Succession and Retirement

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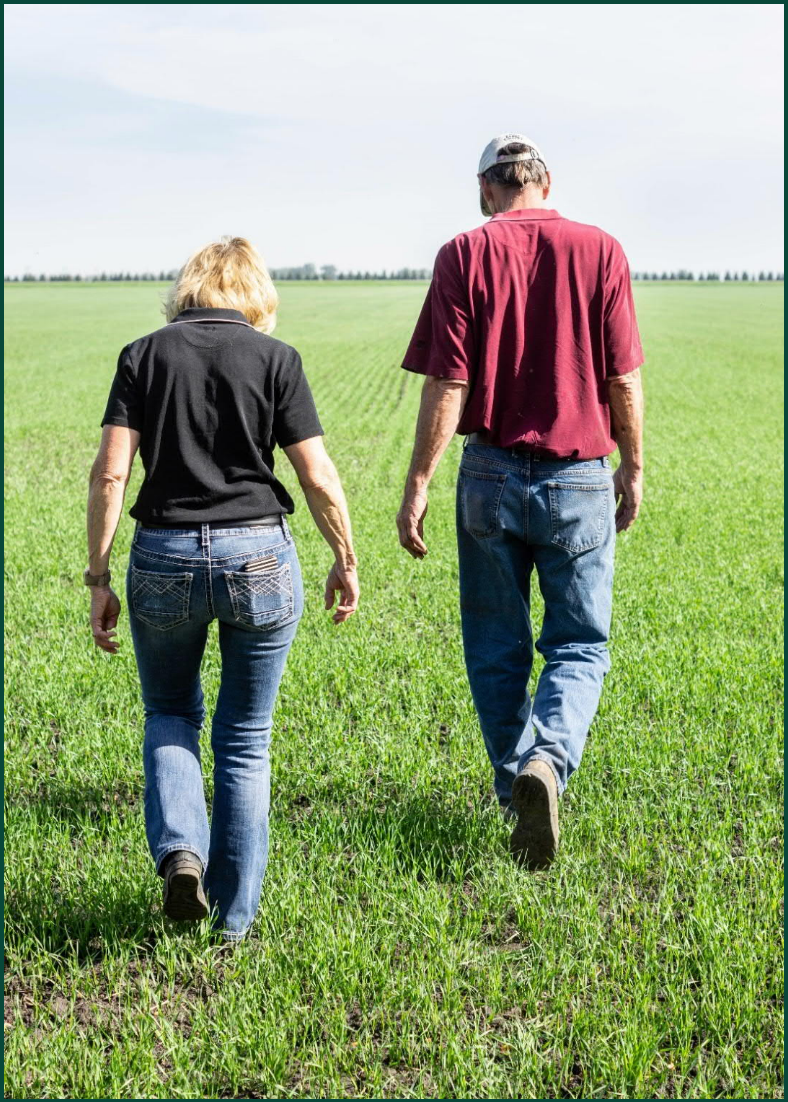

What We Do:

- Estate Planning
- Transition Planning
- Farm Succession & Retirement Planning
- Entity Planning
- Family Meetings
  - Help with communication

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Who We Are

- We serve 37 AgCountry offices in North Dakota, Minnesota & Wisconsin
- Fee Based Consulting – not selling any products.
- Work with your existing professionals – CPA, attorney for legal work, etc.
- "Quarterback" of your plan - Guide

Topics Today

- Update on Estate Tax – Federal and State (MN)
- Update on Gifting
- Outlook for Estate and Gift Tax – What's Proposed?
- What are We Seeing Out There? - Address multiple popular topics/issues
- Q&A

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Estate Taxes

What is the Estate Tax?

- The estate tax is a tax on the transfer of assets at death.
- *Estate tax applies if the total value of the taxable estate is larger than the estate tax exemption amount in the year of death.*
- If the taxable estate exceeds the exemption amount, an estate tax is imposed on the portion above the exemption before the remaining assets are distributed.

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Estate Taxes

Is my Estate Taxable?

- **Unlimited amount can be transferred to a spouse**

Federal Estate Tax Exemption:

- **2021 - $11,700,000 per person.**

Portability between spouses can bring this to $23,400,000.

If exceeding, the tax is 40%.

This law is set to “sunset” December 31, 2025, and revert back to prior exemptions: $5,000,000 per person, indexed for inflation

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State Estate Taxes

How about State Estate Taxes?

- South Dakota, Wisconsin and North Dakota are coupled with the Federal law.
  - No specific / separate state estate tax.

- Minnesota is decoupled from Federal law.
  - Has its own separate state estate tax.

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Minnesota Estate Taxes

Minnesota Estate Tax Exemption:

- **2021 - $3,000,000**

  + $2,000,000+ ***potentially*** for ***qualified*** farmland & business assets.

  NO PORTABILITY between spouses – DIFFERENT than federal rules. Need to use disclaimer / bypass trusts.

  For estates that exceed the exemptions, there is a tax of roughly 16%.

MN Estate Tax: *Non*-MN Residents

May affect non-Minnesota residents if they own real estate in Minnesota:

- Real Estate in Minnesota owned by non-MN residents may be exempt from Federal estate tax but not exempt from MN estate tax
- Also, the additional exclusion for qualified land is not available to non-residents . . . Only available for Minnesota residents.

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Updates-Gifting

Gifting Rules for 2021:

- Annual Exemption: $15,000 per Person
  - No taxes and no tax return on first $15,000/grantor/recipient.
  - Each recipient can receive $30,000 as a combined gift from "mom and dad", for example.
  - If you include your child's spouse, an additional $30,000 ($60,000 combined) can be given without any IRS reporting with respect to gift tax returns.

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Updates-Gifting

Gifting Rules-2021 (No MN state gift tax)*

Lifetime Exemption: $11,700,000/person

- If a gift exceeds $15,000 or $30,000/ couple, then a federal gift tax return is required.
- No gift taxes as long as the combined total is under $11,700,000/person.

*MN has a three year “claw back” rule.

Updates-Gifting

MN has a three year “claw back” rule:

- If the person giving the gift dies within 3 years of making the gift, Minnesota includes the value of the asset gifted (full FMV) when determining taxable estate for Minnesota estate taxes.

- If survives at least 3 years, not included.

Step Up in Basis

- Inherited assets i.e. land, machinery, buildings, investments (non-IRA) receive a step-up in basis to fair market value on date of death.
  - *Ex: Land bought at $500/acre is valued at $4,000/acre at death; heirs receive the land with a new basis of $4,000/acre.*

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Step Up in Basis

- Assets gifted do not receive a step-up in basis at the date of death. The basis of the grantor is the basis of the recipient:
  - *Ex: Land bought at $500/acre is gifted to a child and 10 years later the farming parent dies. Child's basis is $500/acre. No-step up.*

Changes to Federal Estate and Gift Tax

- **Biden Plan – What's been Proposed?**
- Reduce the Exemption to $3,500,000 per person – 45% tax

or

- Repeal Trump Tax Plan - reduce exemption to 2017 level which was $5,500,000/person and 40% tax.

- Repeal Step-up in Basis – if occurs, will have major implications

This is just a "proposal" – nothing final until when/if it becomes law.

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What are We Seeing?

LTC Planning

- A cash flow analysis needs to be done first to see if you are at risk of having to sell assets
- Married—can retain personal residence and $130,380 of other assets plus 1 car, pre-paid burial and $1,500 in cash value for life insurance
- Single/widowed—can retain $3,000 of assets
- If you gift any asset, the “look back” period is 5 years
- For assets in ND & WI, use of Life Estate or Irrevocable Trust will work
- For assets in MN, Life Estates are more complex and use of an Irrevocable Trust will not work

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What are We Seeing?

Estate Tax Protection Strategy – Five Parts

1. Ensure proper wills and/or trusts are in place
    - Disclaimer and Marital Trusts—especially in MN

2. Shrink the estate
    - Gift and sell assets
    - Maybe a Charitable Trust

3. Devalue the estate
    - Use of entities, especially for land

What are We Seeing?
Estate Tax Protection Strategy – Five Parts

4. Fund the estate tax
    - Life insurance or designated assets that can be sold

5. Slow the growth of the estate
    - Have farming children buy assets
    - Use of Irrevocable Trusts to freeze the value of the estate

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What are We Seeing?

Piercing the "Corporate Veil" – Asset Protection

If you don't treat your entity as a separate entity, neither will the courts.

- Not keeping accurate and timely minutes
- Co-mingled records & not keeping a separate checkbook
- Failure to maintain arm's length transactions—rental agreements!
- Intermingling corporate assets and shareholder assets
- Treating corporate assets as individual assets

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What are We Seeing?
Need for Written Documentation

<u>If it is not in writing it does not exist!</u>

Examples:

- Farm transition plan between parents and farming child. No will / estate plan that includes the plan. Parents die. What happens?

- No buy-sell agreement between co-owners of a business entity (partnership, corporation, etc.) One co-owner dies unexpectedly. What happens?

What are We Seeing?
Asset Co-Ownership Issues – Need Buy-Sell

Co-ownership issue:

- Buy-sell agreement in place?
    - Dissolution
    - Death
    - Departure
    - Divorce
    - Disability

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What are We Seeing?
Asset Co-Ownership Issues – Need Buy-Sell

Buy-sell agreement

- Determines who can be an owner, when something happens.
  - I.e. co-owner wants to sell their share to an outsider.
- Determines how to value the assets at issue.
  - If a triggering event occurs, how do you determine what the value of the assets are? Need to do so ahead of time.
- Determines how the payment will occur.
  - Cash at closing? Paid in installments?

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What are We Seeing?
Needing Clarity on What Avoids Probate

- Last Wills and Testament do NOT avoid probate.

  In order to do that, you need to have non-probate transfers established (i.e. TODD's, and/or a Revocable Living Trust based estate plan.)

- Revocable Living Trusts can avoid probate if they are properly Funded.

  This means that the assets are transferred into the trust / controlled by trust. Most assets need to be transferred into the trust; i.e. land, stock, bank accounts, etc. Exception: Qualified Retirement Accounts.

If a revocable living trust is not fully funded, it will go through probate at death.

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What are We Seeing?
Need to have an Updated Estate Plan

Ensuring the plan works as you intend:

Ensuring the plan is updated, well thought out and tested is important, especially when a next generation farmer is taking over.

- Run the plan through your balance sheet:

  If there are buyout provisions, can the farm afford them?

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What are We Seeing?
Proper Asset Titling

This is crucial to assure that the will or trust functions the way you want.

- For example, land held as joint tenants with right of survivorship is not handled by your will. Thus, disclaimer trusts cannot be used.

- For example, if you have a revocable living trust, and your assets are not properly titled / controlled by the trust (“funded”), the trust will not avoid probate at your death.

What are We Seeing?
Procrastination

Easy to put off this type of planning.

There's no filing deadline for your estate plan to be completed.

- i.e. no penalty if not filed by April 15th.

BUT - We ALL have a "deadline." Guaranteed.

We see the consequences of people passing their deadline with no plan in place, or an old, outdated plan.

QUESTIONS?

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Thank you for Attending!

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