


Oklahoma State University Parade Turns Deadly as Car Crash Kills 4

By KATHLEEN WELSHY and ARIELY NATHAN, OCT 24, 2013

STILLWATER, Okla. — The crowd was thick. The music was upbeat. The energy was at fever pitch. This was Oklahoma State University's homecoming parade.

As it does here every year, the parade on Saturday, called the Sea of Orange, wound up a mile-long stretch from West North Avenue to West Hall of Fane Avenue, as thousands of spectators — some of them small children being pushed in strollers, and nearly all of them dressed in orange — gathered downtown and packed onto Main Street to watch the penultimate event of homecoming weekend.

But the occasion for pomp and pep suddenly turned tragic when a car plowed into the crowd near the end of the parade, killing four people, including a 2-year-old boy, and injuring at least 40, law enforcement and hospital officials said.




The scene where a car crashed into a crowd of people during the Oklahoma State University homecoming parade on Saturday in Stillwater, Okla. Dan O'Brien/The World Press, via Associated Press


Mark 6:4

Jesus said to them, "A prophet is not without honor except in his hometown and among his own relatives and in his own household."

Ferrell's corollary:

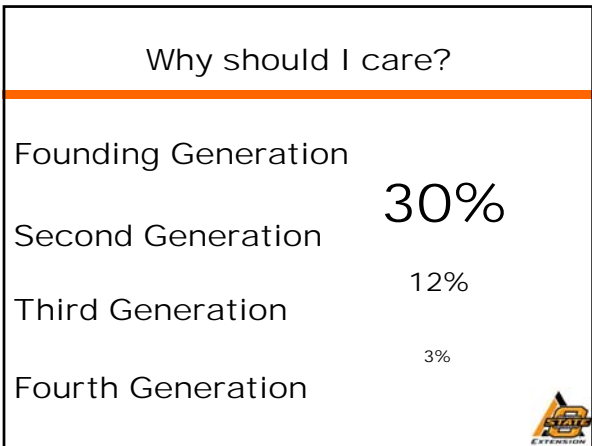
You cannot regard someone as an expert if you have changed their diaper.




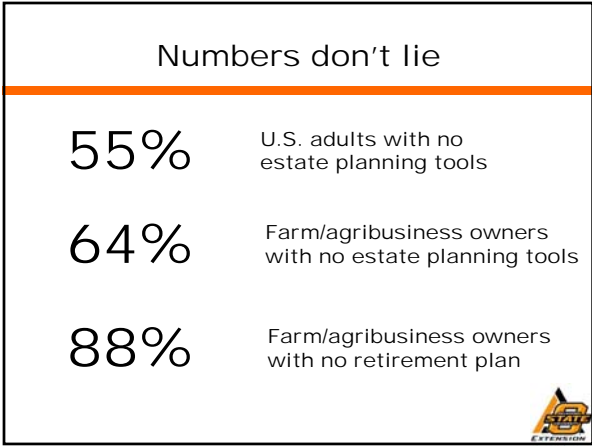


The Legal Mechanics of Farm Succession Planning

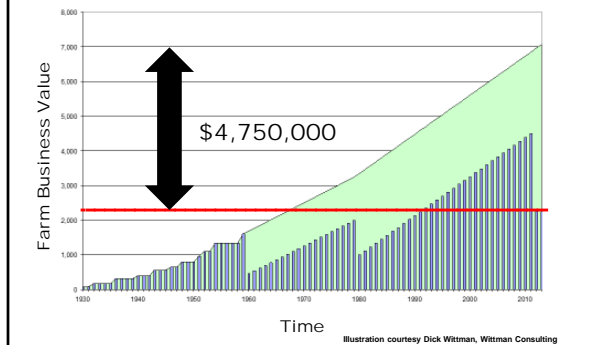
Shannon Ferrell	Rodney Jones	J. C. Hobbs
OSU Department of Agricultural Economics Associate Professor, Agricultural Law	OSU Department of Agricultural Economics Associate Professor, Agricultural Finance	OSU Department of Agricultural Economics Farm Management &Taxation Specialist



- ### Causes of business failure after a generational transfer
-
- Inadequate estate planning
 - Not just "not having a will"
 - How do you prepare for the unexpected
 - Insufficient capitalization
 - Failure to prepare the next generation properly
- Source: Spafford, 2006
- 



The value of transition planning



Who needs a transition plan?

- EVERYONE!
- Especially vulnerable:
 - **Young** families
 - Farms on verge of “viable size”
 - Families and farms with limited asset liquidity
 - “Complex” families



What's this transition planning stuff?

Transition planning

Business assets

Personal assets



Succession
planning



Estate/gift
planning



Just remember, it's called a

PLAN



Don't go it alone

- Lawyer
- Accountant / tax professional
- Farm business consultant
- Family communications / relations consultant
- Meeting facilitator



Step 1:
Determine where you are now

- Inventory!
 - Personal and real property
 - Business relationships
 - People
 - Goals
 - Values



Step 2:
Communicate with stakeholders

Danger of ASSUMING you know what your stakeholders think and value:



Step 2:
Communicate with stakeholders





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Step 2:
Communicate with stakeholders

- Who: ALL stakeholders
- What: a talk about the farm
- When: NOT a holiday
- Where:
 - A comfortable place
 - NOT anyone's home
 - Free of distractions
- Why: so we can discuss ideas for future of the farm and ranch

Step 2:
Communicate with stakeholders


- What you say may not matter as much as how you say it
- "Total communication" components:
 - 7%: actual words used
 - +38%: tone of voice
 - +55%: body language and non-verbal messages
 - 100% of total message



SUCCESSION PLANNING

Formalize your governance

- Organizational chart, job descriptions ► employee handbook
- Buy/sell agreements, investor limitations and requirements ► operating agreement / bylaws
- Policies and procedures ►
 - Adopted at formal meeting of owners
 - Incorporated by reference where needed



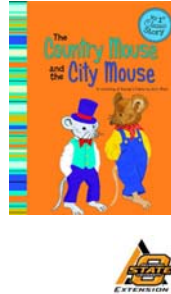
Developing farm business succession plans

- Who wants to be involved?
 - Daily operations and decisions
 - Strategic decisions
 - Financial stake
- What are current / projected skill and labor needs?
- How will new roles be created / existing roles changed?
 - For EVERYONE involved



Critical issue #1:
The farm kid / city kid conundrum

- Economic perspectives
 - Farm kid: Asset is business, so invest and grow
 - City kid: Asset is investment, so generate returns or sell
- Equal ≠ equitable
- Desire & ability for farm roles
- Policies for
 - Employment
 - Equity contribution



Critical issue #2:
Sweat equity plans

- “Someday child, this will all be yours”
- Problems:
 - IT’S NOT A TRANSITION PLAN and it’s barely an estate plan
 - Increased risk of contests
 - Lack of enforceability
 - Masks profitability problems
- Discuss desires to participate & think about how to create opportunities for involvement




Critical issue #3:
The heir-less a-parent

- Same challenge, very different perspective:
 - Provide cash flow
 - Disposition of assets
- Alternatives
 - Seek outside successor?
 - Hire operator?
 - Liquidate assets?
- Selecting a successor
 - Evaluating skills
 - Formalizing relationship



Elements of Transition

Founder




Ownership
Control
Participation

On-farm heir

Off-farm heir


Separate Entity

Unrelated Successor



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Founder




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Elements of Transition


Founder



Ownership
Control
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Separate Entity

Unrelated Successor




Entity considerations

- Who can be a member & classes of membership
- Capital contributions & capital calls
- Manager(s) and succession




Entity considerations



Entity considerations

- Who can be a member & classes of membership
- Capital contributions & capital calls
- Manager(s) and succession
- Salaries, guaranteed payments, special allocations
- Termination and dissolution procedures



The family business buy/sell agreement
(MANDATORY good idea)

- Death
 - Given to lineal descendant/spouse?
 - Given to other
- Disability (permanent)
- Divorce
 - Given by decree to ex-spouse
- Bankruptcy or insolvency
- Removal or withdrawal of member



The family business buy/sell agreement
(MANDATORY good idea)

- Who gets to buy?
 - Redemption – company first right (obligation?)
 - Cross-purchase – members' first right (obligation?)
- Valuation method
 - Established and agreed in advance
 - Defensible methodology
- Liquidity planning
 - Identified sources
 - Insurance coverage



ESTATE PLANNING

Intestate succession

Pros	Cons
Well, uh... its definitely low-effort on your part	Unable to select who handles your affairs (and several people may "volunteer")
	Unable to direct who gets your property – succession rules dictate heirs
	No provision for stepchildren, unrelated parties, charities, etc.

Wills

- What exactly is a will?
 - A set of directions for the distribution of your property after you pass away
 - ONLY effective once you pass away
- Must have "testamentary capacity"
- Must be executed correctly
- Must be probated



Wills

- What DOESN'T a will do?
 - Function as a WHOLE succession plan (but it's a critical PIECE)
 - Stick around and manage things
 - Does it's job and goes away
 - Long-term management of assets requires trust or other entity
 - Prior to death, create an interest in property for potential recipient



Wills	
Pros	Con's
Leaves control with testator until death	Must go through probate
Can direct where property goes – almost anywhere	Easily contested
Can select executor	Lengthy and public process
Can name guardians	State-specific
Does its job then goes away	Cannot operate “long-term” w/o other tools

Trust
<ul style="list-style-type: none"> • A set of instructions for management of a separate legal entity • Can be simple or complex • Must be carefully drafted to ensure that your goals and objectives are met • Involves trustor, trustee, beneficiary, and trust property



Items to be considered in creating revocable living trusts
1. Trustee
– Co-Trustee
– Successor Trustee
2. Beneficiaries
3. Duration of Trust



Items to be considered in creating revocable living trusts

- 4. Rights of Trustee
 - Buy, sell and lease property
 - Lease minerals
 - Invest funds
 - Distribute trust income
 - Distribute trust principal
- 5. Uses of trust income and principal
- 6. Timing of distribution to beneficiaries



LIVING TRUSTS
Advantages

Pros	Cons
Eliminates probate for assets in trust	May have trustee fees
Don't need guardian to hold assets for minors	Adds complexity to management of assets in life
Not public information	Requires coordination with other estate tools
Very difficult to contest	Still needs will

Other critical estate planning documents

- Guardian nomination for minor children
- Beneficiary designations
- Powers of attorney
 - Business
 - Healthcare
- Advanced directive for health care



Other critical estate planning documents

- Estate liquidity plan for final expenses/debts
 - Life insurance
 - Identified assets for liquidation
 - How to handle fluctuations in value
 - Priority list of liquidations
 - May be part of will, but should also include pieces outside of will
 - Important cross-connection with succession and business plan



The “hit by a _____” plan

- Literally, what do you do tomorrow?
- Prepare plain-English plan in advance
 - Step-by-step
 - Current & thorough farm records **CRITICAL**
 - Where to find needed resources
 - Documents
 - Keys and passwords
 - Contacts
 - Who to ask for help
 - List of records to keep
 - What can I do on my own / after consultation / only with court's approval




“No battle plan survives contact with the enemy.”
-Colin Powell






For more information

<http://agecon.okstate.edu/farmtransitions>





THANKS!

Dr. Shannon L. Ferrell
OSU Department of Agricultural Economics
shannon.l.ferrell@okstate.edu
