

Just Give It to Everyone Equally: Case Study

Goering, P.;
Extension Specialist, AREC, lgoering@umd.edu

Henry and Alice established a dairy in 1948. Over time the dairy grew to include three tracts of land, the Home Place totaling 160 acres, the Bob Farm totaling 100 acres, and the Leathers Farm totaling 160 acres. Henry and Alice had three children: Charlie, Rosemary, and Kathleen. Of the three kids, Kathleen and her husband eventually moved back to the farm to help with its operation. The other two children have moved off the farm.

In 1995, Henry and Alice developed an estate plan that included a revocable trust transferring the three parcels of land. Henry and Alice acted as co-trustees, the survivor would become the trustee, and at the survivor's death, the three children would become the beneficiaries with a trustee managing the trust for them. The terms of the trust required the trust be divided equally among the three children.

Kathleen and her husband moved back to the area and began working with Henry and Alice in the dairy in 1997. In 2004, Kathleen and her husband purchased Henry and Alice's dairy herd and built a small home on the Home Place to operate the dairy. In 2004, Kathleen and her husband entered into long-term leases on all the farmland Henry and Alice owned. The farmland and dairy also began to transition into organic in 2004.

Henry passed away in 2009, and Alice became trustee of the trust. Alice and Kathleen revised the long-term leases to include provisions to apply the value of any capital improvements which Kathleen and her husband made to the future purchase price of the farmland. If the farmland sold to another person, then Kathleen and her husband could remove the capital improvements or be

appropriately compensated. The long-term leases also included language that if Kathleen and her husband and Alice entered into purchase agreements on the farmland, then the rent payments would be applied against the purchase price.

Questions:

1. What issues do you see developing with Henry and Alice's estate plan?
2. What should Henry and Alice have considered doing in 1997 or 2004?
3. What protections if any do Kathleen and her husband have to maintain the farmland needed to continue the operation?
4. What about Kathleen and her family's sweat equity in the dairy operation?
5. What if anything would you have done differently?

Getting back to our story, Alice passed away in 2012, and the children became beneficiaries of the trust. The trustee began to negotiate with the three children on how to distribute the trust's assets, including the three parcels of farmland. A district court eventually got involved and determined that the trust terms required equal distribution among the three children.

After this ruling, Charlie commenced an action in district court to equally divide the farmland up between the parties, and wanted Kathleen to provide Charlie and Rosemary with their share of the fair rental value of the property. Kathleen responded by requesting reimbursement for capital improvements made. According to the state law, the judge appointed two disinterested referees to recommend how the court should proceed.

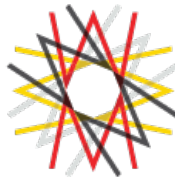
The referees issued a report determining fair market values of the three properties totaled close to \$1,800,000. The referees also found that Kathleen and her family wished to stay in their home and partitioning would be impossible with prejudice to Kathleen and her family, their capital improvements to the farmland, and the steps taken to obtain organic certification. The referees recognized that

Kathleen and her family had made capital improvements worth \$125,000 to the three pieces of farmland, reducing the total value of the three farms to \$1,675,000. The referees recommended that the district court require Kathleen and her family pay her brother and sister each \$558,333 (one-third the value of the farmland).

Questions:

1. What if any issues do you now see with Henry and Alice's estate plan?
2. What if Charlie/Rosemary wants to press and have the farmland sold to the highest bidder?
3. What do you think about the outcome?

UNIVERSITY OF
MARYLAND
EXTENSION



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE

*This material is based upon work supported by
USDA/NIFA under Award Number 2018-70027-28588.*



**NORTHEAST
EXTENSION
RISK
MANAGEMENT
EDUCATION**



National Institute of Food and Agriculture
U.S. DEPARTMENT OF AGRICULTURE