

THE PROBLEM: Is it possible for parents and working heirs to put in writing their expectations for the distant future?



SUBMITTED BY E.I. VIA EMAIL

There is a sentence that I see in your December 2012 article that I have often heard expressed: “It is also my way of paying him for the years he worked with me and took on the lower pay and the risk involved.”

I don’t see you addressing that key concept of the mix. Father and farm son may have an understanding on that, but most often that understanding is not translated into a concrete plan to compensate the farm family in any distinct settlement.



Fortunately, legal documents aren’t the only form of writing that can clarify assumptions and misunderstandings.

– Dr. Donald Jonovic



By the time estate settlement comes around, everybody else has mentally discounted that understanding to a lesser – or usually a much lesser – extent.

Maybe the farmer – or better yet both father and son – needs to treat the business as a business and take that farming son into partnership, transferring ownership of some property as the years pass.

Maybe they also need to add as part of that agreement that the farming son will give senior care to his parents at a given ownership rate per year. Many times, senior care is what we see happening anyway, and it’s the child who is close by who takes on the lion’s share of caregiving.

Shouldn’t these understandings also be defined in writing as legal documents?

THE SOLUTION:

We know that written agreements are important and often essential to effective succession on the family farm. E.I. raises a deeper question, though: Shouldn’t we also have legal agreements for transition expectations to be fulfilled many years in the future?

This question gives most of us pause. The distant future is a fog. How can we commit that far ahead? We may have intentions to do something, but we remain far from decided on exactly what and how.

Fortunately, legal documents aren’t the only form of writing that can clarify our assumptions and minimize misunderstandings. I say fortunately, because many times transition agreements begin more as intentions than specific rights or hard numbers.

Consider the following two examples from written documents. The first is from a buy/sell agreement; the second is from a letter signed by a son and his parents:

» “The ‘Purchase price’ shall be one

times the ‘book value’ of the Offered Units on the last day of the month most recently ended. . . .”

» “This is our full and current intention for the farm: Sometime prior to 2020, Bruce should have the opportunity to buy the farm assets from us or our estate at a discount recognizing his less-than-market current pay, assuming Mom and Dad remain secure. We will review this understanding yearly.”

The first is a legally executed contract that creates rights and obligations that can be changed only with difficulty, if at all. The second clarifies an understanding, but it’s hardly a binding contract. It is prelegal, a start down the path to legal agreements and contracts.

These informal, written understandings actually accomplish a lot. What has been promised is defined. What is not defined is presumed not to be promised. Also, both the parents and their heir commit to ongoing discussion as things change and the situation evolves and becomes clearer.

Such documents can also communicate intention early on to the other heirs and, maybe more importantly, the in-laws. Transition agreements are better built stone by stone than discovered by avalanche just after death. •

Dr. Donald J. Jonovic

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