More than a Will

Farming and ranching are more than just jobs — they are a legacy. Whether your operation was passed down from generation to generation, or you are just starting out, it is important to start planning for the future, now.

by Jamie Johnson

In the next 20 years, 70% of U.S. farmland will likely transfer hands, according to AgWeek. A successful plan can ease the legal, emotional and financial complexities of transferring your farm or ranch.

Kaleb Hennigh, a family succession planning lawyer at Ewbank and Hennigh Law Firm, says many families start transition planning while they are still living by incorporating a trust or even making their operation a limited liability company (LLC).

"The majority of my clients have a goal and a plan," Hennigh says. "That plan is to maintain the family farm by continuing its operation. It is something that was held on to and their parents, grandparents and other family members have built. Keeping that spirit alive is very important to a lot of people."

Parents can do plenty in terms of gifting, estate management and trusts to keep the farm intact, says Ronald Hanson, an agribusiness professor at the University of Nebraska–Lincoln (UNL).

Income tax and planning come into play when large farming families create corporations or an LLC, and gift or transfer ownership interest in those, Hennigh says. By doing this, income taxes are not just on the parents, they also include the beneficiaries, typically the children.

Most family farms realize the importance of and need for a succession plan, but few actually have one in place for the next generation, Hanson says.

"I would tell you that everybody — underline, bold, italics and asterisks — everybody needs to have a set of estate planning tools, I don't care how old you are. I don't care what you own." — Shannon Ferrell

"It is never too early to begin the planning process," he says. "Most families wait until it is too late. They wait until there is an unexpected or sudden death in the family."

Creating a plan

Shannon Ferrell, an agricultural economics professor at Oklahoma State University (OSU), says farmers and ranchers need a team to help with their farm succession planning. They will need both an accountant and attorney well versed in agriculture. For every tax issue, there is an exception for agriculture. A large chunk of family farms are asset intensive, with limited cash. Most assets come in the form of land, which can be hard to handle with an inexperienced attorney in this matter.

A family's legal team may also include a production consultant if they want a financially viable operation after the transition. A mediator or family communication specialist for the actual discussion may be helpful as well, Ferrell adds.

Unmet expectations are sometimes the hardest part of the planning process. Talking to your family early on can help manage expectations.

Tough, but worth it

Hanson says it is hard to bring up the idea of death and talk about what is going to happen after someone dies. But it is vital.

The owners of the operation should discuss their wishes first, Hanson says. Then, they must communicate their vision and plans to their children.

However, it is important for children to talk about their expectations too. If they just finished college and want to go back to the family operation, they need to make that clear to their parents.

Hanson says sometimes dad or grandpa still plan to run the operation and make all of the decisions. When their children come home, they may find they are just hired help to do the work with no input or recognition. Hanson says situations like these are when people get frustrated and families begin to pull apart.

"I always ask parents, 'You've worked your whole life to build and accomplish this. What are you going to do with it?'" Hanson says. "Do you have a plan to preserve it, to make sure the farm and legacy, the name on that mailbox, never change?”

Continuing the legacy is a major commitment, Hanson says, but it is money and time well spent.

Ferrell says estate planning encompasses making decisions for the family and loved ones. If there is no plan, the farm owner will die intestate, meaning the inheritance laws of their state of residency will determine how the property will pass.

Where to start

To start off planning, appoint a guardian if children are under the age of 18.

You need to have beneficiary designations on all of your accounts. Investment, retirement and some savings accounts will let them designate where they want the money to go when you die. Make sure those account beneficiaries stay up to date though, he adds.

Ferrell says producers need a health care power of attorney. If you become incapacitated, who is going to make decisions for you if surgery is needed? Who is going to pay your bills and receive your mail?

Writing a will and considering trust arrangements are important parts of an estate plan.

A family inventory should be next on the list. It should state the asset or property, where it is located, who owns it, the beneficiaries, how much it is worth and how to access it (account numbers, usernames and passwords), Ferrell says.

A will is not only a document that tells where assets go, but it also allows producers to name who will carry out their wishes. This is where guardians can be named for children.

The probate process is where your property is legally transferred to other parties. A will must go through this to be legally valid. It can be very costly and take anywhere from weeks to years.

A living trust avoids the probate process. It is a document controlling assets while people are still living, Ferrell says.

“I would tell you that everybody — underline, bold, italics and asterisks — everybody needs to have a set of estate planning tools,” Ferrell says. “I don’t care how old you are. I don’t care what you own.”

Hennigh says many families have a plan, either in their head or maybe even discussed. It is important to get it down on paper, in the form of a partnership agreement, a family operating agreement, a last will and testament trust or estate planning documents, to outline exactly what the succession plan is.

He says each state in our country has laws that will identify who will be in charge of administering your assets and where they will go.

“At some point the formalization of your plan is critical,” Hennigh says. “Ultimately, to direct how you want things to be taken care of. The primary reason to formalize your plan is to avoid third parties coming in and doing it for you.”

Editor’s note: Jamie Johnson is a freelance writer from Kersey, Colo.