

AGEC 3713 Agricultural Law - Estate planning

true

Introduction

-family owned farms -multigenerational - Transfer of property during ones life and at death

Initial analysis

- ▶ family situation
- ▶ Family with interest in the estate
- ▶ Family with an interest in the business
- ▶ May not be the same
- ▶ Rights of family members usually protected
- ▶ Spouse's rights may be restricted by prenuptial agreements or other contracts
- ▶ ex-spouses
- ▶ children

Further analysis

- ▶ How is the property owned?
- ▶ Insurance particularly life insurance
- ▶ Disability insurance
- ▶ Equal treatment of children

Probate estate

- ▶ those assets that are to be distributed under the terms of a will
- ▶ absence of a will then under laws of intestate succession (transfer at death)

Living trust

- ▶ a will substitute
- ▶ revocable by deceased during their lifetime
- ▶ Some states have community property meaning title to property is vested in both spouses

Example

Mr. and Mrs. Jones live apart and no longer like each-other. Mr. Jones while alive directed his attorney to place his assets in a living trust. Mr. Jones died and Mrs. Jones attorney filed for probate and to compel the living trust to transfer assets to the estate. Mr. Jones should have placed assets in an irrevocable trust out of reach of Mrs. Jones. Real property would still be within her reach. Downsides of irrevocable trusts are loss of control, inability to revoke and tax.

Transfers of property at death

- ▶ ownership of survivorship property
- ▶ testate succession (under provisions of a will)
- ▶ inaction (intestate succession) law of state of residence applies.
- ▶ Indirect ownership in a trust.
- ▶ beneficiary designations in life insurance policies and retirement plans
- ▶ power of appointment (ownership not necessary)

Methods of transfer

- ▶ mutually exclusive
- ▶ if the methods are incompatible (property allocated to different people) litigation likely

Survivorship property

- ▶ Spouses are one unit (common law) ownership is shared (tenants by the entirety)
- ▶ Joint owners of real property who are not married are joint tenants
- ▶ Latter requires express survivorship agreement
- ▶ Joint tenancy can apply to both real and personal property
- ▶

Estate succession

- ▶ Attested wills
- ▶ Written wills
- ▶ Preferred practice
- ▶ Holographic wills (no witnesses), may not be recognized.
- ▶ Nuncupative wills (oral near death, need to be witnessed (overheard))

Wills

- ▶ testator needs to be of age and sound mind
- ▶ testator need not be competent but must understand
 - ▶ who he/she is
 - ▶ assets
 - ▶ recipient of assets
 - ▶ consequences
- ▶ no duress
- ▶ No undue influence

Purpose of will

- ▶ choice of person or institution to administer estate
- ▶ choose guardian of children
- ▶ -push decisions about property into the future (e.g. trusts)

Intestate succession

- ▶ In the event of death without a will
- ▶ state determines how the estate is to be divided and to whom it is passed

Example:

Larry had a written will that gave his farm to his stepson. Before he died Larry bought an office building. Larry's will contained no residuary clause. A residuary clause disposes of property not otherwise devised in the will. Residuary clauses are essential for distributing property not otherwise devised in the will. Residuary clauses are essential for distributing property acquired after the last will was executed. Larry bought the office building after the will was executed there was no residuary clause therefore partial intestacy arises and the office building goes to Larry's next of kin a third cousin twice removed.

Trusts

Grantor transfers legal interest in property to trustee.

- ▶ revocable trust, created by living person, creator of trust can revoke it
- ▶ Revocable trusts are called living trusts
- ▶ Living trusts are will substitutes
- ▶ Advantages: avoid probate
- ▶ irrevocable trust: can be set up by living person or by will (testamentary trust)

Beneficiary designations

- ▶ Wealth transfer by designating a beneficiary (e.g. life insurance, pensions, individual retirement, accounts, employee death benefits)
- ▶ Tax issues vary, e.g. life insurance may be taxable depending on who owns the policy.

Power of appointment

- ▶ Found in deeds or wills
- ▶ may be general or particular

Probate

- ▶ Begins with presentation of the will to the probate court
- ▶ Executor appointed if estate was testate
- ▶ Administrator is appointed if estate was intestate
- ▶ Personal representative can mean executor or administrator
- ▶ Role of personal representative is to inventory assets, pay debts and file material with the court
- ▶ Probate has the advantage that it excludes new creditor claims after creditors have been notified.