

Farm Management

More than a will needed to avoid probate



Farm & Family

BY RYAN PROCHASKA

If you have a will, your estate will likely go through probate. During the administration of your estate, an inventory of your assets is assembled, and assets are classified as either probate or non-probate.

Probate assets are owned individually and do not pass by operation of law. Common examples include land, owned individually or as tenants in common, and bank accounts, vehicles and machinery.

Non-probate assets transfer by operation of law, typically through joint ownership and beneficiary designation. If upon your death, the value of your probate assets is greater than \$50,000, or you own any real estate individually or as tenants in common, your estate will go through probate.

Probate process

The first step of the probate process is to assemble an inventory of assets owned individually or as tenants in common by

the deceased as of the date of death, and get a valuation of those assets. In order to obtain values for the checking accounts, savings accounts, investment accounts and retirement accounts without beneficiary designations, letters are sent to the respective financial institutions asking for an exact valuation on the date of death. Vehicles are typically valued using the Kelly Blue Book. Finally, real estate and farm equipment must be appraised as of the date of death. The inventory must be filed within nine months of the decedent's death.

Once an inventory is assembled, documents are filed with the court and there is either a formal or an informal hearing scheduled. After filing the required documents with the court and appointing a personal representative, notice must be given to all known creditors. Additionally, the personal representative must publish notice once a week for two consecutive weeks in the legal newspaper for the county of probate.

Once notice has been published, creditors have four months to present claims against the estate to the personal representative. After this period has passed, the personal representative has two months to allow or disallow the claim. For any disallowed claims, the creditor has two months to petition the court to allow the claim.

Once all claims have been paid, there will be a final accounting and the personal representative will distribute the remaining assets according to the terms of the will. The length of time to administer the estate will vary. Typically, it will take 12 to 18 months for the closing and distribution of the estate.

How to avoid probate

Consider Henry, a retired farmer, and Wilma. They have one son, Sam, who farms. Henry gifted all of his equipment to Sam after retirement. Henry's and Wilma's estate comprises the following assets: \$100,000 in checking and savings, \$50,000 in investment accounts, \$50,000 in combined retirement accounts, two vehicles worth \$40,000, and 160 acres with a homestead worth \$800,000. The cash accounts have a payable on death, and the investment and retirement accounts have beneficiary designations.

The probate assets are the two vehicles and the 160 acres with the house. Because they own real estate, Henry and Wilma's estate will go through probate.

However, by drafting a transfer on death deed, which is essentially a beneficiary designation for real estate, or transferring the land into a revocable living trust, the real estate is no longer a probate

asset. If Henry and Wilma use either tool, their vehicles would be under the \$50,000 limit and their family would avoid the time and costs associated with probate.

For farmers with larger and more complex estates, transfer on death deeds are less practical, and probate can only be avoided by using a revocable living trust.

Consider Frank and Louise and their son, Seth. The assets of Seth and his wife include \$100,000 in cash accounts, \$50,000 in investment accounts, \$750,000 in life insurance, \$500,000 in equipment and 480 acres worth \$2.75 million. Because Seth owns \$500,000 in equipment, his estate will always be subject to probate unless he has a revocable living trust. A revocable living trust is an estate plan that designates how you want your assets to be distributed and is effective upon signing.

By retitling probate assets, such as land, farm equipment and vehicles into the trust, probate is avoided. Additionally, a trust will allow Seth and his wife to put in provisions to allow their children to farm in the future.

Contact an attorney to assess your estate plan or to develop one to avoid the time and costs of probate.

Prochaska is an attorney at law with Miller Legal Strategic Planning Centers P.A., Tyler. Email him at comments@millerlegal.com.



Smaller tractor to install tile

IMAGINE installing tile drainage with a 105-hp tractor. You can do it with the new Gold Digger Stealth ZD from Soil-Max. This Category II three-point mounted tile plow is the easiest-pulling plow on the market, according to the company. It is made out of T1 steel to be lighter and stronger. Replaceable shears allow the plow to be as wide as needed. It will tile up to 4 feet deep and lay 2- to 4-inch tile. Call Soil-Max, Brazil, Ind., at 888-764-5629, or see soilmax.com.

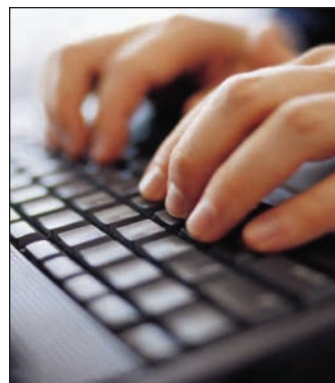
Trench like a real beast

THIS is not your average rental trencher. Tesmec's TLM 60/60 will probably not be seen on many average farms, but its size deserves a little respect. Weighing in at 240,000 pounds, the trencher is designed for professional contractors working with water mains. It has a digging depth of 14 feet and width of 60 inches. Contact Tesmec, Alvarado, Texas, at 800-851-5102 or tesmec.com.



New Nachurs fertilizer products

NACHURS has four new products: YaraVita Procote, a fertilizer pellet coating which helps ensure even distribution of micronutrients; Rhyzo-Link, a fertilizer containing growth promoting rhizobacteria; Aqua Tech 7-20-4, a liquid fertilizer that has improved nutritional product with compatibility agents for use in all types of irrigation systems; and Bio-K, a natural plant metabolite form of K. See a Nachurs dealer or visit nachurs.com.



Online equipment sales from Ritchie Bros.

RITCHIE Bros. Auctioneers now offers online equipment and material sales. EquipmentOne.com is a fair, easy and safe place to buy and sell ag equipment and materials online. Membership is free, and anyone can buy and sell. List items, make bids, negotiate and complete transactions online. Ritchie Brothers runs a secure escrow process. Learn more from Ritchie Bros, Caseyville, Ill., at 618-688-1625, or see rbaction.com or equipmentone.com.