A will may not be enough to save family farm

. EDITOR'S NOTE: The following information was prepared by E. S. Publishers of Houston, Tex. and is being distributed to major agricultural publications in the United States.

A WILL IS NOT ENOUGH... TO KEEP THE FARM IN THE FAMILY

A will is not enough. It won't protect your family's future.

Inflating property values increase death taxes and probate costs and these threaten farm and ranch families who want to preserve the farm within the family.

The federal estate tax was passed in 1942 for the distribution of wealth. In 1945, only one per cent of all estates had to pay the tax. In 1974, the estate tax yielded the federal government about $5 billion with a considerable part of it from family farms and ranches.

Although you live modestly, you may be "rich" for death tax purposes. Real estate, personal property, savings, stocks, bonds, life insurance and virtually all other assets may be ground up in the tax mill after your death. Even estates of $100,000 or less may get chopped up by settlement costs.

Paying death taxes and other costs can put a tremendous financial burden as well as emotional strain on your survivors.

TRUSTS BENEFITS

Trusts are an unused tool in estate planning for many farmers and ranchers. Yet trusts can deliver these benefits.

Consider using trusts to:

1. Minimize probate costs.
2. Minimize federal estate taxes.
3. Minimize federal gift taxes.
4. Minimize state inheritance taxes.
5. Reduce income taxes.
6. Avoid estate liquidation.
7. Minimize will contests.
8. Maintain privacy.
9. Add flexibility to estate planning.
10. Determine how your assets are held and managed after your death.

Trusts offer another advantage to parents of minor children. If both parents die, a trustee can become the "financial parent" of the children. The trustee is the individual or corporation to whom you commit property to be administered according to your written instructions for the benefit of your beneficiaries.

You can also use a trust to distribute money or property to your children after your death. You can direct that this disbursement be delayed until the time that you believe your children will be mature in judgment.

And the terms of a trust can include a "spendthrift clause" to protect your children's inheritance from being reached by creditors before distribution to them, and also to prevent your children from selling their share while still a part of the trust.

A TRUST

In legal terms, a trust is a fiduciary relationship in which a trustee is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of the beneficiaries.

Stated simply, it's a device for transferring property to a trustee who manages the property for the beneficiaries. A trust can be viewed as a vehicle for handling a gift as well as property management when no gift is involved.

Trusts are relatively easy to set up. A trust can be as flexible or as rigid as you wish. You can tailor a trust to your needs and the needs of your family.

"How do trusts fit in your total farm or ranch business?" asks Neil Harl, Iowa State University professor of economics. "How should you structure your business and what should be the role of trusts?"

The Tax Reform Act of 1976 increased gift taxes in many cases. Also, the new law may result in large federal estate taxes when the surviving spouse dies. But trusts can help reduce these taxes.

Here is one example where the husband owns all the property and wishes to minimize taxes at the death of himself and his wife.

"Generally, a combination of using the marital deduction principle and the life estate principle is used to provide the surviving wife with the use of all the property during her lifetime," explains Richard Weigle, University of Wisconsin farm estate planning specialist.

"If half of a husband's property is left to the spouse outright or in trust so that it can qualify for the marital deduction, this half is not taxed at the wife's death.

"If the other half is left to the wife for life - generally in trust - with right of income for her life, then this half will be taxed at the husband's death, but not at the wife's death. The two halves are taxed separately for greater tax savings."

Several kinds of trust can be tailored to meet nearly any need. But all trusts are either testamentary trusts or living trusts.

A testamentary trust is established by will. It allows you control of your property during life, and then takes effect when your will is probated.

One advantage of a testamentary trust for minor children is that it may be contingent upon several factors. For example, you can state that the trust won't be created if your spouse is still alive when you die.

A living trust can be set up and operated during your lifetime. And, it can continue after your death.

Living trusts can be revocable or irrevocable, depending on the flexibility and type of tax savings you desire.

Revocable living trusts can be changed or terminated at any time before your death. The revocable living trust, or in vivo trust, offers no death tax savings.

A trust is irrevocable when the grantor does not keep the power to revoke the trust and have the assets returned. An irrevocable trust generally protects assets from the probate process and death taxes.

"The irrevocable living trust may provide death tax savings, but it may also result in gift taxes," cautions Arnon Allen, University of Wisconsin law professor.

You may give up to $3,000 per year to each of as many persons as you wish free of gift tax. This allows a married couple to give up to $6,000 to each child each year free of gift taxes.

There is a gift tax marital deduction for gifts to a spouse. That amount is all of the first $100,000 and 50 per cent of all over $200,000.

Beyond that, taxable gifts are covered by the new unified federal gift and estate tax credit. This credit can be used to cover gifts during life or property passing at death, or some each time, but it can be used only once. The credit phases in over a five-year period and is "worth" about $134,000 for gifts made for deaths occurring in 1978. It rises to a "worth" of about $175,000 in 1981.

A TEMPORARY TRUST

The so-called Clifford trust offers unique tax savings. It transfers income from one person to another without transferring ownership.

This tempery trust is established by gift, and the grantor keeps a reversionary (returning) interest in the property. The trust must run for more than 10 years, or for the life of the beneficiary.

For example, you could put some income producing property in a 12-year temporary trust with your minor child as beneficiary. Because your child receives the income earned by properities in the trust, that income is not taxable to you. Your child pays the income tax, if any. When the trust terminates, the property reverts to you. This explains a simple trust. An attorney or trust officer can explain a complex trust - if he has the knowledge.

Temporary trusts have become more popular because the new law has increased gift taxes in some cases. Also, continuing inflation makes many people reluctant to give away property if it may be needed later.

There is a gift with temporary trusts, but only of the value of the income amount for the duration of the trust.

If you plan to fund the trust with farmland and then rent it back, check with your tax advisor about deductability of the rents paid.

Capital gains and losses go to the grantor of a temporary trust, not the beneficiary. The grantor also bears the tax effects from the sale of the trust's assets. Evaluate the other benefits and limitations of this type of trust before deciding if it may prove beneficial to you and your family.

A TRUST FOR RUNNING A BUSINESS

There is a business device little used by farm and ranch families. The Massachusetts business trust is designed primarily for running a current business.

And although this type of trust originated in Massachusetts, it could probably be used anywhere.

With this agreement, the assets of a business are transferred to trustees who might be yourself, your spouse, your adult children or anyone else you select. The trustees have complete power of management.

The beneficiaries of the trust could be the trustees themselves, other members of the family or anyone else selected.

This trust is similar to a corporation with the trustees acting like directors and officers, and the beneficiaries similar to corporate stockholders.

In state restricting corporate farms, this type of trust might be useful. There may also be significant income tax and death tax advantages.

ILLINOIS LAND TRUST

The Illinois land trust is a special form of business for holding and managing property. While most states do not recognize this type of trust, it could be worth investigating.

An Illinois land trust agreement transfers property to a trustee. "The trustee acts only on direction of the beneficiary to sell, mortgage or lease property as well as collect rent or take other action affecting use of the property," says John McCord, University of Illinois law professor. "The trustee holds little more than bare legal title."

The main benefit is ease of conveying partial interests in property. Instead of deeding pieces of a land parcel to several children, for example, each child can be assigned a percentage of beneficial interest in the trust.

This approach keeps the original land parcel intact while conveying the desired interest to each child or other beneficiary. It has been held in Illinois that the owners of the beneficial interests do not have an automatic right of partition. This solves the concern about one child breaking up a parcel by sale of interest or other manner.

Also, the income-splitting benefit may be important in some tax situations.

Many people think that only a man needs to set up a trust. While most trusts have been set up by men to benefit their wives and children, this is often because men have been regarded as the income earner and because women live an average of seven to ten years longer than men.

But today women need to take an active role in estate planning. The new federal estate tax law can result in large taxes upon the death of surviving spouse, so it is important that wives develop their own estate plan.

EXPERT COUNSEL

After you develop some ideas about what you would like to do, consult with specialists such as tax experts, attorneys, trust officers and others.

And then after you set everything up the way you want it, don't just forget it. Review your plans regularly as your situation changes. Your needs and the needs of your family may change, too.

You can provide your family with security, opportunity and tax savings both now and after your death. This is the purpose of estate planning.

1. Eliminate probate costs on trust assets.
2. Eliminate or minimize federal estate taxes.
3. Eliminate or minimize federal gift taxes.
4. Eliminate or minimize state inheritance taxes.
5. Reduce income taxes.
6. Maximize liability protection.
7. Avoid the grief of dissolution of family assets in event of death.
8. Protect against estate liquidation.
9. Reduce will contestment.
10. Protect family solidarity.
11. Promote family privacy–and avoid publicity.
12. Protect assets from personal judgments and debts.
13. Eliminate third party control of assets.
14. Eliminate third party administration fees and service charges.
15. Protect trustees from personal liability.
16. Protect beneficiaries from personal liability.
17. Be managed by its trustees who normally are family members.
18. Own the assets with which it deals.
19. Function without license or franchise fees.
20. Function in any state since it is common law organization, created by contract.

Even with a modest estate, you cannot afford to ignore the devastation toll exacted by the probate-death tax system.

For further information on this subject, you may write E.S. Pubishers, Suite 605, 11211 Katy Freeway, Houston, Texas 77079. A book of interest to farmers, ranchers, and property owners will be sent free upon request.