

A Wedge of Discontent

Q I wish we could turn back the clock. Two decades ago, my dad included my brother and me as equal heirs in his estate plan. At the time, the three of us farmed together. Dad was the business manager, I handled the crops and my brother maintained our equipment. It was a nice arrangement, and we developed an impressive operation. After a few years, my brother lost interest in farming and eventually left to become a partner in the local equipment dealership.

My dad and I continued our farming partnership until last year, when he suddenly died. As if the loss of my father was not bad enough, he had never changed his will. Now my brother is, once again, a co-owner in the farming operation. He has no desire to farm; truth be told, he wants nothing to do with farming. I'm not sure what to do now. My brother and I talk. We've always had a good relationship, but it's getting more strained. He wants out, but I can't afford to buy his interest. What do you suggest?

A I'm sorry for your loss. Your letter screams caution and should serve as a warning to other farm families. Maintaining the validity of a succession, estate, business or any other plan requires regular reviews and updates.

Inactive family members (those not working on the farm) always have different objectives from those family members working on and dependent on the farm. Many parents believe that distributing assets equally to all of their children is fair. They assume or hope everything will work out in the end—but it never does. Partial ownership in the operation becomes a wedge of discontent between farming and nonfarming siblings.

Inactive children do not want an interest in the operation; they are consumed by their own career and family obligations. Active children do not want to be bothered by the whims of an inactive owner.

Based on your letter, I assume you and your father were equal partners. Using rough numbers, upon your father's passing you became a majority owner with 75%, and your brother now owns 25%, making him a minority owner. Fortunately for you, he has a minority interest and cannot exercise control.

You and your brother need to have a conversation. Use the following discussion points to help work through this uncomfortable but solvable situation:

■ Though he may not want to work in the operation, does he want to maintain a minority interest to diversify his other investments?

■ Does he prefer to be completely bought out of the operation?

■ If so, is he willing to cooperate with a buyout strategy that does not unduly jeopardize the capital reserves of the operation?

■ Do you want him to consider maintaining the ownership interest and assuming an active role in the operation?

■ Should you and he consider selling to another partner (family member or loyal employee) who may bring a necessary skill or ability?

This unfortunate situation is full of lessons for others:

1. A comprehensive succession plan, including a provision for ownership transition and regular updates, may prevent this type of frustration. Your father's estate plan was probably written to minimize the estate tax—a noble effort, but hardly a viable solution to the succession puzzle. A comprehensive succession solution is designed to protect the operational integrity of the family farm and create a seamless ownership transition.

2. Inactive and active family members always have opposing objectives. It is natural for an inactive owner to



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want to convert equity to cash by selling the farm. It is just as natural for active owners to want to convert cash into equity by reinvesting profits.

3. A family farm is still a business. As the basis for financial security, independence and self-reliance, it must be protected, nurtured and grown for long-term success. Commitments, understandings and agreements must be in writing and updated regularly.

4. Planning is not just the parents' responsibility. All active family members should be involved in the decisions that affect operational integrity. Act as if your security and peace of mind depend on it—because they do.

5. Estate and succession plans are not once-and-done affairs; reviews and updates should be performed each year. Everything changes, from the composition of the family and the design of the operation to tax laws. To maximize efficiencies, your plans should be fluid.

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