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Avoid These 5 Common Estate Planning Mistakes Farmers Tend to Make

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Common Mistake #1

"I'm doing nothing because I'm worth less than $11.4 million," or the similar reasoning: "Because my wife and I are worth less than $22.8 Million."

1. Taxes are probably not your biggest problem! Family farms are destroyed more often by feuding families than by taxes.

2. You may have a false sense of security that your total assets are worth less than $22.8 million. What's your farm ground really worth today? What are your neighbors selling for? Maybe you have a lurking tax problem.

3. Who knows what will happen after 2025? The estate tax exemption reverts to half this level in 2026. Anything could happen between now and then.

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Common Mistake #2

"I want to treat all my kids exactly the same."

NO

#1 lesson Fair does not mean equal!

Change your mindset!

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Common Mistake #2A

"My kids will just figure this out after I'm gone."

NO THEY WON'T

#2 lesson: Draw a road map. Take responsibility for your legacy. Tell your kids what to do.

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Common Mistake #3

- "I plan to title my property jointly with my children and their spouses so that it automatically passes to them at death."
  - Avoids probate administration.
  - Is it best to leave property outright to child? That puts your farm squarely in their estate in the event of divorce or other creditor problems.
  - They have to consent to mortgage or sell it now – lost control over it.
  - Hey wait – you just made a taxable gift and need to report it on a gift tax return and the kids' basis in 50% of the whole is carryover basis = FMV on date of gift without the benefit of step up.
- Consider Transfer on Death (TOD) Deed instead.

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Common Mistake #4

"I'm just going to sell my last crop, have an equipment auction and retire."

– No! Huge tax liability.

– Careful planning can reduce tax hit.
  - Use of corporation to own operating assets, then sell stock in corporation to successor
  - Charitable remainder trust

Common Mistake #5

"I'm just going to copy what my neighbor did."

- No cookie-cutter approach.
- Lifetime gifting may be great for some, and rotten for others.
- This is very fact-sensitive.
- Every family has different goals – and these are emotionally sensitive to address.

Will the Kids Sell? What's your basis?

- ✓ Lifetime gifts remove appreciating assets from donor's estate resulting in estate tax savings.
- ✓ Lifetime gifts = "Carryover Basis" → Recipient receives your low basis in your land.
- ✓ Inherited assets = "Step up in Basis" → Recipient's basis is equal to fair market value on date of death.

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Will the Kids Sell? What's your basis?

- ✓ Lifetime gifting may <u>not</u> be advisable if there may be a future sale.

- ✓ Careful analysis of Estate Tax vs. Capital Gains Tax is necessary before gifting.

- ✓ In light of new tax laws, higher exemptions, returning gifts previously received to original donor may be best (wait… what!?).

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How's your Ground Titled? Maximize the Step Up!

- ✓ Step up in basis to fair market value at date of death is very powerful!
- ✓ Many farms are owned ½ by husband (or his trust) and ½ by wife (or her trust). That limits the step up in basis for the whole farm at the second death. Re-examine titling!
- ✓ Old A/B trust planning may have "trapped" an interest in ground in the first deceased spouse's credit shelter trust – may be able to get it out so that it receives a full step up at second death.

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Another Possible Mistake

- “I’m going to give away the remainder interest, but hold on to the life estate to retain control and income stream.”
  - This is not a good plan for someone trying to minimize death taxes.
  - Retained interests such as this cause 100 percent of the value to be taxable upon the death of the life estate holder under the Federal Estate Tax.
  - Does result in a step up in basis. Does avoid probate administration.
  - Vested interest at risk for remainderman’s divorce & must consent to mortgage/sale and share profits proportionately.
  - Could help with Medicaid/Nursing Home Planning

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Questions?