



What is a Transition Plan (contd.)?

- ▶ In the context of farm and ranch operations, such a plan should facilitate the transition of the operation to the next generation (or the next owner) in a manner that meets the needs/goals of its current owners and addresses the expectations, where appropriate and reasonable, of the current (and/or future) operators.

Issues to Consider/The Hard Questions:

- ▶ Your goals for the use of your assets during your lifetime
- ▶ Provision for a surviving spouse (and/or second marriage concerns)
- ▶ Disposition of assets when both spouses are gone
- ▶ Continuation of family business or farming operation
 - ▶ Control
 - ▶ Management
 - ▶ Transition Timeline

Issues to Consider/The Hard Questions (contd.):

- ▶ Tax planning
 - ▶ Federal Estate Tax
 - ▶ Federal Gift Tax
 - ▶ Generation Skipping Transfer Tax
 - ▶ Nebraska Inheritance Tax
 - ▶ Income Tax
- ▶ Nomination of fiduciaries to manage your concerns if you are unable to do so or after your death
- ▶ Respecting the relevant entity form, if applicable

Asset Ownership

Accidental or Intentional Planning?

Types of Asset Ownership

- ▶ Single Name
- ▶ Tenancy in Common
- ▶ Joint Tenancy
- ▶ Trusts
- ▶ Legal Life Estates
- ▶ Beneficiary Designations on Life Insurance, Qualified Retirement Plans, Investment Accounts, or Similar
- ▶ Payable on Death Designations
- ▶ Corporations (Shareholders Agreement), Partnerships (Partnership Agreement), and Limited Liability Companies (Operating Agreement)

The Elements of a Thoughtful
Transition Plan

Elements of a Thoughtful Transition Plan

- ▶ Development of Estate Plan
 - ▶ Will
 - ▶ Trust
 - ▶ Durable Power of Attorney
 - ▶ Healthcare Power of Attorney/Living Will
 - ▶ Appointment of Fiduciaries
- ▶ Review of Potential Tax Exposure
- ▶ Review of Entity Form and Related Issues

Development of an Estate Plan

Purpose of an Estate Plan

- ▶ Provides asset management assistance for Grantor
- ▶ Provides asset management assistance for spouse, children, or incapacitated beneficiaries
- ▶ Develops and implements plan for managing farm and ranch assets for the benefit of children in the operation as well as children off-operation or transitioning in some other manner
- ▶ May avoid probate and save estate settlement costs
- ▶ Saves (mitigates) estate and other transfer taxes

Appointment of Fiduciaries

- ▶ **Personal Representative** – charged with collecting the decedent's assets and distributing them to new owners as well as paying taxes and paying claims
- ▶ **Trustee** – an agent who is charged with the management (typically, long term) of decedent's assets for the benefit of named beneficiaries
- ▶ **Guardian/Conservator** – individuals who are charged with the care of the decedent's minor children or a disabled beneficiary
- ▶ **Attorneys in Fact** – Durable Powers of Attorney and Health Care Powers of Attorney

Brief Primer on Estate Taxes and Related Issues

Tax Considerations

- ▶ **Federal Estate and Gift Taxes (2017) – Unified Credit**
 - ▶ \$5.49 million exemption per person (40% is top federal tax rate)
 - ▶ Portability issues
- ▶ **Gifting Considerations (i.e., Annual Exclusion Amount \$14,000 per recipient)**
- ▶ **State Inheritance Tax?**
- ▶ **Step Up in Basis – Capital Gains Issues**

Review of Entity Form and Related Issues

Know Your Entity

- ▶ What type of entity or entities is involved?
 - ▶ LLC
 - ▶ Corporation (S-Corp or C-Corp)
 - ▶ Partnership
- ▶ Are you respecting the entity form?
 - ▶ Regular meetings
 - ▶ Entity books up to date
- ▶ What are the financial implications of the entity form as interwoven with a thoughtful transition plan?
 - ▶ What do the operative agreements say about death and transition?
 - ▶ What are the tax implications of your plan in relation to the entity?

Questions?

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▶ PLEASE NOTE: The purpose of these materials is to generally inform and not to specifically advise. You should not make legally significant decisions without advice from competent legal counsel. Estate and generational transition counseling is based upon the application of state and federal laws to unique facts. Presentations and materials cannot consider all factors that impact counseling in individual cases. Materials prepared applying Nebraska law.