



© Linde Waidhofer

This story from our client files illustrates:

- the value of comprehensive estate planning,
- the value of conservation easements,
- the donation of a conservation easement after the death of a landowner, and
- the value of having expert legal guidance.

Clyde and Priscilla Silver (name changed to protect client's privacy) owned and operated the Silver Ranch in Colorado for decades. The Ranch had been in Priscilla's family long before her mother passed it to her. The couple had significant wealth tied up in the land, but not much liquid wealth. Their old wills left all of their respective property to each other. This estate plan would have produced an eventual federal estate tax liability of approximately \$4,000,000, and would have forced the children to sell off large parts of the ranch to pay the federal government.

As part of a comprehensive estate planning process with their attorney, the couple created a new estate plan, and discussed granting a conservation easement on their ranch. Their goal was to reduce the huge potential liability for federal estate tax, to pass the ranch in tact to their three adult children and grandchildren, and to protect the land and a way of life that they loved. At Clyde and Priscilla's request, their attorney conferred with the extended family to help them all understand the implications of their new estate plan and what the conservation easement would mean for them.

Their attorney entered negotiations with The Conservation Fund ("TCF"), a public charity qualified to receive donations of conservation easements, for a bargain-sale of the conservation easement in three phases over a three year period. TCF would pay the Silvers cash for a portion of the value of the conservation easement, and the Silvers would donate the remaining value of the conservation easement to TCF and receive an income tax deduction for this charitable contribution.

Although a contract was negotiated to memorialize this agreement, Clyde Silver died before he could sign it. His wife, the Executor of his Estate under his new will, proceeded with the transaction with TCF on behalf of the Estate.

Clyde and Priscilla owned the Ranch as tenants in common. Their attorney received permission from the probate court to partition a portion of the Ranch which represented Clyde's ownership interest and create a legally defined parcel. In the first phase of the conservation easement transaction, the Estate made a post-mortem grant of a conservation easement on this parcel.

The fair market value of this parcel was reduced by 45% because of the conservation easement. Furthermore, the Estate also elected to take an additional \$500,000 reduction in the value of the parcel for federal estate tax purposes under IRC Sec. 2031(c). The Estate received some cash from the bargain-sale and also a charitable deduction under IRC Sec. 2055(f) for the donated portion of the conservation easement. The Estate sold the resulting Colorado Conservation Easement Tax Credit for more cash.

The accountant, working with the attorney, filed the federal estate tax return (Form 706). There was no federal estate tax owed because the estate plan created a family or bypass trust to hold Clyde's property. The parcel, now greatly reduced in value because of the conservation easement, passed entirely into the family trust together with some cash for the benefit of Priscilla and the children. As the value of this parcel appreciates over time, all of that appreciation will pass to the next generation free of federal estate tax.

The attorney anticipated changes in the federal estate tax law. In order to keep open additional options for the family, the attorney filed an intentionally defective election for Special Use Valuation under IRC Sec. 2032A. This bought the family an additional two years to consider whether to proceed with Special Use Valuation, and thereby reduce the value of the Estate's parcel further so as to transfer more cash into the family trust. This was important in order to reduce the potential federal estate tax at Priscilla's death. Assets transferred into the family trust created under Clyde's estate plan escape the federal estate tax in Priscilla's estate at her death. When the IRS eventually asked the Executor to perfect its 2032A election, the family decided not to proceed with Special Use Valuation because of the burdens imposed on them and the parcel for the ten year period under the tax code, and because of unforeseen health issues that arose during that two year period for Priscilla's son who ran the ranch. Without the intentionally defective election, the family may have been forced into an irrevocable strategy involving Special Use Valuation that could have forced the Estate to pay the federal government hundreds of thousands of dollars.

While the probate process continued and the IRS examined the Form 706, Priscilla proceeded to grant the conservation easement on her portion of the Ranch in two phases over a two year period. She received some cash for each phase and donated a portion of the value of the conservation easement. Each year the resulting Colorado Conservation Easement Tax Credit was sold to generate additional cash. The conservation easement reduced the fair market value of her portion of the Ranch by 50%, and she greatly reduced her exposure to the federal estate tax. Clyde and Priscilla saved the \$4,000,000 that they otherwise would have owed the federal government in estate tax, and created significant income tax benefits. They generated millions of dollars in cash

from the bargain-sale of the conservation easement and the sale of the resulting Colorado tax credit. The cash will be used to pay future property taxes and expenses of the ranch operation, and will be eventually distributed to the children.

More importantly for the Silver family, the mountain views, the meadows, the rivers and the forests on the Silver Ranch are now entirely protected. The family's heritage is also protected. The family can continue its ranching operations, and further develop additional commercial outfitting and hunting activities on the property. Priscilla reserved home sites for her children and grandchildren on whom they wished to build homes in the future. She and her husband left an incomparable legacy for her children and grandchildren and future generations.

The attorney representing the family in this success story was Thomas S. Hall of Braun & Associates. Please contact him if you have any questions about estate planning or conservation strategies.



© Linde Waidhofer