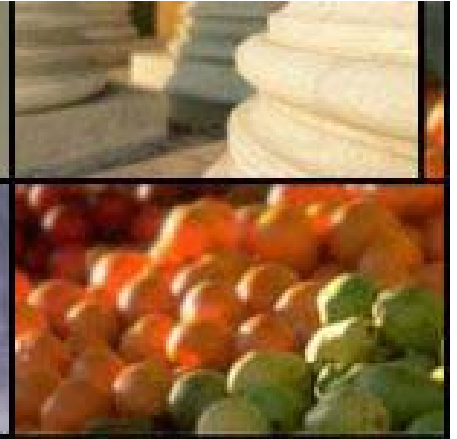


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University of Arkansas
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Agricultural Estate Planning

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Farm Bills

Glossary

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CRS Reports

eXtension

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- :: Site Map
- :: Disclaimer
- :: Recent Web Postings

Welcome to the National AgLaw Center's electronic resources for an agricultural law Center-published research article; each room is an overview article that is the left side of each reading room.

Periodic browsing of our Reading Rooms is ongoing.

- **Administrative Law**
- **Animal Identification**
- **Aquaculture**
- **Biosecurity**
- **Business Orgs**
- **Clean Water Act**
- **Commercial Trans.**
- **Conservation Programs**
- **Cooperatives**
- **Disaster Asst/Crop Ins**
- **Estate & Taxation**
- **Food Labeling**
- **International Law**
- **Labor**
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- **Packers & Stockyards**
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- **Animal Welfare**
- **Bankruptcy**
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- **COOL**
- **Environmental Law**
- **Finance & Credit**
- **Food Safety**
- **International Trade**
- **Marketing Orders**
- **Nutrition Programs**
- **PACA**
- **Production Contracts**
- **Secured Trans.**
- **Sustainable Ag**
- **Water Law**

- :: Bankruptcy
- :: Biosecurity
- :: Biotechnology

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Home Page

AgLaw Reporter

CRS Reports

About the Center

Farm Bills

eXtension

Reading Rooms

Glossary

Reference Desk

Publications

Bibliography

State Compilations



Google™ Custom Search

Search

:: Website Guide

:: Disclaimer

:: e-Newsletter

:: Ag & Food Law Blog

:: Center Twitter

:: Administrative Law

:: Agricultural Leases

:: Agritourism

:: Alternative Dispute Resolution

:: Animal Feeding Operations

:: Animal Identification

:: Animal Welfare

:: Aquaculture

- **Overview**
- **Major Statutes**
- **Regulations**
- **Case Law Index**
- **Center Research Publications**
- **Congressional Research Service Reports**
- **Agricultural Law Bibliography**
- **Reference Resources**
 - **Governmental Agency Resources**
 - **Congressional Resources**
 - **International Resources**
 - **Publications**
 - **Additional Resources**

planning devices, business entities, and rules governing succession of property, the Internal Revenue Code primarily governs the major tax issues associated with estate planning. [Read the full overview](#)

Note: Recently added resources are posted at the top of the applicable sections.





Why is it Important?

“In this world nothing can be said to be certain, except death and taxes.”

- Benjamin Franklin, 1789



Today's Topics

- Taxes:
 - Federal and State
- Estate Planning
 - Transferring Assets v. Succession Planning
 - Estate Planning Tools
 - Information that YOU must provide
 - Personal Information
 - Financial Information
 - Your Goals/Wishes



Estate and Gift Taxes: What are they?

Estate Tax – tax imposed on the transfer of the “taxable estate” from a deceased individual

Gift Tax – tax imposed on the transfer of property (including money) during a person’s life



Estate and Gift Taxes:

Where are we?

- Tax Relief Act of 2010 (passed 12/2010)
- Only good for 2011 and 2012...after that we start again unless more legislation is passed
- Several major changes with the estate tax.

Estate Tax, continued

- \$5 million applicable credit (gift and GST taxes are harmonized with this)
- Maximum tax rate at 35%
- Step-up in basis is back again
 - Capital gains tax issue
- Surviving spouse gets the unused applicable credit (estate and gift tax)
 - Ex. H dies in 2011 and passes \$2 million to kids and the rest to W. W dies in 2012 and gets to pass on \$8 million tax free.



State Estate Tax Exemptions:

- Oklahoma – No Tax
- Mississippi – No Tax
- Arkansas – No Tax
- Missouri – No Tax
- Kentucky – No Tax



Talk to your Attorney

- Before making any large gifts or creating a will (or trust) talk to your attorney and family.
- Let your attorney or CPA worry about the tax aspects
 - There are ways to reduce tax liability that you are probably unaware of.



So if estate taxes aren't the issue
than what is?

Estate Planning or Succession Planning

- **Estate Planning** – how are going to distribute the assets to the next generation
- **Succession Planning** – bringing in the next generation so that they know what they are doing when the owner passes away



Transferring Property or the Farming Operation?

- Do you want to transfer assets or do you want to transfer the farming operation?
-
- Transferring assets is pretty simple:
 - Use a will or a trust to pass property at death
 - Transferring the farming operation is **MUCH** more difficult!!!



Succession Planning

- About 90% of Farming Operations do not survive the transition from one generation to the next.
-
- Reasons for this:
 - Heirs do not have the necessary management experience because parent did everything up to their death
 - The family fights because assets could not be divided in a “fair” manner



Succession Planning

- You **WILL** need an attorney for this and input from family members.
 - This is complex and every family and farm differs so the succession plan must be unique
 - How do you give to family members that do not wish to participate in running the farm?
 - What about your surviving spouse?
 - The next generation needs to learn the ropes while you are still around to teach them which means that they have to take some responsibility...you can't do it all.



Benefits of Succession Planning

- Keep the family farming operation going through the next generation or two
- Divide your assets according to your own wishes
- Protect the assets from some unforeseen events such as lawsuits and divorce



Estate Planning Tools of the Trade

- **Intestate Succession**, i.e. dying without an estate plan
- **Will** – a person's declaration of how they want their property divided at death.
- **Trust** – an arrangement where a trustee holds the legal title of property for the benefit of another.

- **Life/Long-term Care Insurance**
- **Business Organizations** (Partnerships, LLCs,...)
- **Living wills**
- **Joint tenancy deeds and money accounts**
- **Retirement Accounts**
- **Gifting of assets** (\$13,000 per year per person in the past)
- **Powers of Attorney**
- And more...



The Legal Terminology

- **Decedent** – the person who is dead
- **Testate** – they died with a will
- **Intestate** – they died without a will
- **Executor** – handles the will
- **Administrator** – if they die intestate then this is the person that administers the estate
- **Trustee** – runs the trust and holds legal title and responsibility to the property in the trust
- **Beneficiary** – holds the equitable title to property in the trust and enjoys the benefits of the trust



Estate Planning Tools

- Are you **REQUIRED** to have a will or estate plan?
 - No, there are quite a few people out there that don't have wills or estate plans and probably never will have.
- So what happens to your property if you die without any form of an estate plan?
 - The state governments have all created a default set of guidelines for people that die intestate (without an estate plan).

Example of Intestate Succession

- You and your spouse have 3 children and a farm. You would like for your spouse to get the farm and take care of the kids with it. You can do this through estate planning, but suppose you don't have one?
 - Using OK law as an example, the farm would be divided so that the surviving spouse gets 50% and each child gets 16.66667% of the farm depending upon how the farm was owned at the time of death and the age of the children doesn't matter!



Example of Intestate Succession, continued

What happens to the family farm?

- These 4 individuals own the farm in tenancy in common...all 4 have a right of possession to the whole property
- None will have title until the matter is settled in probate court (6 mon. – 2 yrs)

Intestate Succession, continued

If there is no legal title conveyed until after probate then:

- How does the family continue receiving operating loans with no collateral?
- What about farm program payments?
- How are management and labor decisions made?





Intestate Succession, continued

What happens when farm ownership is fractionated?

- If there are a few owners then it may be possible to divide responsibilities and income accordingly.
- If there are multiple owners then it may be necessary for a partition by sale.



Estate Planning Tools, continued

- Traditional Estate Planning: The Will
 - Mental capacity...you cannot be too crazy, but a little bit is ok
 - Must know the “Nature of your Bounty”
 - Formalities (each state is different)
 - Writing requirement
 - Signature
 - Witnesses
 - Probate
 - Only wills that dispose of real property must be probated. Ark. Code Ann. § 28-40-104(a)
 - Probate is expensive and time consuming



Estate Planning Tools, continued

- Trusts: What are they?
 - A legal arrangement where one party (the trustee) holds the legal title to property for the benefit of another party (the beneficiary).
 - Example: A trustee is given a farm to hold in trust for a child. The trustee would pay the taxes on the land, maintain it, rent it out or sell the land and use the proceeds for the child's benefit...after taking trustee fees from the money that was earned.

Estate Planning Tools, continued

- **Trusts:**
 - **Who can be a trustee?**
 - Basically anybody or organization can be a trustee. A family member, a close friend, or more commonly a bank.
 - **What keeps the trustee from robbing beneficiaries since they hold the legal title?**
 - **Fiduciary Duty.** The trustee is legally required to do what is best for the beneficiaries even if it is against the trustee's own interest!



Estate Planning Tools, continued

- Other methods to pass on assets without probate being needed:
 - Owning property in “joint tenancy with right of survivorship”
 - Joint bank accounts can be set up this way as well
 - Owning property through a business organization and passing that on to heirs
 - Life Insurance Policies
 - Individual Retirement Accounts (IRAs)
 - Gifting of assets while alive



Estate Planning Tools, continued

- Other Estate Planning tools not tied to passing on assets:
 - Living wills
 - Long-term Care/Health insurance
 - Durable Power of Attorney in case you lose your ability to make decisions for yourself
 - Be careful with these since you are giving someone a lot of control over your life and property.



Information that You must Provide

Personal Information:

- You WILL be asked for some pretty personal information...Do not hide anything!
 - The problem of the unmentioned child
- Have a list of names and relationships
 - Spouse, ex-spouses, children, children born outside of marriage, step children, adopted kids, living parents and grandparents, etc...



Information that You must Provide

Financial Information:

- You need to bring your attorney a list of all of your assets (and their estimated values):
 - Real property including legal descriptions
 - Bank and retirement accounts (account numbers)
 - Insurance Policies (with the name of the beneficiary on it!)
 - Vehicles
 - Farm Equipment
 - Livestock
 - Household items
 - Personal items
 - Things like your grandmother's china



Information that You must Provide

Your Wishes/Goals:

- Sit down and think about what you wish to accomplish.

- Rank your goals because some of them may not work well with others (and some may be outright impossible).



Information that You must Provide


Your Wishes/Goals (continued):

- Put some thought into what you are giving to each individual
 - Giving farmland to a child that has no interest in farming isn't going to keep the family farm going
 - If you give them the farm than shouldn't you give them the equipment needed to run the farm?
 - Do the heirs want what you are giving them and can they use it/store it?
 - Giving the furniture from your 2 story house to a daughter living in a one bedroom apartment isn't going to work very well



Something to think about...

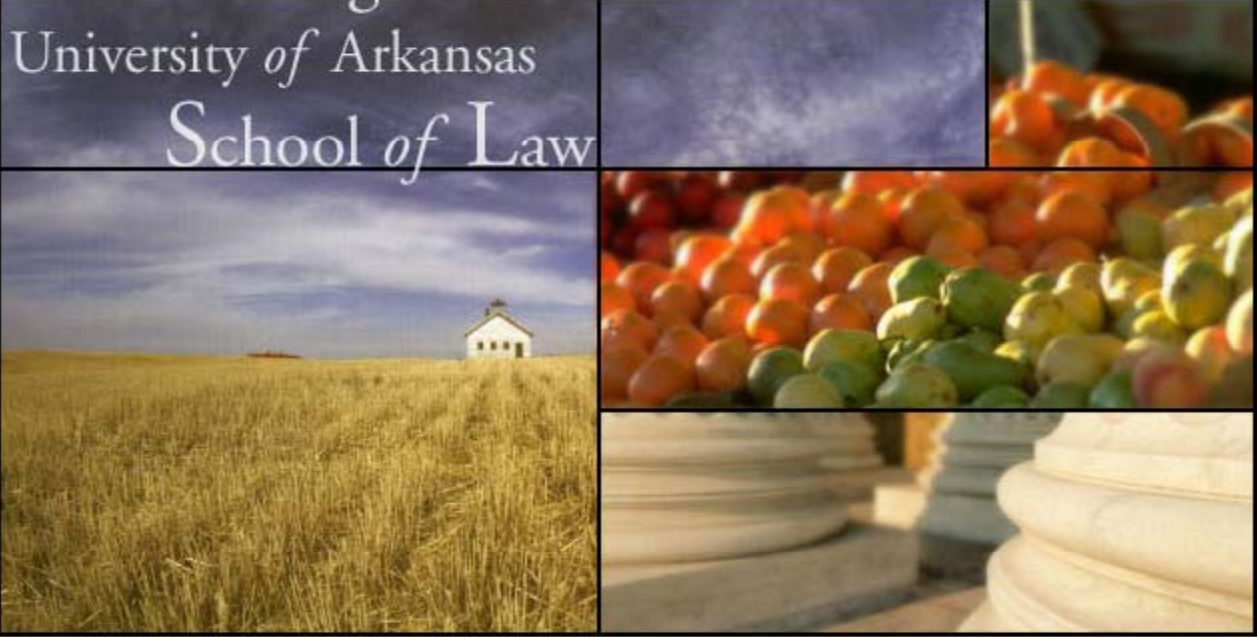
- It is your property and you can do almost anything you want with it.
 - You can give it all away or to only certain people and disinherit the rest (not your spouse however)
- How will your heirs react to your division of the property?
 - This decision can have far reaching consequences for your family.

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- About the Center
- Reading Rooms
- Publications
- AgLaw Reporter
- Farm Bills
- Glossary
- Bibliography
- CRS Reports
- Congressional Links
- Reference Desk
- Ag Community

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Finally...

Are there any Questions?

I have contact information up here with me