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Pick Estate Advisers Who Make the Grade

Minding Ag's Business
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How Do I Know My Estate Planners Make the Grade

Today I'm again bantering with family business mediator and DTN-Progressive Farmer Columnist Lance Woodbury on farm family succession tips. Based in Garden City, Kan., Lance has been facilitating business transitions and mentoring heirs for more than 20 years. He knows the complexity and emotions involved in talking out priorities. In the process, he also comes in contact with lawyers, accountants and others who provide the technical and legal services to implement plans.

Taylor, DTN: Lance, how do I know I have the right technical team to help plan an estate and business succession? What should I look for in a “good” professional adviser?

Woodbury: Marcia, I receive calls from a number of family business members asking about various tax, legal or succession planning strategies. For example, in a recent meeting someone asked me if I thought an “Intentionally Defective Irrevocable Trust” was a good fit for them. I'm not an attorney, but the answer to whether that or any other strategy fits is an unqualified “it depends.” There simply is no one-size-fits-all transition technique. There are, however, a few points to consider when assessing your professional advisers to make sure they are getting at the plan that best fits your situation.

1. Does your tax adviser understand your tolerance for risk and complexity? There are a number of tax strategies that, particularly as they become more complex, carry some amount of risk with the IRS. In other words, there is some “gray” area involved. Your adviser should understand your level of comfort with tax strategies in general, and you should understand how aggressive your adviser is. Is the goal to be so conservative that an audit is highly improbable, or is there a desire to be more aggressive and defend a particular position in case of an audit? If in doubt, will you err on the side of paying more tax or less tax? Take some time to get clear with your adviser about where you stand. The level of complexity generally increases the cost of the plan, but should reduce the potential tax liability.

2. Do your professional advisers take time to understand your goals and concerns? The reality is there are a number of ways to accomplish your goals, and the key to tailoring an estate and succession plan is to understand what is most important to you. Do you want your children to inherit or buy the business? Is paying no estate tax more important, than, say, being able to give each heir the exact same thing? How have you defined a “fair” estate plan versus an “equal” estate plan? Is selling land a strategy you could ever endorse? If your heirs will own assets together, is it important for them to have a pre-determined

process if someone wants out, or do you want them to negotiate? Your answers to these and other questions begin to narrow and solidify the potential tools to use. Your advisers should feel you out on these topics; you will then know if they have a solid grasp of the options or whether they rely on only one or two tools.

3. Do your advisers collaborate with one another? Are your attorney, accountant, insurance provider and wealth manager willing to work together, or are their egos in the way? The estate planning process can get very inefficient if advisers make you – the client – carry the message back and forth about which strategy might work. Sure, having them all in the room at the same time can be expensive, too, but in the long run you are likely to save money with a collaborative team.

Taylor, DTN: Lance, I'd ditto your advice. After writing about families in this situation since the 1980s, I'd just add that two caveats: Start with a clear vision of what you want to accomplish--how you want to accommodate both on-farm heirs and off-farm heirs, children and in-laws, what your successor needs to be viable, your timetable--even if you don't know the mechanics. Some families feel strongly that they want those involved in day-to-day management to receive certain breaks for buying assets; other families think everyone should pay their own freight. If there's no agreed direction from the family leaders, it's hard for even the best tax and legal consultants to proceed.

Second, understand the compensation process. Some advisers work off commissions such as life insurance. Others charge by hourly rates, but I've heard the fees for some complex projects hit $400,000 while other equally qualified professionals say they'd have a hard time charging $40,000. In Iowa, lawyers get a percentage of the estate for settlement, unless you negotiate otherwise. It's worth getting a feel for the fees, but remember, this is a lifetime event and the goal is to keep both taxes and transaction fees reasonable. Anyone else have experience they'd like to share?

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