with not needlessly paying estate taxes, probate fees and costs. Farmers and ranchers, at an increasing rate, are expressing liability concerns whether attributed to lawsuits or their children's possible divorce.

In addition, we listen for references to potential planning obstacles:

- Are one or both parents uninsurable?
- Will someone want to farm?
- Is there sufficient cash flow to support multiple families while paying significant planning fees?
- Who prepares the tax returns and will they cooperate?
- Is there a trusted advisor able to serve as a trustee?
- Will we lose any subsidies or special use valuation discounts?
- Must we have the land and buildings appraised and/or surveyed?
- What will we do with one or more houses on the land?
- How close are the children with each other?

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- Does everyone share the dream?
- Does each prospective client have long term care or will they be relying on Medicaid for long term care?
- How much longer does dad want to control every thing?
- How much income do our clients' need or want?
- Must we find assets to make home or other improvements?
- What happens if the farming child dies prematurely?
- Will everyone involved be comfortable with setting up new accounts in QuickBooks?
- Will Farm Credit or the local bank allow the mortgaged land or equipment to be transferred to various entities?
- How do we eliminate or minimize the impact of state and federal estate taxes without giving up control?

These questions and more must be answered before a detailed planning recommendation can be made. The planning recommendation could include creating multiple revocable trusts, multiple limited liability companies and multiple irrevocable trusts. The design of the overall strategy and exactly how each entity interconnects with the other entities is a direct reflection of the clients' expressed objectives.

Once we understand our clients' story and have explored each and every planning objective, we need to make sure the client has the right team of professionals who have the expertise and experience to help. The choice of members for the team can make all the difference in the success or failure of any plan. The counseling-oriented attorney should be prepared, if necessary, to recommend the services of those needed advisors. These professionals should be brought into the strategy session at an early stage. The clients must understand that not only will they pay a fee to develop the plan but they must pay their advisors to meet as a group once each year to review the situation and provide additional recommendations.

Great care must be utilized in selecting the farm planning team. We liken it to the selection of a board of advisors for a private corporation or non-profit entity. There are five key factors—competency, commitment, communication, collaboration and chemistry—that make an effective advisor, and consequently an effective team member. With so much at stake, every farm and ranch operation can be strengthened by a high-performance team of advisors, regardless of its size or the current state of farm planning. Our experience shows that key members of this team must include the clients' CPA and financial advisor. Just as the success of athletic teams relies on the effectiveness of teamwork, the success of a group of advisors depends on the effectiveness of teamwork. Teamwork starts with individual qualities and ends with ensuring these qualities are used selflessly for the good of the team – and for the benefit of the client.

Ted Gudorf, Principal of Gudorf Law Group, LLC, is a member of WealthCounsel and is a past President of the Ohio Forum of Estate Planning Attorneys. As one of only 142 OSBA Board Certified Specialists in Estate Planning, Trust and Probate Law in the State of Ohio, Gudorf's practice involves comprehensive planning for individuals, families, and businesses – including planning for farmers and ranchers.

David I. Beckett, J.D., LL.M., is of counsel to Gonnella & Majors in Jackson and Cody, Wyoming and concentrates in succession, business, estate and tax planning. He has over 20 years of legal experience focused on business and tax planning, as well as 10 years of finance/investment banking experience.