FACT SHEET

Agriculture and Natural Resources

"Building for the Successful Transition of Your Agricultural Business" Fact Sheet Series

Is a Prenuptial Agreement Right for Your Farm Business?

Chris Zoller, Extension Educator,
Agriculture and Natural Resources/Community Development,
Tuscarawas and Holmes Counties

David Marrison, Extension Educator,
Agriculture and Natural Resources,
Ashtabula County

Introduction

Farm and agricultural businesses often have high capital investments in land, machinery, livestock, and miscellaneous equipment. The typical Ohio farm has over $1 million in capital assets. These assets are usually owned and held by multiple members of a family. With the rising divorce rate (over 50%), it is in the long term financial interest of the business to protect their business assets from a divorce of one of the business partners.

A prenuptial agreement is something many couples do not discuss (or dare to discuss) as they make their wedding plans. However, such an agreement can help minimize the financial stress on a family business in the event of a divorce. This agreement can also help determine the disbursement of assets, responsibilities for liabilities, and care of minor children.

A marriage is intended to be a life-long commitment; however, a significant number of marriages end in divorce. In fact, statistics from the Ohio Department of Health show that in 2006 Ohio had a divorce rate of 55.4 per 100 marriages. As farms increase in size and new family members become a part of the business, either directly or indirectly, there becomes a real need to discuss how assets and liabilities will be divided.

An example of how one farm was affected by not having a prenuptial agreement:

John and his parents, Ida and Levi, were partners in the family's dairy business. Together they milked 100 cows and farmed 500 acres. This little farm's assets were worth $2.5 million at this time. John was in partnership for five years with his parents prior to marrying Elizabeth. John and Elizabeth were married eleven years. They had an okay marriage, but life on the farm wore on Elizabeth. As a result of the divorce, Elizabeth was awarded one-quarter of the net worth of the farm at settlement. During the time they were married, the business's assets grew by $1 million. Elizabeth was awarded $875,000. In order to pay, John and his parents sold 50 acres of their prime farmland and took out a second mortgage. This hampered the financial stability of this operation for many years following the divorce.

What is a prenuptial agreement?

A prenuptial agreement (prenup) in its simplest form is a written contract between two people before they are married. This agreement typically lists all of the property each person owns along with all debts and specifies the rights each will have if the marriage ends in divorce, dissolution, or death of a spouse.

Marriage without a prenuptial agreement

In the event of a divorce, dissolution, or death, and without a prenuptial agreement, state law will determine who owns property acquired during marriage (known as marital or community property) and what happens to the property. Marriage is viewed by the court as a contractual relationship and with it comes certain rights for each spouse. In the absence of a prenuptial agreement, a spouse usually has the right to:

- Share ownership of property accumulated during the marriage with the expectation that such property will be divided between the spouses in the event of a death, dissolution, or divorce.

- Incur debts during marriage the other spouse may have to pay.
- Share in management and control of any marital or community property.

Preparing a prenuptial agreement

A prenuptial agreement should be discussed and completed well before the wedding day. This will require the couple to fully discuss their present finances and future goals. In order for the agreement to be enforced, each party must completely and accurately disclose all assets and liabilities assumed prior to the marriage. Once the agreement is written, copies of tax returns and balance sheets should be attached to the agreement as an appendix. The completed agreement should be reviewed by separate attorneys to add validity and because one attorney cannot represent both parties in the event of a divorce or dissolution of marriage. Ohio law also requires two witnesses to be present for the signing of the prenuptial agreement.

Enforcement of the agreement

Only in cases of divorce or dissolution will the court enforce a premarital agreement. In these instances, either party can ask the domestic relations division of the common pleas court to enforce the agreement. Factors that may impact enforcement include: if either party failed to fully disclose information prior to the signing of the agreement or where there is fraud or the terms of the agreement are contrary to law or against public policy. Interestingly, the court is not likely to enforce agreements presented and signed the eve of the marriage.

Examples of prenuptial agreements

Sample prenuptial agreement forms are available online for you to complete yourself. Simply type "prenuptial agreements" into any search engine and you will locate several resources. Once the agreement is written, it should be reviewed by an attorney. It is important that all parties be aware of all the facets of the agreement prior to signing the agreement. No one should sign an agreement unless she or he truly agrees with the terms.

Summary

A prenuptial agreement can help farm and agricultural businesses protect their business assets from a costly divorce. Many businesses are including in their business organization agreements a clause that states a prenuptial agreement is required for any partner in the family business. This will allow the partners to be assured that a separation or death does not interfere with the future success of the business. It is crucial this planning is done in consultation with an attorney. No one likes to believe their marriage will end in a divorce. Writing a prenuptial agreement does not mean a couple believes their marriage will fail but rather they are planning for the continued success of their agricultural business.

References

Marriage and Divorce Rates and Other Selected Statistics, by County, 2006, Ohio Department of Health, Center for Vital and Health Statistics.

Premarital Agreements. (1998). Oregon State University. Fact Sheet #318. A. M. Morrow and M. Goetting. Accessible at: http://extension.oregonstate.edu/catalog/html/fs/fs318-e/

Prenuptial Agreements—An Overview, www.findlaw.com

Ohio's Marriage Laws, www.ohiobar.org

Prenuptial Agreements Protect Pre-Marital Assets, www.ohiobar.org

Acknowledgment

The reviewer of this document was Peggy Kirk Hall, OSU Agricultural Extension.