Estate Planning ... What Do We Need to Know Now?

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Men (farmers in particular) don’t plan for their retirement or estates as much as they should.

That’s why it’s critical that their spouses / partners have a good knowledge and handle on it.

Things are changing fast today too so it’s even more important now more than ever.
These are Some Important Reasons to Plan Your Estate

• **Provide** for Spouse / Significant Other
• **Be certain** that your wishes are followed
• **Plan** the distribution of your assets
• **Guide** for business continuation
• **Care for** minor children / dependents after you’re gone
Who Should Be Involved With Your Estate Plan?

• You and Your Spouse/Significant Other
• Your Attorney (Estate Planning Specialist, not necessarily your personal attorney)
• Your Financial Advisor (tax person or banker, etc.)
• Family & Close Friends & Neighbors might be asked for specific things, but should not be involved!
What you will need to plan

• Take stock of your present situation
• Analysis of farm operation
• Updated balance sheet
• List your estate planning goals and objectives
Estate Planning & Probate here in Missouri...

- Probate is the *legal* process by which assets are transferred upon someone’s death.

- In Missouri (as in other states), if you haven’t a plan when you die, the state has one for you!
Specific Duties of the Probate Division are...

• Protect the rights of heirs and beneficiaries.
• Provide a forum for creditors to receive money owed them and collect money owed the decedent.
• Pay any taxes that are owed by the estate.
• Can give clear title to any Real Estate.
• Provide jurisdiction over cases where minors or those disabled or incapacitated are involved.
The Advantages of Probate are...

• The court provides supervision over all claims made to and from the estate.

• A well-established law guides the process and person handling the affairs.

• Court provides for the “orderly” process of conflict resolution that can occur.

• If insufficient assets exist to pay all claims, priorities are set forth in the law!
The Disadvantages of Probate include...

- The costs associated with probate may be “high”, especially where there are large amounts of assets.
- Probate is public knowledge so anyone can come in and look it over.
- A legal time frame is set which can be lengthy and assets are not distributed until the proceedings are completed. (min 7 months)
People Involved in the Probate Process

**Personal Representative** - making sure that all the legal requirements are done
- creditors are paid
- taxes that are due are paid
- beneficiaries are paid

**Attorney** – are to assist the personal representative
- be positive that all the legal requirements are met.
- being sure that a clear title can be provided to heirs
<table>
<thead>
<tr>
<th>Amount</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>First $5,000</td>
<td>5%</td>
</tr>
<tr>
<td>Next $20,000</td>
<td>4%</td>
</tr>
<tr>
<td>Next $75,000</td>
<td>3%</td>
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<tr>
<td>Next $300,000</td>
<td>2.75%</td>
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<td>Next $600,000</td>
<td>2.50%</td>
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<tr>
<td>Next 1,000,000</td>
<td>2%</td>
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Probate Cost Example #1...

- Example #1 – estate has a house valued at $65,000; bank accounts of $25,000; an IRA of $5,000.

Solution #1 – assuming the person died leaving a will and nothing else, the personal property is counted for the purpose of figuring the fees. Again, we’re assuming the real estate is not sold during probate. The personal rep and attorney both would receive $1,200.

First $5,000 - - - 5% ($250)
Next $20,000 - - 4% ($800)
Last $5,000 - -- - 3% ($150)

total     $1,200 x 2 persons
Probate Cost Example #2...

- Example #2 - Estate is a farm with real estate of 420a. worth $420,000; breeding livestock (80 cows worth $120,000) and machinery valued at $80,000; bank accounts of $25,000 and an IRA of $5,000.

  Solution #2 - Again assuming the same things as we did in #1, we’re not selling the land through probate. Because we are talking about a farm, we will include the value of calves born during the year ($61,500), hay produced ($12,800)

The personal representative and attorney in this example would each receive $8,918. W/Real Estate Sale during Probate $19,658

First $5,000 - - - 5% ($250)
Next $20,000 - - - 4% ($800)
Next $75,000 - - - 3% ($2,250)
Last $294,666 - - 2.75% ($5618)

Total $8,918 x 2 persons
Federal Estate Tax Exemption

1) Congress passed the “new law” at the end of 2012. It also re-coupled the gift tax with the estate tax and kept the “stepped-up basis” rules.

2) Remember, however, that Congress can (and may) change their mind in the future.

3) Keep in mind the Federal Law change doesn’t affect probate costs either.
Federal Estate Tax Exemption

4) The new law re-couples the gift and estate exemption amounts so you can give or inherit {up to the exemption amount} with no estate or gift tax.

5) Inheriting gives you the stepped-up basis {value at current market} while a gift puts your basis at the gifter’s basis.

6) That could mean a large capital gains tax if sold.
### Estate Tax Exemption Amounts...

<table>
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<th>YEAR</th>
<th>EXEMPTION **AMOUNT</th>
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<tr>
<td>2012</td>
<td>$5,160,000</td>
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<tr>
<td>2013</td>
<td>$5,250,000</td>
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<tr>
<td>2014</td>
<td>$5,250,000 indexed</td>
</tr>
<tr>
<td>2015</td>
<td>$5,250,000 indexed</td>
</tr>
</tbody>
</table>
Estate Planning Tools That Can Be Utilized...

• Now that you understand the potential impact of probate and estate taxes, what can you do?

• We’ll now begin to look at the different tools you can use to plan your estate.
Tool #1 – Property Co-ownership...

• One Estate Planning tool that is commonly used is the co-ownership of property.

• *Remember* that in Missouri property can be co-owned as
  – tenants by the entirety (husband & wife only)
  – joint tenants or
  – tenants in common.
Tool #1 – Property Co-ownership...

- Co-ownership of property can (and is) used as an estate planning tool.

- It offers the advantage of being simpler than most other tools.

- However, the disadvantages (potential gift taxes, divorce, “wrong” person dies 1st) are a large risk too.
Tool #2 - Wills

- Written wills (other than living wills)
  - *Do not* avoid probate
  - Often used to designate who you want to take care of minor children
Tool #2 - Wills (continued)

- Flexible

- Do not have to be recorded, but a good idea

- Can distribute things such as collectibles to whomever you want
Tool #2 - Wills (continued)

• Danger of having a will not in writing or recorded – may not be able to find it, can be contested.

• You have a grace period (6 months) to come up with the will.

• Can use a list to distribute items but then don’t avoid probate.
Tool #3 - Durable Power of Attorney

- Advantages include the ability to manage all business affairs and avoids having to go to court to declare incompetency.

- Disadvantage mainly relates to the perception of older persons that they are giving up control.
Tool #4 - Non-Probate Transfers

• Attorneys will often say non-probate is the best way to go, but it depends on your situation.

• Not good for specifics, ie...if you had 4 kids and you wanted one to have a specific tract of land like the back 80.

• Also not good for non-titled assets such as livestock
Tool #4 - Non-Probate Transfers

- **Pay on Death (POD)**
  - checking accounts, savings or CDs

- **Transfer on Death (TOD)**
  - automobiles, stocks and bonds, insurance policies

- **Beneficiary deeds**
  - non-probate transfer of real estate

- **Uniform transfer to minors (UMTA)**
  - funds for minor children and/or grandchildren
Trusts

• A division of different property interests among different owners.

• Another tool to avoid probate and estate taxes.
• **Living, Revocable Trust**
  – is probably the most flexible estate-planning tool
  – **complete** control until death
  – avoids probate
  – substantial capital or liquid assets are involved
  – works for non-titled assets as well as titled assets
  – disadvantage is in the complication and expense of setting it up (~$1,000)
Gifting

• Depending on how they are designated, will not be considered part of your estate and therefore non-taxable

• Limit is $14,000 per individual per year without gift or income tax implications

• Keep in mind the concerns with giving property away (already discussed).
Gifting

• Can go 5 years back to claim for nursing home expenses.

• If there is anything owed to the state of Missouri then they can come back into the estate and get their money – medicaid, ADC, State income tax

• Caution: if gift is given to married couple and couple divorces then in-law may have equal rights to assets. Gifting also means giving up control of those assets.
Insurance

• Need to be protected from the loss of a partner

• To pay off debt

• To pay probate or estate tax due that is not included in estate

• Payoff value not included/cash value included in estate
Insurance... (con’t)

• Way to equalize sibling payoff (bigger problem now due to land values)

• Way to finance long-term care

• Way to build in assurance that can protect the business heir.
Private Annuity

• Lower interest rate results in smaller payments from kids and less taxable income for the parent

• Fixed income payments for life

• Transfers ownership of assets free of gift and estate taxes

• Payment liability ceases at death of parent

• IRS is challenging these so be careful!
Non-ownership of Property

• There are two main ways to not own property: 1) giving it away (already discussed) and 2) sale of property.

• Property can be sold to heirs or co-owners as another estate planning tool. Remember that heirs may have a difficult time coming up with money to purchase assets.
In Conclusion...

1. a **will** (to cover anything not covered elsewhere)
2. a **durable power of attorney** (for handling affairs if necessary)
3. **insurance** (for whatever reason(s) you determine you need it for)
4. **non-probate transfer** (for those titled items where it makes sense)
5. a **trust or estate planning tool of some kind** (to protect non-titled assets)
6. a **plan to communicate your wishes to your heirs**
In Conclusion…

• Estate Planning (for farmers in particular) can be complicated.

• We (Extension) has an Estate Planning series that goes into much more detail on these topics.
Questions?

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MU Extension’s History

• Cooperative extension originated with Morrill Land-grant Act of 1862
• Continuing education began in early 1900s with independent study courses