Advertisement

Trait Stewardship Responsibilities Notice to Farmers

Do not export Genuity® Roundup Ready® Alfalfa seed or crop, including hay or hay products, to China pending import approval. In addition, due to the unique cropping practices **do not plant Genuity® Roundup Ready® Alfalfa in Imperial County, California,** pending import approvals and until Monsanto grants express permission for such planting.

Monsanto Company is a member of Excellence Through Stewardship® (ETS). Monsanto products are commercialized in accordance with ETS Product Launch Stewardship Guidance, and in compliance with Monsanto's Policy for Commercialization of Biotechnology-Derived Plant Products in Commodity Crops. This product has been approved for import into key export markets with functioning regulatory systems. Any crop or material produced from this product can only be exported to, or used, processed or sold in countries where all necessary regulatory approvals have been granted. It is a violation of national and international law to move material containing biotech traits across boundaries into nations where import is not permitted. Growers should talk to their grain handler or product purchaser to confirm their buying position for this product. Excellence Through Stewardship® is a registered trademark of Biotechnology Industry Organization.

Individual results may vary, and performance may vary from location to location and from year to year. This result may not be an indicator of results you may obtain as local growing, soil and weather conditions may vary. Growers should evaluate data from multiple locations and years whenever possible.

Always read and follow IRM, where applicable, grain marketing and all other stewardship practices and pesticide label directions. Roundup Ready® crops contain genes that confer tolerance to glyphosate, the active ingredient in Roundup® brand agricultural herbicides. Roundup® brand agricultural herbicides will kill crops that are not tolerant to glyphosate. Genuity Design®, Genuity Icons, Genuity®, Roundup Ready® and Roundup® are trademarks of Monsanto Technology LLC. All other trademarks are the property of their respective owners. ©2014 Monsanto Company. 30780R1

Farm Management

A will or revocable living trust? It depends on goals

Farm & Family

By STACEY LEE

Key Points

- Goals and circumstances dictate whether one should have a will or a trust.
- A will does not allow you to avoid probate court in Minnesota.
- A revocable living trust offers more flexibility.

WE'VE been following estate planning for Joel and Kim, dairy farmers in their mid-50s, who were first introduced in the May issue of *The Farmer.*

We set up three limited liability companies — one for their dairy farming operation, another for the dairy confinement facility and minimal pasture acres, and a third for their crop real estate and sheds.

This August I will discuss the differences of using a will-based estate plan vs. a revocable living-trust-based estate plan.

Joel and Kim, like many of our clients, ask if they need a will or a trust. Our response, as estate planning attorneys, is, "It depends."

It depends primarily on the clients' goals, wishes and aspirations. And it depends on the clients' past history with and knowledge of estate and trust administration, the size of the estate and potential estate tax liability, the makeup and dynamic of the family, the need for incapacity planning, the importance of the administration being private, and their desire for asset protection.

We consider the foundational document of an individual's estate plan as being either a will or an RLT. This foundational document is then used to address the individual's entire estate, either specifically addressed or dealt with through the estate's residue distribution clauses.

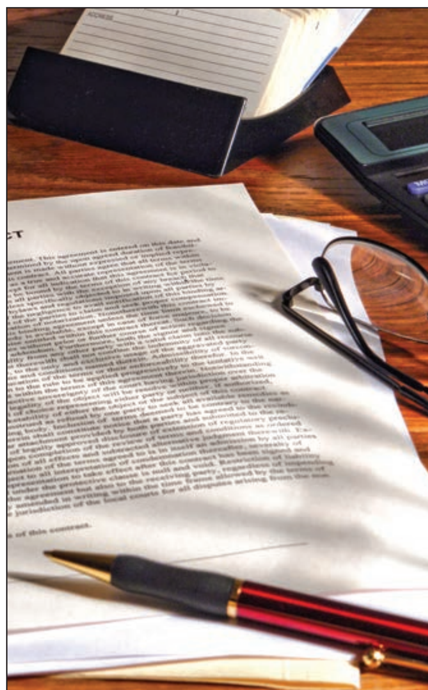
Will-based estate plan

A will works great for many clients. It is relatively simple to draft, can be amended prior to incapacity or death, and does not require any retitling of assets. A will essentially appoints a personal representative to handle the administration of your estate, directs the distribution of the estate assets, and sometimes names guardians or conservators for minor children.

It is important to know, however, what a will cannot do. One of the biggest misconceptions estate planning attorneys hear is when clients say their estate will not have to be probated because they have a will in place.

This is not true. In Minnesota, if you own $1 of real estate or $50,000 in other assets in your sole name at your death, your estate will need to be probated in court in order to distribute your assets according to your will. If you don't have a will, the Minnesota intestacy statutes will govern.

Probate is a court proceeding where the will is submitted to the court; the probate case is published in the newspapers to allow time for creditors to make claims; the personal representative is appointed; an inventory of the estate is submitted; and final distribution of the assets is approved by the court.



Probate proceedings are sometimes frustrating for the heirs, and they are open to the public.

Bottom line, however, is that a will alone does not automatically avoid the need to probate one's estate. If probate avoidance is high on the priority list for the client, this may not be able to be accomplished with a will-based estate plan.

In addition, a will only takes effect at death. So, it is not possible to plan for the event of incapacity with a will. For many clients, it is very important to address what they wish to happen should they become incapacitated in either a farming accident, a major health concern or due to aging. If incapacity planning is significant to the client, a will-based estate plan may not be the best option.

Note that there are wills that establish trusts after the death of the individual, often called testamentary trust wills. These types of wills help minimize potential estate tax liability, especially in Minnesota. However, these wills are still subject to the probate and lack of incapacity planning issues stated above.

RLT-based estate plan

A revocable living trust appoints a trustee to handle the administration of your trust, both during your incapacity and after your death. Options to use, rent or purchase at certain terms during incapacity or at death to one or more individuals or heirs can be stated in the RLT.

Restrictions, if desired, on the trust assets relating to when trust assets can be transferred or sold can be stated in the RLT as well. In addition, RLTs can be amended or revoked at any time prior to incapacity or death by the trustees.

Assets are funded into the RLT, removing the assets from the individual's sole name, which subsequently eliminates the need to probate those assets.

Another advantage of an RLT is that the trust terms can be kept private, versus on public record through a probate proceeding.

RLTs are also used to minimize, if not eliminate, estate taxes due to using the exemptions of both spouses. There are several asset protections available in RLTs as well, including provisions addressing divorce, remarriage and creditors.

Joel and Kim's RLT plan

When deciding whether to use an RLT or a will as the foundational document of Joel and Kim's estate plan, we began by focusing on the clients' initial goals, which included planning for both incapacity and death, succession planning for their farming son, and asset protection for their heirs.

Incapacity planning was very important to the couple as both wanted to ensure that their farming heir would be able to continue farming and be able to finance the operation at terms they felt were reasonable and fair to both the farming heir and their nonfarming heirs. This could not be achieved through a will.

In addition, the clients had personal reasons for wanting to keep the administration of their estate private.

Lastly, the clients really liked the fact that the RLT could be amended over the years to adapt to changing circumstances if need be.

So we decided to move forward with an RLT-based estate plan. The RLT included provisions that addressed what would happen with the various LLCs, as well as the remaining assets of the estate, during both incapacity and death. All options included considerations of providing the desired income stream to the surviving spouse, as well as addressing the needs of the farming heir to financially be able to sustain the farming operations.

We also included a few restrictions on the sale of the LLC membership interests that owned the farm real estate, giving the first option to purchase these membership interests on certain terms to the surviving siblings or farming descendants. This was to satisfy the clients' goal of keeping the farm real estate in the family before it is offered to outside parties.

In September, I'll discuss Joel and Kim's goal of providing the possibility for their farming heir to financially continue and take over the farming operation, while considering their other nonfarming heirs in their RLT-based estate plan.

Please feel free to email your questions and comments to Miller Legal at *comments@millerlegal.com*.

Lee is an attorney at law and CPA with Miller Legal Strategic Planning Centers, P.A., Tyler. Visit the firm's website at www.millerlegal.com.