

Estate Planning & The Farm: Top Tips and Practice Pointers

Mid-South Agricultural and Environmental Law Conference

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A large, round hay bale sits in a field of tall grass. In the background, there are rolling hills under a clear sky. The text is overlaid on the image in a dark red, serif font.

The primary purpose of
good estate planning is to
preserve family
relationships.

Farming is Big Business

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Farming is Big Business

- Price of Land
- Price of Equipment
- Cost of Inputs
- Farm Programs, Crop Insurance, Commodity Marketing
- Many Farm Clients are very savvy
- May need more sophisticated estate planning techniques



Farming is a Way of Life

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Farming is a Way of Life

- Legacy
- Nurtured over many generations
- Preserve it for younger generations

The Land is
IMPORTANT!

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The Land is Important!

- Land may have been in the family for generations
- Consolidation in Farming – Finite Resource
- Land is always UNIQUE



Special Considerations when Estate Planning for Farmers

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Co-Ownership of Land

- Discourage This
- Almost never get along
- Land ends up getting sold
- Cash Flow vs. Value of Land
- Rough Division or Even-Up

“FAIR is not always EQUAL”

- Has on-farm heir been under-compensated?
- Give on-farm heir the equipment
- Give on-farm heir “Grand Central Station”
- Give on-farm heir the ability to purchase at discount

Rights of Refusal

- Based on Fair Market Value
 - Discount
 - Recover if Sell
- Don't Set Price
- Method for determining FMV

Right to Rent

- Cash Rent or Crop-Share
- How determine price

Trustees

- Consider a Special Farming Trustee
- Family Members
- Corporate Trustee
 - Give ability to hire a farm manager
 - Farm manager may be one of the beneficiaries

Lifetime Trusts

- PURPOSE: Protection of Beneficiaries
- Protect from Creditors
- Protect from Ex-Spouses
- Reduce or Eliminate Estate Tax for Beneficiaries
- Flexibility vs. Control
- Also called: Heritage Trusts, Dynasty Trusts, GST Trusts



Planning with Life Insurance

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Life Insurance

- Consider Irrevocable Life Insurance Trust
 - Best to have ILIT purchase the policy
- Can provide liquidity
- Unlikely to be an equalizer



TAXES: Where are We and Where are We Going?

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FEDERAL ESTATE/GIFT TAX

- \$13.61 Million per person
 - Indexed for Inflation
- More than \$27 Million for couple
- Estate Tax Rate above exemption: 40%
- Can be given during life, at death, or a combination
- Sunsets on January 1, 2026

WHERE ARE WE GOING?

- Heavily depends on Presidential Election
- Extension of Current Exemption?
- Sunset in 2026?
- Retroactivity?
- Opportunity for Large Gift this Year?
- Consider Inflationary Pressure

LARGE GIFT OPPORTUNITY

- Go Big or Go Home
- Put Clients in Position to Make Gift Quickly
- Take Advantage of Discounts
- Incorporate Dynasty Trusts
- Loss of Stepped-Up Basis

BASIS

- The value of property at the time you bought it or received it
- **Appreciation:** rise in value of an asset from receipt to disposition
- **Stepped-up Basis:** If transfer property at death, recipients receive a basis of the value of the property at the date of death
- **Transferred Basis:** If transfer property during life, recipients receive the previous owner's basis in the property
- Why does it matter? Capital Gains Tax

BASIS: Example

- Buy a farm in 1980 for \$100,000. The farm is now worth \$500,000.
- If I **SELL** the farm during my lifetime: I owe capital gains tax on \$400,000
- If I **GIFT** the farm to my children during my **lifetime**: I do not owe capital gains tax, but my children will owe capital gains tax on the difference between \$100,000 and what they sell it for if/when they sell farm
- If I **GIVE** the farm to my children at my **death**: my children will have a basis of \$500,000 in the farm. If children sell the farm, will not owe capital gains tax

WHERE ARE WE GOING?

- Elimination of Stepped-Up Basis?
- Taxation of Unrealized Gain at Death?
- Proposed Exemptions: \$1M plus primary residence (up to \$500,000)?
- Exemption for Farms that Stay in the Family?



Government Programs

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Types of Government Programs

- ARC – Agricultural Risk Coverage
- PLC – Price Loss Coverage
 - Both ARC and PLC will have “base acres” – acres which have a history of growing certain crops (corn, soybeans)
 - Will also have a certain yield assigned to them
- Disaster Relief
 - USDA may declare certain counties “disaster areas” and farmers may apply for payments

Types of Government Programs

- CRP – Conservation Reserve Program
 - Government pays the farmer “rent” to take the land out of production
 - Contract usually between 10-15 years
- Conservation Security Program
 - Administered by NRCS
 - Government pays the farmer a certain amount of money to conduct certain conservation practices

General Rules

- Can be for landowners or tenants
- Must be “actively engaged in farming”
 - Crop-Share – for landowners
 - Significant contribution of labor, management, capital, equipment and/or land
- Left-hand contributions: capital, equipment and/or land
- Right-hand contributions: labor and/or management

General Rules

- Adjusted Gross Income Rule
- Not eligible if average adjusted gross income for previous 3 years is more than \$900,000
- Husband and Wife each get \$900,000
- Put in place by the 2018 Farm Bill

Payment Limits

- ARC and PLC - \$125,000/person
- CRP - \$50,000/person
- CSP - \$40,000/person
- Disaster Payments - \$70,000 - \$100,000/person
- An ENTITY is 1 person except for a **General Partnership**

Planning for Government Programs

You don't want to reduce eligibility for farm payments by placing them in an entity – Corporation, LLC, joint trust, etc.

- Exception: General Partnership

Example 1

- Husband and Wife own farmland jointly
- If they own jointly in their individual names or in a general partnership, husband and wife are each considered 1 person
- If they transfer the land to a joint trust – the trust qualifies as **1 person**
- If they transfer the land to an LLC or corporation – the entity qualifies as **1 person**

Example 2

- 2 Brothers and 1 Sister own farmland jointly that they want to enroll in CRP
- Each have a \$50,000 payment limitation = \$150,000 total
- If they transfer the land to an LLC or corporation – the entity qualifies as **1 person**
 - **Only qualify for \$50,000**

Example 3

- 2 Brothers farm together and want to enroll in CSP
- If have general partnership – each qualify for up to \$40,000 payment (\$80,000 total)
- If have a corporation or LLC – only qualify for one payment of \$40,000

Planning for Government Programs

Layer entities under a general partnership

- Each spouse or partner has a separate trust or LLC that is a partner in a general partnership

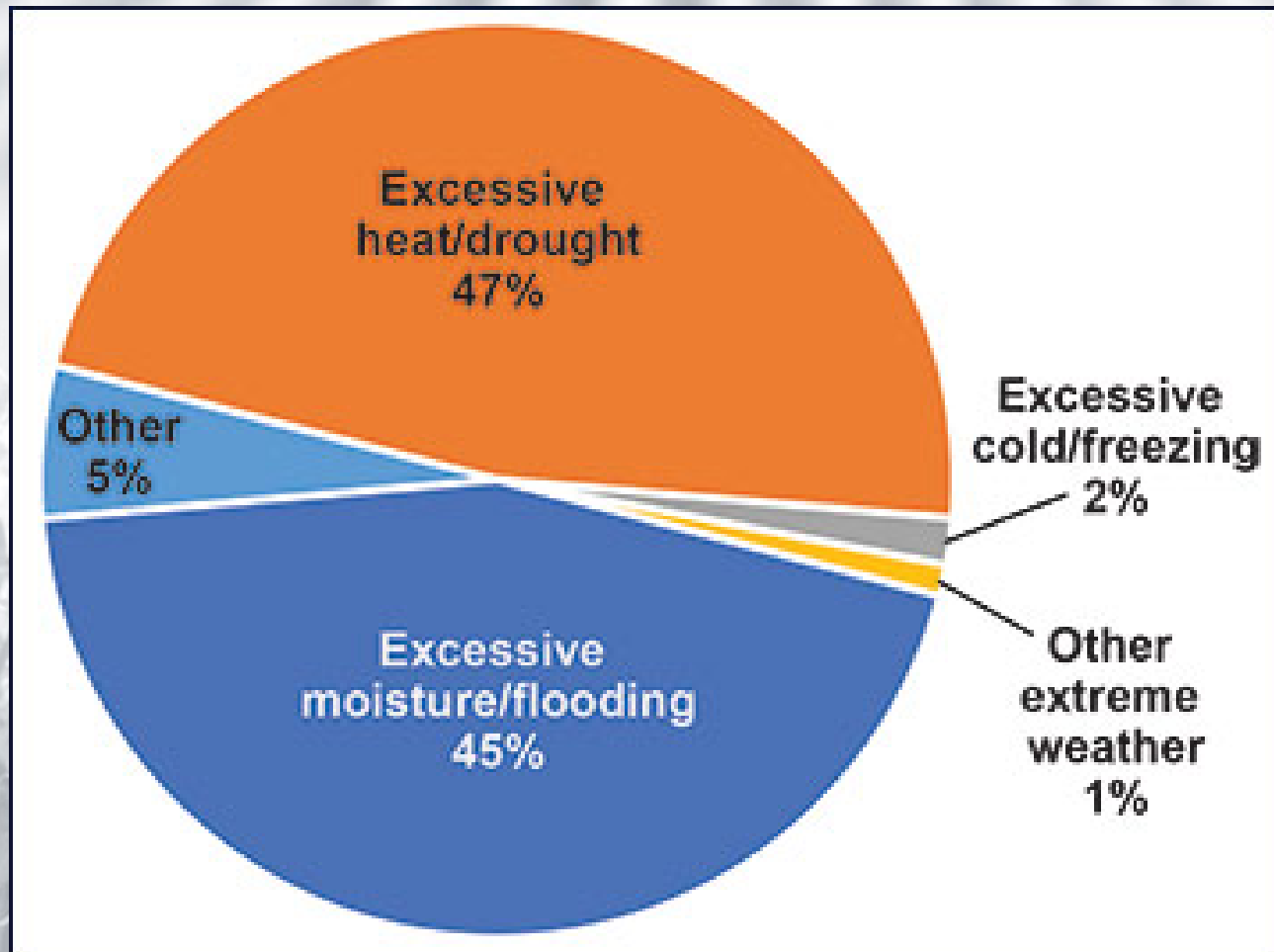
CROP INSURANCE

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What is Crop Insurance?

- Protects Farmers Against:
 - Natural Disasters – Drought, Flood, Tornado
 - Poor Harvests
 - Crop Loss
- Different Events
- Different Crops (Corn, Soybeans)
- Revenue Policy - pays out based on the amount of revenue that the farmer loses because of a certain event
 - Based on Previous Yields

Crop Insurance Protection



*Source: University of Missouri Extension

What is Crop Insurance?

- The Risk Management Agency of the USDA administers the Federal Crop Insurance Corporation
- Private companies sell and service all federal crop insurance products.
- RMA develops and approves the premium rates, administers subsidies, approves and supports products, and reinsures these private companies.

Planning for Crop Insurance

- May want to segregate high-risk land from other land to reduce the overall cost of crop insurance
- Create multiple LLCs to lease the land
- This can adjust from year-to-year



EACH PLAN IS UNIQUE

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