Business point

ESTATE PLANNING: BUILD A STRONG FOUNDATION

In general, the estate planning process should reflect how you would like to handle the disposition of your property at death and/or throughout your life as gifts. Often the discussion of estate planning focuses on the tax and legal aspects. However, the starting point or foundation for your plan is simply "what would you like to accomplish." Answering this question is usually the most difficult.

Take the proper time to look at your estate plan from a "big picture" point of view. Because many farm operations are multigenerational and involve both farm and nonfarm heirs, this has become more difficult. Here are several of the most common discussion topics.

Fair vs. equal

This issue usually is at the top of the discussion list. It's rarely a topic everyone agrees on. We suggest you first start this discussion of what is "fair" with your spouse if you have one. Because of social changes, many children have left the farm, hence "fair" may not always be equal, especially when all things are considered.

Although not everyone may agree with your decision, we can't emphasize enough how critical it is that you and your spouse make this decision. In fact, this decision may be the best inheritance gift that you leave your family. Too often procrastination has led to family misunderstandings. The end result may be incomplete family reunions.

Entity traps

Entities such as corporations, partnerships and LLC have become common in many producers' operations. These may range from complex C Corporations with multiple shareholders to a simple land-owning partnership between two brothers.

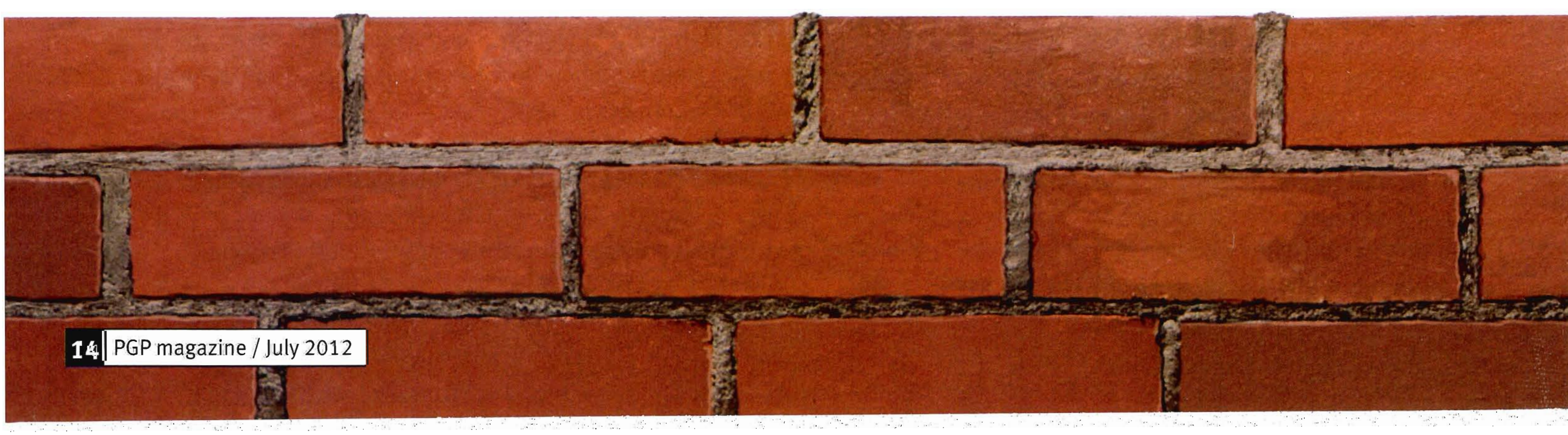
These entities work great for the owners who created them because of a shared common goal. They also may offer tax planning opportunities such as discounts or gifting stock. However, when you pass along these entities to your family, it's important to realize you're forcing them into business with each other. If these new owners don't share the same goal, tough issues tend to arise. This is especially true for minority shareholders or when the entity is passed to the next generation.

At times, producers may feel that passing along shares of the 160-acre family farm will keep the farm together. It seems the easier choice. But consider how your six grandchildren or your 20 great-grandchildren will get along when they each own 5 percent of the family farm.

To help avoid this situation and help everyone understand your intent, review any buy-sell agreements and make sure they are well thought out, legal and written down.

Common estate planning mistakes

- Making your plan too complex
- Not considering the order of death between the spouses
- Survivors are unable to find the will
- Didn't review the plan with financial/tax advisor
- Not keeping updated on recent estate tax changes
- Failure to check property titles and life insurance ownership
- No power of attorney (financial and health care)
- Did not utilize annual gifts exclusions (larger estates)
- Not having well drafted buy-sell agreements
- Doing nothing (procrastination)



***Editor's note:** Kent Vickre and Dwight Raab write a tax and finance column for each issue of Pioneer* GrowingPoint® *magazine. Vickre is the state coordinator of the Iowa Farm Business Association. Raab is the state coordinator of Illinois Farm Business Farm Management. They address issues that influence agribusiness success.*

Gifting: Be selfish

Another option may be to gift assets while you're still alive. I think most people would agree they would enjoy watching their children grow a $10,000 gift into $100,000 more than leaving them $100,000 in their will.

This also allows you to be involved and offer advice. By doing this, you're also passing along your experiences. Consider this: Would you be rather leave your children $100,000 and the management skill to succeed OR $1 million with no skills?

Tax considerations

2012 Federal Tax: In recent years, it seems the estate tax has been changing constantly. The "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act," signed into law on Dec. 17, 2010, made changes to the estate tax for 2010, 2011 and 2012 years only. Here's a review of some current 2012 Federal estate tax considerations:

- **Federal Estate, Gift Tax and Generation Skipping Transfer Tax Exemption:** This exemption is currently index to $5.12 million; the estate tax rates for estates valued over this amount will be 35 percent. Also, the stepped-up-basis rules apply to the basis of property a taxpayer receives from the person who bequeaths property under IRS Code Section 1014(a). Under this code section, the beneficiary's basis equals the fair market value of the property at the time the descendent dies. If the property cost $50,000 originally, but was worth $200,000 at the time of death, the value would be $200,000.
- **Annual Gift Tax Exclusion:** Each individual is permitted to transfer $13,000 annually to any individual as a gift without tax implication. For assets, this limit applies to the fair market value; however, the asset basis remains unchanged. For example, a husband and wife who jointly own the farm machinery may give equipment with a fair market value of $52,000 to their son and his wife ($13,000 x 4). Any remaining basis on the machinery would be depreciated on son's and wife's Schedule F.
- **Portability of Federal Estate Exemption between married couples:** "New" and only for 2011 ad 2012 tax years is portability. This allows married couples to add any unused portion of the Federal Estate Exemption of the first spouse to die to the surviving spouse. This in essence eliminated most of the need for the "AB Trust," although it does not shelter post-death appreciation. However, because portability only applies for 2011 and 2012, both spouses must die before 2013. And an election must be made in the estate of the first spouse to die to use the unused exemption in the surviving spouse's estate.

2013 federal tax considerations

Unless additional legislation is passed before 2013, the estate tax exemption will drop to $1 million with a tax rate of about 50 percent. In looking to the future and an election year, we expect more changes and suggest you try to maintain maximum flexibility.

In conclusion, each family situation is different. If and when and how you decide to discuss it with your family is your choice. Remember, your estate plan should be based on what you would like to accomplish. Making and documenting this decision is the only way your family will know your intent.

While there's no right or wrong answer, some plans will be better financial decisions in regards to estate tax. Have a plan and discuss it with your financial/tax/legal adviser often to make sure you maintain a strong foundation to secure your goals.