


Ag Decision Maker



Good farm policy: Avoid these top 10 estate planning mistakes

Having worked with farm and ranch families over the past 20 years on issues of estate and succession planning, certain trends have become apparent. The top mistakes observed include the following:

1. Procrastination: We'll get to it one of these days

The most common mistake is failure to get it done. Folks delay and put off taking the steps necessary to put an estate and succession plan in place. They are unsure of what to do, who gets what- and believe there will be time to get the plan in place later. Particularly in farm families, there is indecision about how to carry on the family farm. Some people find themselves unable to make decisions about who should serve in the role of executor or trustee. Almost any estate plan is better than no estate plan at all. When a person dies without an estate plan in place, state law governs who receives assets and when. The lack of an estate plan may also result in higher expenses or taxes. Do not be paralyzed into doing nothing because you are waiting to find out what the "best" estate plan is for you. Identify what you own - both tangible and intangible properties - and put together a plan for what you would want to have happen to all of those assets if you died tomorrow.

2. Failure to plan for if you DON'T die (well, not right away)

While we will all die eventually, consider that it may be necessary for someone to step into your shoes and make decisions during your lifetime. We never know - at any age - when we may be unable to speak for ourselves. With proper planning, there are a variety of tools that can be used for what is sometimes referred to as "substitute decision making." In Iowa the concept of substitute decision making is addressed in various sections of the Iowa code. (See for example Iowa Code ch 231E, the "Substitute Decision Maker Act.") The concept of "substitute decision making" generally means the provision of decision-making services of by guardian, conservator, representative payee or an attorney-in-fact under a power of attorney or personal representative. A power of attorney (POA) is a legal document that grants authority to another person to manage affairs on your behalf. You are referred to as the "principal" while the person who is given the authority to act on your behalf is called an "attorney-in-fact" or "agent." Most POAs are intended to grant authority when you become unable to manage your own affairs. Although you must be competent at the time a POA is executed, many POAs are "durable," which means that they remain in effect during a time of incompetency. Likewise, a POA may be revoked as long as you are competent to do so. A POA may be plenary, meaning it grants complete and unqualified authority to the attorney-in-fact. However, most POAs are express, which means that the POA grants specific, limited powers to the attorney-in-fact. The Iowa State Bar Association has prepared several forms that can be used for substitute decision making purposes. However, it is important not to rely on forms alone for legal advice and decisions as the forms may or may not fit your needs and wishes in the event that you become incompetent to manage your own affairs. You should consider and discuss your specific needs and wishes with your family and with your own legal professionals.

3. Keeping secrets: A failure to communicate

Old movies and books portray the drama of an event known as the "reading of the will," where family members gather in the lawyer's office to find out how much money they get. This is a myth - a thing of the past - but it still leaves people with the mistaken impression that they should keep estate plans a secret during their lifetime. In fact, the exact opposite is true: communicate, communicate, communicate. Share the essential aspects of your estate plan with the entire family. This is one of the best ways to head off conflict and hard feelings among family members. If there are technical details, involve your lawyer or other professionals in the process to explain these matters. Be sure that you have included a plan for distribution of your personal property- either during your lifetime or after death. And be sure that the family knows you have prepared and executed the necessary documents. Maintain an estate plan portfolio and

let the right people know where these documents are kept along with other essential records that will be needed upon your incapacity or death. Remember, you do not need to treat everyone equally but you should make such decisions honestly and openly. While everyone may not agree with your decisions, it is much better to explain your decisions and rationale. Talking about your decisions will provide everyone with an opportunity to understand and respect your decisions. Communication can allow hurt feelings to heal and jealousy to diminish and can help prevent estrangement and court battles among your heirs.

4. Failure to be fair: Trying to treat everyone equally

Estate planning is frequently more about family relationships and dynamics than it is about asset transfer and tax planning. The issue of how to treat on-farm versus off-farm heirs can be a particularly prickly subject. A common estate planning scheme would leave all assets to children equally. When farming is involved and land is left to children as tenants in common, complex questions arise. Does an on-farm, active farming child pay cash rent to non-farming siblings, or should there be another form of reimbursement such as shares? Can the off-farm owners second-guess farming decisions (large or small) made by the farming child? May the farming child buy out the siblings' share of farmland ownership? In reality, bequeathing equal farmland shares to on-farm and off-farm heirs can be a disaster, and often fails to acknowledge the contributions made by the on-farm child who spent years contributing labor and management to the farm operation, which equates to building equity. There are many reasons why children may reasonably receive unequal shares in an estate. While one child worked and helped to build the farm business, others may have received money for education, new homes or starting a business of their own. Make decisions about what will be fair or equitable to all, even though it may not be equal. Then communicate your decisions and be honest about it. As discussed earlier, it is a mistake to be secretive. Don't let your legacy be children who are estranged from one another because you did not share your decisions with them.

5. Failure to coordinate estate plans and property ownership strategies

While many people believe that their estate planning documents (wills and trusts) will ultimately control who gets what when you die, it is important to understand that many assets are transferred based on provisions that both contradict and supersede those contained in a will. Intangible properties such as bank accounts, certificates of deposit, retirement plans, IRAs, annuities, life insurance policies, real estate and similar assets may not be controlled by wills depending on the ownership strategies (such as joint ownership or payable-on-death designations). Beneficiary designations associated with life insurance or other investments should be reviewed and updated regularly as they are impacted by death, divorces or even changes in need. When intangible assets are jointly owned, the surviving joint owner often becomes the sole owner of the assets - and that surviving joint owner can leave the property to anyone desired regardless of the deceased owner's wishes.

6. Doing nothing because "I'm worth less than \$5 million"

The corollary to this mistake is "We (my spouse and I) are worth less than \$10 million." In the United States, many farmland owners are land rich, cash poor and have little or no estate plan in place. As the value of farmland continues to increase, the bottom line on a balance sheet goes up - and an estate plan problem could be on the horizon in the years ahead. We know that following early 2013 Congressional action, current federal law allows each decedent to pass \$5.25 million of assets free from federal estate tax, and a married couple can pass \$10.5 million (indexed for inflation). Nine hundred fifty acres of land at an average value of \$11,000 per acre approaches \$10.5 million- hovering dangerously close to a level that could trigger federal estate tax. Farmland owners in Iowa may have a false sense of federal estate tax security because they think their share of the farm is worth less than \$5.25 million. But adding up all the assets on the balance sheet and estimating increasing farmland values may paint a different picture at the time of death. Be sure that you maintain an accurate balance sheet that reflects the fair market value of your assets - both currently and projected into the future.

7. Death is not cheap: Lack of liquidity

Farmers- and others- can be good at accumulating assets such as land, equipment, farm buildings, livestock and other investments. However, costs arise at death. Consider the costs of a funeral and final medical expenses. There is

always a cost to settle an estate, be it probate or trust administration fees or fees to other professionals. Cash *may* be needed to continue farm or business operations at the time of death prior to final estate settlement. It is important to maintain a level of assets with sufficient liquidity to convert to cash and cover these costs, or use life insurance as a tool for this purpose. If one or more heirs will want to buy out other heirs' land interests at the time of death, provisions need to be made for sufficient cash or credit to achieve those purposes.

8. Failure to be organized and maintain good records

The lack of adequate records is the greatest heartache of the estate executor or POA. Maintain a recordkeeping system that can be found and used by others at the time of your incapacity or death. Keep all records in a safe place yet still accessible to those who need them when you are gone. A safe deposit box or fireproof filing system is good, but be sure that those who need access will have it at the time of your death. Then sit down with your executor, trustee or POA and have a show-and-tell session, explaining where everything is located and organized. While many of us maintain electronic records, hard (paper) copies are still most accessible to others. When you leave well-organized records and documents, procedures at the time of your incapacity or death will be less time-consuming, expensive and frustrating for those you leave in charge.

9. Trying to do it on the cheap and not using a team approach

There is nothing wrong with being frugal. But think about the value of your assets and your goals for those assets and your heirs, both during your lifetime and after death. Does it pay to adopt a do-it-yourself approach? If you need surgery, do you try to do it yourself or shop around for the bargain surgeon? Making sure that your wishes are carried out both during lifetime and after death is worth an investment of time, energy and dollars to make sure it is done right. Build relationships with a comprehensive team of professionals, legal, accounting, tax, financial, insurance, real estate, farm management, and others who *may* be vital to your goals. Discuss your goals and meet with these professionals regularly to maintain the estate and/or succession plan that is right for you and your family. Proper estate planning is not an inexpensive proposition, but it is well worth the investment when the results you desire are achieved.

10. Not maintaining your estate plan

Once you have an updated estate plan in place, do not just put it on the shelf and forget about it. Estate planning documents - wills, trusts and substitute decision making (powers of attorney) designations - should be reviewed on a regular basis. Similarly, beneficiary designations on intangible assets- retirement accounts, CDs, bank accounts, life insurance policies - should be reviewed regularly. Certain life events should trigger an automatic review- births or adoptions, incapacitation or death, marriages, divorces or separations of anyone who may be impacted in your estate plan. Watch for changes in estate tax law. If you move to a new state or have significant changes in your income or wealth, consider how your estate plan may be impacted. Good estate planning is never truly done - it is always a work in progress. Circumstances and needs of both you and your heirs change and these should be discussed with your professional team. Do not expect your professionals (attorneys, CPAs, insurance professionals) to call you to come in for a review. Simply schedule an annual check-up- just like you would with your physical health - to review your plans and circumstances. Many people spend more time making summer vacation plans than they do thinking about their estate plan. Take the time and effort on a regular basis to make sure that your true wishes will be carried out. The peace of mind you have will be worth it.

Melissa O'Rourke, extension farm and agribusiness management specialist