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Working With an Attorney

Some tips on working with an attorney for your estate and succession planning needs

In the end, the representation your attorney is able to provide will only be as good as the information and guidance you are able and willing to furnish.

Questions to Ask Before You Hire an Attorney

The first meeting between you and an attorney offers the two of you an opportunity to get to know each other and to determine whether he or she is the right person to handle your estate planning needs. Allow the attorney to guide the conversation, so that he or she can assess your needs. Be prepared with questions to evaluate the attorney's qualifications, and bring the recommended documents that will provide the attorney an overview of your estate.

Some questions that you might want to ask include:

- How much experience do you have in estate planning?
- How much of your estate planning work has involved farm or family businesses?
- What percentage of your practice involves estate planning work?
- What problems do you foresee in preparing my estate plan?
- Do you have any conflicts of interest that I should know about before I hire you?
- What documents will be prepared, and approximately how long will it take to prepare them?
- How will you keep me informed of progress?
- How will you charge me for your time, and how often will you bill me?
- What other costs or expenses will I be responsible for paying?
- Who else in your office will work on my estate plan?
- What is a ballpark figure of my total bill, including all fees and expenses?

Documents to Bring to the First Meeting

Some attorneys may ask you to complete a questionnaire and provide you with a list of documents either to bring with you to the first meeting or to send ahead of the meeting. If not, it is still a good idea to collect some information to have on hand. Being thorough in collecting and organizing this information will likely save you time and money and may improve the quality of the services you receive.

Documents to bring to the first meeting:

- Written summary of what you hope to achieve with your estate plan.
- Your complete personal income tax returns for the last three to five years.
- Balance sheet, including assets and liabilities owned by you or any entities that are wholly or partially owned by you. Any records indicating the value of these items also may be useful.
- List of owners or directors of such entities, along with recent tax returns, financial statements and corporate records for these entities.
- Business plan or summary of information about your farm or family business, including a diagram or organizational chart, if needed.
- Financial statements that you may have given to anyone in the past two years.
- Deeds and mortgages or deeds of trusts covering any real property wholly or partially owned by you or any entity wholly or partially owned by you.
- Any leases of real or personal property.
- List and details of any other oral or written agreements that you have with a lender, creditor, landlord, tenant or other party.
- Marital agreements and/or divorce decrees.

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It is important to be honest and forthcoming about the information you give to the attorney. The attorney is required by attorney-client privilege to keep your information confidential and generally is protected from being forced to disclose the information by a court. In the end, the representation your attorney is able to provide will only be as good as the information and guidance you are able and willing to furnish.

Legal Fees

You should not agree to be represented by an attorney until you have a clear understanding of how you will be billed for his or her services. For estate planning work, attorneys are likely to charge for their services in one of two ways:

- On an hourly basis. The amount your attorney charges per hour will be determined by a number of factors, including the extent of his or her experience in estate planning and the generally accepted hourly charges for legal services in your community. In many instances, an attorney will request that you pay a retainer fee up front, against which the attorney will bill his or her time. When you are being charged an hourly rate, you should ask for a complete, itemized bill periodically, so that you can understand all of the services rendered and expenses incurred on your behalf.
- On a fixed fee-per-service basis. Some attorneys will charge a fixed fee for standard and routine matters such as a simple will.

When your attorney agrees to represent you, he or she should give you a written letter or statement outlining the fee structure or ask you to sign an agreement regarding the services to be provided and the charges for those services. Carefully read this document and understand it fully before you sign it. The document should cover not only the attorney's hourly rate, but also any extra costs that are to be passed on to you, such as copy costs, conference room charges, delivery charges, etc. You may be able to negotiate fees with your attorney, but if you are going to do so, you should do so at the beginning of your representation. Also, you should ensure that the outcome of this negotiation is reflected in the letter or agreement you receive.

Selecting an Attorney

You should compare the services offered and costs involved when selecting an attorney for your estate planning needs. The attorney you select should have obtained a law degree, have passed the bar exam, and be licensed to practice law in your state. Preference should be given to those attorneys who have experience in estate planning, tax implications, state and federal laws, and the interdependence of these issues in financial and health care planning.

Simply open a phone book and you'll find many listings for attorneys in your area; however, these listings will not tell you much about the character and experience of the attorney. Ask trusted friends, other farmers, your accountant or banker for recommendations. If you have business, farm or property interests, talk to other business or farm owners and ask them about their contacts and experiences.

The Tennessee Bar Association, like many other state bar associations, provides a lawyer referral service. The service puts you in touch with a prescreened lawyer with whom you may schedule a half hour appointment for a small fee (instead of the lawyer's normal hourly fee). As mentioned above, be prepared for your appointment and plan to use that 30-minute consultation wisely. Visit the Tennessee Bar Association's website (<http://www.tba.org>) or call 615-277-3210 to learn more about their lawyer referral service or how to find an attorney.

Finally, the quality and usefulness of your attorney's services will depend to a large extent on the relationship you have with the attorney providing these services. In general, the more clearly you are able to communicate your desires and expectations, the more likely you are to get the help you want and need. Similarly, the better you understand the process and the constraints you and your attorney face, the more likely you are to be satisfied with the assistance you receive.

The Tennessee Farmland Legacy Partnership "Planning Today for Tomorrow's Farms"

On Feb. 16, 2010, 12 organizations and Gov. Phil Bredesen officially formed the Tennessee Farmland Legacy Partnership with the purpose of serving as an authoritative resource, providing information and assistance, and encouraging both farm-level and community planning that promotes the preservation and viability of working farms in Tennessee.

The University of Tennessee is a member of this partnership and provides many resources related to farm succession and estate planning. To find out more about these resources or the partnership, visit www.farmlandlegacy.org.