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Family Law Issues in Agriculture: Farm Succession and Estate Planning Consideration

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It is uncommon for agriculture producers and business owners to consider estate planning and succession planning for their agriculture operation in the midst of a divorce; however, divorcing farm families should consider this while negotiating the division of marital assets. These assets may include the farm or ranch business and its assets. After all, divorce is one of the Big Ds that hurt family farms. Here are a few tips and tricks to consider for your negotiation:

Agreements on Inheritances

Divorcing couples with children can agree that the farmland/ranch property plus any farm equipment will go to their children upon their death. The divorce settlement agreement itself can require each party to make provisions in their Last Will and Testament or Trust to this effect.

Agreements or Prenuptial Agreements for Future Spouses to Waive Inheritance Rights

If the Parties chose to ensure children or grandchildren obtain certain farm or ranch property in their divorce settlement agreement, then there should also be a requirement that if either party remarries, then the parties will execute a prenuptial or postnuptial agreement requiring their future spouse to waive rights to such property. There is a separate Fact Sheet for Prenuptial Agreement, which discusses estate rights as they apply to nuptial agreements.

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Agreements on Business

It is a misconception that all farm and ranch assets need to be divided in a divorce. To the contrary, divorcing couples can continue to operate the farm or ranch business together. In this scenario, their relationship shifts to a business relationship so there needs to be business planning involved, especially in light of the strained relationship (and perhaps distrust and acrimony).

In this situation, there is a myriad of issues for families to consider, such as what would happen upon the death of the other party. Do their shares go to the children? Should their shares belong in a trust that automatically transfers to the children upon their death? Similarly, buy-sell agreements should be considered in case one or both parties decide to leave the family business. It may not work being in business with an ex-spouse and this “exit plan” should be properly thought through.

Agreements on Life Insurance

Life insurance can be used for several reasons with divorcing families, including security for child support and spousal maintenance. It can also be used to fund buy-sell agreements in the case of the death of a farm owner, like any other business entity, or can be used as security for payment of farm/ranch liabilities upon the death of either parent to aid in succession.

For more information:

Cari B. Rincker et al., ONWARD AND UPWARD: GUIDE FOR GETTING THROUGH NEW YORK DIVORCE AND FAMILY LAW ISSUES (2015) available at <https://www.amazon.com/Onward-Upward-Getting-Through-Divorce/dp/0692556540>

Cari B. Rincker, “I’m Talking About the Big D and I Don’t Mean Dallas” (May 2019), available at <https://www.slideshare.net/rinckerlaw/im-talking-about-the-big-d-family-law-issues-in-agriculture>

American Academy of Matrimonial Lawyers, Online Book store, available at <https://aaml.org/store/ListProducts.aspx?catid=704530>

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