

You Can't Take It With You

There's no better time than now for farm estate planning and preparing a will.

BY JANET MAYER

Thomas and Sandra are second generation farmers. In their late 40s, they have taken over full control of the family's 400-acre cow-calf operation since the retirement of Thomas' father, Larry, last year.

Until that time, the father and son had enjoyed an open and positive working relationship as business partners. Both feel a smooth transfer of the farm has been achieved by the careful thought and consideration put into the process of estate planning. The continuation and growth of the family farm business for following generations can now be realized.

During the years when Thomas was growing up, he remembers hearing his father say, "You can't take a farm to the grave with you, no matter how much of your life has gone into building it. If you want to preserve what you have built for your family, you have to plan for the future."

Thomas recalls this usually was said after his father would learn of another family losing their farm because of the death of one of the owners and the lack of an estate plan.

Larry vowed this would not happen to his operation, and he and his wife Doris prepared a will when Thomas and his brothers were youngsters.

"It was after my mother died that he got really serious about doing a whole estate plan," Thomas says. "It was the year I entered college, and all of the events seemed to make him aware that he had better make sure nothing happened to his operation which had taken him most of a lifetime to build."

Larry developed a practical plan after attending estate planning seminars at the local Extension office. By including his family in the

planning process, and with the help of his attorney and professional advisors, he made provisions for the transfer of the property in the event of his death, or if he retired or became disabled.

Fortunately, Thomas and Sandra acquired the farm when Larry decided to retire. "We plan on taking a similar approach to planning for our children," Thomas says. "We feel by building good family relations based on open communication and careful planning and management, the family can look forward to the future of our beef operation with confidence."

Not all farm families realize the value of planning ahead, says John Becker, a professor of agricultural law and economics at Pennsylvania State University. Instead, many people are apathetic when it comes to the planning of their estate. They perceive it to have an impact only in the future. Because of this misconception, many times

opportunities for adequate estate planning are lost through a failure to act while there is still time to do so. "Another aspect is the psychological barrier that discussions of death and dying create for some people," he explains. "Of all possible topics to discuss, these subjects are way down on many people's list. One experience that seems to motivate people to plan their own estate is seeing a large



John Becker

YOU CAN'T TAKE IT WITH YOU cont.

portion of another person's estate lost to inheritance and estate taxes, or their property transferred to someone who is considered undeserving."

Becker advises people to ask themselves this vital question:

Where are you today and what would happen to your property if you died before you ever had chance to do anything more than what you had done up to this point?

If you don't like the answer, then estate planning should be a priority in your life.

What is Estate Planning?

"Pre-planning is the crucial ingredient to the success of any estate plan," Becker says. "Without pre-planning, decisions on property ownership, transfer methods, tax avoidance and tax payment can be haphazard and uncoordinated." Becker defines estate planning in several ways:

1. Maintaining a continuous inventory of what you own and owe and the plans you make for disposing of your accumulated property if you die.
2. The process that you apply in planning for the transfer of property after your death.
3. Important decisions you make that will have a lifetime impact on and significance to both you and your family.

Becker adds that definition No. 3's decisions don't involve the transfer of property, but would include giving someone the authority to deal with your property if you become disabled or incapacitated and providing for advanced directives concerning medical care. In some states, this is known as a living will.

Find the Right Experts & Tools

Becker, a former attorney in private practice for 23 years, says a common complaint from farm owners and operators is that advisors do not understand farmers and their operations. When this occurs, less attention is paid to the advisors suggestions and recommendations, making for an unproductive and uncomfortable situation.

He strongly recommends consulting an attorney whose practice and experience are in the area of agricultural estate planning especially for matters involving legal issues such as preparation of a valid will, a trust agreement, or the transfer of property. Information about income, estate or gift tax questions can be provided either by the attorney or an accountant who has the proper background.

Other members of the estate planning team should include advisors whose expertise and skill are in particular areas, such as insurance, investments or business organization management and operation, and last but not least, the family.

"The family is one part of the estate planning team that doesn't bring knowledge or expertise to bear on planning choices, but does play an important role nonetheless," Becker says. "As the primary group that benefits from property transfers, family members help to define the goals and objectives of the plan."

The How-to of Estate Planning

Before embarking on an estate plan, Becker advises doing a complete analysis of family objectives and goals, net worth and income needs. He points out three general areas that should be taken into account:

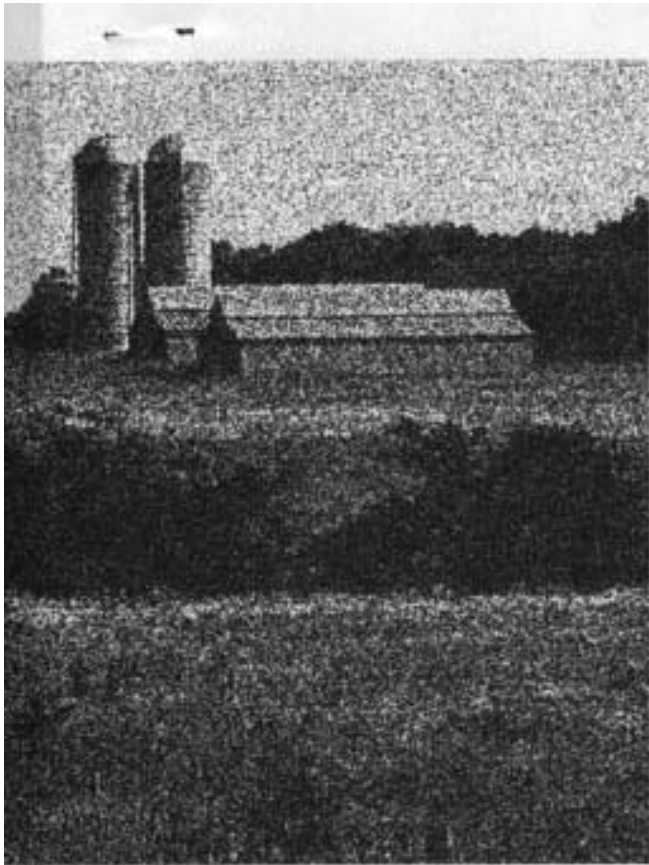


1. Personal goals, such as providing financial and personal security for a financially or personally dependent family member, or for other individuals needing a dependable source of regular income either before or after retirement.
2. Common goals which involve making decisions directed at continuing a business, such as a family farm. This would mean finding the family members capable and interested in continuing the business and providing for meeting the expenses of such a transfer.
3. Common goals which involve the financial issue of reducing state and federal taxes and the expenses associated with the transfer of property. Because passing substantial property on to others increases the risk that taxes will take a large portion of the property, planning strategies need to be employed which reduce that threat, with specific goals and objectives reflecting individual situations.

The Will

Although the will may be the heart of the estate plan, Becker stresses that many things must be studied to determine what goes into the will. For instance:

- How large is the estate?
- How is property owned and who provided the major monetary consideration?
- How many children are in the family? Are they minors; mentally or physically disabled?
- How much insurance is there and who owns it?
- Is there a business involved? Does the owner intend for family members to take it over?
- What expenses will be incurred and what taxes imposed in settling the estate?
- Are there antiques or family heirlooms the owner wants specific family members to receive?



Farm Family is Unique

In many respects, Becker says, estate **planning** for farm families is identical to that of other families, but for farm families it's not a matter of having a simple will prepared.

Some people think they could not possibly understand all the many facets and implications in planning for their farm because of the wide range of issues involved. In farm or agribusiness situations, land is a major portion of the farm business and is a valuable asset. When the owner dies, transfer of the property to someone else is a central issue.

If an owner wants to have the land continue in agriculture, a plan to provide for this must be incorporated into an estate plan. Becker suggests this can be achieved by conservation easements and deed restrictions that would limit the use of the land for other purposes.

"The bottom line is still, what is going to happen to your land if something happens to you?" Becker says. "The basic question of estate planning is understanding the current ownership of the property and what the implications would be if something happened to the owner of that property."

Using Trusts in Your Estate Plan

In planning a farm estate, trusts can fill any of the roles they play in non-farm estates. A trust is a special legal relationship the law describes as a "fiduciary" relationship. The trust places legal ownership in the hands of the trustee, with an accompanying obligation on the part of the trustee to maintain ownership of the property for the benefit of another.

Becker says there are several types of trusts that could be used for a farm estate plan:

1. **Testamentary Trust** — In this trust, created in a last will and testament, the decision to specify that a farm business assets to improve investment performance and to maintain the farm business often depends on whether a trustee can be found with

the background and knowledge to operate a farm profitably.

Finding an investment manager familiar with running a farm business to maximize its income potential is often difficult, Becker points out, and a drawback to this type of trust. Convincing an institutional trustee, such as a bank, to manage a farm business placed in trust often requires that someone **familiar** with the farm operation be named co-trustee with the bank.

2. **living Trust** — Also known as an inter-vivos trust, it is created during a person's life in contrast to the testamentary trust. This type of trust can be either revocable, giving the grantor the right to cancel the trust, or irrevocable, where the grantor gives up the right to revoke it in the future. This option is often promoted as a simple, private and inexpensive way to avoid the delay and cost of transferring property under a will.

"The important question to ask in relation to the use of trusts in planning a farm estate is, *what will be accomplished in my estate plan if I place any of my assets in trust?*" Becker advises. "If the use of a trust does not achieve an objective, or makes it more difficult to achieve the goals and objectives previously set, there should be little or no reason to use it or any other device that does not contribute to the success of the plan."

Estate Gifts

To many people, giving property away during their lifetime accomplishes several important goals. Becker describes a gift in the legal sense as a transfer of property to another person without some consideration or benefit given in return. A gift can be either total or partial.

A total or complete gift is a transfer in which the recipient does not give any consideration to the former owner. A partial gift is one where the recipient of the property transfers some consideration to the former owner, but the value of the consideration must **be** less than the value of the property received.

Changing Issues

Estate planning is a process rather than an act that ends in a single, final event. Becker says estate planning involves many issues that change over time. The property a person owns changes from month to month. The individuals to whom the property will be distributed change as families pass through their cycles of lifetime development. Laws that influence choices regarding ownership of property, inheritance and estate tax, business organizations, marital property rights, and the status of family members often change.

"It's important to remember that once you review your personal situation and make your decisions about the transfer of property after your death, your plan is complete for only that point in time," Becker advises. "It would be wise to review the plan **from** time to time and ask if it still provides for the efficient and effective transfer of the property you desire.

"Likewise, you may want to ask if changes in laws give you new opportunities to incorporate things into your plan. In either case, the review gives you the chance to make revisions that will benefit you."

