TRANSITIONING

Tips for farm and ranch transfer and estate planning.

by ***Micky Wilson***

It's a hard thing to think about — planning for our farm or ranch for the years after we're gone. The paperwork, the complications, facing our own mortality. It's such a hard thing to think about, in fact, that more than half of all Nebraska farmers do not have a will, says Dave Goeller, transition specialist at the University of Nebraska.

Making decisions is hard, but making the decision to simply not do anything isn't an advisable answer, he says. Instead, worthwhile tasks for future planning include making a will, having an estate plan, and understanding how the decisions you make will affect your successor's tax situations.

Wills and living wills

A will is a legal declaration of a person's wishes as to the disposition of his or her property or estate after he or she has died. It's usually a written document, signed by the testator and attested by witnesses.

"A will is an important part of the plan because it names heirs, nominates an executor and appoints guardians for dependants," notes the American Farmland Trust (AFT) Farmland Information Center's Fact Sheet "Farm Transfer and Estate Planning." For more information from the Farmland Information Center, visit *www.farmlandinfo.org.*

A living will also is recommended for estate planning, Goeller says. A living will, or a medical directive, is used as a medical power of attorney. For example, if the owner of a farm or ranch is in a medically permanent vegetative state, a living will tells survivors what the wishes of the patient are with respect to life support. A living will should be part of estate-planning documents; many times it eases difficult decision-making for survivors.

Estate planning key questions

According to Dave Goeller, transition specialist at the University of Nebraska, the following questions are key when doing estate planning:

- ►What do you own?
- ►What is it worth?
- ►How much do you owe?
- ►How are your assets titled?
- ►Who do you want to give your assets to?
- ►When do you want to give your assets to them?
- ►How long do you want to exert control?
- ►What are your plans for long-term care?

Estate planning

Goeller explains that a transfer plan is simply transferring a group of assets. An estate plan is transferring a business, including a succession plan, financial viability, goals and a retirement plan. According to the AFT, "the estate-planning process is a good opportunity to resolve business operation and management issues and to transfer assets."

The July 2009 issue of *Farm and Ranch Scene* by Farmers National Co. recommends estate planning be completed with numerous individuals, "including your attorney, financial planner or CPA and a qualified appraiser." An appraiser is suggested to help establish a new basis value for your property. This basis will help if you choose to gift your property, or if you choose to form a Family Limited Partnership (FLP).

"If your descendents are the recipients of your gift, they need to have the basis established for the gifted property," Farmers National Co. says.

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In the event of the property being donated to a charitable organization, they say, "the IRS will need to have a qualified appraiser complete the appraisal in order for your estate to take the gift as a contribution."

Some farmers and ranchers may choose to preserve their estate for conservation purposes, in which case a conservation easement must be placed on the property.

"Again," Farmers National Co. says, "this may require several professionals working as a team to maximize the benefit to you or your estate." This option allows heirs to "take advantage of a section in the tax code that allows them to retain the property for agricultural use for a period of time, which has the effect of lowering their basis value."

Regardless of your choice, a good estate plan should accomplish these four goals:

1. Transfer ownership and management of the agricultural operation, land and other assets;
2. Avoid unnecessary transfer taxes (income, gift and estate);
3. Ensure financial security and peace of mind for all generations; and
4. Develop the next generation's management capacity.

The AFT continues, saying it's important

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to set goals and revisit your estate plans over time as families, finances, priorities and laws change.

"As part of this goal-setting process," they say, "landowners must take inventory of their assets and be sure they fully understand who owns what and how titles to the property are held."

Taxes

Efforts should be made to minimize taxes because, Goeller says, "at each generational level, assets will pass through a tax screen." These are called transfer taxes.

Estate tax. Estate tax occurs on time-of-death transfers, says Goeller and Hawbaker. If there is a surviving spouse and all property was jointly owned, no estate tax is imposed on transfers because spouses are treated as one economic unit. Spouses can be taxed on all of the assets. However, if the assets are worth less than exclusion amount/unified credit, there shouldn't be a tax problem. Unified credit "offsets cumulative gift and estate tax liabilities," Goeller says.

Gift tax. Gift tax occurs on inter vivos transfers. Goeller lists three elements of a gift: It must have a donor, it must have a recipient, and it must have an actual or constructive receipt of the gift. He recommends gifts be given with no strings attached, and reminds recipients that a gift, in any amount, is not considered income.

Capital gains tax. "Capital gain," according to Goeller, "is the difference between what you paid for an asset and what it is presently worth." If you sell the asset, you may pay capital gains tax. If you give the asset away, the recipient of the gift receives a basis in the asset equal to your own.