



Bulletin

Extension

Estate Planning Considerations for Ohio Families

Section 1

Background and Basics

Who needs an estate plan?

Every person, young or old, who has a family or owns property, needs an estate plan. A good estate plan will allow a person to reach desired economic, legal, and personal objectives.

Death is unpleasant to talk about and we tend to avoid those conversations or assume we will live forever, but death is inevitable. You will rest easier and your family will benefit greatly if you will take time to develop an estate plan.

What is Estate Planning?

Estate planning is providing for the desired personal, economic, and legal consequences in the accumulation, conservation, and distribution of your property. It is the process of arranging for the well-being of your family and the use of your property to accomplish your objectives while you are living and after your death. It is choosing from among the many alternatives that are available to secure your financial future, especially during retirement, and perhaps preserve an estate for your heirs after payment of debts, taxes, and other settlement costs.

Estate planning is complex and requires knowledge in federal and Ohio estate taxation, wills, insurance, methods of owning property, forms of business organization, trusts, and more. It involves consideration of the amount and type of your property, forms of property ownership, and plans for its transfer. Retirement plans, arrangements for estate liquidity, concern for your children's futures, planning to meet family objectives, and many other factors must be considered. Obviously, this publication is not intended to serve as legal counsel. Rather, it is to help you think objectively about the consequences of alternative ways of using and disposing of your estate.

“An ounce of prevention is worth a pound of cure.”

What would happen if your estate had to be settled tomorrow? Would your spouse be able to maintain a satisfactory standard of living? Would an adequate education for your children be assured? Who would receive your property if after your death your spouse remarried—your children, the second spouse, a

business partner? Will your plan be followed, or would it be the plan provided by Ohio law? These questions and others can be specifically answered in your estate plan.

People spend a lifetime accumulating an estate but are often “too busy” to spend a few hours planning for its conservation and orderly transfer for maximum satisfaction for them and their families. A few hours of planning now may save your family thousands of dollars in settlement costs, needless delay, and unnecessary family discord.

Develop a Plan for Your Situation

Your plan needs to be tailored to your resources and to your family needs. Unfortunately, many families cannot come to grips with these challenges because they either are not aware of the present day cost of not planning, afraid of what they think is a complex subject, or wary of outsiders who seek to help develop a plan.

Actually you are unconsciously developing part of your estate plan every time you acquire property, decide how it will be held, or purchase insurance. If you do not have a will, the Ohio Statute of Descent and Distribution will be followed for property that is subject to probate. This plan for property distribution may or may not agree with your family needs. For non-probate property, the way the property is owned or the designated beneficiaries will dictate the distribution. These plans also need careful attention.

Estate Planning Objectives

A good place to start is to outline your general objectives and, if married, develop them with your spouse. From your list and discussions with family members, more specific objectives may evolve. Common examples might include:

To maximize total family satisfaction. This is probably the ultimate objective, but one will need other sub-objectives which can be more easily measured. Parents can allow children and other beneficiaries a meaningful role in reviewing estate plans. This can create understanding and encourage suggestions. Tensions among children may be reduced if parents assume the responsibility for involving children in the planning and sharing information on the final estate plans.

To provide for a young widow/widower and children. The birth of a first child is often a stimulus to get a will and some life insurance. Life insurance proceeds and Social Security benefits for a surviving spouse and minor children are frequently the most important sources of cash when one parent dies. At a *minimum* most young families with children need a will or trust, some term life insurance on the major breadwinner(s), and should be regularly paying into Social Security, or some comparable state or federal plan, in order to qualify for the plan’s disability and death benefits. Some young farm families do not have any of the three.

Death may strike at any age. A thoughtfully drawn will can help provide for the needs of the spouse and children who survive. Often the amount of assets is less for young families, but planning is still needed to assure the desired availability, distribution, and control of those assets. A will or trust may simplify estate management. Life insurance proceeds and Social Security benefits for a surviving spouse and minor children may be important sources of cash.

To provide adequately for you and your spouse, if married, during retirement years. For many this should perhaps be one of the most important objectives. Retirement planning is filled with uncertainty. We really don’t know how long we may live or what our health may be. The “Retirement Planning and Medical Insurance” section contains tools you can use to calculate your life expectancy. Not knowing

how long you will live makes it extremely difficult to determine how much it will take to live in the fashion to which we are accustomed. For many farm families, Social Security, farm rental, and an extremely modest lifestyle are the plan for meeting retirement income needs. If inflation rears its ugly head again, that may not provide enough income. Families with more than a few years left before retirement should consider diversifying by investing in some off-farm investments. Families in or near retirement frequently sell part of their farm real estate to generate retirement income.

Families with significant assets and income to protect, and who want to remain independent and pay for their own care, also should consider buying long-term care insurance. Families with low to moderate income and wealth frequently will not find it to their advantage to buy long-term care insurance. Persons interested in learning more about long-term care insurance may want to read the section on Long-term Care Insurance.

To treat all children equitably, not necessarily equally. It may be difficult to treat all children fairly. It's probably impossible to treat them equally. Each is an individual with a unique personality, abilities, and needs. Some children may have been given additional help in obtaining an education or purchasing a home. On the other hand, one or more may have stayed in the business to help it succeed. Therefore, an equal distribution may not be as fair as rewarding a son or daughter who has cared for the parent or worked in the family business. For another example, if a son's payment for a silo or barn built on the parents' farm goes unrecognized, the uncertainty of ownership may create problems for him as to his rights on the death of his parents.

To maintain the business as an efficient and functioning unit. This objective may be out of respect for the family traditions, or may represent the best vocation for the next generation. If heirs outside the business become eligible for part of the business wealth at death, withdrawal of that capital may adversely affect the continuation of the business unless the transfer has been carefully planned. In general, estate planning and business planning should be planned at the same time to assure adequate integration of the plans.

To provide liquidity to settle the estate. Availability of cash at death to meet estate settlement costs without forced sale of property is often overlooked. Many times real estate makes up the bulk of an estate. If there are debts and sizable amounts of estate taxes to be paid, how does the executor get the money? The executor may have to sell some or all of the business assets. The estate plan needs to recognize the possible need for cash—the need to have some degree of liquidity in an estate. Assets easily converted into cash, such as savings accounts, stocks and bonds, grain and livestock, and life insurance proceeds provide estate liquidity to meet current obligations and taxes. If one goal in estate planning is to keep the business intact as a going concern for the next generation, additional consideration must be given to liquidity. Trying to preserve certain assets for the next generation also increases the need for liquidity planning.

To maximize the amount remaining for distribution after estate settlement costs. This may be a more appropriate goal than minimizing estate taxes, legal fees, court costs, etc. Potential estate settlement costs should be estimated—Ohio and federal estate taxes, attorney and executor fees, and probate court costs—and plans made on how to manage the anticipated costs.

Finding an Estate Planning Attorney

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Each individual and/or family has somewhat unique circumstances, so there is no simple prescription or

plan. In developing an estate plan, one should seek the counsel of an attorney, a trust officer, an insurance representative, an accountant, a financial advisor, or others professionally skilled in estate planning. Your county Extension agent or district farm management specialist may also be able to make suggestions.

An attorney's assistance is essential in finalizing your plans. Some attorneys are much more knowledgeable about estate planning than others. It is important to choose an attorney and other advisors who have had training and experience developing estate plans. Effective January 1, 2003, the Ohio State Bar Association has begun certifying attorneys who spend a significant amount of time in their practice in this area of law and who meet other special requirements. The attorneys certified in Ohio can be found at <http://www.ohioabar.org/profdev/specialization/personlist.asp?type=estate&group=all&year=all>.

Many farms in Ohio would sell for more than \$1,000,000. There is a strong demand for land, especially near our larger urban areas. That is good if you are selling, but bad if you are buying, and it creates some major estate planning concerns for farm owners. High valuations are also a problem for your heirs if you die with a large estate.

Fortunately, with good planning and the proper legal documents in place, many families can avoid most of those settlement costs. If you have a valuable farm and go the "sleeping dog route" of leaving everything to your spouse, your spouse's heirs will have to come up with some big bucks.

How Can You Minimize Estate Settlement Costs?

The single most important thing you can do is find the right attorney and other estate planning counselors and get on with it! It is too easy to procrastinate for a variety of reasons including, "I don't know who we should get to help us." Twenty years ago it was often difficult to find an attorney experienced in farm estate planning in many rural communities. Today there are several experienced and well-trained attorneys in almost every county in Ohio. There is rarely reason to go more than 30 or 40 miles from home.

If you have a large or complicated estate, try to get several people to help you put together your estate plan. Preferably these people are from different firms, have different backgrounds, and can look at your situation and work together to come up with a recommendation. It is desirable to get different opinions and perhaps a bit of disagreement because that means someone is looking out for you.

Be very cautious when all the members of the estate planning team work for the same firm or obviously do a lot of work together. Frequently, families are approached by an insurance or investment salesperson who has very close ties with one attorney. That is efficient, convenient, and quick, but too often it is clear that the professional advisors are as concerned with selling the family something as with doing what is best for the family. If at all possible have some independent qualified person outside that firm take a hard look at the package you are being sold. Two key people who may be able to help you evaluate a proposal are your accountant and your banker. If they can't help you, frequently they can guide you to someone who can. For example, your bank may have access to a trust officer.

When you pick your attorney, ask at least one other qualified professional to look over the plan drafted by the attorney. Other key persons may be your accountant, your banker or the trust officer at your bank, your financial advisor, an insurance agent, the attorney you use for other legal work, your charity's estate planner, or someone else you know who understands estate planning.

How do you find a qualified attorney? You find a good attorney the same way you find a good dentist, optometrist, heart surgeon, or other professional. You ask many questions of many people and you use what people tell you to find an attorney to interview.

Who do you ask? Start with someone you trust, such as your accountant, banker, and perhaps the attorney you use for other legal work. Ask them who in your area is experienced in estate planning for farm families.

Your current attorney may say they can do it or recommend a specialist in their firm. Expect that. You may decide to use them or you may decide not to even ask them for that reason. You may tell them you would like them to recommend a specialist in farm estate planning. It is up to you who to ask and how you proceed.

Ask your banker if the bank has a trust officer or access to one. Call or make an appointment with the bank's trust officer to discuss your situation. Generally the trust officers are attorneys or people very experienced in estate planning, and their services are free. Understand though that trust officers make their living by selling the trust services of their bank. Expect them to show you all the advantages of having them as a trustee. There are some advantages of using a bank trust department and you may ultimately want to use their services, but initially you want to learn what you can from them. The first question is what attorneys, accountants, and others in the area are highly qualified in doing estate planning for farmers. Also talk with farm friends and relatives about who they used and what they thought about the attorney's abilities, experience, and integrity.

You can find additional information and guidelines for selecting an attorney at the Ohio State Bar Association website at: <http://www.ohiobar.org/conres/pamphlets/article.asp?ID=2>.

The bar association also maintains a search engine on their website which will tell you what attorneys in your area say they practice in certain specialties, such as: Agricultural Law, Probate/Trust Law, and Family Law/Domestic Relations. <http://www.ohiobar.org/memdir/>

Once you have decided who you want to interview for the job, call and make an appointment. You may inquire about a brief "get acquainted" meeting with the attorney to see if you and he or she are compatible. Some attorneys will agree to a brief introductory meeting at a reduced fee.

Your job isn't over when you have selected an attorney to interview and made an appointment to meet with them. Your primary objective at your first meeting is to decide whether this is the person you want to lead in planning your estate. If you are married, you and your spouse should both go to the appointment. It is perfectly acceptable to have a first meeting with an attorney and decide to not use their services. You should consider your first meeting and perhaps even your second meeting with them as an interview. They will necessarily ask most of the questions, but in reality it is up to you to decide whether you want them to do the work. You and your spouse should both be comfortable with them or you should continue your search.

Here are some questions that may help you evaluate an attorney. Do you like them? Do they put you at ease? Do you think you can trust them? If your answer to any of those questions is no, you should strongly consider going to someone else.

Other considerations include: Do they appear competent? Are they organized? Do they have an organized way of getting information they will need from you? Can you understand what they are talking about or do they speak in legalese? Do their tentative suggestions and proposals make sense to you? What do they estimate it will cost to do an estate plan for you?

It is easy to procrastinate about estate planning. If you don't have an estate plan or yours is not current, NOW is the time to get something done.

November 2003

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