

Lee Law Office PC
2021 Next Generation Seminar Materials

1) **Farm Lease Dispute**

a) Factual Background

- i) Clients (husband and wife) had a decade's longtime relationship with a property owner in which they leased the owner's farmland
- ii) Some of the farmland was owned by a corporation set up by the property owner and in which his spouse and adult daughters owned shares
- iii) The parties did in fact have written leases at many points during this time period, but at a certain point, the leases all lapsed
- iv) The clients and landowner had a great degree of comfort and trust in each other
- v) At a certain point, the Clients son started leasing some of the ground
- vi) The property owner's wife and children had no involvement with the farm and knew little to nothing about farming operations or her husband's relationship with my clients
- vii) Both the property owner and the wife were elderly and the property owner was in declining health
- viii) The property owner died
- ix) The property owner's wife and their adult children were then left to sort out the situation with leasing the farmland to my clients
- x) Following harvest, a dispute arose about the amount of rent owed by the clients and their son

b) Issues

- i) No written lease agreements were in place when the landowner died

- ii) The landowners' wife and adult children did not know which lands the clients were farming or which lands the clients' son was farming
- iii) The landowners' daughter sent a demand letter to my clients demanding that they pay cash rent for ALL of the farmed lands

c) Recommendations

- i) Make sure you have written leases in place for all leased ground and that the lease clearly outlines the terms of the deal
- ii) If a cash lease, ensure the total number of farmable crop acres are agreed to in the contract by working with the Farm Service Agency
- iii) If two or more people (or entities) are assisting each other with each other's respective farming operations, ensure there are separate written contracts clearly indicating who farms which farmland
- iv) Be aware that individuals acting as your agent can possibly bind you to agreements they make
- v) Ensure that it is clear in the contract how chemfallow/summerfallow reimbursements to the outgoing lessee will be paid and by whom (i.e., the outgoing lessee is reimbursed by the incoming lessee for chemfallow/summerfallow costs)
- vi) Ensure that surface damage payments are made to the lessee by lessor as in the case of the North Central Montana Regional Water Authority for the construction and installation of the waterline
- vii) If you are an elderly landowner and lease out your ground, make sure your spouse or your agent under your power of attorney is familiar with the circumstances regarding the lease of your land
- viii) Make sure you have a valid durable power of attorney in place

2) **Estate Planning Dispute**

- a) Factual Background

- i) Testator was unmarried with no children
- ii) Testator drafted his own Will on 8/16/12
 - (1) See Attachment A
- iii) Testator dies
- iv) Testator is survived by three siblings, one of whom he is estranged from
- v) None of the Testator's siblings knew where the Testator's estate planning documents were located
- vi) Siblings do not get along and one brother seeks to be appointed as PR in intestacy
- vii) Sister eventually locates the Will and then seeks to be appointed PR under the Will
- viii) Sister claims the Testator told her about numerous changes to his will that he wanted to be made
- ix) Testator owned 1,200+ acres of land enrolled in CRP

b) Issues

- i) Poorly drafted Will Provisions
 - (1) Some of the dispositive provisions of the Will were ambiguous (i.e., subject to more than one reasonable interpretation)
 - (a) Contents of the house
 - (b) Pickups
 - (2) Since the interpretation of these provisions would impact what the sister would receive, she was forced to hire her own separate attorney and seek resolution through the Court
 - (a) This ended up costing the sister \$10,000+ in attorney fees, undue stress and a significant delay in the administration of the estate waiting for the Court to resolve these issues

- (3) It also cost the estate attorneys' fees, which further reduced the share of the net estate payable to the devisees under the Will
 - (a) Costs of administration (i.e., attorney fees, personal representative fees, etc.) unless otherwise specified in the Will are borne our the general estate

ii) Defective Will – No Residue Clause

- (1) The Will was defective in that it did not include a residue clause
- (2) A residue clause typically provides that all of the Testator's remaining property not specifically devised under the Will goes to _____ (i.e. spouse, kids, etc.)
- (3) As a result, the Testator's assets not specifically devised in the Will were distributed under Montana's intestacy laws which means that the Testator's two brothers would potentially receive a share of the estate
 - (a) This was clearly contrary to what the Testator wanted

iii) CRP Income

- (1) During the administration of the estate, the estate received CRP income of more than \$65,000
- (2) The will also did not specify who should receive the CRP income which led to during administration of the estate
- (3) These monies ultimately were determined to be "residue" and therefore used to pay costs of administration of the estate

iv) Failure to advise heirs/devisees where estate planning documents are located

- (1) Lots of time, money and energy was wasted on locating the will, filing formal probate proceedings, etc.

c) Recommendations

- i) DO NOT draft your own estate planning documents
 - (1) The laws are complex

- (2) Mistakes can have consequences that result in your estate being distributed contrary to your wishes
- (3) Don't be scared of fees
 - (a) Cost of estate planning - \$750 - \$2,500
 - (b) The costs to litigate far exceeds what it costs to pay an attorney to properly draft your estate planning documents
- ii) Don't wait to get your estate planning documents drafted
 - (1) Age
 - (2) Competency
 - (a) You can't draft a will if you lack testamentary capacity (one of the legal requirements for a will to be valid)
- iii) Don't tell your family members about changes you want to make to your existing Will or trust
 - (1) make the changes so they are legally binding
- iv) Review and update your estate planning documents, if necessary, on a regular basis
 - (1) We recommend our clients meet with us once every two years to review and discuss whether any changes to the estate planning documents are necessary
- v) Make sure that your family knows where your estate planning documents are located
 - (1) If they are kept in a safe at home, make sure they know how to access the safe
 - (2) If they are kept in a safe deposit box at a bank, make sure you take steps to permit your designed personal representative to be able to access the safe deposit box AFTER you have died
 - (3) Remember – your power of attorney terminates upon your death so it is of no use after you pass

3) **Common Law Marriage**

a) Factual Background

- i) Client had a longtime girlfriend
- ii) She was assisting him in running his business but there was no formal agreement as to the nature of her involvement
- iii) He hears second hand that she is telling people in the community that they live in that they are common law married

b) Issues

- i) Has the client inadvertently established common law marriage?

(1) The party seeking to establish a common law marriage in Montana must show that:

- (a) the parties were competent to enter marriage;
- (b) that there was assumption of a marital relationship by mutual consent and agreement;
- (c) that they cohabited; and that they acquired the reputation, character and status of marriage in public.
- (d) The parties must enter upon a course of conduct to establish their repute as husband and wife.

ii) Risk

(1) Can lead to property (real or personal property) acquired during the relationship to being equitably apportioned between the parties in the case of a dissolution.

c) Recommendations

- i) Consider entering into a co-habitation agreement with a significant other if you are going to live together

4) **Corporations**

a) Factual Background

i) Client owned multiple business entities (a corporation, and two LLC's)

ii) Client and his entities were all sued for a breach of contract claim

(1) See enclosed Amended Complaint

iii) Plaintiff sought to treat the client and all of his business entities as the altered egos of each other

b) Issues

i) The client and his other business entities were exposed to potential liability

ii) Veil of liability protection was put at risk

c) Recommendations

i) Rule #1 – ALWAYS FOLLOW THE CORPORATE FORMALITIES!

(1) **Mandatory Annual Meetings:**

(a) The corporation must hold annual shareholders' and directors' meetings.

(i) Shareholders elect directors

(ii) Directors elect officers

(b) The date, time, and details for the meeting should be clearly stated in company bylaws.

(c) Minutes from the meetings must be prepared and accurately describe what transpired

(2) **Special Meetings:**

- (a) Special meetings need to be scheduled whenever important corporate decisions must be made, such as opening a bank account, changing officer salaries, or entering into a new business venture.
- (b) If permitted by the bylaws, a decision can be made by unanimous consent of the shareholders and directors

(3) Maintain Accurate Records:

- (a) The company should keep good financial records and records of corporate activities.
- (b) Records should also include meetings of minutes, as well as corporate tax activity.
- (c) Keeping clear, accurate and separate records will also help abuses of corporate assets.

(4) Fiduciary Duties:

- (a) Officers and directors need to exercise loyalty to the corporation by exercising their fiduciary duties.
- (b) This means not using corporate assets or opportunities for personal gain and keeping corporate matters private and confidential

(5) Contract Procedures:

- (a) Procedures for negotiating and signing business contracts should be enforced. These may include:
 - (i) authorizing an officer to sign contracts;
 - (ii) making all company purchases in the corporation's name; and
 - (iii) maintaining a separate corporate account.

(6) Follow company Bylaws, Articles of Incorporation, and other documents:

(a) Failing to comply with company documents can expose directors and shareholders to liabilities that they should not have to incur.

(i) Ex. – if your bylaws require 5 directors, make sure you are electing five directors and that the minutes from the meeting reflect this

ii) If you have more than one entity, you must follow Rule #1 –

(1) ALWAYS FOLLOW THE CORPORATE FORMALITIES!

iii) Things NOT to do

(1) Do NOT engage in insider deals, insider trading, or other abuses of confidential corporate information

(2) Do NOT use corporate funds and assets for personal reasons

(3) Do NOT mix corporate funds with personal funds (i.e., commingling)

iv) Final Advice

(1) Keep your corporate binders up to date and accurate

(2) Don't let your CPA maintain your corporate binder!

(a) CPA's are not attorneys and they do not understand what is required to keep a corporate binder up to date

(b) Filing annual reports without conducting annual meetings and preparing minutes from those meetings