AG-VISOR BLOG

Will Parents' Long-Term Care Costs Sink the Farm?

Authored by Aric D. Burch
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Problems can result when parents maintain ownership of a farm but need long-term health-care services from an assisted-living facility or nursing home. Expenses associated with long-term care can jeopardize a farm business if not properly managed ahead of time.

There's a common situation attorneys encounter when helping farm families with farm legal matters.

- Although parents have stepped aside from day-to-day farm operations, they continue to hold controlling-ownership interest in the farm.
- Recent health issues require long-term care for one of the parents. The care is not covered by Medicare.
- While they actively farmed the parents put most of their financial resources into building the farm. They do not have a lot of additional savings and are worried about affording the care they need.
- They know long-term care is expensive regardless of whether it's care at home, or in an assisted-living facility or nursing home. It may be necessary to apply for medical assistance to help pay for care.
- As they explore options they want to know if the state will take the farm from their family to cover long-term health-care costs.

The good news is a business is typically an exempt asset for medical-assistance purposes. A farm's value doesn't count as an asset that would keep a farm owner from receiving medical-assistance benefits. The bad news is a farm is part of an estate.

After a farm owner's death the state will recoup what it paid for care by filing a claim against the estate. That's when real danger to a family farm results. Business interest adds value to a parent's estate — but liquidity is an issue. If the estate includes no other resources to use to pay the state's claim, the family will need to find a way to preserve the farm and generate cash needed to pay the claim.

To avoid a claim against a parent's estate the older generation could have planned in advance to protect their farm interest. One could suggest they should have given the farm to their farming children years before needing care. Although not uncommon to transfer farm ownership by gifting, parents would have relinquished control of the farm. Loss of control was unacceptable to them.

Also when dealing with medical assistance, gifts can cause benefits to be withheld. Gifts must be reported on a medical-assistance application if they are made within five years prior to filing an application. That's referred to as a five-year "look back." So gifts should be made well before care is anticipated.

To protect the farm from long-term-care costs, yet be able to maintain control, the parents could have transferred their ownership interest to an irrevocable trust for which they are trustees. While still a gift that must be reported if during the five-year look-back period, gifting to a trust rather than directly to children allows parents to maintain control of the farm. And when the father later dies a trust is not subject to a claim by the state for benefits paid on his behalf.

By planning early parents can maintain control of their interest in a family farm but ensure the farm won't be subject to a claim by the state after death.

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500 N First Street, Suite 8000
P.O. Box 8050
Wausau, WI 54402-8050
Phone: 715.845.4336
Toll Free: 800.477.8050
Fax: 715.845.2718

402 Graham Avenue
P.O. Box 187
Eau Claire, WI 54702-0187
Phone: 715.834.3425
Toll Free: 800.477.8050
Fax: 715.834.9240

222 Cherry Street
Green Bay, WI 54301
Phone: 920.435.9393
Toll Free: 800.477.8050
Fax: 920.435.8866