

2012 (10)

## CATEGORIES

Agriculture & Agribusiness (43)

Agriculture Law & Agribusiness (30)

Business & Corporate Law (27)

Commercial Real Estate (5)

Cybersecurity (1)

Construction (4)

Employment Law (18)

Family Law (38)

Adoption (1)

Alimony (1)

Child Support (1)

Custody (6)

Divorce (28)

Farm Ownership & Divorce (7)

Parenting Time & Child Support (2)

Prenuptial Agreement (1)

Reproductive Assistance Technology (1)

Finance (44)

Finance & Banking (49)

Commercial Lending (2)

Food & Beverage (4)

Healthcare (7)

Insurance (4)

Intellectual Property (3)

Labor & Employment (26)

Litigation (2)

Commercial Litigation (2)

Manufacturing (4)

## AFTER DIVORCE

SUNDAY, JUNE 10, 2012

POSTED BY: ANDREW M. TATGE

Minnesota divorce lawyers are faced with unique and challenging issues when representing farmers in divorce proceedings, especially when dividing up the marital assets and debts.

Particularly important in light of today's farmland prices and other issues contributing to the value of the marital estate, a substantial award of cash or equity in a farm to the non-farming spouse can leave the farmer in a precarious position. Will he be able to cash flow the farming operations? What if prices of the farm output go down and he can't afford to keep the operation afloat? Are there non-farm assets that can be awarded to the non-farming spouse to allow suitable income for him or her to live on without invading the farm or requiring spousal maintenance? These are just a few of the difficult questions that must be analyzed in connection with a Minnesota farm divorce.

When negotiating a property division in a farm divorce matter, it is important to take into account the future impact of the property division on the farmer's income. If farm assets are reduced by a property division that fact should significantly impact the spouse's income for purposes of not only child support and spousal maintenance, but what is equitable as a division of the property.

One way to keep the family farm is for the previous generation to have gifted the farm or farm assets directly to the family member spouse, and not to the family member and his spouse jointly. In Minnesota, a gift to one spouse and not the other is non-marital property. This is the best way to keep a multi-generation family business or family farm out of the hands of the divorcing spouse. Antenuptial agreements can be utilized as well, as can tracing assets obtained by the farming spouse before the marriage to argue that those assets should not be divided.

If it is not possible to argue that the farm or farm assets are non-marital and there are not sufficient non-farm assets to divide, then it is vitally important to work with competent Minnesota divorce and business lawyers, financial advisors, accountants, and bankers to determine the best way to structure a "buy out" of the non-farming spouse so that the operation can continue on and support any new debt load it is required to undertake in order to buy out the spouse and ensure that the farm will be a viable business into the future.

There are numerous ways that creative attorneys can create asset and debt divisions which can provide significant advantages to the farm owner while also taking into account the risks inherent in