

Farm Management

Wrap up estate planning with a family meeting



Farm & Family

By STACEY LEE

THIS month, we will wrap up the setup phase for the estate planning scenario of Joel and Kim, the dairy farmers in their mid-50s, who were first introduced in the May edition of *The Farmer*.

We will discuss pour-over wills, power of attorneys, healthcare directives and holding a family meeting to review the client's estate plan with their children.

Pour-over wills: Joel and Kim have created revocable living trusts, which were funded with many of their assets. As a necessary companion to the RLTs, we also drafted pour-over wills for Joel and Kim. These pour-over wills are often very short, as they merely "pour over" any assets the decedents own at the time of their death. It catches all assets not funded into the RLTs and "pours" those assets over to the RLT, to be distributed as the RLT states and consequently then receive all the asset protection provisions and specific options granted to the heirs that are provided for in the RLT.

Please note, however, that one of the largest misconceptions that many clients have is that assets covered under a

Key Points

- Pour-over wills are short and cover assets owned at the time of death.
- Power of attorney names agent to make decisions for you when you cannot.
- A family meeting at conclusion of estate planning ensures no surprises for heirs.

will are not subject to probate, the court proceeding that governs the distribution of a decedent's estate. To be clear, a will does not avoid probate (see August 2014 article for estates required to be probated in Minnesota).

By statute, the RLT governs assets that the RLT owns, and the pour-over will governs all other assets. However, for Joel and Kim, we had reviewed their estate plan accordingly, funding certain assets into their RLTs, naming beneficiaries and titling assets appropriately to take as many measures as possible to avoid the need for probate, as probate avoidance was a goal in this client's estate planning.

Lastly, the pour-over will named personal representatives to work with the trustees of Joel and Kim's RLTs to administer their estate. Oftentimes, the personal representatives named in the pour-over wills are the same as the trustees of the RLTs to make it easier for the estate and trust administration.

Power of attorneys: We also created power of attorneys for Joel and Kim,



naming agents to make decisions and act with regards to their financial matters when Joel and Kim could not do so for themselves. We drafted "springing" power of attorneys, which only take place upon Joel or Kim's incapacity, or when they decide to sign a certification making them immediately effective.

Joel and Kim are currently able to make all of their financial decisions, so there is no need to give these powers to anyone else. However, if they were not able to do so, an agent that they trust is now named to act for them with regards to particular financial matters.

Please note the following:

- The trustees of their RLTs handle the trust assets and the power of attorneys handle the assets not owned by the RLTs.
- The power of attorneys are durable, which means they are effective through disability and incapacity.
- The power of attorneys end upon Joel and Kim's deaths.
- The power of attorneys can be revoked or terminated anytime prior to incapacity or death.

Healthcare directives: We rounded out the initial documents of Joel and Kim's estate plan by creating healthcare directives for each of them, naming agents to make various healthcare decisions for them when they are unable to make these decisions for themselves.

Oftentimes, the healthcare directive can be the most important document in an estate plan, as end-of-life decisions stay with a surviving spouse and/or children for the rest of their lives. Putting Joel and Kim's wishes regarding their healthcare and end-of-life decisions in writing is truly a gift that will give guidance to their medical professionals and healthcare agents, as well as other family and friends.

We addressed many of Joel and Kim's concerns and wishes, including the following:

- the specific healthcare decision-making powers given to their healthcare agents
- giving rights to the healthcare agents to receive medical records
- giving rights to the healthcare agents to decide where Joel and Kim receive healthcare and where they may need to

live at some point in the future

■ laying out specific language as to treatment, or non-treatment, to be given if the clients are terminally ill and unable to express their own wishes.

■ addressing organ donation

■ addressing client's preference in regards to a regular burial versus cremation

Family meeting: Lastly, Joel and Kim preferred to schedule a family meeting to go over their estate plan with their children. The advantages of family meetings are that the estate plan is reviewed with all members of the immediate family present. The options given during both incapacity and at death can be explained to all, as well as the options after death, the distributions of the estate, the asset protections given, the buy-out provisions of any entity can be reviewed, and the ultimate goals of wishes of Joel and Kim can be communicated to the family with everyone present.

The focus of these family meetings is to provide an understanding of Joel and Kim's estate plan according to their objectives. However, with these family meetings often come many questions and concerns from the family members. Sometimes the meetings can be very sensitive, and at times, adversarial.

Our goal is to meet the estate planning objectives of our clients to the best of our ability, according to the laws currently in place. The decision to hold a family meeting to review estate planning is made on a per-client basis, weighing the advantages and disadvantages.

Joel and Kim's family meeting took place in a conference room, generated a few questions, and provided a greater understanding and level of comfort in regards to the family farming operation and the remaining estate assets.

We continue to meet with Joel and Kim on an annual basis, reviewing their estate plan and discussing any changes to their farming operations, the income and estate tax laws, and their family dynamic.

The ongoing review is an essential phase of our client's estate plan.

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U-M makes FairRent software available

THE Center for Farm Financial Management, part of University of Minnesota Extension, has just released a tool to help producers and landlords evaluate alternative land-rental arrangements.

FairRent for the Web is a new and improved Web version of the FairRent desktop software that CFFM has distributed for more than 20 years.

Land-rent negotiations are going to be very challenging this year, according to Dale Nordquist, University of Minnesota Extension economist. He says that at current commodity prices, it is important for producers to know their costs and to look at options to limit downside risk.

"The common reaction we get to 'FairRent' is that there is no such thing," he says. "And that will likely be true this year. It looks like there will be a large divide between breakeven rental rates and the current market for cash rents.

Given this divide, it will be even more important for everyone to be equipped with the numbers when they enter into this fall's negotiations."

One option to limit risk might be a flexible cash lease, one that shares the risk of low prices and/or yields with the landlord, while rewarding the landlord with a portion of the gains if prices and/or yields exceed expectations.

The new Web version of FairRent includes the option to evaluate seven different flex-lease options as well as traditional cash-rent and share-rental returns. Another improvement is the inclusion of crop insurance in the analysis to show how insurance limits downside risk.

FairRent is free. Sign up at fairrent.umn.edu and begin creating rental plans.

Also, FINBIN (www.finbin.umn.edu) offers additional information on crop production costs for rental plans.

Source: U-M Extension