

ESTATE PLANNING FOR RANCH OWNERS

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I. INITIAL CONSIDERATIONS

A. Legacy or Recreational Retreat

One of the threshold questions in planning for a ranch is whether the owner intends the ranch to be passed on to subsequent generations in perpetuity.¹ While many Texas ranches are multi-generational family legacies, recreational rural properties for high-net-worth individuals are also quite common and may not hold any specific sentimental value for the owner or his or her descendants.² In the latter case, the owner may expect the ranch to be liquidated during his or her lifetime or shortly after his or her death.³

1. See discussion *infra* Section VI.A.

2. See Jim Dobson, *Billionaire Cowboys are Buying and Selling The Largest Ranches in America*, FORBES (Sept. 15, 2020, 10:40 AM), <https://www.forbes.com/sites/jimdobson/2020/09/15/billionaire-cowboys-are-buying-and-selling-the-largest-ranches-in-america/?sh=79b88de71467> [https://perma.cc/AP9F-4K59].

3. See *id.*

1. Liquidation

If liquidation is anticipated, tax efficiency will be one of the most significant considerations in structuring the estate plan for the ranch.⁴ Even if the client's estate is not likely to be subject to estate taxes, due to the current high estate and gift tax exemptions, consideration should be given to the income tax aspects of liquidation, including the possibility of securing the step-up in basis for the ranch if still owned at death.⁵ Due to rapid increases in real estate prices in many parts of Texas, even recently purchased ranches may have a relatively low basis compared to the current market value.⁶ For clients who may be exposed to estate taxation, there may be a trade-off between the transfer tax efficiencies of obtaining discounts for gifts of fractional interests in real estate—either directly or through a family entity—and the loss of the step-up at death.⁷ However, as discussed in more detail later, if the owner intends to liquidate a ranch during his or her lifetime, liquidation following a gift of ranch interests to an intentionally defective grantor trust (IDGT) can be an efficient method to reduce estate exposure.⁸

Consideration should also be given to the possibility of disputes between beneficiaries as to the appropriate sales price, method of offering the property for sale, and other aspects of liquidation.⁹ While many planners generally grant broad discretion regarding sales to the applicable fiduciary and expect that he or she will act in accordance with his or her fiduciary duties to make a reasonable decision regarding these matters, if the ranch is a substantial component of the person's estate, more specific guidance may be warranted.¹⁰ In addition, if there is a known "problem" beneficiary, adding a specific clause exonerating the applicable fiduciary for the exercise of his or her discretion in conducting the sale might be prudent.¹¹ Further, consider the following:

- Whether the ranch should be listed publicly or without listing, such as an interested neighbor or family friend.¹²

4. See discussion *infra* Section VI.A.

5. See Andrew J. Barron, *Gift, Estate and Generation-Skipping Transfer Tax Changes for 2022*, WHITE AND WILLIAMS LLP (Mar. 2, 2022), <https://www.whiteandwilliams.com/resources-alerts-Gift-Estate-and-Generation-Skipping-Transfer-Tax-Changes-for-2022> [https://perma.cc/B2JL-3BLR].

6. See Luis Torres, *Around the Region: Texas Home Prices Rose at Record Pace in 2021*, FED. RSRV. BANK OF DALL., <https://www.dallasfed.org/research/swe/2022/swe2202/swe2202f.aspx> (last visited Sept. 26, 2022) [https://perma.cc/3UG5-NDSZ].

7. See *Step-Up in Basis*, TAX FOUND., <https://taxfoundation.org/tax-basics/step-up-in-basis/#:~:text=The%20step%20Dup%20in%20basis,tax%20owed%20by%20the%20recipient> (last visited Sept. 26, 2022) [https://perma.cc/9CCZ-7QP5].

8. See discussion *infra* Section VI.A.

9. See discussion *infra* Section IV.B.2.

10. See discussion *infra* Section IV.D.2.

11. See discussion *infra* Section IV.D.

12. See *Off market properties: What are they and how to buy*, BUNGALOW (Feb. 1, 2022), <https://>

- Whether the ranch should be auctioned, rather than listed at a set price.¹³
- Whether the buyer pays cash—and secure third-party financing if needed—or partially in cash and partially with a promissory note.¹⁴
- Whether the ranch be sold whole or parceled out.¹⁵
- Whether, and to what extent, the fiduciary is to expend funds to improve the ranch and ready it for sale.¹⁶
- Whether someone is living at the ranch, such as a tenant, family member, etc., at the time a sale is contemplated, and whether they may continue to reside at the property until it is sold.¹⁷

2. Multi-Generational Ownership

If long-term ownership through multiple generations is anticipated, beneficiary exit options and conflict resolution mechanisms should be given high priority in designing the estate plan.¹⁸ Families may fail to anticipate that the family ranch could become a significant temptation for descendants looking for a large cash windfall.¹⁹ However, as real estate prices rise across Texas, so does the tension between those who see family ranches as sources of identity and family legacy and those who desire access to the monetary value of the land.²⁰ Even if all members of the next generation are equally interested in owning the ranch at the time the plan is created, it is still important to consider the possibility that unanticipated disagreements might arise among them or that members of subsequent generations might want to exit the ownership arrangement.²¹ Accordingly, the planner should talk through options for exit strategies with the client, regardless of whether an immediate need is expected.²² Cash flow management should also be given

bungalow.com/articles/off-market-properties-what-are-they-and-how-to-buy [https://perma.cc/P28T-4FJ6].

13. See *When to Use an Auction to Sell a Property*, TEX. REALTORS (Sept. 23, 2020), <https://www.texasrealestate.com/members/posts/when-to-use-an-auction-to-sell-a-property/> [https://perma.cc/7FXH-8RCR].

14. See discussion *infra* Section IV.D.

15. See discussion *infra* Section IV.B.2.

16. See discussion *infra* Section I.B; see also *infra* Sections V.B–C for further discussion of considerations when third parties reside at the ranch.

17. See discussion *infra* Sections V.B–C.

18. See discussion *infra* Sections V.B–C.

19. See discussion *infra* Part IV.

20. Teresa Opheim, *The farmland transfer dilemma: Keep the farm—and family—intact*, PRAC. FARMERS OF IOWA (May 30, 2014), <https://practicalfarmers.org/2014/05/the-farmland-transfer-dilemma-keep-the-farm-and-family-intact/> [https://perma.cc/JJC3-CAZA].

21. See *id.*

22. *Keeping the Family Farm in the Family*, SECURIAN 3, 8–14, <https://issueins.com/wp-content/uploads/KEEPING-THE-FAMILY-FARM-IN-THE-FAMILY.pdf> (last visited Sept. 23, 2022) [https://perma.cc/9NSN-9BHR]; see also *infra* Part IV.

careful consideration, particularly if the ranch is a significant component of the overall estate.²³

3. Cemeteries on Private Property

If the ranch has been in the family for multiple generations or if it is intended to stay in the family, it is worth inquiring whether the family has or intends to establish a private cemetery on the ranch.²⁴

B. Liquidity and Cash Flow

Regardless of the size of the overall estate, a critical question in planning for a ranch is whether it produces sufficient income to meet its expenses, such as property taxes and the maintenance and repair expenses, as they arise.²⁵ Even if the ranch is income producing, it is not uncommon for ranch owners to depend on other sources of income to meet the ranch's cash flow needs.²⁶ If other sources of income may be required from time to time, the estate plan should be structured to take this need into account, particularly if the owner intends for the ranch to be passed down to subsequent generations rather than liquidated immediately at death.²⁷

I. Capital Calls for Ranch in FLP or LLC

It is common for ranches to be held in a family limited partnership (FLP) or limited liability company (LLC).²⁸ Consideration should be given to whether the governing document of the entity should allow discretionary capital calls to meet ranch expenses.²⁹ Permitting capital calls may produce fair results if all owners have roughly equal financial situations and all desire

23. See John Tanaka, *Ranch Management*, RANGELANDS GATEWAY, <https://rangelandsgateway.org/topics/human-economic-dimensions/ranch-management> (last visited Sept. 23, 2022) [<https://perma.cc/A38K-3UMF>]; see *infra* Section I.B.

24. TEX. FAM. CODE ANN. §§ 711.003, 711.008, 711.034; Doug Jordan, *Oh Bury Me (Not) On the Lone Prairie: Establishing Family Cemeteries on Texas Farms and Ranches*, 73 TEX. BAR J. 374, 376 (2010).

25. Tanaka, *supra* note 23.

26. Anil K. Giri et al., *Off-Farm Income a Major Component of Total Income for Most Farm Households in 2019*, USDA (Sept. 7, 2021), <https://www.ers.usda.gov/amber-waves/2021/september/off-farm-income-a-major-component-of-total-income-for-most-farm-households-in-2019/> [<https://perma.cc/S78U-S78C>].

27. See Michele Lerner, *3 Ways to Transfer Real Estate to Future Generations*, FORBES (Apr. 2, 2019), <https://www.forbes.com/sites/whittiertrust/2019/04/02/3-ways-to-transfer-real-estate-to-future-generations/?sh=607725b15530> [<https://perma.cc/7MBL-M36T>].

28. James J. Ferraro, *Keeping Property in the Family with LLCs and Partnerships*, KIPLINGER (Apr. 29, 2022), <https://www.kiplinger.com/retirement/estate-planning/604612/keeping-property-in-the-family-with-llcs-and-partnerships> [<https://perma.cc/N4AL-E3AM>].

29. Elizabeth S. Miller, *Practical Pitfalls in Drafting Texas Limited Liability Company Agreements*, 45 TEX. J. BUS. L. 27, 32 (2012).

to retain ownership of the ranch.³⁰ In other circumstances, they may lead to inequitable results and conflict.³¹ For example, if one of the owners does not wish to retain ownership but is prohibited from liquidating their interest due to the transfer restrictions in the governing document (which is quite common in family entities) a mandatory capital call could appear inequitable.³²

Discretionary capital call provisions also have some potential for abuse in the event the governing persons wish to squeeze out a financially disadvantaged minority owner.³³ If capital calls are permitted, the provisions should be carefully drafted to address the consequences of default.³⁴ The Texas Business Organizations Code provides a list of potential consequences of default that can be included in the company agreement of an LLC; for example, the company agreement may provide that a defaulting member's ownership interest is reduced, subject to a forced redemption or sale, or the member may be made subject to other penalties or consequences.³⁵ In the family context, it may be appropriate to provide that in the event an owner defaults on a contribution obligation, the other owners have the right, but not the obligation, to cover the defaulted amount and adjust the ownership percentages accordingly.³⁶ In such an event, consider providing expressly that the reduction of the defaulting owner's percentage is the sole consequence of default, and prohibit the entity and other owners from seeking specific performance or damages, in addition to the reduction in ownership.³⁷

2. Oil, Gas, and Other Energy Revenue

It is very common in parts of Texas for ranch owners to utilize oil and gas income as a key source of liquidity to meet ranch expenses.³⁸ The planner should be cognizant of this issue if the estate plan separates the ownership of the surface and minerals in either the disposition of the estate or in the family's entity structure; for example, one FLP owns the surface and one FLP owns the minerals.³⁹ For some ranches, solar and wind leases may also be a

30. *Capital Call*, EQUITY MULTIPLE, <https://www.equitymultiple.com/glossary/capital-call#:~:text=A%20capital%20call%20is%20the,the%20partnership%20or%20subscription%20documents> (last visited Sept. 26, 2022) [<https://perma.cc/SMP6-QKQQ>].

31. See Edward S. Robson, *The Hazards of 'Weaponizing' Capital Call and Dilution Provisions*, ROBSON & ROBSON (Apr. 12, 2019), <https://robsonlaw.com/2019/04/weaponizing-capital-call-and-dilution-provisions/> [<https://perma.cc/3FMQ-F286>].

32. See *id.*

33. See *id.*

34. See TEX. BUS. ORGS. CODE ANN. § 101.153(b).

35. *Id.*

36. See *id.*

37. See *id.*

38. See Ernest E. Smith, *The Growing Demand for Oil and Gas And the Potential Impact Upon Rural Land*, 4 TEX. J. OIL GAS & ENERGY L. 1, 13 (2009).

39. NANCY SAINT-PAUL, *Rights of Owners of Separate Interests in Oil and Gas*, 1A SUMMERS OIL AND GAS § 8:4 (3d ed. 2021).

significant source of revenue, and both the income and obligations under such leases should be considered when planning for the ranch.⁴⁰

3. Liquidity for Ranch in Trust

If the ranch is left in trust, the planner should consider whether the trust will be funded with sufficient liquid assets to maintain the ranch indefinitely.⁴¹ Even in non-taxable estates, it is generally unwise for a beneficiary to contribute to a trust for their own benefit.⁴² Doing so diminishes the creditor protection and marital property protection benefits.⁴³ It can also significantly complicate the income taxation of the trust, causing a portion of the trust to be taxed under the standard trust rules and the portion attributable to a beneficiary to be taxed under the grantor trust rules.⁴⁴

Accordingly, while there are potentially reasonable methods for a beneficiary to add liquidity to a trust—through loans or purchases of trust assets—it is unwise to plan on future liquidity routinely coming from the beneficiaries while the ranch is held in trust.⁴⁵ If there is insufficient liquidity in the trust to maintain the ranch, the trustee should be given the flexibility to sell some or all of the ranch.⁴⁶ If the grantor of the trust wishes the ranch to remain in the family, the trust could provide certain beneficiaries with a right of first refusal or option to purchase if a sale is contemplated.⁴⁷ If a sale to a beneficiary or trustee is possible, the trust instrument should specifically address the potential conflict of interest and self-dealing; in addition, specific guidance on the sales price and terms of any sale to a related party would be advisable to protect both the beneficiaries and the trustee.⁴⁸ Even if a sale to a related party is authorized by the trust agreement and objectively reasonable, related party transactions can give the appearance of impropriety and lead to litigation.⁴⁹

40. *Wind and Solar Offer Diversified Revenue for U.S. Farmers and Ranchers*, PINION (Mar. 9, 2022), <https://www.pinionglobal.com/wind-and-solar-offer-diversified-revenue-for-u-s-farmers-and-ranchers/> [https://perma.cc/LXB3-ZR2R].

41. Shayna W. Borakove, Esq., *Estate Planning, Business Continuation, Transition and Succession for Farmers*, 26 SAN JOAQUIN AGRIC. L. REV. 1, 34–35 (2017).

42. See Lisa Lehan, *The “Write” Plan*, EDGE MAGAZINE, <http://edgemagazine.com/the-write-plan-8/> (last visited Sept. 26, 2022) [perma.cc/HS9X-SC53].

43. See *Beneficiary Designations in Estate Plans (TX)*, PRACTICAL LAW PRACTICE NOTE w-000-3025.

44. See *id.*

45. See EDWARD F. KOREN, *Sources of liquidity—In general*, 2 EST. TAX & PERS. FIN. PLAN. § 23:6.

46. See TEX. PROP. CODE ANN. § 113.010.

47. See 3 TEX. PRAC. GUIDE REAL EST. TRANSACTIONS §§ 19:288–:291.

48. See JAMES LOCKHART, *Causes of Action Against Trustee for Self-Dealing*, 14 COA 411, §§ 5–6 (1987); see also TEX. PROP. CODE ANN. §§ 114.001, 114.031.

49. See ALAN S. GUTTERMAN, *Related party transactions policy and procedures*, BUS. TRANSACTIONS SOL. § 221:237 (2022); see also Joseph Bassano et al., *Impropriety or appearance of impropriety*, 48A C.J.S. JUDGES § 91 (2022).

C. Property Taxes

Detailed analysis of the property tax rules applicable to rural landowners is outside the scope of this paper.⁵⁰ However, a basic understanding of relevant property tax terminology and requirements can be helpful for estate planners dealing with this type of property.⁵¹

For property tax purposes, property is usually valued at its market value.⁵² However, certain rural land can instead be valued based on the land's capacity to produce agricultural products (productivity value) instead of at market value for property tax purposes.⁵³ Accordingly, while one may hear people speak colloquially about "ag exemptions" or "ag exempt land" in the property tax context, they are usually referring to the special valuation method and not an "exemption."⁵⁴

Agricultural use valuation (1-d appraisal) requires a yearly application to be filed before May 1st.⁵⁵ Crucially, from an estate planning perspective, the land must be owned by a natural person in order to qualify for agricultural use valuation.⁵⁶ Open space valuation (1-d-1 appraisal) requires a one-time application to be filed with the applicable county appraisal district.⁵⁷ Wildlife use valuation is a subpart of 1-d-1 open space appraisal but has its own distinct set of rules, including submission of a wildlife management plan.⁵⁸

While the general rules for qualification for special use valuation are found in the Texas Constitution and Tax Code, some specific rules and issues of interpretation can vary significantly between county appraisal districts.⁵⁹ In every appraisal district, "once a landowner obtains a special use valuation, there are serious penalties for ceasing to comply with the requirements."⁶⁰

Accordingly, it is important to be sensitive to any aspect of the estate planning strategy that might cause a change in the use of the land, or if

50. See *infra* Section I.C.

51. See *infra* Section I.C.

52. Tiffany Lashmet, *Special Use Valuation in Texas (Part I): The Basics*, TEX. A&M AGRILIFE EXTENSION (Nov. 7, 2016), <https://agrilife.org/texasaglaw/2016/11/07/special-use-valuation-texas-part-basics/> [https://perma.cc/VXN7-QPQF].

53. *Id.*

54. *Id.*; Jessica Haile & Randa Barton, *How to Get an "Ag-Exemption" and the Consequences of Losing It*, 80 TEX. BAR J. 762, 762 (2017).

55. Glann Hegar, *Manual for the Appraisal of Agricultural Land*, TEX. COMPTROLLER OF PUB. ACCT. 1, 13–14 (2020), <https://comptroller.texas.gov/taxes/property-tax/docs/96-300.pdf> [https://perma.cc/5DMV-TRRA].

56. TEX. CONST. art. VIII, § 1-d(a); see, e.g., *City of Mesquite v. Malouf*, 553 S.W.2d 639, 644 (Tex. App.—Texarkana 1977, writ ref'd n.r.e.).

57. Tiffany Lashmet, *Special Use Valuation in Texas (Part III): Open Space Valuation*, TEX. A&M AGRILIFE EXTENSION (Nov. 21, 2016), <https://agrilife.org/texasaglaw/2016/11/21/special-use-valuation-texas-part-iii-open-space-valuation/> [https://perma.cc/GJ52-RU4T].

58. See TEX. CONST. art. VIII, § 1-d-1(a); 34 TEX. ADMIN. CODE ANN. §§ 9.2003–2004 (2008) (Comptroller of Pub. Accts., Special Appraisal).

59. Lashmet, *supra* note 52.

60. *Id.*

qualified under 1-d agricultural use valuation, might cause someone other than a natural person to own the land.⁶¹

II. LIABILITY PROTECTION

Liability protection is important for ranches of all sizes.⁶² There are a few simple steps that should be taken by all ranch owners, regardless of ranch size.⁶³ For example, almost anyone who owns a ranch should post signs with the warning language required by the Agritourism Act; doing so is a cheap and easy way to obtain certain liability protection if a guest is injured on the ranch while engaging in an outdoor recreational activity (hunting, fishing, etc.).⁶⁴ Other types of liability protection planning, such as the formation of LLCs and FLPs, may be appropriate for larger ranches or higher net worth clients.⁶⁵

A. Agritourism Act

The Agritourism Act can provide significant protection to rural landowners who allow guests to engage in recreational activities on the land, including hunting, fishing, swimming, boating, hiking, and “any other activity associated with enjoying nature or the outdoors.”⁶⁶ Some of the terminology used in the Agritourism Act is not necessarily intuitive, but the key terms are so broadly defined that the Act’s protections are potentially relevant to almost anyone who owns rural land in Texas.⁶⁷ For example, the Act only protects an “agritourism entity.”⁶⁸ However, “agritourism entity” is so broadly defined that it probably includes almost any rural landowner who invites guests onto his or her property for recreational activities.⁶⁹ Specifically, it is defined as “a person engaged in the business of providing an agritourism activity, without regard to compensation, including a person

61. See *id.*; see, e.g., *City of Mesquite*, 553 S.W.2d at 644.

62. See Tiffany Lashmet, *How Landowners Can Protect Themselves from Liability*, TEX. A&M AGRILIFE EXTENSION 1, 1–3 (Sept. 2018), <https://agrilife.org/texasaglaw/files/2018/10/How-Landowners-Can-Protect-Themselves-from-Liability.pdf> [<https://perma.cc/3QE8-S3HT>].

63. See *id.*

64. See TEX. CIV. PRAC. & REM. CODE ANN. § 75A.003; Tiffany Lashmet, *Questions from Tiffany’s Desk: What Signs Do I Need on My Farm/Ranch?*, TEX. A&M AGRILIFE EXTENSION (Aug. 16, 2021), <https://agrilife.org/texasaglaw/2021/08/16/questions-from-tiffanys-desk-what-signs-do-i-need-on-my-farm-ranch/> [<https://perma.cc/5DRL-K7QL>].

65. See Lashmet, *supra* note 62.

66. TEX. CIV. PRAC. & REM. CODE ANN. § 75.001(3).

67. See *id.* § 75.001; Kenneth C. Riney, *Litigation Update: The Texas Agritourism Act: New Potential Liability Protection for Texas Agricultural Landowners*, KANE RUSSEL COLEMAN LOGAN PC (Aug. 2, 2016), <https://www.krcl.com/insights/litigation-update-texas-agritourism-act-new-potential-liability-protection-texas-agricultural-landowners> [<https://perma.cc/BV64-B9HX>].

68. TEX. CIV. PRAC. & REM. CODE ANN. § 75A.002(a).

69. *Id.* § 75A.001(3); see Riney, *supra* note 67.

who displays exotic animals to the public on agricultural land.”⁷⁰ If the requirements of the Act are met, the agritourism entity is protected from liability to any person for an “agritourism participant injury or damages arising out of the agritourism participant injury,” subject to the limitations in Section 75A.002(b).⁷¹

1. Obtaining Protection Under the Agritourism Act

To obtain the protection of the Agritourism Act, the landowner must either post signs complying with the requirements of Section 75A.003 or obtain signed agreements complying with Section 75A.004 of the Texas Civil Practices and Remedies Code.⁷² The signs must be posted “in a clearly visible location on or near any premises on which an agritourism activity is conducted” and must contain the following language:

WARNING
UNDER TEXAS LAW (CHAPTER 75A, CIVIL PRACTICE AND
REMEDIES CODE), AN AGRITOURISM ENTITY IS NOT LIABLE
FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM
PARTICIPANT RESULTING FROM AN AGRITOURISM
ACTIVITY.⁷³

Unlike many other types of liability releases, a written agreement under the Agritourism Act is enforceable against a minor if signed by the minor’s parent, managing conservator, or guardian.⁷⁴ The written agreement and warning statement must be “in a document separate from any other agreement between the agritourism participant and the agritourism entity other than a different warning, consent, or assumption of risk statement.”⁷⁵ Accordingly, it is advisable to keep the agritourism agreement as a separate document from a general ranch liability release, hunting lease, or other document.⁷⁶

2. Limitations of Liability Protection

The Agritourism Act does not limit liability for injuries that are intentionally caused by the agritourism entity or proximately caused by:

70. TEX. CIV. PRAC. & REM. CODE ANN. § 75A.001(3).

71. *Id.* § 75A.002(a)–(b).

72. *Id.* §§ 75A.003–.004.

73. *Id.* § 75A.003.

74. *Id.* § 75A.004(2).

75. *Id.* § 75A.004(3).

76. *Id.*

(A) the agritourism entity's negligence evidencing a disregard for the safety of the agritourism participant; (B) one of the following dangers, of which the agritourism entity had actual knowledge or reasonably should have known: (i) a dangerous condition on the land, facilities, or equipment used in the activity; or (ii) the dangerous propensity, that is not disclosed to the agritourism participant, of a particular animal used in the activity; or (C) the agritourism entity's failure to train or improper training of an employee of the agritourism entity actively involved in an agritourism activity.⁷⁷

B. Farm Animal Liability Act

The Texas Farm Animal Liability Act (FALA) offers limited liability to farm animal owners if injuries are caused by an inherent risk of a farm animal activity.⁷⁸ Like the Agritourism Act, the FALA has broader application than some of the terminology might suggest.⁷⁹ For purposes of the FALA, “‘Farm’ means any real estate, land area, facility, or ranch used wholly or partly for raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, agricultural, apicultural, or aquacultural operation.”⁸⁰ Several amendments to the FALA went into effect September 1, 2021 that are particularly relevant to estate planners: (1) the scope of FALA's protections were broadened and are now likely applicable to more clients than before, and (2) signs containing FALA's required statutory warning language must be hung in order to obtain the Act's protection.⁸¹ Accordingly, if the ranch owner has farm animals, it is advisable to post the FALA warning signs.⁸² The FALA provides that the sign must be placed in a “clearly visible location on or near the stable, corral, or arena” where the farm animal activities are conducted.⁸³ The signs must contain the following language:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A FARM ANIMAL PROFESSIONAL OR FARM OWNER OR LESSEE IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN FARM ANIMAL ACTIVITIES, INCLUDING AN EMPLOYEE OR INDEPENDENT CONTRACTOR,

77. *Id.* § 75A.002(b).

78. *Id.* § 87.003.

79. *See generally id.* § 87.001 (defining the scope of FALA terms).

80. *Id.* § 87.001(2-a).

81. Tiffany Lashmet, *Amendments to Texas Farm Animal Liability Act Effective September 1*, TEX. A&M AGRILIFE EXTENSION (June 21, 2021), <https://agrilife.org/texasaglaw/2021/06/21/amendments-to-texas-farm-animal-liability-act-effective-september-1/> [<https://perma.cc/7R47-KFCK>].

82. TEX. CIV. PRAC. & REM. CODE ANN. § 87.005(a).

83. *Id.*

RESULTING FROM THE INHERENT RISKS OF FARM ANIMAL ACTIVITIES.⁸⁴

This language should also be included in any employment agreement or other written contract “that the professional, owner, or lessee enters into with a participant, including an employee or independent contractor, for professional services, instruction, or the rental of equipment or tack or a farm animal.”⁸⁵

C. Liability Waivers

High net worth or risk adverse ranch owners may wish to obtain additional written liability waivers from guests.⁸⁶ These should always be in addition to—not in lieu of—appropriate Agritourism Act signs and agreements.⁸⁷

D. Texas Recreational Use Statute and Liability Insurance

The Texas Recreational Use Statute limits the liability of the owner, lessee, or occupant of agricultural land in certain contexts.⁸⁸ If guests are not charged for entry, or total charges are within the limits prescribed by the Texas Civil Practice and Remedies Code, nothing needs to be done to obtain the protection of the statute.⁸⁹ If guests are charged for entry and total charges exceed the statutory limits, then to obtain the protection of the statute, the owner, lessee, or occupant must maintain “liability insurance coverage in effect on an act or omission described by Section 75.004(a) and in the amounts equal to or greater than those provided by that section.”⁹⁰

E. FLPs and LLCs

As further discussed in Part III, conveying the ranch to an LLC or FLP can provide liability protection benefits for the owner, while also facilitating other estate planning objectives.⁹¹

84. *Id.* § 87.005(c).

85. *Id.* § 87.005(b).

86. Author’s original thought.

87. Author’s original thought.

88. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 75.002.

89. *See id.* § 75.003(c)(2).

90. *Id.* § 75.003(c)(3).

91. *See infra* Part III.

III. FAMILY LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES

A. Homestead Qualification

Property held in an LLC or FLP will not qualify for the homestead property tax exemption.⁹² Accordingly, if there is a home located on the ranch that is used as the client's homestead, it may be appropriate to survey out the home and outbuildings prior to conveying the remaining ranch to the entity.⁹³

B. Marital Property Issues

Absent a premarital or marital agreement addressing this issue, funding an LLC or FLP with a separate property ranch may have unexpected consequences for the characterization of property accumulated within and distributed from such an entity.⁹⁴ This is particularly relevant to the owners of mineral interests.⁹⁵ In Texas, the royalty income from separate property minerals is also characterized as the separate property of the owner spouse.⁹⁶ However, if the separate property minerals are contributed to an LLC or FLP, distributions of that royalty income from the entity to a spouse are community property.⁹⁷ The case law on the characterization of entity distributions is complex and sometimes contradictory.⁹⁸

An LLC or FLP organized during marriage and capitalized entirely with traceable separate property of one spouse should be characterized as the separate property of that spouse.⁹⁹ Undistributed income, or other assets held in a spouse's separate property entity, is not community property and not subject to division at divorce or death, with the rare exception of cases in which equity permits a spouse to "pierce the veil."¹⁰⁰

With some specific exceptions, all non-liquidating distributions by a separate property entity to the owner spouse are probably community property under Texas law.¹⁰¹ One could make the argument that distributions of capital should be characterized as separate property.¹⁰² However, until this

92. See TEX. TAX CODE ANN. § 11.13.

93. See *id.*

94. See TEX. FAM. CODE ANN. § 3.001.

95. See *Norris v. Vaughan*, 260 S.W.2d 676, 680 (Tex. 1953).

96. See *id.*

97. See *Marshall v. Marshall*, 735 S.W.2d 587, 593–94 (Tex. App.—Dallas 1987, writ ref'd n.r.e.).

98. Thomas M. Featherston, Jr., *Marital Property Characterization of Interests in and Distributions from Business Entities and Express Trusts*, BAYLOR U. 2, 3 (2018), https://www.baylor.edu/law/faculty_staff/doc.php/328138.pdf [<https://perma.cc/DQ7F-QNZ6>].

99. *Id.*

100. *Id.* at 7, 12.

101. *Id.* at 17.

102. See TEX. FAM. CODE ANN. § 3.001.

matter is resolved by the courts or legislation, we must live with uncertainty.¹⁰³

The key takeaway if your client is married and does not have a premarital or marital agreement addressing this issue: do not allow them to contribute property to an FLP or LLC without fully informing them about the potential impact on the marital property characterization of accumulations and distributions.¹⁰⁴ In addition, if you represent both spouses in their estate planning, evaluate the possible conflict of interest and whether it is waivable under applicable ethics rules before asking the non-owner spouse to sign a partition and exchange agreement or waiver in the context of funding an FLP or LLC.¹⁰⁵

C. Choice of Entity

1. Simplicity of LLCs

In many situations, an LLC will offer some significant advantages over an FLP in terms of simplicity.¹⁰⁶ LLCs can be disregarded for federal income tax purposes if owned by a single individual or by a married couple as community property.¹⁰⁷ An FLP cannot be disregarded for income tax purposes; it will be taxed as a partnership unless elected otherwise under the “check the box” regulations.¹⁰⁸ In addition, the FLP will typically require the formation of two entities—the LLC general partner as well as the FLP itself—which results in additional startup costs and ongoing administrative costs compared to an LLC.¹⁰⁹ Accordingly, absent other considerations, LLCs are often the best choice for more modest estates and complexity-adverse clients.¹¹⁰

2. Mineral Income and Choice of Entity

An FLP can qualify as a “passive entity” for Texas franchise tax purposes, but an LLC cannot.¹¹¹ Accordingly, if the ranch is producing or may produce royalty income that exceeds the no tax due threshold for

103. *See id.*

104. *See* David J. Elbaz & Robert C. Kopple, *Integrating Business Succession and Wealth Transfer Planning Techniques*, 64 MAJOR TAX PLAN. 2-1, 2-29 to 2-32 (2012).

105. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.06. *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (Tex. State Bar R. art. X, § 9).

106. *See* Mark Merric, *Comparison of the FLP versus the LLC as a Complement to the Foreign Asset Protection Trust*, 2 ASSET PROT. J. 31, 38 (2000).

107. *See id.*

108. *See id.*

109. *See id.*

110. *See id.*

111. *See* Cynthia M. Ohlenforst et al., *Taxation*, 61 SMU L. REV. 1131, 1138–43 (2008).

franchise tax purposes (\$1,230,000 for reports due in 2022–2023), an FLP would be a better choice to own the ranch.¹¹² Alternatively, the surface of the ranch may be transferred into an LLC, while the minerals can be retained by the owner individually or transferred into an FLP.¹¹³

3. FLP with Non-Equity General Partner

Historically, it was very common to grant the LLC general partner a small partnership interest, often one percent, when forming the FLP.¹¹⁴ However, for very “active” FLPs with very regular distributions to the partners, this small ownership percentage can be administratively burdensome, as FLPs are generally required to make pro rata distributions to all partners.¹¹⁵ In some cases, it may be preferable to make the LLC a general partner but not grant it an ownership interest in the FLP, which is permitted if authorized in the partnership agreement.¹¹⁶ If cash flow from the FLP is needed by the LLC general partner, the LLC and FLP can enter into a management agreement providing for set annual compensation to the LLC for its services as general partner.¹¹⁷

D. Creation of Multiple Entities

In some circumstances, creating multiple entities for the ranch may offer greater liability protection or facilitate other estate planning strategies.¹¹⁸

1. Separation of Minerals from Surface

Liability can arise from ownership of the surface of real property but is unlikely to arise from ownership of the mineral estate.¹¹⁹ To prevent the minerals being exposed to liability from the surface estate, consider separating the minerals into separate entities.¹²⁰ In some circumstances, this separation may also facilitate other estate planning goals.¹²¹ For example, this would allow the older generation to transfer some or all of the income

112. *See id.*

113. *See id.*

114. *See Protecting Your Family Limited Partnership*, PEDERSON & HOUPPT (Jan. 2005), <https://www.pedersenhaupt.com/newsroom-publications-48.html> [<https://perma.cc/NZA7-BBXN>].

115. *See* John F. Ramsbacher et al., *The Family Limited Partnership: Forming, Funding, and Defending*, 18 PRAC. TAX L. 29, 43 (2004).

116. *See* TEX. BUS. ORGS. CODE ANN. § 153.151(d).

117. *See id.*

118. *See* Neil E. Harl, *Farm and Ranch Estate (and Business) Planning—Part 2*, 42 EST. PLAN. 21, 21 (Apr. 2015); TEX. BUS. ORGS. CODE ANN. §§ 2.001, 21.223.

119. *See* Aloysius A. Leopold, *Rights of holder of undivided mineral estate—As against surface owner*, in 3A TEX. PRAC., LAND TITLES AND TITLE EXAMINATION § 14.26 (3d ed. 2020).

120. *See* *Humphreys-Mexia Co. v. Gammon*, 254 S.W. 296, 302 (Tex. 1923).

121. *See* Harl, *supra* note 118.

producing minerals to the next generation or trusts for their benefit, while retaining the surface estate in a liability protected entity.¹²² Under current tax law, this would likely be more efficient than transferring both together, as the surface could still receive a step-up in basis upon the older generation's death and the investments and reinvestments from the income-producing assets can grow outside the older generation's estate.¹²³ This is particularly effective from a transfer tax perspective if the minerals are gifted to an IDGT so the older generation continues to pay the income tax burden.¹²⁴ The mineral entity might also be a suitable subject of an installment sale to an IDGT.¹²⁵

2. Separation of Tracts for Distribution to Beneficiaries

If the client is leaving specific tracts to different beneficiaries it may be advisable to separate the tracts into separate LLCs.¹²⁶ For example, if Tract A is going to Child A and Tract B is going to Child B, the owner might establish and fund "Tract A, LLC" and "Tract B, LLC."¹²⁷ If the LLCs are "manager managed," the owner could add Child A as a manager of Tract A, LLC and Child B as a manager of Tract B, LLC.¹²⁸ The owner can continue to serve as manager and may remove or replace the children as managers so long as the owner holds the requisite amount of membership interests under the company agreements.¹²⁹ The owner may also retain or give away as much of the ownership as they wish during their life, while creating continuity of management after their incapacity or death.¹³⁰

3. Separation of Operations and Ownership

For additional liability protection, the ownership of the surface estate can be separated from the operations of the ranch.¹³¹ This arrangement involves the creation of two entities: one that will own the land (Owner Entity) and the other (Operations Entity) that will lease the land from the Owner Entity.¹³² If the Operations Entity generates a liability, the Operations Entity's assets (minimal cash) would be directly exposed to such liability, but the Owner Entity's assets (the land) would not be unless the plaintiff

122. TEX. PROP. CODE ANN. § 113.012(a)(2).

123. See Turney P. Berry & Paul S. Lee, *Retaining, Obtaining, and Sustaining Basis*, 7 EST. PLAN. & CMTY. PROP. L.J. 1, 49–50, 59–60 (2014).

124. *Id.* at 69–70.

125. See *infra* Section VI.B.

126. See TEX. PROP. CODE ANN. § 5.151.

127. *Id.* § 12.019(c).

128. See TEX. BUS. ORGS. CODE ANN. § 101.102.

129. See *id.* §§ 101.302, 101.304.

130. *Id.*

131. *Id.* § 101.052.

132. *Id.*

prevailed on an “alter ego” or similar theory conflating the two entities in the suit.¹³³ A written lease agreement and compliance with its terms would be an important factor in whether the arrangement would be respected for liability protection purposes.¹³⁴ If the Operations Entity and the Owner Entity are both single member LLCs that elect to be disregarded entities for federal income tax purposes, there would be no federal income tax consequences to the lease arrangement.¹³⁵ While this structure does offer some additional liability protection benefits, the additional complexity likely makes it appropriate for clients with larger estates and sufficient administrative support from a family office or other professionals to ensure it operates in accordance with the requisite formalities.¹³⁶

IV. EXIT STRATEGIES

While many families envision the ranch as a legacy to be handed down and cherished in perpetuity by their descendants, it is inevitable that at some point a beneficiary will wish to exit the joint ownership arrangement and receive cash for his or her share.¹³⁷ Clients who wish to lock their descendants into the joint ownership arrangement for as long as possible, regardless of descendants’ own wishes, need to understand that these types of forced economic relationships between siblings and multiple generations can be very detrimental to family harmony and increase the risk of litigation targeted at breaking the plan.¹³⁸ Accordingly, the plan should include one or more exit strategies for the beneficiaries.¹³⁹ The appropriate choice will vary based on whether the client wishes to favor a beneficiary desiring to retain the ranch, favor a beneficiary desiring to exit the joint ownership arrangement, or wants to treat both types of beneficiaries as equitably as possible.¹⁴⁰ If the client strongly favors beneficiaries who desire to retain the ranch and reduce the temptation of liquidation to access the cash value, a conservation easement may be beneficial; conservation easements are discussed further in Section 170(h) of the Internal Revenue Code.¹⁴¹ In tax planned estates, one should consider whether the exit strategy might adversely affect discounts for

133. *Id.*

134. *Id.* § 101.052(f).

135. Treas. Reg. § 301.7701-3(b)(ii).

136. See *Single Member Limited Liability Companies*, IRS (Aug. 19, 2022), <https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies> [https://perma.cc/W2L4-BJX7].

137. See *Minimizing Conflict When Inheriting a Property with Your Siblings*, CITY NAT’L BANK, <https://www.cnb.com/personal-banking/insights/inheriting-a-house-with-siblings.html> (last visited Sept. 22, 2022) [https://perma.cc/U4CA-H8F8].

138. See *id.*

139. See *id.*

140. TEX. EST. CODE ANN. § 405.001.

141. See I.R.C. § 170(h).

transfer tax purposes; for example, provisions in the governing documents of an FLP or LLC regarding termination and liquidation.¹⁴²

A. Non-Pro Rata Estate Division and Equalizing Bequest

If it is known that a beneficiary does not want the ranch and sufficient other assets in the estate, consider mandating a non-pro rata division of the estate at death, so the beneficiary who wants the ranch receives the ranch, and the beneficiary who does not want the ranch receives other assets equivalent in value.¹⁴³ For example:

I. Special Bequests of Real Estate and Equalizing Amount.

I make the following special bequests:

1.1 I give [Real Property Description] (the “Ranch”) to Child A, if he survives me.

1.2 If Child A survives me, I give the “Equalizing Amount” to Child B, if he survives me. For purposes of this paragraph, the Equalizing Amount is an amount of cash or other property equal to the fair market value of the Ranch on the date of my death. The fair market value of the Ranch on the date of my death shall be determined by an independent appraiser selected by my executor, in my executor’s sole discretion. [Specify whether appraiser should take any discounts into account if the ranch is already partially owned by Child A or would otherwise qualify for a discount for lack of control, lack of marketability, etc.].¹⁴⁴

If there is any possibility of the estate being insufficient to make the equalizing bequest, it may be appropriate to leave the entire estate equally to Child A and Child B but provide: (1) that the ranch will be allocated to Child A’s one-half share to the extent possible, and (2) that Child A shall have the option to buy out the excess portion of the ranch from Child B, either through third party financing or a promissory note secured by the purchased portion of the ranch.¹⁴⁵ As further addressed in Section IV.D, if a person is given an option to purchase some or all of the ranch, the governing instrument should

142. See Andrew H. Weinstein, *Family Limited Partnerships—Legitimate Tax Planning is Approved*, HOLLAND & KNIGHT (Nov. 24, 2004), <https://www.hklaw.com/en/insights/publications/2004/11/family-limited-partnerships--legitimate-tax-planni> [<https://perma.cc/Y9QP-GLG9>].

143. See 26 CFR § 1.355-4.

144. Author’s original proposition.

145. See 26 CFR § 1.355-4.

specifically address the valuation method, possibility of financing, and other key terms of the possible sale.¹⁴⁶

B. Ability to Partition

If the ranch can be partitioned, there are many additional potential options for beneficiaries to separate their interests from each other.¹⁴⁷ In terms of conflict minimization, this is often the ideal option.¹⁴⁸ However, many ranch owners may be resistant explicitly to create the right to partition within the estate plan.¹⁴⁹ This resistance may be overcome by explaining the right to partition under Texas law and the costs associated with a court ordered partition.¹⁵⁰ It will generally be less expensive and less contentious to provide a mechanism to force a partition by private agreement through the trust or other estate planning instrument rather than forcing beneficiaries to seek judicial intervention in the event of a disagreement.¹⁵¹ In planning for a partition, be cognizant of each tract's ability to access roads, water, grazing areas, and other important features of the ranch.¹⁵²

1. Right to Partition Under Default Law

When two or more persons jointly own real property, each co-tenant usually has an absolute right to partition the property in kind, or if the property is incapable of partition, force the sale of the property through judicial action.¹⁵³ However, since Texas's adoption of the Uniform Partition of Heirs' Property Act in 2017, a different set of rules often applies when at least one of the co-tenants received his or her interest from a relative.¹⁵⁴ If the property is an heirs' property, as defined in the Texas Property Code, in the event a co-tenant attempts to force a sale, the other co-tenants have the right to buyout the interest.¹⁵⁵ After the buyout concludes, if the remaining co-tenants request a partition in kind or by sale, the court may act in accordance with the rules under Section 23A.008 of the Texas Property Code.¹⁵⁶

146. See discussion *infra* Section IV.D.

147. See TEX. PROP. CODE ANN. §§ 23.001, 23.004.

148. See *id.*

149. See David J. Willis, *Partition of Texas Property*, LONESTARLAW.COM, <https://lonestarlandlaw.com/partition-of-texas-property/> (last visited Sept. 23, 2022) [<https://perma.cc/QF46-OUKL>].

150. *Id.*

151. See TEX. PROP. CODE ANN. §§ 23.001, 23.004.

152. *Id.* § 23.006.

153. See *id.* §§ 23.001–.002.

154. See *id.* § 23A.009.

155. See *id.* §§ 23A.007, 23A.002(5).

156. *Id.* §§ 23A.007(d)(3), 23A.008.

2. Partition During Lifetime or at Death

To minimize the risk of disputes, the client may wish to partition the ranch during their lifetime so that separate tracts can be left to each beneficiary.¹⁵⁷ Alternatively, it is also possible to obtain a survey and mandate the partition of the ranch in accordance with such survey upon the client's death.¹⁵⁸ If being partitioned at death, it may be advisable to confirm that the beneficiaries do not object to the terms of the proposed partition.¹⁵⁹ While not legally required, it can be helpful, as a practical matter, to alert the client and estate planner to signs the beneficiaries might be discontent and attempt to disrupt the plan once the client is deceased.¹⁶⁰

3. Mandatory Partition Upon Beneficiary Election or Specified Event in Trust

If it is anticipated that the ranch will be owned in undivided interests—directly or indirectly through an LLC or FLP—by one or more trusts, it may be advisable to mandate a partition upon a specified event.¹⁶¹ For example, perhaps the family situation is such that the children all agree that they wish to keep the ranch during their lifetimes.¹⁶² To avoid continued indefinite joint ownership at the grandchildren's level, consider giving the children the right to partition or sell the ranch by agreement during their joint lifetimes, but require a partition, buyout, or sale upon the death of the last grandchild if not completed during the children's lifetimes.¹⁶³

C. Operating Ranches and Exit Strategies

While all ranches require management and maintenance work, the degree of time and expertise required from the owner/operator can vary dramatically.¹⁶⁴ In the case of “ranchettes” used principally as retirement or vacation homes, the owner may not devote significant time or expertise towards managing and maintaining the property.¹⁶⁵ However, in ranches with more significant operations, it is necessary to identify if any beneficiary will

157. *Id.* §§ 23.001, 23A.002(7).

158. TEX. R. CIV. P. 764, 767.

159. *See* CRAIG HOPPER & D'ANA H. MIKESKA, O'CONNOR'S TEX. PROB. L. HANDBOOK Ch. 9-E § 2 (2022–2023 ed.).

160. *See* TEX. PROP. CODE ANN. § 23.004.

161. *See* HOPPER & MIKESKA, *supra* note 159, § 2; TEX. R. CIV. P. 770.

162. *See generally* TEX. PROP. CODE ANN. § 23.003 (stating the effect of a partition on future interests).

163. *See* TEX. PROP. CODE ANN. §§ 23A.007–.009.

164. *See* John Tanaka, *Economics Associated with Rangelands Ranch Management*, RANGELANDS GATEWAY, <https://rangelandsgateway.org/topics/human-economic-dimensions/economics-associated-rangelands> (last visited Oct. 4, 2022) [<https://perma.cc/G759-55GY>].

165. *Id.*

continue the operation and take the value of their time and labor into consideration when evaluating estate planning options.¹⁶⁶ If the ranch requires substantial time and expertise to manage, it may be more equitable for increases in value and asset accumulation to benefit the person who is actively involved.¹⁶⁷ One way to accomplish this is to enter into a formal employment agreement with the person operating the ranch.¹⁶⁸

D. Buy-Sell Provisions, Rights of First Refusal, and Buyouts

Provisions permitting or requiring the sale of ranch interests in the event a beneficiary wishes to exit the joint ownership arrangement can be an effective way to reduce future conflicts.¹⁶⁹ However, the practical viability of the provisions generally depends on whether the beneficiary or beneficiaries who wish to retain the ranch have sufficient sources of liquidity to fund the exit strategy.¹⁷⁰ In addition, disputes over the appropriate valuation method and other terms of the sale can arise if not specifically addressed.¹⁷¹ Accordingly, if the governing instrument, whether a will, trust, or entity agreement, provides for a buyout right, put option, or similar arrangement, one should consider:

- Whether liquidity is a potential concern and can be addressed through life insurance.¹⁷²
- Whether the value is determined by appraisal and if the parties agree on an appraiser.¹⁷³
- When using a Form 706, whether the value is what is initially reported or the value as finally determined for estate tax purposes—the latter typically not known for a significant time after death.¹⁷⁴
- Whether discounts that apply for transfer tax purposes be considered or specifically negated.¹⁷⁵ For example, there could be a substantial difference between fifty percent of the value of the

166. See Amanda Radke, *Family Ranch Series Part 3: Avoid these 3 Mistakes When Estate Planning*, BEEF MAG. (May 21, 2015), <https://www.beefmagazine.com/blog/family-ranch-series-part-3-avoid-these-3-mistakes-when-estate-planning> [<https://perma.cc/LK26-MKAU>].

167. See Tanaka, *supra* note 164.

168. See *id.*

169. See HOPPER & MIKESKA, *supra* note 159.

170. See *id.*

171. See TEX. TAX CODE ANN. § 23.01.

172. PATRICK PACHERO ET AL., TEX. PRAC. GUIDE WILLS. TR. & EST. PLAN. § 10:45 (2021).

173. See TEX. PROP. CODE ANN. § 23A.009.

174. See *id.*; *About Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return*, IRS, <https://www.irs.gov/forms-pubs/about-form-706> (last visited Oct. 4, 2022) [<https://perma.cc/9WXA-BXT6>].

175. See TEX. TAX CODE ANN. § 23A.006.

ranch and the fair market value of an undivided fifty percent interest in the ranch.¹⁷⁶

- The buyer's form of payment, whether cash, secure third-party financing, or partially in cash and partially with a promissory note.¹⁷⁷

An example of a partnership agreement provision requiring the consideration of discounts, authorizing partial payment by promissory note, and addressing the selection of an appraiser is below:

The fair market value shall be the price which a willing buyer would pay a willing seller with neither being under a compulsion to buy or sell, and both having reasonable knowledge of relevant facts. In determining the value, full effect shall be given to all applicable discounts, including, but not limited to, minority interest and marketability discounts. Such value shall be determined by an independent appraiser mutually acceptable to the transferor Partner and a majority in interest of the remaining Partners. If the parties cannot agree upon an appraiser, each party shall select an appraiser and the values determined by the two appraisers shall be averaged. If the two appraisers arrive at values which are more than fifteen percent apart, the two appraisers shall select a third appraiser who shall determine the applicable value.

The purchase price shall be paid twenty percent in cash and the balance to be evidenced by a promissory note initially bearing interest at the prevailing prime rate of interest reported by the Wall Street Journal on the date of the note. The interest rate shall be adjusted annually so that on each anniversary date of the note the interest rate shall be changed to the then prevailing prime rate, with all accrued interest to be paid annually on the anniversary date of the note, and principal to be paid in four equal annual installments beginning on the first anniversary date of the note, and continuing regularly and annually on each anniversary date until the note is paid in full, with each payment being applied first to accrued interest and then to reduction of principal. At the seller's option, the note shall be secured by the ownership interest being transferred and such security shall not be deemed in violation of [Reference to Partnership Agreement's Section on Encumbrances].¹⁷⁸

176. *See id.*

177. *Payment Options for Property Taxes in Texas*, HEGWOODGROUP, <https://www.hegwoodgroup.com/payment-options-for-property-taxes-in-texas/#:~:text=What%20are%20the%20Payment%20Options%20for%20Texas%20Property,3%20Escrow%20Agreements%20...%204%20Installment%20Agreements%20> (last visited Oct. 4, 2022) [<https://perma.cc/632B-9NAG>].

178. Author's proposed agreement; I.R.S. Publ'n 561 (Rev. Feb. 2000).

1. Entity Agreements

If the ranch is owned in an LLC or FLP, the entity's governing document should address the owners' rights to withdraw and the transferability of the interests.¹⁷⁹

a. Right of Withdrawal

A member is prohibited from withdrawing from an LLC unless withdrawal is authorized under the company agreement.¹⁸⁰ Similarly, a limited partner may withdraw only as provided in the partnership agreement.¹⁸¹ However, a general partner may withdraw at any time by written notice to the other partners.¹⁸² If withdrawal is permitted by the governing document of the LLC or FLP but is otherwise silent on the consequences of withdrawal, the withdrawing member or partner is generally entitled to the fair value of their interest as of the withdrawal date.¹⁸³ Accordingly, if withdrawal is permitted, the governing instrument should specifically address whether the withdrawing owner will be entitled to a distribution and, if so, whether it may be made in kind or in cash.¹⁸⁴ A right to withdraw and receive a payment in exchange for the interest makes the withdrawal provision functionally equivalent to a put option.¹⁸⁵

b. Transfer Restrictions

Both LLC interests and partnership interests are freely assignable unless the governing instrument says otherwise.¹⁸⁶ Typically, the governing documents of family entities will contain transfer restrictions that prohibit transfers outside of the family or provide that transfers are subject to a right of first refusal.¹⁸⁷ However, consideration should also be given to other types of transfer provisions, such as tag-along rights, drag-along rights, push-pull provisions, and put rights.¹⁸⁸

179. Sandra K. Miller, *What Buy-Out Rights, Fiduciary Duties, and Dissolution Remedies Should Apply in the Case of the Minority Owner of a Limited Liability Company?*, 38 HARV. J. ON LEGIS. 413, 419 (2001).

180. TEX. BUS. ORGS. CODE ANN. § 101.107.

181. *Id.* § 153.110.

182. *Id.* § 153.155(b).

183. *See id.* §§ 153.111, 101.205.

184. *See id.*

185. *See* First Am. Disc. Corp. v. Jacobs, 756 N.E.2d 273, 274 (Ill. App. Ct., 2001).

186. PETER M. FASS, TAX-ADVANTAGED SECURITIES HANDBOOK § 13:7 (2022).

187. *See id.*

188. Gene Wolf, *Planning to Succeed: Developing and Implementing a Family Business Succession Plan*, 65 NO. 3 PRAC. L. 11, 16 (2019).

2. Application Under Will at Death or in Trust

A buyout right, option to purchase, or other purchase or sale requirement may also be contained within a will or trust agreement.¹⁸⁹ Consideration should be given to the potential conflict of interest in the event the fiduciary responsible for interpreting and carrying out the provisions might also benefit directly or indirectly from the sale.¹⁹⁰ In the event the fiduciary is potentially an interested party in the transaction, consider adding a provision permitting the appointment of an independent fiduciary for the limited purpose of conducting the sale at the election of the interested fiduciary, beneficiary, or both to prevent dispute.¹⁹¹ Also, consider whether an exculpation or indemnification provision would be appropriate.¹⁹² Below is a sample provision giving a beneficiary an option to purchase a family ranch at the testator's death:

1.1 Special Directions Regarding Sale of Ranch. For purposes of this Paragraph 1.1, the "Family Ranch" shall mean any interest in [Property Description] that I own at my death. I direct that Beneficiary A shall have the option to purchase all, but not part, of the Family Ranch upon my death, on the following terms and conditions:

A. Option to Purchase. Beneficiary A may exercise his option by providing my executor with notice of his intent to exercise this option no later than 30 days from the date my will is admitted to probate. The notice of intent to exercise this option shall be in writing and delivered by hand, certified mail, or in such other form as is mutually agreed by my executor and Beneficiary A. The purchase price must be paid in cash at closing and closing must take place no later than 120 days from the date my will is admitted to probate. I have required that the purchase price be paid in cash, as it is my intention that Beneficiary A must secure third party financing if he requires any financing to complete the purchase. Should Beneficiary A fail to exercise the option or close prior to the expiration of the applicable period of time, or should Beneficiary A earlier inform my executor of his intention not to exercise such option, the option shall lapse and

189. *Why Buyout Provisions Are Essential to Your Texas Partnership Agreement*, MASSINGILL (Jan. 21, 2022), <https://jm.legal/articles/business/partnership-buyout-provisions-tx/> [<https://perma.cc/3H7N-4PRZ>].

190. *The Fiduciary's Guide to Conflict of Interest Claims*, RMO LLP, <https://rmolawyers.com/fiduciarys-guide-conflict-of-interest-claims/> (last visited Sept. 27, 2022) [<https://perma.cc/AZ3L-UXJR>].

191. See TEX. EST. CODE ANN. § 405.0015.

192. See *Jewett v. Cap. Nat. Bank of Austin*, 618 S.W.2d 109, 112 (Tex. App.—Waco 1981, writ ref'd n.r.e.); Legal Ops. Comm. of the Bus. L. Section of the State Bar of Tex., *Statement on Legal Opinions Regarding Indemnification and Exculpation Provisions Under Texas Law*, 41 TEX. J. BUS. L. 271, 278–80 (2006).

the Family Ranch shall thenceforth be administered and distributed in accordance with the other provisions of this will.

- B. Purchase Price. The purchase price for my Family Ranch shall be the fair market value of the Family Ranch. The fair market value shall be the price which a willing buyer would pay a willing seller for the Family Ranch with neither being under a compulsion to buy or sell, and both having reasonable knowledge of relevant facts. Such value shall be determined by an appraiser selected by my executor, in my executor's sole discretion.
- C. Fiduciary's Powers and Responsibilities. My executor is directed to notify Beneficiary A of the terms of this Paragraph 1.1 as soon as reasonably practicable after my will is admitted to probate. If any question arises regarding the correct interpretation of any provision of this Paragraph 1.1, my executor's interpretation shall be final and binding on all parties. My executor shall be exculpated to the fullest extent permitted by applicable law for any action or inaction relating to the provisions of this Paragraph 1.1.¹⁹³

V. EMPLOYEES, TENANTS, AND FAMILY MEMBERS LIVING AT THE RANCH

A. Employees Generally

If the owner of the ranch employs full-time or part-time workers, it may be advisable to have written employment agreements.¹⁹⁴ Note that the sample agreement contains the required language to obtain the protection from the FALA.¹⁹⁵

B. Employee Housing

It is not uncommon for larger ranch owners to provide housing on their property for ranch hands or other persons working full-time or part-time on the property.¹⁹⁶ In this circumstance, it is advisable to have a written agreement addressing such housing and circumstances in which the owner can evict the working tenant.¹⁹⁷ It may be appropriate for clients with larger estates—and greater concerns regarding privacy and liability—to have a

193. Author's sample provision; I.R.S. Publ'n 561 (Rev. Feb. 2000).

194. See *Employee Agreement: Everything You Need to Know*, UPCOUNSEL, <https://www.upcounsel.com/employee-agreement> (last visited Oct. 5, 2020) [<https://perma.cc/QWF3-NPSE>].

195. TEX. CIV. PRAC. & REM. CODE ANN. § 87.005.

196. Paul Neiffer, *Farm and Ranch Provided Housing*, CLA (Dec. 23, 2015), <https://blogs.claconnect.com/agribusiness/farm-and-ranch-provided-housing/> [<https://perma.cc/8X74-XPSS>].

197. See TEX. PROP. CODE ANN. §§ 24.005, 91.001; *Cummings v. Nix*, 279 S.W. 484, 485 (Tex. App.—Amarillo 1926, writ ref'd).

separate agreement addressing the housing and providing more detailed guidelines for the use of the property.¹⁹⁸ Consider addressing the following:

- Whether the tenant's right to remain in the property automatically terminates in the event employment is terminated.¹⁹⁹
- The tenant's right to invite guests.²⁰⁰
- The tenant's right to use parts of the ranch for recreational purposes.²⁰¹
- The tenant's duty to comply with ranch rules.²⁰²
- The tenant's right to disclose information relating to the ranch or employer to third parties.²⁰³

C. Family Houses on the Ranch

If family members or persons other than the current owner live on the ranch without the payment of rent, consideration should be given to how the arrangement should be handled in the event of the current owner's incapacity or death.²⁰⁴

1. Incapacity of Ranch Owner

a. Modification of Statutory Durable Power of Attorney

If the ranch owner would want the family member to continue living on the ranch gratuitously in the event of the owner's incapacity, this should be addressed in the owner's financial power of attorney.²⁰⁵ Section 752.051 of the Texas Estates Code provides a form that can be used to grant an agent a durable power of attorney.²⁰⁶ This statutory form includes a provision that the principal may grant the agent the power to make gifts up to the annual

198. See Nathan Whatley, *Avoiding hidden liabilities with employee housing agreements*, MCAFEE & TAFT (July 1, 2012), <https://www.mcafeetaft.com/avoiding-hidden-liabilities-with-employee-housing-agreements/> [https://perma.cc/6NCE-EX8V].

199. See *Employee Evictions And How To Handle The Issue*, RENTAL HOUS. J. (Feb. 17, 2017), <https://rentalhousingjournal.com/employee-evictions-and-how-to-handle-the-issue/> [https://perma.cc/97AA-9SF6].

200. See 49 TEX. JUR. 3D *Landlord and Tenant* § 90; *Landlord's Right to Ban a Guest*, FINDLAW (Oct. 15, 2019), <https://www.findlaw.com/realestate/landlord-tenant-law/landlord-s-right-to-ban-a-guest.html> [https://perma.cc/CE6D-369Z].

201. See Whatley, *supra* note 198.

202. *Id.*

203. See *id.*

204. See TEX. EST. CODE ANN. § 101.001; 49 TEX. JUR. 3D *Landlord and Tenant* § 305.

205. See TEX. EST. CODE ANN. § 752.102(a).

206. *Id.* § 752.051.

exclusion amount.²⁰⁷ However, the fair market value of the foregone rent and utility costs, if applicable, may greatly exceed the annual exclusion amount.²⁰⁸ Accordingly, it may be appropriate specifically to authorize the agent to allow the family member to continue living on the ranch and pay expenses the principal had been paying prior to incapacity.²⁰⁹

b. Coordination with Gifting Power in Revocable Trust

If the owner has a revocable trust, the trust agreement should include a gifting power that allows the trustee to coordinate with the agent under the durable power of attorney to maintain the family member at the ranch.²¹⁰

2. Right to Continue to Live in Home After Death of Ranch Owner

If the family member living on the ranch without payment of rent is not the sole beneficiary of the ranch after the owner's death, the plan should specifically address the living arrangement during the period of the estate administration and in the long term.²¹¹ In some cases, it may be appropriate to provide for the person to continue living in the home rent free for some fixed period of time during the administration but specifically require a formal rental agreement and payment of rent afterwards.²¹² If the person living in the home rent free is also one of the beneficiaries of the ranch and intends to live in the home long term, consider the following:

- When the ranch is distributed outright to multiple beneficiaries, each co-tenant has an equal right to use and reside on the ranch without payment of rent to the other co-owners.²¹³ Accordingly, in this circumstance, the family member may continue to reside in the home rent free.²¹⁴ The other co-tenants may perceive this to be unfair if they do not also live on the ranch and have less practical use of the ranch, despite having equal legal rights to its use.²¹⁵

207. *Id.*

208. See Louis S. Shuntich, *Current estate planning for farmers and ranchers*, NATIONWIDE 1, 7 (Aug. 2016), <http://www.anniesproject.org/home/media/Nationwide-Current-Estate-Planning-For-Farmers-Ranchers-White-Paper-Louis-Shuntich.pdf> [<https://perma.cc/RBQ9-HSVA>].

209. See TEX. EST. CODE ANN. § 752.051.

210. See *id.* § 751.032.

211. See *id.* § 752.111.

212. See *id.*

213. See James Chen, *Tenancy In Common (TIC) Explained: How It Works and Compared to Joint Tenancy*, INVESTOPEDIA (July 29, 2022), https://www.investopedia.com/terms/t/tenancy_in_common.asp [<https://perma.cc/D6AQ-W8BK>].

214. See *id.*

215. See *id.*

- In contrast, when the ranch is owned by an LLC or FLP, the beneficiary's personal use of the home is not automatically assured.²¹⁶ Depending on the terms of the entity's governing documents, the beneficiary's use of the home may require the payment of rent and approval of the other co-owners of the entity.²¹⁷ A lease transaction between the entity and an owner may also constitute a conflict of interest under the governing documents and may require special procedures to approve.²¹⁸
- When a co-tenant makes improvements to the home, the improvements will accrue to the benefit of all co-tenants, absent an agreement to the contrary.²¹⁹
- When a partner or member of an entity makes improvements to a ranch owned by the entity, it would probably be treated as an additional capital contribution to the entity—the terms and effect of which would be determined by the entity's governing documents.²²⁰

Given the potential emotional and legal complexities of the foregoing, if the person living rent free is a beneficiary of the ranch, and the ranch is capable of partition, it may be appropriate to survey the applicable home and distribute it to that beneficiary as part of their share of the estate.²²¹ This could be done prior to the owner's death or mandated in their will or revocable trust.²²²

VI. OTHER ESTATE PLANNING TOOLS AND TIPS

A. Income Taxes and Gifting

Family ranches often have a very low basis for income tax purposes.²²³ Furthermore, property values in Texas have increased rapidly in many parts

216. See TEX. EST. CODE ANN. § 752.109.

217. See *id.* § 752.107.

218. See Michael P. Connolly, *Beware of Conflicting Interest Transactions in Family Business Management*, MURTHA CULLINA BLOG (Jan. 12, 2017), <https://www.familybusinessperspectives.com/category/conflicts-of-interests/> [https://perma.cc/8ESS-M82D].

219. See Farren Sheehan, *Rights And Duties Of Co-Owners In Texas Real Estate*, SHEEHAN L. (Nov. 11, 2017), <https://www.farrensheehanlaw.com/real-estate-rights-of-joint-tenants/> [https://perma.cc/9MBM-BAND].

220. See Jerrold J. Stern, *Filling, Grading, Excavating: Land Improvements May Yield Deductions*, TIERRA GRANDE 1. 1–2 (Oct. 2005), <https://assets.recenter.tamu.edu/documents/articles/1752.pdf> [https://perma.cc/PCX9-LSWY].

221. See TEX. EST. CODE ANN. § 360.001.

222. See *id.*; see Shuntich, *supra* note 208.

223. See Tia McDonald et al., *ERS Modeling Shows Most Farm Estates Would Have No Change in Capital Gains Tax Liability Under Proposed Changes*, USDA ECON. RSCH. SERV. (Dec. 7, 2021), <https://www.ers.usda.gov/amber-waves/2021/december/ers-modeling-shows-most-farm-estates-would-have-no-change-in-capital-gains-tax-liability-under-proposed-changes/> [https://perma.cc/CJ8U-4RH6].

of the state.²²⁴ As previously noted, even recently purchased ranches may have a relatively low basis compared to the current market value.²²⁵ Accordingly, the ability to obtain a step-up in basis for assets owned at death should be a major consideration in evaluating gifting options.²²⁶ If lifetime gifts of ranch interests are to be made and the ranch is expected to still be owned by the family at the donor's death, consider making the gifts to an IDGT containing a nonfiduciary power to substitute assets.²²⁷ This leaves a possibility for the grantor exercising the power to swap other high-basis assets for the ranch prior to their death.²²⁸ If the ranch is going to be liquidated during the owner's lifetime for non-tax reasons and the owner's estate may be subject to estate taxes, consider gifting ranch interests to an IDGT and then liquidating.²²⁹ The gift of the fractional ranch interest to the IDGT will likely be significantly discounted for transfer tax purposes; following the gift, the capital gains tax on the sale will be paid by the grantor of the IDGT, rather than by the trust or beneficiaries, and further reduce the grantor's estate.²³⁰

B. Installment Sales

Installment sales to IDGTs are popular estate "freeze" transactions (i.e., a transaction designed to remove the future appreciation of the asset from the transferor's estate) in a low interest rate environment.²³¹ Whether the IDGT has sufficient assets to make the note payments is a key factor in whether the promissory note in an installment sale will be respected by the IRS as a bona fide debt.²³² Accordingly, because their income production is often fairly low, ranches may not be good candidates for installment sales to IDGTs unless the grantor also gifts significant seed money or other income producing assets to the IDGT.²³³ However, if the ranch has significant oil and gas income, an installment sale may be a viable planning option.²³⁴ It may be advisable for the transferor to retain the surface estate in order to obtain the step-up in basis.²³⁵

224. See Courtney King, *Texas Housing Prices on the Rise*, COMPTROLLER (Mar. 2018), <https://comptroller.texas.gov/economy/fiscal-notes/2018/march/housing.php> [<https://perma.cc/2QC3-8MMM>].

225. See McDonald, *supra* note 223.

226. See *id.*

227. See I.R.C. § 675(4)(c).

228. See Alistair M. Nevius, *Intentionally Defective Grantor Trusts*, J. ACCT. (Nov. 1, 2008), <https://www.journalofaccountancy.com/issues/2008/nov/intentionally-defective-grantor-trusts.html> [<https://perma.cc/NE92-YFSV>].

229. See *id.*

230. See *id.*

231. Mark Stone, *The IDGT: The Effective Defective Trust*, 15 J. FIN. PLAN. 120, 133 (2002).

232. See, e.g., I.R.S. Priv. Ltr. Rul 9515039.

233. Stone, *supra* note 231.

234. See *id.*

235. See *id.*

C. Trust Planning

If the ranch is going to be held in trust, consideration should be given to liquidity needs.²³⁶ In addition, the provisions addressing the trustee's duties and powers should likely be customized to specifically address the retention and management of the ranch.²³⁷ At a minimum, the trust instrument should likely: (1) expressly authorize the trustee to retain the ranch, (2) waive the trustee's duty to diversify that would otherwise be imposed by the Texas Uniform Prudent Investor Act, and (3) exonerate the trustee from liability for retaining the ranch.²³⁸ It might also be appropriate to specifically authorize the trustee to hire persons to assist with the management of the ranch.²³⁹ A sample paragraph is below:

Ranch Properties. The Trustee is authorized to do any and all acts that the Trustee may deem appropriate in managing and controlling ranch properties placed in any trust and the livestock on such ranches, including the employment of a ranch manager, foreman, ranch hand, and other employees and independent contractors and/or the hiring of a professional ranch management service. The Trustee is authorized to retain such ranches until any trust is distributed, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention. The Trustee is further authorized to sell the same, in whole or in part, upon such terms and conditions as the Trustee may deem appropriate.²⁴⁰

In addition, consideration should be given to the following:

- The extent the trustee is authorized to delegate the trustee's management powers over the ranch to a third party, including a beneficiary who is actively ranching or a professional ranch manager.²⁴¹
- Whether the trustee should be exculpated from liability in the event of such delegation.²⁴²
- Whether compensation paid to a ranch manager should reduce the trustee's own compensation, if any.²⁴³

236. See *supra* Section I.B.

237. See TEX. PROP. CODE ANN. § 113.051.

238. See *id.*

239. See *id.*

240. Author's sample provision.

241. See TEX. PROP. CODE ANN. § 113.018.

242. See *id.*

243. See *id.*

- Whether the trustee should be given additional powers relating to resources of the ranch, such as minerals, timber, solar, and wind leasing powers.²⁴⁴

D. Conservation Easements

A donor is entitled to an income tax deduction for a lifetime donation of a qualified conservation easement.²⁴⁵ A qualified conservation contribution is defined in Section 170(h) of the Internal Revenue Code as a “contribution of a qualified real property interest to a qualified organization, exclusively for conservation purposes.”²⁴⁶ Even if the client’s estate is unlikely to be subject to estate taxes, donation of a conservation easement may be worthwhile for a client due to this income tax benefit.²⁴⁷ As noted previously, conservation easements may also be valuable to clients who wish to reduce the monetary value of the ranch to their beneficiaries, thereby decreasing the beneficiaries’ incentive to liquidate or split the ranch in the future.²⁴⁸ For clients in need of estate tax planning, a conservation easement can also be a highly effective way to reduce the value of the ranch for estate tax purposes.²⁴⁹

There are a number of state, federal, and nonprofit organizations and programs dedicated to promoting conservation easements.²⁵⁰ The Texas Land Trust Council maintains an online directory of land trusts for conservation easements.²⁵¹ In addition, the Texas Land Trust Council publishes a guidebook on conservation easements for Texas landowners.²⁵² While the guidebook is not detailed enough to be a legal resource for attorneys, it may be helpful to share with clients in the preliminary stages of considering a conservation easement.²⁵³

244. *See id.* § 113.012.

245. *See* I.R.C. § 170(h)(1).

246. *Id.* § 170(a)(1), (h).

247. *Id.*

248. Andy Rieber, *Straight Talkin’ About Conservation Easements: A Useful Tool, But Not Everyone’s Cup of Tea*, W. LIVESTOCK J. (Aug. 2012), <https://www.txaglandtrust.org/straight-talkin-about-conservation-easements-a-useful-tool-but-not-everyones-cup-of-tea/> [https://perma.cc/YY9T-UZUC].

249. *Id.*

250. *See Easement Program Acquisition Data*, USDA (July 1, 2022), <https://www.farmers.gov/data/easements/acquisition> (charts can be sorted by list of programs) [https://perma.cc/5ERE-SBZM].

251. *Texas Land Trust*, TEX. LAND TR. COUNCIL, <https://texaslandtrustcouncil.org/landtrusts/> (last visited Sept. 27, 2022) [https://perma.cc/VM5F-SXG9].

252. *More Info*, TEX. LAND TR. COUNCIL, <http://texaslandtrustcouncil.org/more-info/publications/> (last visited Sept. 27, 2022) [https://perma.cc/BZC8-TGSD].

253. *See id.*

E. Discounts for Fractional Interests

One of the simplest ways for ranch owners with large estates to reduce exposure to estate taxes is to give undivided interests in the real estate.²⁵⁴ The value of fractional interests in real estate may be discounted substantially based on the lack of marketability, limited control of a joint owner, and the potential cost and complication associated with an attempted partition.²⁵⁵ Nevertheless, in many cases, transferring the ranch into an entity and gifting interests in the entity is preferable to directly gifting interests in the ranch.²⁵⁶ This is true for a number of reasons, including, but not limited to, the following: (1) the donor can retain greater management authority with an entity structure, including the right to sell without the consent of other owners, (2) the entity adds liability protection, (3) for transfer tax purposes, the donor may be able to obtain greater valuation discounts for entity interests, and (4) the entity provides more flexibility for long-term succession planning.²⁵⁷

F. Section 2032A

The fair market value of real estate for transfer tax purposes is generally determined by its fair market value—highest and best use.²⁵⁸ However, if the strict requirements of Section 2032A are satisfied, real property used for farming or ranching may be valued for estate tax purposes at the greater of its special use value or its fair market value reduced by the IRC amount.²⁵⁹ Due to the current high estate and gift tax exemptions and strict requirements of Section 2032A, it is relatively uncommon to encounter clients who could benefit from Section 2032A, particularly when compared with alternative and less restrictive techniques to reduce estate tax exposure.²⁶⁰ Accordingly, a detailed review of the requirements of Section 2032A is outside the scope of this Article.²⁶¹ However, if the client's estate is substantially comprised of farming or ranching land, related personal property, and may be subject to estate taxes, the planner should be aware of the potential application and benefit of Section 2032A.²⁶²

254. See Paul Premack, *How gifting of ranch land to family can increase taxes owed*, MYSA (Jan. 29, 2018), https://www.mysanantonio.com/life/life_columnists/paul_premack/article/How-gifting-of-ranch-land-to-family-can-increase-12534592.php [<https://perma.cc/L3KU-NR76>].

255. See, e.g., *Estate of Baird v. Comm'r*, 416 F.3d 442, 446 (5th Cir. 2005).

256. See *Using partnerships and corporations to transfer farm assets*, U. MINN. EXTENSION, <https://extension.umn.edu/transfer-and-estate-planning/using-partnerships-and-corporations-transfer-farm-assets> (last visited Sept. 27, 2022) [<https://perma.cc/VSJ6-TAK3>].

257. See *id.*

258. *Symington v. Comm'r*, 87 T.C. 892, 896 (1986).

259. I.R.C. §§ 2032A(a)(1)–(2).

260. See *id.* § 2032A.

261. See *id.*

262. See *id.*

VII. CONCLUSION

Estate planning for ranch owners can pose unique challenges for the attorney.²⁶³ Proper planning for these clients often involves a complex interplay of real estate law, federal and state tax laws, business law, family law, and employment law in addition to the more familiar law of wills and trusts.²⁶⁴ It is often wise—and sometimes absolutely necessary—to consult with other attorneys with specialized expertise to be sure the client’s needs are being appropriately addressed.²⁶⁵ In addition, the estate planner must be prepared to address the potential divergence between the client’s goals for the family ranch and the likely outcome of long-term joint ownership by multiple family branches and generations.²⁶⁶

263. See Alex Kincaid, *The Family Farm: Passing & Protecting Your Legacy*, ALEX KINCAID L. (Sept. 28, 2013), <https://www.alexkincaid.com/the-family-farm-passing-protecting-your-legacy/> [<https://perma.cc/V9WE-VPZE>].

264. See generally *id.* (touching on different issues an attorney must be aware of when planning a ranch or farm estate).

265. See *Collaboration Between Law Firms*, ALFRED ABEL L. OFF., <https://www.alfredabellaw.com/attorney-collaboration/> (last visited Sept. 27, 2022) [<https://perma.cc/2ZC6-E2Z6>].

266. See *supra* Parts II–V.