Agri-Succession Planning 2022
Planning and Utilization of the Advisory Team in a Difficult Economy

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Economic challenges continually face today's agriculture industry. Farm product prices are not under the farm's control while operational and input expenses continue to rise year after year. For those who have been working in agriculture for years, the cyclical nature of the difficult times continue to arise every few years. Regardless of when the downturns occur or how long it continues, it is those who are prepared for these times who persevere through and continue to prosper.

The same holds true when it comes to facing the need for long term succession planning for a farm or ranch – it is critical to be prepared and to have a plan in place. Unlike many industries where the owners' goal is to develop and then sell the business for the greatest financial gain possible, the owners of closely held agriculture businesses are generally more focused on ensuring the perpetuation of the farm or ranch for the next generation and beyond. But, without the proper plan in place, that is close to being an impossibility.

What is succession planning? Having a will? A buy sell agreement with your partners? And, what role does the farm advisory team play in ensuring that a proper plan is in place. The key players of the advisory team include the accountant, the attorney, the management consultant, the financial/insurance advisor and, of course, the banker. There may be others involved as well as each adds his or her own individual expertise and experience to the plan. In many cases, the client may have a greater comfort level with one or more of the advisors than others so its important to have "the team" working together for the client. If the client sees that his team is all "on the same page", the process is much easier for the client to accept.

It's the advisory team that can facilitate the conversations with the client to make a succession plan a reality – despite the hesitation of the client. When it comes time to acquiring land, purchasing equipment and machinery the consensus among the owners is many times "we need it now, help us get it!" But when it comes time to planning for the future, procrastination many times stands in the way. It may be perceived as time consuming, too expensive or it may be just a reluctance of the senior generation to face the reality of the winding down of their careers. Whatever the reason, the advisory team needs to impress upon the owners and management team – senior and junior – the importance of ensuring that a plan is in place for both expected and unexpected events.

It is critical to have the proper advisory team in place in developing and implementing an effective succession plan. Each advisor plays an important role in the planning. The role of all advisors is to ensure that discussions take place, plans are structured and that they are kept up to date and maintained as the tax laws, the operations and/or the family involvement change over the years.

Back to the primary question – what is agriculture succession planning? It is not simply a will that leaves assets to family members and it is not simply a buy sell agreement that provides that if Dad dies, Uncle Bob buys him out and vice versa. Succession planning involves many components of a well coordinated plan that is based on the particular circumstances that exist within the farm or ranch and most importantly it must be in writing and kept up to date. These components include:

Estate Planning – farm based wills and trusts that do not simply divide assets among heirs. What entities are involved and who is to own and manage them, etc?

Asset Protection Planning – utilization of limited liability entities and trusts to protect assets for not only the current generation but future generations.

Management and Knowledge Transfer – establish a plan today that allows the junior generation to benefit from the years of experience of the senior generation and the many relationships that have been established by the senior generation over the years. The time for son and daughter to meet the banker for the first time should not be at Dad's funeral.

Succession Planning Agreements - planning for expected and unexpected events that will arise in the future such as death, disability, divorce, departure etc. with proper agreements such as buy sell agreements among the owners of the operation and employment and long term incentive arrangements with key employees who may not be owners, but are critical to the continued success of the farming operations.

Lifetime Planning – implementing the appropriate lifetime strategies to protect assets from plaintiffs in lawsuits, minimize or eliminate estate taxes including spouses in matrimonial matters and possibly to protect assets from being improperly managed by owners who should no longer be in controlling positions.

Opportunities for succession planning today are greater than ever. Federal estate and gift exemptions are nine times what they were twenty years ago. In 2022, there is a federal estate and gift exemption of $12,060,000.00 for each individual. With a properly structured plan a married couple can benefit from a joint $24,000,000.00 exemption. This affords opportunities not only for transfers at death, but utilizing long standing and accepted planning strategies to remove significant assets from a taxable estate during life – and this can be done in a manner that benefits both the senior and junior generations. State laws must be taken into consideration as well as to potential estate taxes, but many states have followed the federal lead in lessening the impact of estate taxes on closely held business owners.

Under current law, the federal exemption is to be reduced to about one half of that amount in 2026. Therefore, planning should begin as soon as possible if it is advisable to utilize lifetime gifting opportunities. Almost it may sound logical that if a farm owner utilizes only a portion of their exemption before 2026, they will still have the remaining exemptions, but that may not be the case – logic does not always play a role in tax law.

If a gift is made of $4,000,000 today and the federal exemption is reduced to $6,000,000 in 2026, the person's remaining gift exemption is not $6,000,000 – its $2,000,000. The law provides that if a portion of the present exemption is used, that's charged against the remaining exemption. However, if a person gifts $12,000,000 today and the exemption is reduced to $6,000,000, there is no "clawback" – that is, the person does not get charged back for going over the exemption. Therefore, the most beneficial use of the lifetime exemption is when it is completely used. But, that may not be practical for many farm owners. This is another example of where the advisory team plays an important role – determining the best action to take based on knowledge of the facts and circumstances surrounding the farm assets and operations, who the present and future players are, etc.

Summary

A properly structured succession plan provides opportunities not only for continued business with the current generation of owners and managers, but for establishing working relationships with the next generation. For the farm, this is also important because if there is an unforeseen death, disability or other tragic event, there is inevitably a need to reorganize and address the ongoing operational needs of the farm during an extremely difficult time. To ensure the continued support of the bankers and avoid an overall re-evaluation of the farm or ranch and its ability to get through this time of crisis, it is critically important that the bankers have a comfort level with those in the management team that everything will continue on as planned. The time devoted to creating and maintaining a properly structured plan is worth as much or if not more than that new piece of machinery or tract of land.

The Succession Plan Audit
Questions to Ask

1. Are wills up to date? Do they reflect current tax laws, provide for farm and non-farm heirs in an equitable, but not necessarily equal manner?
2. Are financial powers of attorney, living wills and health care powers of attorney in place to ensure that the proper agents are acting for the client at a time when they cannot act on their own?
3. Review and update Operating, Partnership and Shareholders Agreements. Are management, operational and tax related provisions up to date and reflective of the farm's operations?

4. Are there the proper entities such as corporations and limited liability companies established to protect assets from liability? Is there a need for multiple entities to shield assets from the liabilities arising in other entities?
5. Are written leases in place to substantiate tax positions being taken on the tax return – including leases between related parties?
6. Are key employees being properly respected by having long term incentive arrangements in place to ensure their future participation in the operation.
7. Is there a buy sell agreement in place that addresses death, disability, divorce, departure, and other events which lead to the termination of an owner's involvement in the operation?
    a. Is the agreement up to date with all owners as parties?
    b. Does the agreement reflect the need to ensure perpetuation of the farm to the next generation?
    c. Are the buy out terms manageable from a cash flow perspective upon the occurrence of a triggering event? Is the agreement properly funded with insurance?
    d. Is the valuation provision relevant to the operation and is it up to date?
    e. Does the agreement reflect the "present intentions" of the parties. For example, two owners may have desired many years ago to buy each other out in the upon the occurrence of a triggering event such as death, disability or departure. But, as the years go by, there may be less of a desire to want to have to buy out a partner. It may be more practical to provide that if there is a triggering event the remaining owner has the option to purchase or to work with the departing owner (or estate) to sell the entire operation. This avoids a "race to the door".
8. This checklist of course is an example of only a fraction of what needs to be considered in developing a proper succession plan.