



# Protecting Your Farm Assets

## When Family Law and Farms Collide

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# What happens to the farm in the event of death and divorce?

1. Estate Planning
2. Premarital Agreements

## **Premarital Agreements (a.k.a. Prenups)**

### **What are they, and why are they important?**

Legal contracts entered into prior to marriage, which attempt to settle the interest each spouse has in the property of the other, during the marriage and in the event of death or divorce.

## Divorce 101

- No fault state – the marriage is irretrievably broken
- Non-alimony state
- One-Pot – a presumed equal division of assets/liabilities
  - The Court will look at what assets/liabilities existed on the date of filing for dissolution of marriage
  - These all go in the “pot”

## The Farm

- Has been in our family for generations
- Is owned by mom/dad and kids
- Was inherited
- Is your source of income

# You can protect the Farm by having a Premarital Agreement and by requiring family members to have one too

- This agreement between prospective spouses is executed in contemplation of marriage and becomes effective upon marriage
- Property can be “protected,” carved-out, and defined
- Property can include present interests and future interests; real property and personal property; and future income/earnings

# Uniform Premarital Agreement Act

Ind. Code § 31-11-3-1 *et. seq.*, applies to Premarital Agreements executed on or after July 1, 1995.

- The agreement must be in writing
- Signed by both parties
- It is enforceable without consideration
- It is effective upon marriage



## Three Must-Haves

- **Financial Disclosures** – Even though Indiana UPAA does not require it
- **Legal Counsel** – Each party should have their own independent legal representation
  - Understanding of Indiana law relative to divorce and death
- **Time** – Execution must occur “Prior to Marriage”

# Defining Separate Property

- Premarital Property – should be listed as an Exhibit with fair market values
- Income During the Marriage
- Gifts/Inheritances
- Liabilities
- Retirement Plans and Savings – does this include contributions made *during the marriage*?
- Former Marital Property, by Agreement
- Business Interests
- **THE FAMILY FARM!!!**
- Does Separate Property include the Growth of the Separate Property *during the marriage*?

## Considerations when defining a Farm in Premarital Agreement

- Valuations – real estate, land, equipment, crops, etc.
- Income vs. Asset (crops in the ground on DOF)
- Who are the other owners
- What estate plans are in place? Trusts?
- Are there formal business entities that have ownership? e.g. LLC
- Are you carving out the asset, including the value?  
Or just carving out the ownership, but intending to divide the value

## Difficult conversations

- If you are considering marriage – have these conversations early
- If you are considering inheritance to your children – have direct conversations with your children requiring premarital agreements
- Have this conversation with your estate planning team
- Consider it another estate planning tool and insurance policy
- Plan for the worse case scenario now, when you are not forced to make an emotional decision

Questions?  
Thank you.