Gordon & McLeod LLP Newsletter

FOR OUR VALUED CLIENTS

AUGUST 1, 2017

Together We're Better: Joint Ventures

by Toni L. McLeod

We've all heard the old adage "bigger is better", and this is becoming increasingly more apparent in the agricultural industry as large-scale operations take advantage of economies of scale to gain an upper hand in an already highly competitive market.

But what is a small to mid-size operation to do when it feels like the risks of expansion outweigh the advantages of keeping up with the appetite and momentum of some of the larger and ever-growing operations? Between rising land prices and rising interest rates, it can feel like the only thing that is NOT rising is profit. One option that is often overlooked is the joint venture. Not to be confused with a partnership, the benefit of a joint venture arrangement is that it allows for different families/generations and farm corporations to work together while retaining their own legal entity and ownership of assets.

Joint ventures involve two or more separate entities agreeing to work together for a set period of time. However, unlike a partnership or corporation, each entity maintains its separate legal entity while sharing the use of assets and resources (ie. land, equipment) to create a much larger-scale operation. The income received from the joint venture is combined with each entity's normal tax reporting, and is attributed to each party based on their separate contributions. Notably, not all contributions need to be monetary. They can also take the form of skills or labor that are used to progress the venture.

Another important benefit to a joint venture is the ability for each corporate entity to take advantage of the small business deduction of $500,000. This is unlike a partnership, whereby the partners are required to *share* the small business deduction limit. This is an obvious benefit of a joint venture, as taxable income exceeding $500,000 can result in a painful tax bill on a farm once the higher rates come into effect. By way of an example, if two farm corporations join forces (one contributing land, and the other contributing machinery for speciality crops) and the joint venture profits are $750,000, each entity will receive $375,000 assuming a 50/50 profit split. As the taxable income for each entity is below the small business deduction limit, they will be taxed at a lower rate than a partnership where the partners are required to "share" the $500,000 small business deduction limit (in which case only the first $250,000 of taxable income for each entity would benefit from the small business

deduction, with the remaining $125,000 being taxed at a much higher rate). In addition, there is no tax consequences of ending such an arrangement, and therefore the dissolution of a joint venture is a relatively simple exercise compared to other business structures.

In order to get started, a joint venture agreement will need to be drafted which details exactly how the contributions, liabilities, expenses and profits from the venture will be divided among those involved. In addition, a joint venture agreement must clearly set out the rights and responsibilities of the parties and the management of the operation, keeping in mind that the terms may differ significantly depending on the nature of the venture.

We would welcome the opportunity to be of assistance with the planning and drafting of a solid joint venture agreement for those clients who wish to join forces and expand operations. Contact us today to set up an appointment at 403-646-6111.

Expectancy in an Estate: Don't Count Your Chickens Before They Have Hatched

by Toni L. McLeod

We have become aware of a recent decision of the Alberta Court of Queen's Bench that has helped clarify the issue around whether an individual has any right to property he or she expects to receive in an estate, prior to the death of the person giving the gift.

Although it seems an obvious principle of law that a person named as a beneficiary in a will takes no interest whatsoever under it until the death of the testator, there are exceptions to this rule which have been litigated by expectant beneficiaries with varying degrees of success. The Court in *Kostrub v. Stuparyk* provided some clarity on the issue, and highlights again the importance of regularly reviewing and updating your will as circumstances change to accomplish your estate planning goals.

Briefly, Anastazia Kostrub had three daughters and two nephews. She was the sole owner of two quarters of farmland. In her will, Anastazia bequeathed the farmland to her nephews, provided that they paid a specific sum of money to her daughters.

Shortly before her death, Anastazia transferred the farmland from her name as sole owner, into her name along with her three daughters (thereby creating a joint tenancy with a right of survivorship). The result was that after the transfer, the land no longer formed part of Anastazia's estate and would be owned jointly by her three daughters by virtue of the right of survivorship.

The nephews were disappointed to learn that their aunt had transferred the land, and brought an application asking the court to prevent the transfer. Essentially, the court was asked to decide whether the nephews had a right to protect their interest in the farmland before Anastazia had passed away, as being an "expectancy in an estate".

In his decision, Master Schlosser soundly reinforced the principle that, generally speaking, a beneficiary has no legal right to sue over property they expect to receive from an estate before the person who would have given them the give (the "testator") has passed away.

The only legally acceptable exception to this rule, as articulated by the Court, would be where a testator has lost capacity, for example, due to affliction by Alzheimer's disease, and there is no chance that he or she will regain capacity. In these circumstances, a court MAY allow the beneficiaries of a will to sue to protect their interest in the property they expect to receive upon the testator's death. In this instance, the testator is unable to make another will, and therefore a beneficiary may be considered to have a "vested interest" in the property. However, this exception likely applies only to a narrow set of circumstances, and the Court in *Kostrub v. Stuparyk* held that the nephews had failed to provide satisfactory evidence to support their application.

Why Does this Issue Matter?

We can only guess what Anastazia's true intentions were. If she had signed a new will after the land was transferred, this may have prevented the legal battle that ensued around the time of her death. This case illustrates the importance of having carefully considered estate planning documents that reflect your true (and current) intentions. An individual's intentions may change over time, and the testamentary gifts you wish to make may also change as your assets evolve over time.

How We Can Help

We are happy to take the time to sit down and discuss your individual and family estate planning needs. We understand how important your wishes are, and would be very happy to review your current will or draft new testamentary documents to ensure that your estate will be distributed in the manner that you intend.

*The contents of these articles are intended to provide a general guide to the subject matter. Legal and financial advice should be sought about your specific circumstances.

DID YOU KNOW?

We offer a full range of individual and family estate planning services. Whether you have questions about your will, power of attorney or personal directive documents, we are happy to spend the time to discuss your personal situation and put your mind at ease.

FOR MORE INFORMATION

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