

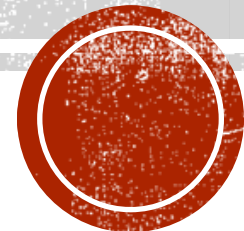
# **ESTATE PLANNING BASICS FOR THE FARM ESTATE**

**Professional Training for Farm Succession Advisors**

**May 4, 2017**

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# FARM SUCCESSION

- A gradual process
- Transfer of labor and farm income
- Transfer of interest in farming operation (Capital, Membership Units)
- Transfer of management and control
- Transfer of the farmland



# FARM SUCCESSION

- Arc of the farm business
- Size of the estate
- Mix of farm and non-farm assets
- Retirement needs of senior generation
- Personal goals and objectives of each generation over time
- Raises issues of changing roles, money and death



# FARM SUCCESSION

A farm succession plan is never “done.”



# FARM SUCCESSION

The Plan Involves:

- Business Succession Planning
- Retirement and Liquidity Planning
- Disability and Death Planning
- Tax Planning – Business and Estate Taxation
- Estate Planning
- Medicaid Planning

To be successful you need to work in a team.



# FARM SUCCESSION

## Dual Legal Structure of Farms

- Farm Operating Business
- Farmland Base – Shielded from Liability of the Farm Business.
- Lease of Farmland by the Farm Business – Land Costs in Lieu of Rent



# FARM SUCCESSION

Estate Planning (will or trust) will most often address the final disposition of farmland.

Why?

- Tax Basis Rules
- Asset may be needed for retirement
- Concern for non-farming heirs



# FARM SUCCESSION

Who is your client?

- Both spouses?
- Parents and farming heirs?
- The family?
- Spouse and Second Spouse?
- The farm?





# PLANNING FOR THE FARM ESTATE

## Three Basic Estate Planning Documents

- A will or a will and a trust
- A Durable Power of Attorney
- Advance Directive for Health Care



# PLANNING FOR THE FARM ESTATE

## The Will

- Directs the distribution of assets at the death of the testator
- Names a guardian for any minor children
- Designates an executor or personal representative to administer the estate under the supervision of the Probate Court



# PLANNING FOR THE FARM ESTATE

## The Farm Will

- Mortgages and Liens. Does property pass subject to a mortgage or lien?
- The Apportionment Clause: Will taxes be paid from the residuary estate or be apportioned?



# PLANNING FOR THE FARM ESTATE

## The Farm Will: Specific Bequests

- Farm Operating Assets (shares or membership units) to farming heirs. Voting, non-voting, control issues.
- Specific parcels of real estate for non-farming heirs
- Specific non-farm assets for non-farming heirs
- Per capita or per stirpes?



# PLANNING FOR THE FARM ESTATE

## Durable Power of Attorney

- Agency that Survives Disability
- Immediate or Springing
- Avoidance of Guardianship
- Competency



# PLANNING FOR THE FARM ESTATE

## Durable Power of Attorney for the Farm Client

- Business Matters
- USDA Agencies / Appeals
- State Agency of Agriculture
- Real Estate Tax Abatement Matters



# PLANNING FOR THE FARM ESTATE

## Advance Directive for Health Care

- Agency – Springing
- Authority to make health care decisions when the principal incapable of making decisions for themselves



# GENERAL INTAKE

## Estate Planning Questionnaire

- Determine the Gross Estate
- Determine How Property is Titled
- Determine Property in the Probate Estate
- Identify Heirs
- Determine Previous Planning / Gifting





# GENERAL INTAKE

## The Gross Estate

- Farm and non-farm real estate
- Business assets – share in farm operating entity
- Bank and brokerage accounts
- Retirement Accounts
- Taxable Gifts made during life of the decedent
- Life insurance owned by the decedent or transferred within three years of death
- Personal property



# GENERAL INTAKE

## The Probate and Non- Probate Estate

- Tenants by the entirety
- Joint Tenants
- Tenants in Common
- Transfer on Death Accounts
- IRA Beneficiary Designations



# NON-FARMING HEIRS

- Non-farm real estate or parcel of the farm real estate suitable for development
- Cash gifts to non-farming heirs concurrent with gifting of business interests
- Leaving non-farming heirs a greater share of the residuary estate
- Naming non-farming heirs as a beneficiary on a retirement account or transfer on death account
- Conserving the farm and giving an equal share to all heirs
- Help with student debt / tuition



# COMPETENCE

- A combined estate of \$7,000,000
- A farm that is failing financially
- Review of a revocable living trust drafted in 2001



# ENGAGEMENT LETTERS AND FEE AGREEMENTS

- Commences the attorney client relationship
- Sets out scope of representation
- Timing of consultations and deliverables
- Estimate of fees
- Timing of payment
- Process for affirmative consent



# MODEL RULE 1.5 FEES

A Lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.

Factors:

- Time and labor required, the novelty and difficulty of the questions involved, and the requisite skill to perform the legal service properly
- The fee customarily charged in the locality for similar services
- The amount involved and the results obtained
- The time limitations imposed by the client or the circumstances
- Whether the fee is fixed or contingent



# CLOSING LETTERS

- Concluding the attorney client relationship
- Statement regarding record retention
- File copies and maintenance



# PROFESSIONAL LIABILITY INSURANCE

- Cost vary by specialty
- Beginning lawyer discounts
- Selecting a provider





# RESOURCES

- National / Regional Gatherings and Trainings
- Reference Libraries / Publications
- Listservs and Newsletters

