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Estate Planning for Farm Families

By: Michele Procino-Wells, Esq.

As my practice has evolved over the years, I've seen certain trends among my various clients. One that stands out in particular is the difficulty farm families have with putting an estate plan in place. This topic is near and dear to my heart as my maternal grandfather was a farmer, as was his father, and his father before him.

My grandfather died from a heart attack at the age of 64 while operating his tractor and cultivating a cornfield. He had four daughters, none of whom farmed. My grandmother leased the land for years and at her later death, the farm was sold outside the family. I was too young to know, but if my grandfather was like all my farmer clients, I have to imagine that was the last outcome he wanted. Every farmer I've ever worked with has told me the same thing: I want the farming operation to continue after my death and I never want the property sold outside my family. These types of wishes present unique challenges when it comes to estate planning, but also make the need for planning all that more important.

Farmers are some of the best planners I know, when it comes to farming. They plan ahead for each crop and each season and work incredibly hard. But when it comes to estate planning, many procrastinate because of the complexities involved. Farmers are do-it-yourselfers, usually very private and often feel they need to come up with the perfect plan in their minds before they seek help. Too, the demands of the farm make them feel they are just too busy to focus on something that *hopefully* won't happen for years. These objections are exactly why farmers need to seek help from an experienced estate planning attorney. Our job is to give them planning options, talk through various strategies to help them achieve their goals and to make the planning as streamlined and efficient as possible, letting the farmer get back to the farm.

Farm families experience many unique planning concerns as the current farming generation ages and passes on. These frequently include the following:

- Farmers are often "land rich" and have limited cash available. This is a concern if the farmer or their spouse needs long term care which could result in a need to sell part of the farm to raise sufficient cash.
- Lack of liquidity is also a concern upon the farmer's death. Where will cash come from to pay expenses and taxes?
- The farm may be subject to significant amounts of debt. Who will be responsible for it after the farmer's death and how will it be paid?

Planning today to protect your family's tomorrow.

- Typically, some family members work on the farm, while others don't. How will farmers ensure harmony is preserved among the entire family while ensuring the continued successful operation of the farm?

All of these concerns can be addressed with planning that not only focuses on planning for the transfer of the farm to the next generation but also preserves assets so the current generation is protected and get the care they need as they age without jeopardizing the future of the farm and the livelihood of their heirs. This planning uses various tools, including the following:

- Revocable Trusts to plan for incapacity, avoid probate and set forth instruction for distribution of the farm after the farmer's death.
- Irrevocable Trusts shelter assets from the costs of long-term care and can set aside funds to pay death taxes, if applicable.
- Limited Liability Companies (LLC) protect the land from liabilities and establish a structure for how the farm will be managed in the future. LLCs can have voting and nonvoting members, set rules for the sale of interests, and provide for centralized management.
- Lease Agreements allow the farmer to maintain control during their lifetime and can establish rules for the use of the farm after the farmer's death.
- Life Insurance planning is critical for farms with debt and if taxes will be due upon the farmer's death.
- Rights Of First Refusal ensure that family members always have the first right to purchase interests in the farm if another owner wants to sell.

Who should a farm family work with for estate planning? It's important to have a good team including the following:

- An experienced estate planning attorney will counsel the farm family on how to best accomplish their specific goals, suggest strategies for protecting the farm with one or more of the above-listed tools, and prepare the necessary documents.
- A certified public accountant (CPA) will assist with strategies relating to the farm's cash flow making sure the farmer has access to the income while living. A CPA will also help with planning related to the division of income after the farmer's death between heirs who work on the farm and those who do not.
- A financial advisor can help with investment strategies, planning for retirement and assist families with maximizing their social security benefits. A financial advisor will also help with asset alignment as part of the estate planning process and with a smooth transition of assets to the heirs upon the farmer's death.
- An insurance advisor has a critical role in protecting the farm against catastrophic loss and with providing a source of funds to pay debt, taxes and other expenses upon the farmer's death.

For farmers, the family farm is not only their livelihood, it's their heritage and their life's work. Preserving the farm for the next generation requires careful planning and requires the right kind of guidance and preparation. Without appropriate planning, years of effort may go to waste and family relationships can be destroyed.