Speaker 1 (00:03):

Welcome to the Vandenack Weaver legal visionaries podcast brought to you by interactive legal here's your host Mary Vandenack

Speaker 2 (00:12):

Welcome to today's episode of Vandenack Weaver, legal visionaries, a weekly podcast discussing updated legal news, evolving methods of providing legal service and law practice issues. My name is Mary Vandenack founder and managing partner at Vandenack Weaver, LLC. I'll be your host. As we talk to experts from around the country about closely held business tax trusts and estates, legal technology, law firm, leadership and wellbeing. Before we start today's episode, I want to thank our sponsor. Here's the message from interactive legal.

Speaker 3 (00:51):

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Speaker 2 (01:40):

On today's episode. I have Brian Holen, he's a financial advisor with insource benefits group and Monte Schatz. Who's a member with me at Vandenack Weaver. Today. We're going to talk about estate planning for agricultural clients. Welcome Brian. Thank you. Good to be here and welcome Monte. Thanks for having me again, Mary. So can each of you, and we'll start with Brian, just share with me briefly what your primary role is in assisting clients with estate planning.

Speaker 4 (02:08):

Sure, you know, I, I grew up on a farm ranch operation about three hours west of here. So, it seems like over my career, over the last 40 plus years, I've kind of been the guy that people have talked to about, farm and state planning. And I guess I kind of think of myself as a quarterback of a team. I mean, we bring in the products and the people that we need to get a solid plan in place find solutions and the people that can get the, get the plan accomplish.

Speaker 2 (02:39):

So with farmers, sometime that might be lenders, bankers might be attorneys might be accountants, might be

Speaker 4 (02:46):

All of the above. Yes. Yeah. It's a, it's, it's a lot of people involved and not to mention the family members as well.

Speaker 2 (02:53):

Yeah. The FA that's a really good point. That's probably the most important people to get engaged in that conversation. Monte can you just talk a little bit about what you do regarding estate planning and in the agricultural area?

Speaker 5 (03:04):

Yeah, so, so I view, estate planning in the agriculture area, kind of mirroring three things, obviously estate planning, but tied in with that usually as a discussion of how to pass the farm on either to existing family members or probably another party that might not be a family member and tied in with that, helping them on a good business plan with that to do that. I know we often talk about those in separate shells, but they're all come together to make a good estate plan. And my job is to work with people like Brian and, and other advisors to create a well-organized plan that will protect the farm during the life of the person who's has the estate plan and help them pass it on successfully with their goal estate planning goals in mind, to at their deaths.

Speaker 2 (03:52):

It might be a farm, might be a ranch too. I kind of include both farming and ranching. And then when I refer to the agricultural industry, so what are some of the unique issues, Brian, for clients in the agricultural industry related to estate planning?

Speaker 4 (04:07):

You know, probably the number one issue and anyone that grew up in that environment understands there is an emotional attachment to the farm. And sometimes this clouds a decision-making. And so, as advisors, we must just be sure that we make sure that everybody is thinking clearly. I had a wise old farmer tells me one time when, when, when it all comes down to it, he said, all this really is, is dirt. And so people shouldn't fight over dirt and families shouldn't divide over dirt. And so that's, I've always remembered that, that quote, because I think that's a great quote and, and it kind of brings, brings everything back down to ground zero. But a lot of times, maybe a family, I mean my, family we've got farmland, that's been in our family for over a hundred years. And so there becomes an emotional attachment.

Speaker 4 (04:54):

Maybe it's the tree house that's up in the tree on the place, and they're going to knock that tree down so they can run a center, pivot irrigation system on it that’s all emotional. And even the off-farm partners or the off-farm kids get involved in that. And they don't want to see certain things happen that may make sense for the operation and they just don't, they don't get it. So you, you have a lot of different emotions and a lot of different agendas that come to the table and so a lot of times, if you can't leave an inheritance that you believe is fair to everyone, that's where we bring in the life insurance. Because the second thing that you know is kind of unique, I think to farmers is that the wealth is often liquid. And so, farmers invest in farmland.

Speaker 4 (05:39):

They don't invest in mutual funds as a general rule. And so a lot of times their focus is on keeping the, the enterprise intact and keeping everything moving forward on the operation. Another thing that comes into play is, is the amount of depth these guys, take on. I mean, it's not unusual just for the, operating note to be, you know, a million plus, that they're, that they're dealing with. So farmers frequently live on borrowed money until the crops come in or until the cattle are sold or the hogs are sold. And so, sometimes there's just there’s just an, a strong need to cover, cover that in the event of an untimely death or disability or something like that. The next thing would be the fluctuating, economy, for farmers, the commodity prices go up and down and sometimes in a very short time frame, you're looking at all of a sudden, they're making a lot of money to, they're not making any money or vice versa.

Speaker 4 (06:40):

And so sometimes financing the solutions can be a little bit difficult. So, we must find creative ways to finance those in the good years and the bad years on the farm. I would say also farming is a dangerous occupation, so you've got to consider the risks people have untimely deaths and untimely disabilities. And so, it's important, you know, to plan for those things and make sure that it doesn't bring the operation down if any of that happens. And then finally, I would just say a to equal the goal would be to equalize the estate and be fair to everybody, to the successors, you know, whether they be on the farm or not on the farm and, and keep peace with everyone, keep the farm intact and keep the family intact.

Speaker 2 (07:23):

So that'd be discussion. We have a lot. So we have some clients in the agricultural industry who have maybe some of the, a couple of the family members have joined the operation, a couple of not have gone off to the city or somewhere and are doing something entirely different. And what is fair, fair look like as a question, right?

Speaker 4 (07:42):

Absolutely. And those emotions come into play frequently. And, and sometimes I serve as a referee and, and just try and, you know, bring peace back to everybody and help everybody on the table understand. And sometimes the off the farm or off the ranch, family members think that they understand what's going on. When, you know, agriculture is like any other industry it's changing technology is absolutely making a world of difference in, in, the way that even the land looks out there. I was out to my family farm a couple of weeks ago, and I couldn't believe how many farm places were missing, how many trees were missing, you know, they're farming every square inch in some cases. And, and even that in that sort of thing brings in some, some emotion and, sometimes the farm, family members don't quite understand all that.

Speaker 2 (08:33):

Do you have anything different or add relative to kind of the unique issues that you deal with when working with agricultural clients?

Speaker 5 (08:39):

Yeah, just playing a little bit on that theme of fairness, you know, it's, it's all, as an ideal goal, I shouldn't say all is frequently in an ideal goal to equalize, but I think one of the things the miss is fair. Isn't always equal among all the areas of the farm. It may, you know, there may have to be some things that favor the on, on the farm sibling that stayed on the farm and so forth. So we try to equalize that. And as Brian alluded to, you can do that with insurance. If, and of course, one of the challenges you always have is when typically does somebody start talking about getting insurance? Well, it's already, when they may be at an advancing age when those premiums are going to get extremely high. So then you may, what you may have to do as hand-in-hand with that, maybe go into some form of a seller finance agreements through a trust, or maybe even through the estate, or with the existing tenants where, where the land is purchased out in installments and so forth, which may have some tax benefits to keep some liquidity intact for the on, on farm operating sibling, because of the other problem you have the other side of the liquidity problem you have is that, that child that stays on the farm, you know, in, in the attempt to try to equalize those that are off the farm, um, if they're having to pay a lot of cash outflow on this thing to the non-farm children, I mean, it could, it could be a real operating platform too.

Speaker 5 (10:05):

And then you tie that in with having to deal with programs like through the farm services agency and so forth and incident of trust. That adds another layer of complications when you apply for those farm programs and so forth, because it isn't just the trustee that can do that. And you must have the other, beneficiaries of the trust, perhaps involved in that process as well, too. So all kinds of issues there, there's, they're not insurmountable, but it's definitely adds a level of complexity to the process

Speaker 2 (10:34):

And advanced and having the discussions about them. Cause the right answer for each family can be a little bit different, right? I've seen successful operations where the non-operating kids continue to own pieces of it. No problem. I've seen other cases, that's where we end up in litigation. So it's partly a matter of just I've structured discussion and design specific to the family member. Well, Brian, you ran through did a really phenomenal job of listing some of the unique issues to the farm, but one of the things I'd really like to, because you're an expert on the different types of insurance in agriculture, and you covered some of them as you went through there, but I'd really kind of like you to go through that list a little bit and say, here's, you know, here's some of the unique coverages that you see in this industry. And here's what it's designed, you know, to the problem is designed to solve.

Speaker 4 (11:22):

There are a number that are, are unique two ag ranch, farm operations loss of crops or the loss of cattle. A couple years ago we saw, you know, a lot of ranchers. I know some ranchers up in north east Nebraska that watched a big part of their cattle herd go down the river and a flood. And so, there are ways of covering those with insurance, there's federal crop insurance for in the case of a hailstorm that would, that would help him out on a, on a crop loss there's also price loss coverage. They can do that, you know, through the board of trade or they can also by you know, the federal crop insurance program through, through some of , their crop insurance people that take care of them.

Speaker 4 (12:10):

There's also an equipment loss. I mean, that's getting to be a big, big deal with, you know, the amount of technology that these guys are working with. My nephew operates our family farm essentially from his phone. So, irrigation systems are operated from his phone GPS on the tractors and combines. There's just a lot of technology there. And with that comes a high price tag. The center pivot systems. I have a client who, builds and installs and sells a center pivot irrigation system. And he said, you know, this is out south central Nebraska. He said, it's not unusual at all for us to replace 50 to a hundred units per year from wind blow over. And, you know, each one of those probably costs 175, $100,000 and up for those systems, depending on how much how much technology they have on them.

Speaker 4 (13:07):

So then beyond that, I think, you know, certainly every operation ought to think about disability insurance, if there are companies that will underwrite farmers, you know, you're about three times more likely to be disabled in your working years than to lose your life. But also, life insurance, I think is important that both on the parents and on the kids, because if, that a son or daughter that's farming with dad, suddenly is, is gone through, an accident. And we've got to remember that farming is a dangerous occupation and, and bad things happen. And we hear about it every year. And so, it's best to cover those risks since, most farmers are asset rich and cash poor. And so sometimes there's, there's a severe loss. If, if something bad happens.

Speaker 2 ([13:53](#)):

We are going to take a brief break from our episode for a word from one of our sponsors, Carson, private client

Speaker 6 ([14:00](#)):

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Speaker 2 ([15:00](#)):

Okay, let's continue our episode. We talked a little bit earlier about transitioning the farm, transitioning the land, transition, the operation. What are the types of things? Now, interestingly, I have to say that a lot of my clients in agriculture industries are still farming in their very late years. Is that really common in what you see? It seems to be really common with those that I represent. I got a guy who's like 92 and he's, his kids are farming with him going. We really think he needs to get off the tractor.

Speaker 4 ([15:33](#)):

I would say that it is, I mean, I think there is a love for the land. And I would say that a lot of farmers and ranchers I mean, I've got a client out in Western Nebraska. That's a rancher has been for years. I mean, he's 85 years old and he still goes out and gets on the horse and checks the cattle every morning. And so, I think that there is a love for the land. There's a love for agriculture. That's probably different than any other business and it's, and they're very unique in that. And a lot of it is they grew up with it. They, you know, they used to play on the, they used to go swimming in those ponds, and they used to, you know, climbing those trees and so forth. And so it's, it's, it's a lifelong thing and they don't feel comfortable doing anything else.

Speaker 4 ([16:16](#)):

I know my own father until he lost his eyesight to macular degeneration, we had to take away the keys of the combine from him. Cause he still wanted to go out and, and, operate the combine even though he was legally blind. So, I think, those things are, are, are all interesting things, interesting dynamics that happen and that are kind of unique to farming. And so, a lot of times there is not an emotional readiness, for them to, to turn it over to, to the sun. Or I had a 80 something farmer tell me, well, I just don't know that my son is ready to take over the operation. Well, his son was 50 something. So, you know, if he's not ready now, when is he ready? But there is that control that takes place. And sometimes it's, you know, the father and son relationship are not such that there's a, there's a strong trust going on there.

Speaker 4 (17:05):

So that's all something that you help have to help people navigate through. And, and sometimes the kids have control issues. Sometimes the dad and mom have control issues. are they ready to retire? Can they, even if they're emotionally ready to do they, are they financially ready? Will they need rent from the land? Or, you know, can the kids rent it or farmer for rent free for a few years to get them going? Again, some of the issues that Monte was talking about is it in an LLC? I mean, can they, can they somehow gift, parts of that LLC so that they can, can retain ownership and still, control the land and, and control, some of the operation and take an income off of it. And how much social security do they have in place? Any other assets that they have in place? I will say that most farmers don't have IRAs. Their IRA is the land that they're farming. So, and, you know, you must consider the, you know, the generation that's coming in, are they financially ready to take over? Monte kind of touched on it, the health issues that come into play, sometimes, you know, there's interference also from the, from the non-farm, family members that, think that they need to be involved in that too.

Speaker 2 (18:23):

Monte talked about some of the things about transitioning the farm or the farm operations land. Is there anything else you'd want to add to what you said earlier?

Speaker 5 (18:33):

Yeah, just expound a little bit on that. There are ways, you know, I alluded to previously, typically the entity of choice for farm operations will be the limited liability company. There may be other avenues to pursue, you know, S corporation structure so forth, but typically the LLC is the best. What you can do is you can divide the land into a separate LLC and then the operational aspects in a S into a separate LLC, apart from that, and keep those two apart. And perhaps some of the land structure would be owned by the non, the non-farm members of the family. And so the cash from the operations might be able to buy the LLC units. That's an easier way to transition it, rather than trying to break up parcels of land and so forth. You know, LLC units can be transferred over and eventually the on-farm sibling, can purchase and have those interests.

Speaker 5 (19:32):

The other parties will have that in, it can be done more seamlessly rather than trying to sell the south 40 of the Northeast section or something of that nature. That's one way to do it. And the other thing that shouldn't be discounted in terms of risk management, which I would think insurance companies would love this as of course having that LLC entity around it, because it does give another layer of protection to the farmer in liability as well too. And that's, that's a real important facet. And then one other thing too, is sometimes when you have more than one sibling on the farm, you might have two or three, you might have some members of the family that would rather run the hog operation. Some would rather do strictly cash crop. And that could be an equitable way of dividing those interests too, and seeing how they stand alone on and eliminate some of the obscurity and accounting, if they were all co-mingled together.

Speaker 5 (20:26):

And that's another way to keep things fairly straight among family members and hopefully mitigate problems. And then the other last thing kind of playing into what Brian was saying into what Brian was saying about, you know, unwillingness to give up control. You know, we can all, you know, we can all set up structures where there are people that have non-voting units, namely the next generation that isn't ready to take over the farm, even though they're in their fifties. And you can give that patriarch or matriarch of the family, that feeling that they're still in control, that they have the voting interests and so forth too. So that's maybe a way of easing some of those family dynamics you run into emotionally.

Speaker 2 (21:09):

And so now I just have to add a comment that in some of the work I do with ag clients, where you said you use the, it might use an LLC for the operations, that's been really common. And really typical. Recently we currently have a 21% tax rate in foresee corporation. So in the last few years I've been looking at the C corporation context, a little more in the Ag industry than I had historically, some other businesses like a service businesses are only make sense, cause they're gonna bring it all in, bring it all out, right? But your agricultural client is, you know, they always have the cashflow issues that Brian mentioned are really common. So, in some cases, it's not for everybody, that's at least something, a tool that I've been throwing out there LLC concept you really must, it's a great tool for management, for passing on.

Speaker 2 (21:54):

You can give non-voting units to the non-involved members. You can put the transfer restrictions and buyout rules that are going to happen. Like you might give the kids who are operating in the farms, the right to ultimately buy out, but you do have to be just a little careful and that when you start putting land into LLC you can cost yourself a step up in basis. Now, obviously we don't know what the step-up in basis in the rules are going to be a year from now, but at this point you can. So you have to kind of think through the total value from an estate tax purpose and whether you want to. So I have to say sometimes I may use more than one LLC, so that I have a single member LLC, where I will get the step up in basis and keep that in place and use a different entity for gifting. It gets a little complicated, which, you know, when you're dealing with the Ag clients, they're like, I want this simple, well, a lot of clients say that and it's not necessarily so simple. Brian, did you have any additional thoughts on that?

Speaker 4 (22:49):

Yeah, I mean, it just a duct tape tailing up what you just said, Mary. A lot of times see happen and I think it works well as is putting the, equipment, the cattle, the operating, what it takes for that individual to operate in one LLC. And I don't want to tread on you guys, land here because, because you guys are the experts in this, but put all of that. So if you have a son or a daughter that's in the operation, there are certain things that he needs to have he or she needs to have just to continue the operation, put all of those into one LLC, and then separate the land over into a separate LLC. And maybe if there's ranch, land, farmland may be three LLCs, you know, a cattle company and a land company something to that effect. Cause it hit a, there are certain things that, you know, they just must be there for a person to continue in, in the, in the operation.

Speaker 2 (23:44):

We strategy that we like, and especially like you earlier mentioned some of the risks and the liabilities,

Speaker 4 (23:49):

We've seen some really serious incidents. So that's, I think the times we'll look at, you know, moving those and I'm sure this is something you guys do too, is move those assets in that operating part over to the, to the person that's operating it to the son. So the son or daughter at the, at the death, he owns that part of it. And so the operation will continue. It's just a matter of, you know, then what he can negotiate, with the sister. And I think in getting back to your question, I think, I think the basic thing, and it seems silly to even discuss it here, but the first question, is there a plan in place? Is there a succession plan in place? You know, that seems basic to us cause that's what we do every day. The USDA, they did a study a while back and it said that 53% of farmers that plan to retire in the next five years have no plan in place whatsoever and how they're going to make that happen.

Speaker 4 ([24:41]):

Another interesting statistic came out of the farm journal. They said that 90% of second-generation farmer operations do not make it to the third generation. So that's kind of sobering when you think about it. And, but if you grew up in that farm operation, you kind of understand brothers and sisters don't always get, get along well. And so if they're forced into business together after the death of the parent, that doesn't always work. And especially even if brother and sister or brother and brother, or sister and sister can get along, their kids may not get along with each other. So all of a sudden you've got cousins working with each other and trained to make decisions together. And so at some point I think that, you know, it makes sense for the farm operation to go to one of the siblings and maybe it's a deal where you divide the, the, maybe the farm doesn't generate enough to, to support two on the farm.

Speaker 4 ([25:37]):

So there's only once, well then we have to, you know, honestly that makes my job pretty easy. Okay. A life insurance policy will take care of those that are off the farm. So, then you must ask the question is the farm are, can we expand our farm operation? So, it takes care of two or should we look at splitting it into two parts? Monte kind of talked about it earlier, maybe there's the ranch part and the farm part, like the, the operation that I grew up on. And so maybe it makes more sense for, you know, Johnny DOE in this part and Jill to own this part over here. The big thing is, is that, you know, everybody needs to figure out a, an equitable way in a good way to keep it, keep it together. I think the question is, does it, does it stay in a single unit or is it split into two and are the sons and the daughters ready to operate that operation?

Speaker 2 ([26:30]):

I think that's a significant issue and we see a bunch of different structures like that. And now we've seen situations where the thought process on the senior generation was in fact a split it up, but sometimes the kids want to keep it together because they think more land, more ability to, and to share that and this, so it's an interesting question, but the key point I think that you've made is there's needs to be some planning ahead. And so we're just about out of time Monte so I was just gonna ask you briefly, you know, I get asked a lot and I get sent, so you see the different journals, my clients and the agriculture interests, or the industry are always sending me articles from the farm magazines about this or that. And one of them is, Hey, the revocable trust, the revocable trust is the magic solution to everything. Is it?

Speaker 5 ([27:18]):

Well, it, it, it's a good, it's a good base, a planning tool at the front end. And depending upon the size of the operation and the value of the operation, it may have to delve dovetail into more complex instruments, like in addition to the revocable trust, or maybe the need to, uh, set up an irrevocable trust and do an annual gifting program of LLC units.

Speaker 2 (27:42):

Yeah, just that, that assumes that the value exceeds the estate tax exemption. I just want to make that clarification. Okay.

Speaker 5 (27:50):

The revocable trust is a good starting place. And it's a good way you can place your LLC units and your other assets in there. And then at the death of the creators of that trust, it becomes irrevocable. And at that point, there should be some basic succession, you know, you know, provisions in that trust that should, should lead to a ready disposition to the next generation at the death of that person. And again, another layer of asset protection, because now you have an LLC wrapped within, across. So, I mean, those are all good. Those are all good ideas and, and revolt revocable trust gives people a lot of flexibility while they're still alive to,

Speaker 2 (28:37):

Thanks Monte So, Brian, do you have some last thoughts you would like to add?

Speaker 4 (28:41):

I would say I totally agree. I mean, I'm not going to get into your area of expertise. I'm always amazed when I, when I take a case into a firm like yours, and you guys just take over and you say, well, we can do this, this and this because that's when, when my eyes kind of glaze over and I just let you guys do what you do best. And I think that that's important in any planning team, that everybody brings to the table, what they do best and trust the others to do it, do it the right way. I, I think, the whole key, as I see it is that that individual who is on the farm or individuals, if there's more than one, that they have what they need to continue operating that. So if that means putting a buy, sell agreement in place between dad and son or daughter, that's, that's going to be taking over so that they can buy out that, uh, trust or they can buy out their siblings. That's an important part of this as well.

Speaker 2 (29:35):

Well, thanks sprain for being here today. Thanks Monte as we get to the end of our episode, I want to thank our sponsors, interactive, legal, and Carson, private client. That's all for now. Thanks for listening to this week's episode and stay tuned for our weekly releases,

Speaker 7 (29:56):

Hurrdat media production.