The FSA Probate Trap

What Happens to Farm Program Benefits When a Farmer Dies?

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Overview

A farmer's death creates obvious estate-planning questions: Who receives the land? Who gets the equipment and livestock? Who will operate the farm? What happens to the debt? But for a farm that participates in USDA Farm Service Agency (FSA) programs, there is another set of questions that can be just as important - and they are not necessarily answered by the farmer's will, trust, or other estate planning documents.

The basic problem is that probate law and FSA program rules operate on different tracks. A will may transfer the farm to a child, but that does not automatically make the child the recognized FSA participant. An executor may have authority to administer the estate, but that does not mean the estate can simply step into every FSA program position held by the deceased farmer. And a payment that appears to belong to the estate may be subject to special federal rules governing who may claim it.

For agricultural attorneys, estate planning attorneys, and CPAs, the lesson is straightforward: an agricultural estate plan is incomplete if it addresses the farm assets but ignores the farmer's FSA status.

Payments Earned but Unpaid at Death

The first question is whether the deceased farmer had satisfied the conditions for an FSA payment before death. FSA has specific procedures for handling payments due to deceased participants, including the use of Form FSA-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent."

The important point is that the federal rules, rather than simply the decedent's will, control who may claim an amount due. FSA's deceased-person guidance establishes an order of precedence that generally starts with the administrator or executor of the estate, followed by the surviving spouse, surviving sons and daughters, surviving parents, surviving brothers and sisters, and, in appropriate circumstance, other heirs entitled under state law.

Consequently, it should not be assumed that a post-death FSA payment automatically becomes an estate asset that can be distributed according to the residuary clause of the will. Instead, it should first be determined what the payment represents, whether the decedent satisfied the applicable program requirements, and who FSA recognizes as the proper claimant.

The Executor's Authority Matters

A family member may believe that being the decedent's child, farm successor, or beneficiary is enough to deal with FSA. It may not be. FSA may require documentation establishing who has authority to act for the deceased participant. Depending upon the circumstances, that may include probate documents, letters of administration, a will, an affidavit of heirship, or other documentation acceptable to FSA.

This can create a practical probate issue. An estate plan may have been designed to avoid probate, but the family may nevertheless discover that additional documentation is needed before someone can effectively deal with FSA. If the farm is entering a critical planting, harvesting, or program- certification period, delay can have economic consequences. A good estate plan therefore identifies who is expected to deal with FSA immediately after death and makes sure that person will have the documentation necessary to establish authority.

The Farm Can Continue—but FSA Eligibility Must Be Addressed

The death of the farmer does not necessarily mean the farming operation must stop. Indeed, many estates continue farming through the remainder of the crop year while the family decides whether the farm will ultimately be sold, leased, or transferred to a successor. FSA's active-engagement rules, however, must be considered. FSA has special provisions for estates following the death of a farmer. Generally, for two program years following the program year in which the individual dies, an estate may be considered actively engaged in farming if the applicable requirements are met, including significant contributions of land, capital, equipment, or a combination by the estate and significant contributions of active personal labor, active personal management, or both by the personal representative or heirs, as applicable.

This means that the estate-planning attorney should ask a question that is often overlooked: Who will actually farm after death? If the answer is a son, daughter, surviving spouse, tenant, or new farming entity, the attorney and CPA should examine how that arrangement interacts with FSA participation. Merely transferring the farm under the will does not answer the federal program question.

Changing the Farming Entity Can Change the FSA Picture

Many succession plans contemplate a change in the structure of the farming operation after death. An individual proprietorship may become an LLC or partnership. A farm may be transferred to a corporation. Several heirs may own an entity while one heir conducts the farming operation. From an estate-planning perspective, that may be perfectly logical. From an FSA perspective, however, the change requires careful attention.

When a deceased person held an interest in a legal entity or was a member of a joint operation or general partnership, FSA procedures call for the organization to contact the appropriate FSA office and provide updated information. The new ownership and operating structure may need to be documented before the successor operation can properly receive program benefits. The key point is that "the son inherited the farm" and "the son is now the FSA participant" are not necessarily the same proposition. The practitioner should verify the FSA records rather than assume that the estate documents automatically update the federal program records.

Payment Limitations and Attribution

Death can also affect the operation's payment-limitation analysis. FSA tracks ownership interests and, for entities, applies attribution rules that can require tracing ownership through multiple levels. A post-death restructuring can therefore change the picture. The practitioner should identify who owns the successor entity, who is receiving program benefits, whether the estate remains a participant, and whether ownership changes constitute a substantive change for FSA purposes.

This becomes particularly important when several family members inherit interests in a farming entity. A transaction that appears to be merely an estate distribution can have consequences for payment eligibility if the ownership structure changes in a way that affects attribution or the operation's ability to satisfy applicable requirements. The estate-planning attorney and CPA should therefore review the FSA ownership and organizational records at the same time the legal entity and tax records are reviewed.

CRP Contracts Deserve Separate Attention

Conservation Reserve Program (CRP) contracts are another area where death should trigger an immediate review. A CRP contract is not simply an ordinary farm asset that can be treated like cash or machinery. FSA has specific procedures for deceased CRP participants, including provisions concerning payments through the date of death and the handling of the contract after death.

The analysis becomes especially important if the land is being transferred to one child, placed in a trust or LLC, sold to a third party, or subjected to an early-termination decision. The estate should determine what happens to the CRP contract before the land is distributed. A will that says "my farmland goes to my son" does not by itself resolve every question associated with a CRP contract attached to that farmland.

FSA Loans Create a Different Problem

If the deceased farmer has an FSA direct loan, the estate-planning analysis becomes even more important. FSA has specific procedures for deceased borrowers, including consideration of the estate, heirs, liable parties, collateral, and available servicing or assumption options. An estate should not simply be treated as though it automatically became the new FSA borrower. FSA's loan-servicing rules contain specific provisions concerning deceased borrowers and the treatment of their loans need to be coordinated. In other words, the FSA loan should be treated as an estate-administration issue, not merely as another farm liability listed on a balance sheet.

Pending Adverse Determinations and Appeals

The death of a farmer can also occur while an FSA matter is unresolved. Perhaps the county committee has denied a payment, determined that the operation was not in compliance, questioned acreage, issued a repayment demand, or made another adverse determination. Those matters should be placed on the estate's inventory of potential assets and liabilities. An appeal deadline may be running even though the farmer has died. The estate should determine whether an appeal is pending, whether additional action is required, who has authority to pursue it, and whether the outcome affects future program payments.

> **Observation:** For an agricultural estate, a pending FSA appeal can have real economic value. The failure to identify it can be just as costly as overlooking a bank account or an outstanding receivable.

Tax Reporting Can Add Another Layer

The CPA also needs to reconcile the FSA records with the estate and income-tax reporting. After death, there may be a final Form 1040 for the decedent, a Form 1041 for the estate, and perhaps returns for a successor partnership, LLC, or corporation. FSA records may continue to use the deceased participant's identifying information for certain payments to a qualified claimant.

The tax practitioner should therefore determine what the payment represents, when the economic entitlement arose, who is legally entitled to receive it, and how it should be reported. A check or information return issued under a particular taxpayer identification number does not, standing alone, answer every tax question concerning the underlying payment.

> **Note:** This is another reason why the FSA file should be part of the estate's initial information-gathering process.

A Practical FSA Estate-Planning Checklist

Before a farmer dies, the estate-planning team representing the farmer should obtain and review the farmer's FSA records. At a minimum, the file should identify:

- the FSA participant number and taxpayer identification information;
- the current farm and tract records;
- the CCC-902 farming-operation information;
- CCC-901 entity and ownership information, where applicable;
- ARC/PLC participation;
- CRP and other conservation contracts;
- FSA commodity loans and direct loans;
- pending applications and unpaid program payments;
- pending adverse determinations or appeals;
- payment-limitation and attribution information;
- applicable adjusted-gross-income certifications; and
- the ownership and operating structure of every farming entity.

The estate plan should then answer a very practical question: Who will have authority to deal with FSA immediately after the farmer dies? That person may be the executor, personal representative, surviving spouse, successor farmer, trustee, or another authorized person. But the answer should be established before death rather than improvised afterward.

The Larger Estate-Planning Lesson

The FSA probate problem illustrates a broader point about farm succession planning - a farm is not merely land and equipment. It is a collection of contracts, government-program relationships, debt arrangements, leases, tax attributes, entity interests, and regulatory obligations. A carefully drafted will or trust can transfer ownership of property. It cannot, by itself, rewrite federal program eligibility rules. For that reason, attorneys and CPAs advising farmers should make FSA participation part of the standard estate-planning checklist. The review should occur well before death and should be repeated whenever there is a significant change in ownership, entity structure, program participation, or debt. The question is not simply, "Who gets Dad's farm?" It is also: "Who gets Dad's FSA payments, who can act for the operation, who assumes or resolves the FSA obligations, and who will Be recognized by USDA as the successor participant?

Those questions can determine whether a farm succession plan works smoothly - or whether the family discovers, after death, that a seemingly simple estate distribution has created a federal program problem.