Estate Plans Help Keep Farms Intact

Not all of North Carolina's farm problems are related to weather, weeds, insects and markets. Poor estate planning is an entirely different problem area which directly effects Tar Heel farms.

Economists at North Carolina State University cith the following example of how a good, productive farm can become a non-productive farm through poor estate planning:

A farmer in a Piedmont county died in 1927 without leaving a will. He had one minor child, five grown children and a widow. The widow received a dowry of 25 acres of land. The remaining land was sold and the proceeds divided among the children.

The widow never received an adequate income from the time of her husband's death until her own death years later. At her death, friction developed among the heirs over estate settlement. Consequently, her estate has not yet been settled. The land has grown up in scrub timber and the buildings have fallen down. Property taxes owed on the 25 acres amount to over $800.

"This, and many similar examples of poor estate planning by farm families, illustrates the need for increased awareness of the problems associated with transferring property between generations," point out the NCSU economists.

The first step in estate planning, they suggest, is to consult a competent attorney.

The basic idea of a will is to see that a person's property is distributed according to his wishes. Without a will, the property will be distributed according to state law.

There are two general ways of transferring property--wills and lifetime property transfers.

A will allows a person to use the property while alive and specifies how it will be distributed after the owner's death. One important aspect of a will is, it can be changed by the property owner as he desires.

A person may be able to transfer property while still alive. There are a number of lifetime property transfer methods and they can be incorporated into the will.

Among these are: 1. Sales, involving the transfer of title; 2. Gifts; 3. Life estate, in which the recipient has lifetime use of the property but the ownership passes to someone else upon the death of the recipient; 4. Trust, under which a trustee receives control and manages property for the benefit of the owner; 5. Partnership, in which two or more people share ownership, management and profits -- possibly terminating upon the death of one of the partners; and 6. Corporation, which is a legal entity that holds and transfers property and carries on business in its own name. The stockholders (farmer and his family) own the corporation which will continue to operate even if a stockholder dies.

Another method of lifetime property transfer is co-ownership. "Tenancy by the entirety" provides co-ownership of real property between a husband and wife. The survivor acquires title to the property upon the death of the spouse. "Tenancy in common" is not restricted to related individuals and provides no survivorship rights. Upon the death of one of the tenants, his interest goes to his heirs. And "tenancy with the right of survivorship" allows co-ownership of property with the survivor taking all.

Legal assistance is virtually required in the proper preparation of any type of estate plan.