ESTATE PLANNING:
For the Family Farm or Business

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So-called "business succession planning" has always presented unique challenges to estate planners. And while there are certainly many challenges to successful business succession planning, due to the limited space available, this article will discuss only one aspect of business planning: The threshold issue of how to plan for a business to pass to the next generation when only some of the children are involved in the business operations.

While most families want to leave what they have worked to create to their descendants in a relatively equal manner, businesses can sometimes make that objective challenging.

In some families, not all of the children have been engaged in the business. That is, while one or more children may want to inherit the business, others may just as soon receive a cash equivalent. In these cases, decisions have to be made by the business owner as to whether equalization is an objective, or even practical.

The business operation often makes up a disproportionate portion of the entire estate. For instance, if a husband and wife own a farm operation that is worth $5 million and have a total estate of $6 million; and if they have three children, only one of whom is involved in farming; the couple doing the planning would have to decide whether providing the two children who are not engaged in farming something relatively equal to what the farming child is to receive is an objective. And if so, they have to decide whether it can be accomplished in a practical manner.

For some business owners, the simple answer is that the child who is engaged in the business will receive substantially more than the other children. Often, these business owners feel that the child receiving the disproportionate gift is entitled to it by virtue of the work they have done in the business over the years.

In other circumstances, the decision will be to try to provide something of significant value to the children who have not been engaged in the business. This is sometimes accomplished through the purchase of life insurance, or by requiring the child that receives the business to "buy out" the interests of the other children either from the income generated by the business over time, or by requiring the child receiving the business to obtain sufficient financing at the time of the inheritance; or some combination of both.

In some families, none of the children are engaged in the business, and the plan would be for a key employee to buy out the business at death, or for the business to be put up for sale.

In all business and farm succession planning cases, there are numerous other considerations that cannot be addressed in this article, including:

1. The nature of the entities in which the business should be held: such as corporations, limited liability companies, or partnerships
2. Whether interests in the business should be gifted during the life of the business owner, and if so, how control is maintained as shares are transferred
3. Whether business interests should continue in trust or be subject to other legal controls so that they "stay in the family" and are not corrupted by divorce or bad decisions of the subsequent generations
4. Environmental issues that require special planning considerations
5. And taxes: estate taxes, property taxes, and capital gains taxes; each of which requires careful consideration

In the end, planning to pass a family farm or business to a successive generation involves many moving parts. The sooner a business owner begins to plan for succession, the more options they will have to accomplish their objectives with the most favorable results.