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AGRICULTURAL LAW SPECIALIST | TEXAS A&M AGRILIFE EXTENSION

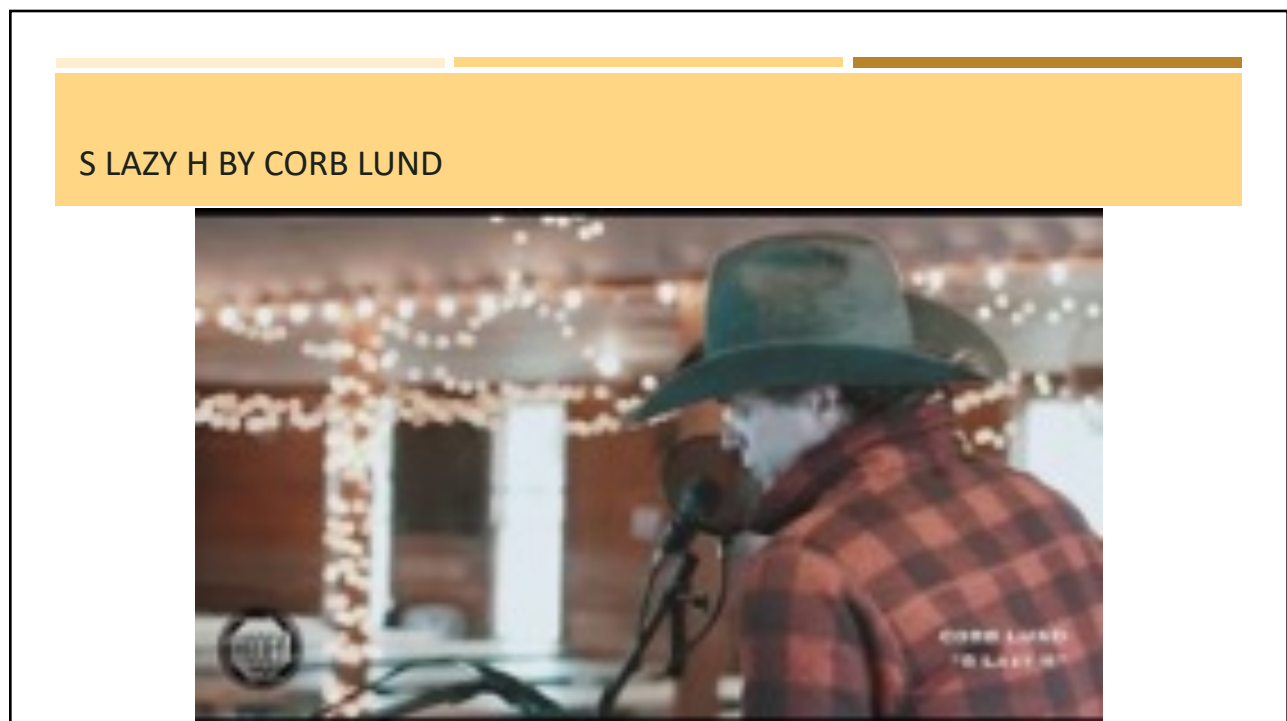
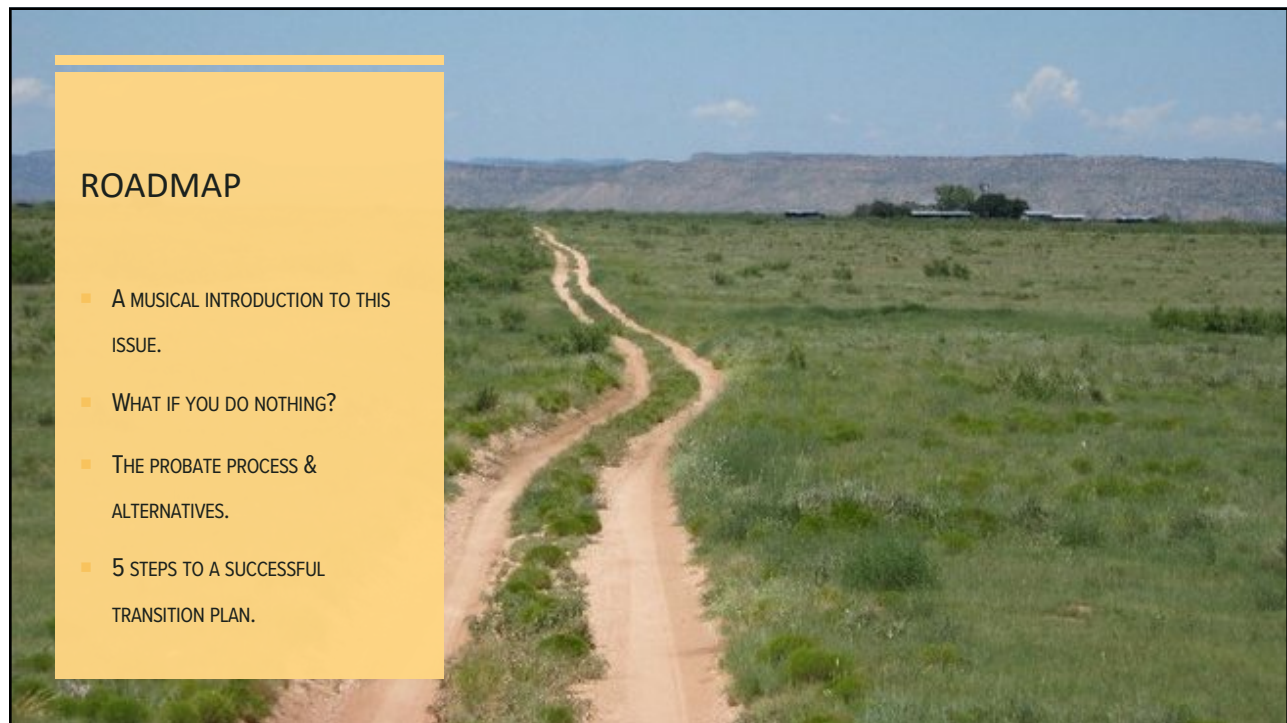




DISCLAIMER

- THIS PRESENTATION IS FOR EDUCATIONAL PURPOSES ONLY, AS WELL AS TO GIVE GENERAL INFORMATION AND A GENERAL UNDERSTANDING OF THE LAW, NOT TO PROVIDE SPECIFIC LEGAL ADVICE.
- THIS PRESENTATION DOES NOT CREATE AN ATTORNEY/CLIENT RELATIONSHIP AND SHOULD NOT BE USED AS A SUBSTITUTE FOR THE ADVICE OF A LICENSED ATTORNEY.





ISSUES AT THE S LAZY H

- FAMILY DIDN'T THINK ABOUT THE FUTURE.
- ASSUMES "WHAT WE LOVED WOULD ALWAYS BE THERE."
- BROTHER GIVES UP COLLEGE TO HELP DAD AT THE RANCH.
- SISTER MOVES BACK EAST.
- DAD DIES, MOM IS OLD, BROTHER LEFT TO TAKE CARE OF THINGS.
- SISTER MARRIES A CITY BOY.
- DIFFERENT IDEAS OF WHAT EXACTLY IS THE "VALUE" OF THE RANCH.
- LAWSUIT GIVES SISTER HALF, BROTHER HALF.
- BROTHER HAS LACK OF LIQUIDITY TO BUY HER OUT.
- BROTHER FORCED TO SELL 20 SECTIONS TO DEVELOPER TO BUY SISTER'S HALF.
- "SOMETIMES RIGHT ISN'T EQUAL, SOMETIMES EQUAL ISN'T FAIR."
- COULD NOT GENERATE ENOUGH INCOME WITH REMAINING LAND TO PAY MORTGAGE, FORECLOSURE.

IT'S NOT JUST IN THE SONG...



- 55% OF AMERICANS HAVE NO ESTATE PLAN IN PLACE.
- 64% OF FARM/AGRIBUSINESS OWNERS HAVE NO ESTATE PLAN IN PLACE.
- ONLY 30% OF FAMILY BUSINESSES SURVIVE TRANSFER FROM THE FIRST TO THE SECOND GENERATION.
- ONLY 12% SURVIVE FROM THE SECOND TO THE THIRD.
- ONLY 3% SURVIVE FROM THE THIRD TO THE FOURTH.

IF YOU HAVE NOTHING IN PLACE...



- IF YOU DIE WITHOUT A WILL, THE GOVERNMENT WILL DETERMINE WHERE YOUR ASSETS GO.
 - TEXAS ESTATES CODE CHAPTER 201
- THE PROBATE PROCESS MAY TAKE A LONG TIME AND COST A LOT OF MONEY.
- THE LIKELIHOOD OF DISPUTES AMONG HEIRS INCREASES.

WHAT DID PRESIDENT REAGAN SAY WERE THE 9 MOST TERRIFYING WORDS IN THE ENGLISH LANGUAGE?



SAMPLE INTESTACY STATUTE RESULTS IN TEXAS

IF A HUSBAND DIES WITHOUT A WILL, WHERE DOES HIS PROPERTY GO?

IF HE IS MARRIED WITH NO CHILDREN, THE WIFE GETS ALL OF HIS SEPARATE PERSONAL PROPERTY AND $\frac{1}{2}$ OF HIS SEPARATE REAL PROPERTY. THE OTHER $\frac{1}{2}$ OF HIS SEPARATE REAL PROPERTY GOES TO THE HUSBAND'S PARENTS. THE WIFE GETS ALL OF HIS COMMUNITY PROPERTY.

IF HE IS MARRIED WITH CHILDREN, HIS WIFE GETS $\frac{1}{3}$ OF THE SEPARATE PERSONAL ESTATE AND THE CHILDREN GET $\frac{2}{3}$. THE WIFE ALSO GETS A LIFE ESTATE IN $\frac{1}{3}$ OF THE PERSON'S LAND WITH THE REMAINDER TO THE CHILDREN. FOR COMMUNITY PROPERTY, THE WIFE GETS IT SO LONG AS THE CHILDREN ARE ALSO HER DESCENDANTS. IF NOT, THE CHILDREN GET THE DECEASED'S COMMUNITY PROPERTY.

THE SECOND HUSBAND EXAMPLE

YOU ARE MARRIED WITH NO CHILDREN AND NO WILL.

YOUR GRANDPA LEFT YOU HIS FARM.

YOU DIE.

YOUR WIFE NOW OWNS $\frac{1}{2}$ OF THE FARM AND YOUR PARENTS OWN THE OTHER $\frac{1}{2}$.

YOUR WIFE REMARRIES.

YOUR WIFE HEARS ME SPEAK, THINKS I'M BRILLIANT, AND DRAFTS A WILL LEAVING EVERYTHING TO HER NEW HUSBAND.

SHE DIES. HER NEW HUSBAND NOW OWNS $\frac{1}{2}$ OF YOUR GRANDPA'S FARM.

THE PROBATE PROCESS

- PROBATE IS THE PROCESS IN WHICH A COURT LEGALLY RECOGNIZES A DEATH AND OVERSEES PAYMENT OF DEBTS AND DISTRIBUTION OF THE DECEDENT'S ASSETS.
- DO NOT BE TERRIFIED OF PROBATE—IT IS SIMPLER IN TEXAS THAN MANY OTHER STATES.
- KEEP IN MIND—THE PROBATE PROCESS ONLY APPLIES TO PROBATE ASSETS.

PROBATE VS. NON-PROBATE ASSETS

PROBATE ASSETS

PASS THROUGH WILL OR INTESTATE SUCCESSION, PROBATE LIKELY REQUIRED

- SEPARATELY OWNED PROPERTY
- YOUR PORTION OF COMMUNITY PROPERTY
- YOUR PORTION OF CO-OWNED PROPERTY (TIC)

NON-PROBATE ASSETS

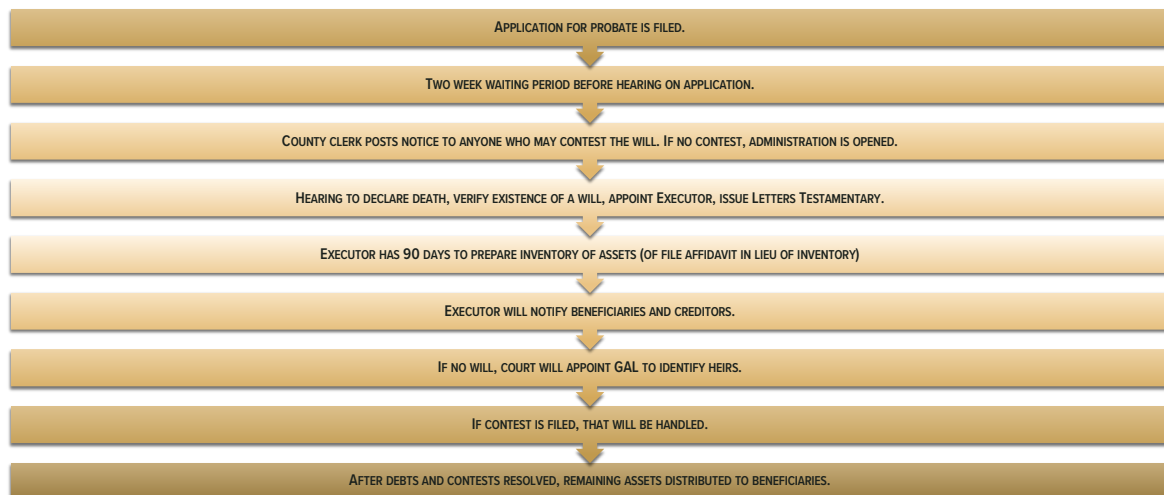
PASS VIA CONTRACT, NO PROBATE

- LIFE INSURANCE
- RETIREMENT BENEFITS (PENSION/IRA)
- JOINT TENANTS WITH RIGHT OF SURVIVORSHIP
- PAY ON DEATH ACCOUNTS
- PROPERTY OWNED BY TRUST
- PROPERTY PASSED BY TRANSFER ON DEATH DEED, LADY BIRD DEED

PROBATE NUTS & BOLTS

- GENERALLY, PROBATE MUST BE FILED WITHIN 4 YEARS OF THE PERSON'S DEATH.
- FILED IN THE COUNTY WHERE THE PERSON RESIDED AT DEATH.
- FIRST STEP IS GATHERING UP INFO TO SEE WHERE YOU ARE AND WHAT PROCESS MAY BE AVAILABLE.
 - FLIGHT PLAN!
 - ORIGINAL WILL
 - LIFE INSURANCE POLICIES
 - BANK AND INVESTMENT ACCOUNT INFORMATION
 - DEEDS
 - DEATH CERTIFICATE

PROBATE PROCESS



ALTERNATIVE OPTIONS

IF THE DECEDENT HAD A WILL

- MUNIMENT OF TITLE
- AFFIDAVIT OF HEIRSHIP (WITH WILL ATTACHED)

IF THERE IS NO WILL

- SMALL ESTATE AFFIDAVIT
- AFFIDAVIT OF HEIRSHIP

MUNIMENT OF TITLE

- “EXPRESS LANE PROBATE”
- SIMILAR TO PROBATE, BUT LESS FORMAL AND LESS EXPENSIVE.
- REQUIRES A WRITTEN WILL.
- ESTATE MAY NOT HAVE ANY DEBTS (OTHER THAN DEBT SECURED BY REAL ESTATE LIEN).
- USEFUL WHEN YOU SIMPLY NEED TO TRANSFER TITLE TO PROPERTY.
- NO EXECUTOR IS APPOINTED, NO ADDITIONAL FILINGS.
- HEARING HELD TO ORDER PROPERTY TRANSFER.
- ONCE ORDER IS ISSUED, THAT IS SUFFICIENT TO TRANSFER ASSETS IN ACCORDANCE WITH THE WILL.

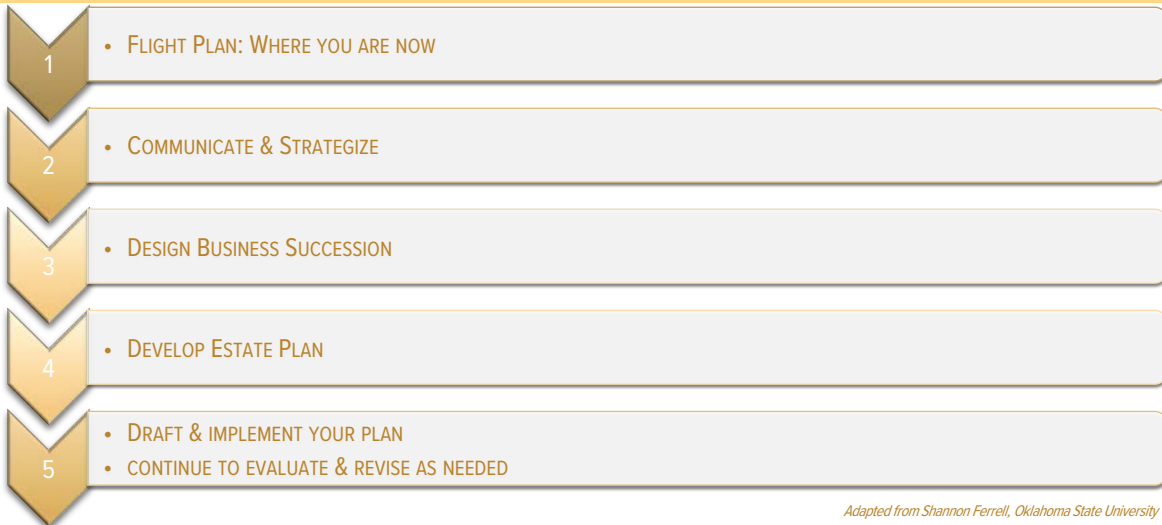
SMALL ESTATE AFFIDAVIT

- DOES NOT REQUIRE A WILL.
- ESTATE VALUE IS LESS THAN \$75,000 AT THE DATE OF APPLICATION.
 - EXEMPTIONS:
 - HOMESTEAD (URBAN UP TO 10 ACRES OF LAND/IMPROVEMENTS; RURAL UP TO 200 ACRES PER FAMILY)
 - EXEMPT PERSONAL PROPERTY LISTED IN STATUTE (\$50,000 SINGLE, \$100,000 FAMILY)
- ONLY AN OPTION IF THE HOMESTEAD IS THE ONLY REAL PROPERTY OWNED AND IT WILL BE INHERITED ONLY BY SPOUSE OR MINOR CHILDREN.
- HOMESTEAD IS THE ONLY REAL PROPERTY THAT MAY BE TRANSFERRED.

AFFIDAVIT OF HEIRSHIP

- CAN BE USED EITHER WITH OR WITHOUT A WILL.
- SWORN STATEMENT FROM SOMEONE WITH KNOWLEDGE REGARDING HEIRS & PROPERTY OF DECEDENT.
- FILED WITH THE COUNTY CLERK RATHER THAN IN COURT WITH A JUDGE.
- NO HEARING IS HELD.
- MAY NOT BE USED IN CERTAIN SITUATIONS:
 - CANNOT USE IF THERE ARE UNKNOWN HEIRS OR POTENTIAL DISAGREEMENT BETWEEN HEIRS REGARDING ESTATE.
 - SOME FINANCIAL INSTITUTIONS MAY NOT ACCEPT TO TRANSFER ASSETS.
 - LIKELY ONLY USEFUL IN SITUATIONS WHERE REAL PROPERTY IS ONLY PROBATE ASSET.

STEPS TO A SUCCESSFUL TRANSITION



Adapted from Shannon Ferrell, Oklahoma State University

STEP 1: FLIGHT PLAN



FLIGHT PLAN: CONTENTS

- ESTATE PLANNING DOCUMENTS
- IRA/401(k)/PENSION/RETIREMENT PLAN
- LIFE INSURANCE POLICIES
- BANK ACCOUNT INFO
- SAFETY DEPOSIT BOX INFO
- CREDIT CARD AND DEBT INFO AND PAY SCHEDULES
- HEALTH INSURANCE POLICIES
- BURIAL PLOT LOCATION AND FUNERAL INSTRUCTIONS

FLIGHT PLAN: CONTENTS

- EMAIL AND COMPUTER PASSWORDS
- DEEDS, TITLES, REGISTRATIONS, LEASES, ROYALTY DOCUMENTS, WATER PERMITS, SURVEYS
- BIRTH CERTIFICATE, MARRIAGE LICENSES, SOCIAL SECURITY CARDS, MILITARY DISCHARGE PAPERS
- LIST OF ASSETS AND ESTIMATED FAIR MARKET VALUE
 - PERSONAL PROPERTY
 - REAL PROPERTY
 - LIVESTOCK
 - STORED CROPS
 - STRUCTURES, EQUIPMENT, VEHICLES, ETC.
- CROP INSURANCE POLICIES AND FSA CONTRACTS

FLIGHT PLAN: CONTENTS

- NAMES AND CONTACT INFORMATION FOR:
 - ATTORNEY
 - ACCOUNTANT
 - BANKER
 - MARKETING RELATIONSHIPS (I.E. FEEDLOT, ELEVATOR, MILK BUYER, ETC.)
 - PARTNERS
 - LANDOWNERS OR TENANTS
 - INSURANCE AGENT
 - FSA OFFICE



See Checklist on p. 8 of Resource Guide



PUT THIS INFO
SOMEWHERE
SAFE AND...



STEP 2: COMMUNICATE & STRATEGIZE

HAVE “THE TALK”

- I DON'T RECOMMEND THE UNCLE FRED APPROACH.
- INCLUDE ALL STAKEHOLDERS.
- DETERMINE INTERESTS, VALUES, GOALS & WILLINGNESS TO PARTICIPATE IN THE ONGOING BUSINESS OPERATION.
- CONSIDER THE BEST TIME TO DO THIS AND KNOW IT MAY BE ONGOING.
- CONSIDER USING A MEDIATOR OR FAMILY COMMUNICATIONS SPECIALIST.

WHAT'S YOUR MOST IMPORTANT GOAL?

- THIS SHOULD BE THE FIRST QUESTION THE LAWYER ASKS YOU. YOUR GOAL WILL DRIVE THE PLAN.
- COMMON GOALS:
 - KEEP THE LAND IN THE FAMILY
 - DIVIDE EVERYTHING EQUALLY BETWEEN THE KIDS
 - KEEP THE LAND IN FARMING
 - KEEP THE GREEDY DAUGHTER-IN-LAW'S HANDS OFF THE PLACE
 - BE SURE OUR KIDS ARE STILL TALKING AT THE END OF THIS
 - DETERMINE HOW TO EQUITABLY DIVIDE THE FARM IF YOU HAVE ON- AND OFF-FARM HEIRS
 - DO NOT LOSE EVERYTHING WE HAVE WORKED FOR TO TAXES
 - ENSURE THAT MOM AND DAD QUALIFY FOR MEDICAID

IDENTIFY YOUR GOALS

WHAT ARE WE GOING TO DO
WITH THE FARM?

LEAVE IT TO FAMILY MEMBERS?

IS THERE AN EQUITABLE/EQUAL
ISSUE?

LEAVE IT TO A
NON-FAMILY MEMBER?

SELL?

LONG-TERM CARE?

PROVIDE FOR NEEDS OF
"RETIRED" GENERATION?

ENSURE THEY HAVE A PLACE TO
LIVE?

HOW WILL WE PAY FOR LONG-
TERM CARE?

ARE THERE ESTATE, GIFT, OR
CAPITAL GAINS TAXES AT
ISSUE?

SHOULD WE TRANSFER
ASSETS NOW, OR WAIT UNTIL
DEATH?

EVALUATE FINANCIAL STATUS



- NEED TO REALISTICALLY LOOK AT THE CURRENT FINANCIAL STATUS TO DETERMINE HOW TO SET UP TRANSFER FOR SUCCESS.
- WILL FARM BE ABLE TO COVER OPERATING DEBT THIS YEAR?
- EVALUATE NET WORTH/COLLATERAL.
- ANALYZE LIQUIDITY.
- POTENTIAL TO SUPPORT “RETIRED” GENERATION?
- POTENTIAL TO SUPPORT TWO OR MORE HEIRS?

LONG-TERM CARE CONSIDERATIONS

- IF LONG-TERM CARE IS NEEDED, WHAT OPTIONS ARE AVAILABLE?
- IS THERE LONG-TERM CARE INSURANCE?
- ARE THERE ANY BENEFITS AVAILABLE AT THE VA?
- CAN THE PATIENT SELF-PAY FOR LONG-TERM CARE?
- UNDERSTAND MEDICAID QUALIFICATION RULES — CONTACT AN ELDER LAW ATTORNEY!
 - QUALIFICATION REQUIREMENTS FOR INCOME & ASSETS.
 - OVER 41 DIFFERENT OPTIONS WITH DIFFERENT QUALIFICATIONS
 - CERTAIN NON-COUNTABLE ASSETS LIKE RESIDENCE, AUTO, ASSETS USED IN BUSINESS (LIKE FARM OR RANCH!), CERTAIN RETIREMENT ACCOUNTS
- MEDICAID TRANSFER PENALTY
 - 5-YEAR LOOKBACK PERIOD
- MEDICAID ESTATE RECOVERY
 - ASSETS IN YOUR PROBATE ESTATE

ESTATE TAX

- FEDERAL LEVEL TAX ON ASSETS TO BE TRANSFERRED.
- EXEMPTION AMOUNT FOR 2021: **\$11.7 MILLION PER PERSON.**
 - DEDUCT ANY LIFETIME GIFTS OVER THE LIMIT (\$15,000/YEAR)
- BASED ON CURRENT MARKET VALUE OF ASSETS.
- IF VALUE IS OVER **\$11.7 MILLION**, PAY **40%** TAX ON OVERAGE.
- AMOUNT DOES NOT INCLUDE:
 - MORTGAGES/DEBTS
 - ESTATE ADMINISTRATION EXPENSES
 - PROPERTY GIVEN TO CHARITIES
- TAX IS NOT OWED ON PROPERTY LEFT TO SURVIVING SPOUSE.
- PORTABILITY BETWEEN SPOUSES—MUST FILE ELECTION!
 - FILE FORM 706 WITHIN 9 MONTHS OF DEATH:
[HTTP://WWW.IRS.GOV/INSTRUCTIONS/I706/CH01.HTML](http://www.irs.gov/instructions/i706/ch01.html)

GIFT TAX

- FEDERAL LEVEL TAX ON TRANSFER OF PROPERTY BY ONE PERSON TO ANOTHER, WHILE RECEIVING NOTHING, OR LESS THAN FULL VALUE, IN RETURN.
- ANNUAL EXCLUSION IS **\$15,000**
- IF MORE THAN EXCLUSION IS GIVEN IN A YEAR, A GIFT TAX RETURN MUST BE FILED.
- THE AMOUNT OVER THE EXCLUSION IS DEDUCTED FROM THE DONOR'S LIFETIME EXCLUSION (**\$11.7 MILLION**).
- DONOR DOES NOT ACTUALLY PAY A TAX UNTIL HE OR SHE HAS GIVEN AWAY MORE THAN THE LIFETIME EXCLUSION. RATES RANGE FROM **18-40%**.
- REMEMBER—THE GIFT TAX CAN IMPACT YOUR ESTATE TAX LIABILITY!

CAPITAL GAINS TAX

- CAPITAL GAINS TAX IS OWED WHEN A PERSON SELLS ASSETS THAT HAVE APPRECIATED OVER TIME.
 - USUALLY EXCLUDES HOME IF MAIN RESIDENCE FOR 2 OF THE LAST 5 YEARS BEFORE SALE.
- TAX RATES RANGE FROM 0-20% FOR LONG-TERM ASSETS AND FOR SHORT TERM ASSETS THE RATE CORRESPONDS WITH INCOME TAX BRACKETS.
- 1031 EXCHANGE MAY BE AN OPTION TO AVOID IF PURCHASING LIKE KIND PROPERTY.
- IMPORTANT ISSUE FOR AGRICULTURE IS STEP UP IN BASIS.
 - ADJUSTMENT OF THE VALUE OF AN APPRECIATED ASSET OR TAX PURPOSES UPON INHERITANCE.
 - COST BASIS, RATHER THAN PURCHASE PRICE WILL BE USED.
 - GENERALLY AVAILABLE IF ASSET IS TRANSFERRED AT DEATH.

WHEN TO TRANSFER: BEFORE DEATH

PROS

- ONE LESS THING TO WORRY ABOUT!
- CAN ENJOY WATCHING THE NEXT GENERATION TAKE OVER & OPERATE.
- REDUCED EXPENSES FOR TRANSFEROR.
- PROBATE PROCESS NOT REQUIRED FOR THE TRANSFERRED ASSETS.
- LAND OUT OF TRANSFEROR'S NAME (IMPORTANT FOR MEDICAID QUALIFICATION AND AVOIDING MERP IF DONE CORRECTLY/TIMELY)
- ASSET NOT PART OF OWNER'S TAXABLE ESTATE.

CONS

- DEED IS IRREVOCABLE.
- LANDOWNER NO LONGER HAS CONTROL.
- LAND SUBJECT TO CREDITORS OR JUDGEMENTS AGAINST THE HEIR.
- POTENTIAL GIFT TAX/ESTATE TAX IMPLICATIONS.
- NO STEP UP IN BASIS FOR CAPITAL GAINS TAXES.
- POTENTIAL MEDICAID IMPLICATIONS IF NOT DONE CORRECTLY/TIMELY (MEDICAID TRANSFER PENALTY)

ALTERNATIVE: TRANSFER ON DEATH DEED

- DEED TRANSFERS INTEREST IN REAL PROPERTY TO BENEFICIARY EFFECTIVE AT TRANSFEROR'S DEATH.
- MUST BE EXECUTED & FILED IN DEED RECORDS PRIOR TO DEATH.
- MAY NOT BE EXECUTED BY A POWER OF ATTORNEY.
- TRANSFEROR RETAINS ALL RIGHTS TO THE PROPERTY.
- ALWAYS REVOCABLE.
- SINCE TRANSFER DOES NOT OCCUR UNTIL DEATH:
 - STEP UP IN BASIS STILL ALLOWED.
 - EXECUTION IS NOT A TAXABLE EVENT FOR GIFT TAX.
 - DOES NOT TRIGGER MEDICAID TRANSFER PENALTY, DOES NOT FALL WITHIN PROBATE ESTATE FOR MEDICAID ESTATE RECOVERY PROGRAM.
 - LAND NOT SUBJECT TO CREDITOR OF BENEFICIARY.

ALTERNATIVE: LADY BIRD DEED

- GRANTOR TRANSFERS INTEREST TO REMAINDERMAN, BUT RESERVES A LIFE ESTATE IN FAVOR OF THE GRANTOR.
- "ENHANCED RIGHTS" ALLOW THE GRANTOR TO SELL, CONVEY, LEASE, OR MORTGAGE PROPERTY WITHOUT CONSENT OF REMAINDERMEN.
- LBD IS REVOCABLE.
- POWER OF ATTORNEY MAY EXECUTE.
- MUST BE RECORDED IN DEED RECORDS.
- PROPERTY NOT SUBJECT TO CREDITORS OF REMAINDERMAN.
- PROPERTY DOES RECEIVE STEPPED UP BASIS.
- NOT A TAXABLE EVENT FOR GIFT TAXES.
- MEDICAID: NOT CONSIDERED A TRANSFER, NOT SUBJECT TO MEDICAID ESTATE RECOVERY.
- POTENTIAL DOWNSIDE: COULD TRIGGER DUE ON SALE CLAUSE IN MORTGAGE OR LOAN.



Lance Schiele
@schiele_lance

A 40+ year old neighbor finally planted today for the first time. Their won't be another generation farming if we as dads don't give up some control

9:38 PM · Apr 22, 2021 · Twitter for iPhone

...

Its not just farms. Its any family business. Giving up control for one side and being humble enough to take advice on the other side is instrumental for family businesses to continue! Also the ability to argue, not hold grudges and put feelings aside. Takes lots of work for all parties involved.

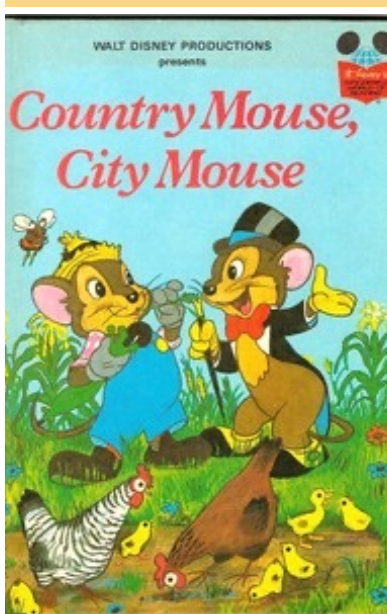
I see a lot of children with that only plan to inherit the operation rather than purchase it from the parents. This doesn't give the parents a way out financially. That seems to be one big reason the older folks will not give up control.

I've thought about this a lot. I can't pay market price for our family land. Don't think I could pay it off in my lifetime. I'll continue leasing from the trust and try to purchase neighboring land as I can. I don't see anyway to expand buying their land.

It is very hard for the older generation to hand the torch a lot of the time. It is also a hard conversation to have with them as well.



WHAT WOULD
STEVE JOBS
DO?



THREE MICE SCENARIOS

COUNTRY MOUSE / CITY MOUSE

- LIKELY HAVE DIFFERENT VALUES/ECONOMIC PERSPECTIVES
- BACK TO OUR SONG "SOMETIMES EQUAL IS NOT FAIR"
- ISSUE OF "SWEAT EQUITY" COMES INTO PLAY.
- NEED TO DISCUSS AND DEAL WITH IN ESTATE PLAN TO AVOID DISASTER.

COUNTRY MOUSE / COUNTRY MOUSE

- WILL THE FARM GENERATE ENOUGH INCOME TO SUPPORT TWO FAMILIES?
- CAN THE TWO OF THEM MAKE DECISIONS TOGETHER?
- WHO WILL HANDLE DAILY OPERATIONS?

CITY MOUSE / CITY MOUSE

- NO ONE INTERESTED IN COMING BACK AND TAKING OVER THE FARM.
- DETERMINE IF FARM SHOULD/CAN CONTINUE ON OR SHOULD BE SOLD.
- IF GOING TO CONTINUE, WHO WILL BE IN CHARGE OF DAILY OPERATIONS?
- HOW WILL THIS BE SET UP?

CONSIDERATIONS

- WHO WILL BE INVOLVED?
 - DAILY OPERATIONS AND BASIC DECISIONS
 - STRATEGIC DECISIONS
 - FINANCIAL STAKE
- HOW WILL NEW ROLES BE CREATED/EXISTING ROLES CHANGED?
- WHAT TYPE OF TRAINING/EDUCATION/EXPERIENCE DOES NEW GENERATION NEED?
- IS FOUNDING GENERATION WILLING TO RELEASE CONTROL?

WOULD A BUSINESS ENTITY BE BENEFICIAL?

- BUSINESS ENTITIES CAN OFFER A NUMBER OF BENEFITS.
- THEY CAN HAVE DOWNSIDES AS WELL.
- DETERMINING THE BEST ENTITY FOR YOU CAN BE COMPLEX
 - CONSULT WITH AN ATTORNEY AND ACCOUNTANT!

COMMON BUSINESS ENTITY OPTIONS

SOLE PROPRIETORSHIP

GENERAL
PARTNERSHIP/JOINT
VENTURE

LIMITED PARTNERSHIP

LIMITED LIABILITY
COMPANY (LLC)

CORPORATION

SOLE PROPRIETORSHIP

SIMPLEST, DEFAULT FORM OF BUSINESS

PROS

- IT'S AUTOMATIC
- NO FORMAL CREATION REQUIREMENTS
- NO ADDED PAPERWORK, NO SEPARATE TAX RETURN
- FLEXIBILITY
- PASS THROUGH TAXATION

CONS

- NO LIMITED LIABILITY
- IF NO PHYSICAL BUSINESS PREMISES, MUST FILE DBA IN EACH COUNTY WHERE BUSINESS IS CONDUCTED.
- NO BUILT-IN ESTATE/TRANSFER PLAN
- SELF-EMPLOYMENT TAX

GENERAL PARTNERSHIP / JOINT VENTURE

TWO OR MORE PERSONS ASSOCIATING TO CARRY ON A BUSINESS FOR PROFIT

Pros

- NO FORMAL CREATION / FILING REQUIREMENTS
- DOES NOT REQUIRE CONSENT FROM ALL MEMBERS TO MAKE DECISION
- EACH PARTNER ELIGIBLE FOR USDA PROGRAM PAYMENTS
- TAXES — PASS THROUGH TO PARTNERS BUT SHOULD FILE ENTITY LEVEL RETURN

Cons

- MIGHT ACCIDENTALLY CREATE
- NO LIMITED LIABILITY
- EACH PARTNER CAN BIND THE PARTNERSHIP
- DEFAULT: PROFITS/LOSSES SHARED EQUALLY REGARDLESS OF INPUT
- IF NO PHYSICAL BUSINESS PREMISES, MUST FILE DBA IN EACH COUNTY WHERE BUSINESS IS CONDUCTED.

LIMITED PARTNERSHIP

*ONE OR MORE GENERAL PARTNERS AND ONE OR MORE LIMITED PARTNERS
MAY BE A GOOD FIT FOR ON-FARM/OFF-FARM HEIR SITUATION*

Pros

- LIMITED LIABILITY FOR LIMITED PARTNERS
- CONTROL OF BUSINESS FOR GENERAL PARTNERS
- SOME FLEXIBILITY IN ORGANIZATION
- TAXED AS A PASS-THROUGH ENTITY

Cons

- GENERAL PARTNER HAS NO LIMITED LIABILITY & OWES DUTIES TO LIMITED PARTNERS.
- LIMITED PARTNER CANNOT HAVE CONTROL OF BUSINESS.
- THERE ARE FORMAL CREATION REQUIREMENTS.
- FARM PROGRAM PAYMENT CONSIDERATIONS.

LIMITED LIABILITY COMPANY (LLC) *COMBINATION OF PARTNERSHIP AND CORPORATION*

PROS

- FLEXIBILITY
- LIMITED LIABILITY
- PROFITS & LOSSES SHARED IN PROPORTION TO OWNERSHIP INTEREST
- CAN ELECT PASS THROUGH TAX TREATMENT FOR MEMBERS
- CAN HAVE BUILT-IN SUCCESSION PLAN

CONS

- FORMAL CREATION REQUIREMENTS
- SEPARATE FINANCIAL MANAGEMENT
- FARM PROGRAM PAYMENT CONSIDERATIONS
- MAY LIMIT RIGHTS OF PROPERTY OWNERS



CORPORATION

PROS

- LIMITED LIABILITY
- CENTRALIZATION OF MANAGEMENT
- CAN HAVE BUILT-IN SUCCESSION PLAN
- POTENTIALLY 21% CORPORATE TAX RATE

CONS

- FORMAL CREATION & MAINTENANCE REQUIREMENTS
- FARM PROGRAM CONSIDERATIONS
- DIFFICULT TO DEAL WITH LAND OWNED BY A C-CORP
- DOUBLE TAXATION (CAN AVOID IF QUALIFY & SET UP AS AN S CORP)



STEP 4: DEVELOP ESTATE PLAN

TOOLS EVERYONE NEEDS

- WILL
- DURABLE POWER OF ATTORNEY
- HEALTHCARE POWER OF ATTORNEY
- ADVANCED DIRECTIVE ("LIVING WILL")

WILL

- DOCUMENT THAT STATES HOW PROPERTY IS DISTRIBUTED AT DEATH.
- SOME ASSETS PASSED BY CONTRACT OUTSIDE OF WILL.
- UNDER TEXAS LAW, CAN BE HANDWRITTEN OR TYPED.
 - FOR TYPEWRITTEN WILL, NEED TWO WITNESSES.
- CONSIDER SELF PROVING AFFIDAVIT & INDEPENDENT ADMIN. CLAUSE
- IMPORTANT TO REVISE AND UPDATE
 - MARRIAGE
 - BIRTH OF CHILDREN
 - DEATH OF FAMILY MEMBERS
 - DIVORCE

ADVANCED HEALTHCARE DIRECTIVE “LIVING WILL”

- INSTRUCTION TO PHYSICIAN TO PROVIDE OR WITHHOLD ARTIFICIAL LIFE SUSTAINING PROCEDURES IN THE EVENT OF A TERMINAL OR IRREVERSIBLE CONDITION.
- SIGN BEFORE 2 WITNESSES OR NOTARY.
- EFFECTIVE WHEN DIAGNOSED.
- GIVE A COPY TO YOUR DOCTOR, ATTORNEY, SPOUSE, & ANY APPOINTED AGENT FOR HEALTHCARE DECISIONS.
- STATUTORY SAMPLE CAN BE FOUND ONLINE.
 - TEXAS HEALTH & SAFETY CODE SECTION 166.033

MEDICAL POWER OF ATTORNEY

- ALLOWS THE PRINCIPAL TO DESIGNATE AN AGENT TO MAKE MEDICAL DECISIONS IN THE EVENT OF INCAPACITATION.
- MAY BE NOTARIZED OR SIGNED BY TWO WITNESSES.
- EFFECTIVE WHEN DOCTOR CERTIFIES YOU ARE UNABLE TO MAKE DECISIONS.
- STATUTORY FORM AVAILABLE ONLINE.
 - TEXAS HEALTH & SAFETY CODE SECTIONS 166.163 AND 166.164.

POWER OF ATTORNEY

- PRINCIPAL GIVES AUTHORITY TO AGENT TO MANAGE PROPERTY ON PRINCIPAL'S BEHALF.
- PRINCIPAL CAN SELECT POWERS AND INCLUDE LIMITS.
- MUST BE NOTARIZED.
- CAN BECOME EFFECTIVE UPON SIGNING OR WHEN INCAPACITATION OCCURS.
- ENDS AT DEATH OR APPT. OF GUARDIAN.
- STATUTORY FORM AVAILABLE ONLINE
 - TEXAS PROBATE CODE SECTION 490

DOCUMENTS YOU MAY NEED

- TRUST
- OUT OF HOSPITAL DO NOT RESUSCITATE ORDER (DNR)
- DOCUMENT PROVIDING FOR CARE OF DEPENDENT (MINOR OR SPECIAL NEEDS ADULT)

TRUSTS

- A TRUST IS A SEPARATE ENTITY SET UP BY A SETTLOR TO ALLOW ONE PERSON (A TRUSTEE) TO MANAGE THE TRUST ASSETS FOR THE BENEFIT OF ANOTHER (BENEFICIARIES).
- EASIEST EXAMPLE IS TO THINK ABOUT THE WILL OF SOMEONE WITH MINOR CHILDREN.
- TRUSTEE MANAGES ASSETS ACCORDING TO SETTLOR'S INSTRUCTIONS, AND LEGAL/FIDUCIARY DUTIES.
- TRUST ENDS WHEN DUTIES ARE COMPLETE, OR WHEN THE SETTLOR'S INSTRUCTIONS DIRECT THE TRUST TO BE CLOSED AND DISTRIBUTED.

TYPES OF TRUSTS

TESTAMENTARY

- CREATED IN WILL TO BECOME EFFECTIVE AT DEATH.
- DOES NOT FUND UNTIL DEATH & PROBATE.
- FUNDED BY EXECUTOR WITH SETTLOR'S DESIGNATED ASSETS.

INTER VIVOS

- CREATED DURING SETTLOR'S LIFETIME
- CAN BE REVOCABLE OR IRREVOCABLE
- CAN HELP AVOID PROBATE

WHEN ARE TRUSTS BENEFICIAL?

- PROVIDE FOR/PROTECT BENEFICIARY
- FLEXIBILITY OF ASSET DISTRIBUTION
- AVOID PROBATE
- AVOID ESTATE TAX LIABILITY
- POTENTIALLY AVOID CREDITOR ISSUES
- PRIVACY
- PROFESSIONAL MANAGEMENT OF PROPERTY
- POTENTIAL TAX BENEFITS

OUT OF HOSPITAL DNR

- DECLARATION THAT NO RESUSCITATION MEASURES (CPR, TRANSCUTANEOUS CARDIAC PACING, DEFIBRILLATION, ADVANCED AIRWAY MANAGEMENT, ARTIFICIAL VENTILATION) SHALL BE UNDERTAKEN.
- MUST BE SIGNED BY TWO WITNESSES OR NOTARIZED.
- MUST BE SIGNED BY PHYSICIAN.
- NEED TO HAVE IT READILY ACCESSIBLE IF NEEDED.
- FORM AVAILABLE 25 TAC SECTION 157.25(H)(2).

DRAFT & IMPLEMENT PLAN



ASSEMBLE THE TEAM



CONTINUE TO EVALUATE AND REVISE

- KEEP TALKING THROUGH THE PLAN WITH YOUR FAMILY MEMBERS IN CASE THERE ARE ANY CHANGES.
- YEARLY REVIEW OF PLAN, DOCUMENTS, BENEFICIARIES.
- REVIEW AFTER MAJOR LIFE EVENTS:
 - DEATH
 - DIVORCE
 - BIRTH
 - PURCHASE/SELL PROPERTY



ADDITIONAL RESOURCES



- “GETTING YOUR FARM & FAMILY AFFAIRS IN ORDER” FROM THE OHIO STATE UNIVERSITY
 - AGNR.OSU.EDU
- “FARM TRANSITIONS” FROM OKLAHOMA STATE UNIVERSITY
 - AGECON.OKSTATE.EDU/FARMTRANSITIONS
- FARM JOURNAL LEGACY PROJECT
 - AGWEB.COM/FARM-BUSINESS/SUCCESSION-PLANNING
- AG DECISION MAKER FROM IOWA STATE UNIVERSITY
 - EXTENSION.IASTATE.EDU/AGDM/WDBUSINESS.HTML
- ANNIE’S PROJECT
 - ANNIESPROJECT.ORG/RESOURCES



WHY GO THROUGH THE HASSLE?

Click for a hub of Extension resources related to the current COVID-19 situation. **COVID-19 Resources**

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TEXAS AGRICULTURE LAW BLOG by Tiffany Lashmet

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January 29, 2021 Weekly Round Up

Posted on January 29, 2021 by tiffany.lashmet

Happy Friday! It's been a busy week here as I have been working with several of my colleagues in the Texas A&M Agricultural Economics Department on a series of educational videos on the legal and economic issues related to hemp production. If this is a topic of interest to you, be sure you subscribe to this blog as we will be releasing our videos and written materials within the next month! Here are some of the ag law stories in the news over the past couple of weeks...

[Read More →](#)

January 15, 2021 Weekly Round Up

Posted on January 15, 2021 by tiffany.lashmet

Happy 2021, friends! We hope you all had a happy, healthy holiday and we are excited to be back for our first Weekly Round Up of the year. Here are some of the major agricultural law stories in the news over the past couple of weeks. * Lawsuit filed seeking to overturn recent dicamba registration. On December 23, several environmental groups filed suit against the US Environmental Protection Agency challenging the recent approval of the use of over-the-top dicamba products through 2025. Specifically, the lawsuit claims that the...

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THANK YOU!

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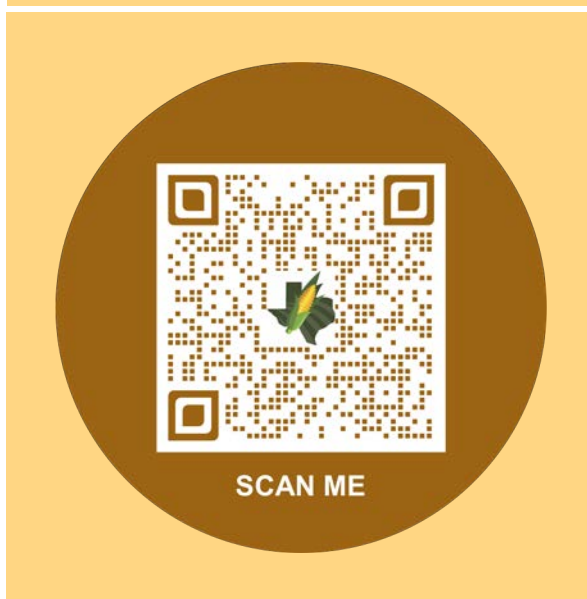
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