Farm Management

Dissolving farm partnerships

Country Counsel

BY ROBERT MOORE

THE most common type of business entities for farming operations with multiple owners are partnerships. The popularity of partnerships is, at least in part, likely to do with the ease with which they can be established. In fact, partnerships can be established without anything in writing. This ease can cause problems when it's time to dissolve the partnership.

Where to begin

Starting with a good partnership agreement is the best strategy to eventually help with dissolving a partnership. However, as stated above, many partnerships do not have partnership agreements but are rather an informal partnership with no structured rules. When no partnership agreement exists, the best strategy is for the partners to attempt to work out the dissolution among themselves.

This process should involve tax professionals and possibly legal professionals to be sure the partners do not unwittingly create unnecessary taxes. Partnerships that have debt are particularly susceptible to creating income tax liability when dissolved if not done properly.

The first step in dissolution should be identifying and valuing assets owned by the partnership. It is absolutely critical to come to agreement on the assets in the partnership and the value. If the partners cannot agree on these two issues, the dissolution will not get far and will quickly end up in litigation.

The values of the assets can be agreed upon by the partners or valued by appraisal. Mutual agreement is best as it saves time and money on appraisals, but partners often disagree on values, especially land values. The appraisals should be done by a mutually agreeable party with either partner having the ability to get a second opinion on any values he or she may challenge.

The next step is to divide the assets among the partners. The easiest way to divide assets is to liquidate all assets and divide the proceeds. However, for farming operations liquidating assets will usually cause enormous tax liability for the partners. More commonly, the partners will each take some of the assets. This is where a tax professional should be consulted.

Partners may decide to divide assets in a way that seems reasonable to them but could cause significant taxes. For example, if one partner takes all "hot assets" like receivables and grain and the other partner takes all machinery or land, there will likely be unequal tax consequences to the partners. It is typically best if each partner takes an equal value of each type of asset if possible.

Coming to the end

After the partners agree on how to divide assets, the last step is to wind up the partnership. This is a final accounting and tax return for the partnership. After the winding up, the partnership no longer exists, and the partners go separate ways.

Partnership dissolutions are often done with the partners being on good terms and fully cooperating with each other.

An example of this situation is where two brothers have farmed together for many years, and each brother has children who wish to farm. The brothers may agree that it would be best for the cousins to not farm with each other and that the brothers should dissolve the partners so that their children can operate their own, separate farming operations.

Partnership dissolutions are sometimes hostile. When the partners cannot agree and show animus toward one another, partnership dissolutions seem to inevitably end up in court.

The presiding judge will rely on the partnership agreement to dissolve the partnership or if there is no partnership agreement, state law. The partners risk the judge ordering all assets being sold and the cash proceeds being divided.

This is often the easiest course of action for the judge, but as discussed above, it will cause enormous tax liability for the partners. Like almost all disputes, it is much better for the parties to resolve the issues themselves than to rely on litigation to settle their differences.

Moore is an attorney with Wright & Moore Law Co. LPA. Reach him at rmoore@ohiofarmlaw.com *or at 740-990-0750.*

Never stop learning or improving

BY **KEVIN SPAFFORD**

Penton Agriculture's Legacy Connection

MY June 2015 column was well-intended, but Dick Steele, chairman of the board of Peaker Services Inc., took exception and called me out. I'd criticized the normal review process and proposed a new approach — one based on actual performance. I suggested, "A performance review should support the goals and expectations of the organization. It should encourage improvement and professional growth."

To that end, based on his experience, Steele offered, "For a different take on employee reviews — back in 1988, I went to a four-day seminar given by Dr. W. Edwards Deming. I had been doing performance appraisals for 15 years at that time, and it was making me sick. When I asked Dr. Deming about it, he said, 'Just quit it; it's a bad idea.' So I did, and to this day, our 75-person company does not have performance appraisals.

"Over those years, we have had some employees who do not seem to be carrying their share of the load, and we have talks with them. Some of those persons have left the firm, and some have stayed."

W. Edwards Deming is credited with formulating the rise of industry in Japan following World War II, and America's automobile industry during the 1980s. As a visionary, he focused on the theory of continual improvement.

The following is an edited version of Deming's 14 Points for Management, originally published in his 1986 book "Out of the Crisis." Paraphrasing Deming, if he were to have written specifically for farming professionals, he may have advised to:

1. Create constancy of purpose toward improvement of production and service, with the aim to become competitive, stay in business and provide jobs.
2. We are in a new economic age. Management on the farm must awaken to the challenge, must learn their responsibilities and take on leadership for change.
3. Eliminate the need for inspection. Build quality into all phases of production.
4. Move toward a single supplier for any one item on a long-term relationship of loyalty and trust.
5. Improve quality and productivity constantly, decreasing costs.
6. Institute training on the job.
7. Institute leadership. Supervision of management is in need of an overhaul, as well as supervision of production workers.
8. Drive out fear, so everyone may work effectively for the company.
9. Break down barriers among departments.
10. Eliminate slogans and targets for the workforce that demand zero defects and new levels of productivity.
11. Remove barriers that rob the hourly worker of his right to pride of workmanship. The responsibility of supervisors must be changed from sheer production numbers to quality.
12. Remove barriers that rob management of their right to pride of workmanship. Eliminate merit rating bonuses.
13. Institute a vigorous program of education and self-improvement.
14. Put everybody on course to accomplish this transformation.

Though I couldn't agree more with Steele, my objective was to move the dial a bit, encourage a results-based conversation and cause agribusiness leaders to rethink an age-old, long-accepted approach to performance reviews. But maybe that's not enough. Maybe it's time to dust off the works of Deming and inspire a renaissance.

*Spafford and his firm Legacy by Design (*legacy-by-design.com*) exclusively serve the succession planning needs of farmers, ranchers and agribusiness owners. Contact Spafford at* kevin@legacy-by-design.com *or 877-523-7411.*