



Good Farm Policy: Avoid These Top 10 Estate Planning Mistakes

Contributed by Melissa O'Rourke, Iowa State University Extension Farm & Agribusiness Management Specialist

Over the years we've worked with a large population of Delmarva's farm families. When we came across this article, it instantly appealed to us due to the similarities in planning mistakes and opportunities. The top mistakes Melissa O'Rourke observed and published included 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

**DON'T LET YOUR LEGACY BE
CHILDREN WHO ARE ESTRANGED
FROM ONE ANOTHER**

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

225 High Street
Seaford, Delaware 19973

17252 N. Village Main Blvd., Unit 16
Lewes, Delaware 19958

616 William Street
Berlin, Maryland 21811

www.pwwlaw.com



**PROCINO-WELLS
& WOODLAND, LLC**

Continued from previous page...

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)

BELLA’S BRIEF

The Office from a Dog’s Perspective



Like most of the free world, I planned to wake up early on May 19th to catch the royal wedding festivities. More than anything, I wanted to see Her Majesty since we share so many of the same qualities and, like the sovereign leader, I’m marrying off several heirs in the near future. It’s an exhausting task to find the appropriate ensemble, but I like Liz’s style and the practicality of her fashion

choices. She wears bold and vibrant colors that have a profound effect on her audience. Her chartreuse frock, for example, could easily be translated into these words: I might be an old broad, but I am still the mother queen and I will be noticed. Yep, I like her panache. For the same reason, I decided to wear a cape to my first big outing in June. One guest mistook me for a superhero. Need I say more?

xxo Bella 

Continued from previous page...

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 \$10 million"

The corollary to this mistake is "We (my spouse and I)

are worth less than \$20 million." In the United States, many farmland owners are land rich, cash poor and have little or no estate plan in place. As farmland and related asset values increase over time, the bottom line on a balance sheet goes up - and an estate plan problem could be on the horizon in the years ahead. In December 2017, the Congress passed and the president signed the Tax Cuts and Jobs Act (TCJA) of 2017. The provisions of this law were effective on

**MAINTAIN AN ACCURATE BALANCE
SHEET THAT REFLECTS THE FAIR
MARKET VALUE OF YOUR ASSETS**

January 1, 2018. The TCJA increased the exemption amount from \$5 million to \$10 million - indexed for inflation from 2010. This increase in the TCJA is effective until January 1, 2026 when the amount will revert to 2017 levels (an expiration or "sunset" provision) unless the law is extended or modified. In early 2018, the IRS announced that the 2018 exemption amount is \$11.18 million (or \$22.36 million for a married couple). Again, the exemption will be adjusted for inflation in subsequent years. So each decedent can currently pass on \$11.18 million of assets free from federal estate tax, and a married couple can pass on \$22.36 million (indexed for inflation). One thousand acres of land at an average value of \$12,000 per acre is \$12 million - a level that can trigger federal estate tax. Farmland owners in Iowa may have a false sense of federal estate tax security because they think their farm assets do not reach values that trigger federal estate tax. But adding up all the assets on the balance sheet and estimating increasing farmland and other asset 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. And everyone should remember - there are many more important reasons to have an estate plan in place other than avoiding federal estate taxes.

7. Death is not cheap: Lack of liquidity

Farmers - and others - can be good at accumulating assets such as land, equipment, farm buildings,

Continued from previous page...

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

**KEEP ALL RECORDS IN A SAFE PLACE
YET STILL ACCESSIBLE TO THOSE WHO
NEED THEM WHEN YOU ARE GONE.**

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.

TIME OUT — STAFF PROFILE

Kristen R. Ferencsik
Estate Planning Coordinator

ON THE CLOCK: Kristen graduated from Delaware Technical & Community College in 2003 with an Associate's Degree in Business and then advanced her studies in Finance at Wilmington University. Kristen has always had a strong relationship with her grandparents, which made her the perfect person to care for their finances as they aged. She was determined to find the best options available for them and through this research she found PWW. It didn't take long to know she would also be a great fit for our team. Kristen brings much experience to our clients, having held accounting and management positions over the years, and looks forward to assisting other families plan for their future and helping them obtain the same comfort she experienced with her own.



OFF THE CLOCK: You will likely find Kristen at the ball field cheering her son on as he plays the all-American game. She also enjoys cycling and stand up paddle boarding. When not at the field, she will be at the beach with both her son and daughter, who is headed to college in the fall.

UPCOMING EVENTS

What is on our Calendar?

July 4 — Office Closed; Independence Day

July 18 — Veterans Planning Workshop;
9:00 am, The Woodlands of Ocean Pines,
Ocean Pines, MD

August 2 — Planned Charitable Giving Workshop;
7:00 pm, St. Peter's Episcopal Church,
Lewes, DE

August 23 — CARES Program Member Appreciation
Event; 7:30 - 10:00 pm,
The Frozen Farmer & Evans Farms
(Rain Date August 30th)

September 27 — Special Needs Planning Workshop;
5:30 - 7:30 pm, Salisbury, MD
(Exact Location TBD)

For more information, visit www.pnwmlaw.com.

LEGAL MUMBO JUMBO

Legal Language in Layman's Terms

POUR-OVER WILL

A Last Will & Testament that is used in conjunction with a Revocable Living Trust that captures any assets that have not been transferred into the Trust at the time of death.

A note from the attorneys...

It's been five months since the opening of our Berlin location and we can't thank our Maryland referral sources enough for their support and endorsement. Expanding our practice to serve clients in Maryland is off to a great start! Even some of our Delaware clients are choosing the Berlin office as their most convenient location. As we dig into the third quarter, we remain focused on growing relationships and helping families in both States!

Michele, Owen & Leslie



**PROCINO-WELLS
& WOODLAND, llc**

225 High Street
Seaford, Delaware 19973



Planning today to protect your family's tomorrow.



OFF THE CLOCK

We would like to thank our featured referrer of the month:



PKS INVESTMENT ADVISORS, LLC
Locations in Salisbury, Ocean City & Lewes
1-800-274-2564

Procino-Wells & Woodland, LLC is a proud member of:



Accredited Attorney



This newsletter is intended for informational purposes only and does not constitute legal advice. For legal advice, consult a licensed attorney. The examples used are simplified for ease of understanding and illustration of general concepts.