

Avoiding a three-D disaster on your farm

Ryan Baker for *Ag Proud*

All closely held businesses, including family operations and partnerships, need to have an updated buy-sell agreement in place. The buy-sell agreement is one part in your framework of legal documents that maintain the future existence and operation of your business when certain events occur. This article highlights three such events to help you avoid disaster for your farm or business. We'll refer to these collectively as the three D's: divorce, disability or death of an owner.

A couple of caveats before we move forward:

1 Having the three D's addressed in your buy-sell or operating agreement is important but does not cover everything. By contrast, our process addresses more than 20 key decision points that need to be considered to protect yourself, your family and your business.

2 This work must be done proactively before an event takes place, so don't put it off or assume everything is covered in an existing document.

To be clear, if you have a poorly written or nonexistent document, the path in front of you can lead straight to court with tremendous legal cost, ruined relationships, time and energy sucked away from your family and the potential unwanted forced sale of your farm or business. Certain issues can take many months to settle, making the day-to-day decisions needed to run your business in the meantime extremely difficult. These are results of allowing the disaster scenarios to play out.

Five potential disaster scenarios

For the sake of simplicity in this article, we'll structure an example using two equal business partners: you and your partner "Jim."

Imagine your partner Jim just got divorced – and because his business was by far his largest asset, it was split in the divorce settlement. Now you are in business

with Jim's ex-wife, who has a say in your business moving forward. Happy?

Imagine Jim gets remarried, then dies a few years later, leaving his remaining interest to his widow. Now his widow and his ex-wife control 50% of your business. How are you feeling?

What if Jim was a majority owner? Now you work for two people who never had anything to do with the operation and possibly don't get along with each other. Would you call this a recipe for success?

Now let's switch gears for this next one and say you were disabled in an accident to the extent you will never be able to perform your current role in the operation again and you need money for ongoing medical care. Will the operation be able to afford to hire your replacement and still have enough reliable profit distribution to cover your medical needs? Will your spouse (or caregiver) be in a position to negotiate with your business partner when you cannot?

If you die before Jim, how do you feel about your spouse or your kids being in business with your former partner when you are gone? How about with his ex-wife and her attorney?

Four tips if this got your wheels turning

My hope is you are thinking about your own situation at this point, and this is enough to get you in gear to either review your current buy-sell design or put something in place for the first time.

Here are a few things to keep in mind as you think about the process:

Tip No. 1: When you think through the agreement for your situation, you always need to think of it from both buyer and seller perspectives because you never know which side of the agreement you will find yourself on, and you will want to feel it is fair either way.

Tip No. 2: The agreement is not set in stone. When the time comes to take action,



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you can always agree to some alternative solution. The buy-sell is a backstop in the event of a future disagreement or if one of the partners is unable to participate in the discussion.

Tip No. 3: This article only touches on three out of the more than 20 decision points in the document design process. That doesn't mean all points are baked into the document; some may not apply or may be chosen to be omitted, but they will have been discussed and a proactive decision will have been made for each when the document is ready.

Tip No. 4: Consult a business planning professional for a second opinion. We offer a second-opinion consultation for free, as do other businesses. Your documents may or may not include buy-sell provisions; however, you will likely discover your current documents fall far short of what you actually want once you understand the options.

In summary

The risk of this kind of disaster playing out on your farm or business is real; you've probably seen it happen. You can do something about it by following an established process to address the issues. The first step is to have your documents reviewed by a business planning professional because this is a situation where most business owners "don't know what they don't know."

Take control now; don't put it off to address down the road. If you wait until something has happened, it is probably too late. **AG**

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