

OK, Now What?

Q Twenty-five years ago our father gifted undivided interests in the family farm to my three brothers and me. I have yet to receive any benefits, but I am responsible for 25% of the income taxes, upkeep and liability.

Our dad passed away 10 years ago, and mom stayed on the place with my actively farming brother until recently. Shortly after she passed away my farming brother had an accident; he is now permanently disabled. Since he is no longer running the operation I feel that the family obligation to maintain ownership has been satisfied. I want to get out of the partnership, cut my losses and apply any capital gain to my retirement savings.

My CPA encourages me to sell the farm. But my brother still lives there, and he says I can't. My other two brothers are not in a financial position to buy my shares. Is it fair for me to turn my back on my family and force a sale, or do I keep my mouth shut and continue paying?

A Your predicament is a textbook example of why selling, gifting, bequeathing or otherwise transferring an interest in a family operation to an inactive son or daughter is not a good idea. An off-farm owner is ultimately responsible for expenses, liabilities, etc. (risks) without any offsetting compensation (rewards)—creating the perfect storm for familial discontent.

In some states a partial owner can force a sale, though it's not easy and it is usually not a desirable alternative. Splitting property is also difficult in many states, but if it's available in your state, it may be an excellent option. By subdividing the property, each owner is allowed to make an individual choice regarding the ultimate disposition of his or her respective parcel.

If the property has little or no value to you (financial, emotional or otherwise), gifting an interest to a brother, nephew, etc., will eliminate your obligations and reduce your estate tax (if applicable). In every case, the obligations of ownership and management usually overwhelm any benefits of an equal distribution.

I encourage you to establish a desired outcome. With an objective you

may eliminate or include any number of alternatives. So:

■ Do you have any emotional attachment to the property?

■ Does it have a positive financial value that exceeds the cost of appraisal, subdivision, capital gain, etc.?

■ Do you have an estate tax problem?

■ Do your heirs have an attachment to the property emotional or otherwise?

■ Can you help a brother or nephew with an outright gift, and will the gift be appreciated?

Q I enjoy reading your column, so when my husband is finished reading the magazine, I always look up your advice. Now it's my turn to ask for some help.

Our family farm is a partnership comprised of my husband and his two siblings. The oldest brother is contemplating retirement. We need to know what steps to take to facilitate the transition. Thanks for your advice.

A You pose the classic succession planning scenario. How does a family transition ownership from one generation to the next without jeopardizing the integrity of the enterprise?

Ownership transition can be one of the most devastating dilemmas to confront, especially considering the material, physical and intellectual value usually associated with the capabilities of a senior partner. In your case, a committed partner with a one-third interest is an integral part of the management team, so this change will cause a tectonic shift in the structure of the business.

Successfully transitioning a family operation to the next generation is often undermined by three management and operational weaknesses: inadequate estate planning, insufficient capitalization and failure to prepare the next generation.



Kevin Spafford
writes from Chico, Calif.

Your first step should be to establish specific succession objectives. Write a description of what you want to accomplish. Use the following questions to guide your thoughts.

■ What has to be done to create a desirable outcome?

■ How can you help the brother prepare for a graceful retirement?

■ What skills or abilities does he possess that you must pass to another member of the management team or hire to compensate for the loss?

■ Can the operation financially support the brother in retirement? Should you establish a buyout strategy? Will the obligation adversely affect the long-term success of the operation?

At www.legacy-by-design.com, my website, there are resources to facilitate these conversations. You'll want to download Ready for Succession (a self-assessment with talking points), Retirement Income/Expense Self Assessment and Buy-Sell Review.

Kevin Spafford is the author of *Legacy by Design: Succession Planning for Agribusiness Owners* and is a certified financial planner whose firm guides farmers and agribusiness owners through the succession planning process. Mail questions to Legacy by Design, 901 Bruce Road, Suite 160, Chico, CA 95928, send an e-mail to SuccessionSolutions@farmjournal.com or call (877) 523-7411.