

PRESERVING THE FAMILY FARM

EMENS & WOLPER LAW FIRM

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“The farm was grandpa’s...and now it is mine. Do I need a Will and a Trust? How can I keep it in the family? I’m worried about taxes, management of the farm and the unknown!!! Where do I start?”

If nothing is done, chances are the farm will be at risk. Creating and developing a plan for keeping the farm in the family requires planning and specific strategies.

The successful transition from one generation to the next is a journey. It is critical to examine the wants and needs of the generation currently operating the farm. Communication with the family is critical, even if difficult. More likely than not, that generation wants and needs security, income, and a “say” regarding the operation of the farm, the oil and gas mineral interests (easements/ leases, etc.) and a “say” in what should happen each crop season. The next generation also wants and needs income, and a “say” regarding operation, mineral interests or what should happen each crop season! There are many obstacles and hurdles to overcome in order to grant the wishes of both generations. Fortunately, they can be overcome!

Succession IS a journey. The transfer of ownership is the easiest step along this journey of succession. Many people believe they only need a simple will but ignore the reality that property passing by will goes through probate, which is not helpful for the family farm!

Ownership of the farm in a Limited Liability Company (“LLC”), which is then owned by a trust can secure a successful transition to the next generation, and can help with the succession of authority (who will take control) as well as how the income is spent and distributed to heirs. By utilizing an LLC, an orderly transition of ownership to the next generation can occur and may be beneficial tax-wise.

The journey of succession should also include succession of relationships, (key customers, vendors, equipment suppliers, grain customers, employees), succession of knowledge (skills, know-how); succession of leadership (working ON the business, vision), and succession of management (daily management, working AT the business).

For the Family Farm Trust, the trust can convey background on why your decisions are made, what factors you have considered and can provide guidance to the trustee.

The Family Farm LLC can be organized so that multiple families may “own” the trust which holds the farm, but can give the voting control to a board of trustees made up of a representative from each family (rather than splintering the ownership of the farm and

the vote for farm decisions among numerous people). Perhaps only those people working on the farm have the right to vote on what happens each crop season. For example, if grandpa and grandma wanted to leave the farm to the five children working on the farm, but want to take care of two other children, a “silo-type” Family Farm Trust can be written so that decisions for daily management is with those who work the farm, and decisions as to disposition of the mineral rights is by the board.

The important point in drafting a Family Farm LLC and Trust is to begin the journey (even if uncomfortable to think or talk about) and to make it personal to the Grantor, so that the trustee “stands in the shoes of the Grantor, and controls the farm the way the Grantor intends.”