PLANNING FOR THE FUTURE OF YOUR FARM

Legal tools and strategies for farm transition and estate planning

FARM TRANSITION AND ESTATE TRANSITION PLANNING: WHAT IT IS AND WHAT TO EXPECT

Pick up a farm magazine and it's likely to have an article about estate planning. An internet search will yield hundreds of references to passing on the family farm, protecting a farm's legacy, and bringing the next generation into the operation. We focus a lot of attention today on farm transition and estate planning. That's because good planning carries critical consequences for the future of agriculture.

WHAT IS FARM TRANSITION AND ESTATE PLANNING?

Farming is both a unique way of living and a unique way of making a living. It is common for farmers to hope to pass this unique heritage on to future generations. "Farm estate planning" uses legal tools to ensure that the next generation receives farm assets after farm owners retire or pass on. But farmers often want to bring their heirs into the farming operation before passing those assets on. The term "farm transition planning" refers to using many tools to prepare for and transfer the farming operation to heirs, including estate planning and business planning tools. Whether your goals are to pass on land and assets, hand the farm business down to future generations, or both, learning about farm transition and estate planning will help you accomplish those goals.

THE FARM TRANSITION AND ESTATE PLANNING PROCESS

The farm transition and estate planning process begins with **identifying goals** for the future of the farm and the farm family. We frequently hear from farmers whose primary goals are to keep farmland in the family and prepare the next generation of managers. Or perhaps a farmer aims to retire, address special issues with children, or plan for long term health care. Whatever the goals may be, healthy **family communication** and **conflict management** are often necessary to accomplish this important first step of identifying goals.

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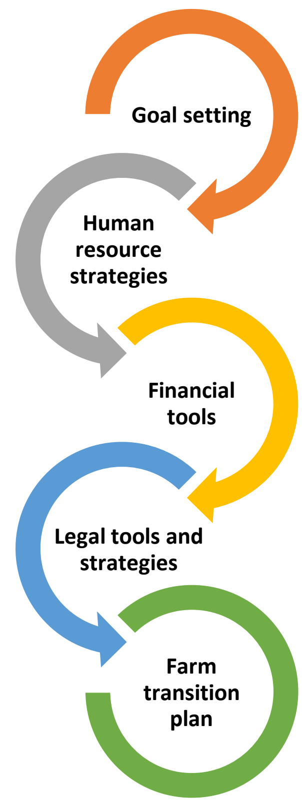
The next step in the farm transition planning process requires **selecting strategies** to implement established goals. Strategies will likely be necessary in several different areas:

- **Human resource** strategies to identify, prepare and train the next generation of the farm business managers.
- **Financial** tools to aid in funding and implementing goals, such as insurance and retirement plans.
- **Legal** strategies and tools for effective asset protection and transfer, such as estate planning and business planning instruments.

The legal tools and strategies component of farm transition planning is the focus of our Planning for the Future of the Farm bulletin series. Some of the legal tools we explain are traditional instruments often used in estate planning, like wills and trusts. But other legal tools can be useful for a farm transition plan, such as business entities, operating agreements, leases, and gifting strategies. These legal tools work together with human resource strategies and financial tools to implement a farm's goals. Putting the legal plan in place is the final step in the farm transition planning process.

The Farm Transition Planning Process



PUTTING A LEGAL PLAN TOGETHER

1. Choose an attorney. The legal side of farm transition planning starts with choosing your attorney. Word-of-mouth is one way to identify a good agricultural attorney with expertise in farm transition and estate planning, or check with organizations like Extension, the state or local bar association, or the American Agricultural Law Association. Ask for an initial consultation and meet an attorney before committing to representation. Several factors can aid in selecting the right attorney: competence, personal comfort, and costs.

- Look for an attorney with **competence** in estate and business planning—composed of both legal knowledge and practical experience. But don't stop there-- it's also very important that the attorney is competent with **agriculture** and experienced in working with farm clients. Farm businesses are different than other types of businesses. An attorney who knows farming will have insight into the laws, tools and strategies that apply to farm situations. Be wary of an attorney who has never worked with farm clients and knows little about agriculture.
- **Personal comfort** with an attorney is essential. It can ensure open communication and make it easier to share necessary information about finances, assets, business plans, and family issues and dynamics. Discomfort can lead to misunderstandings, withholding of critical information, and plans that don't align with a family's goals.
- **Costs** can vary. It is completely acceptable to request an estimate of legal fees. Don't be afraid to ask what the entire plan, from start to finish, will cost.

2. Expect to have two or more meetings with an attorney. The first meeting is typically for reviewing goals and information but might also involve discussing strategies and options. Additional meetings could involve reviewing tools and strategies and executing legal documents.

3. Prepare for the first meeting*.* Advance preparation can help the first meeting move more efficiently and effectively. An attorney might let you know in advance of information to gather before the first meeting. Also consider these tips:

- **Write it down.** Write out your goals for the farm business and farm assets. Also include information about the family, its special needs, and its dynamics. Consider details an attorney may need to know about the farm and the family, like who has "sweat equity" in the business, siblings who don't get along, children with problems managing finances, big purchases coming up, and who wants to be involved in the farm—this and similar information will help with developing a plan that addresses future issues.
- **Compile asset and personal information**. Gather all asset information such as deeds, account numbers and balances, and beneficiary designations, along with personal information on you and your family members. OSU Extension offers a helpful document, *Getting Your Farm and Family Affairs in Order,* that can aid in organizing the information. Doing so before meeting with your attorney can save time and the costs of having your attorney track down the information.
- **Organize financial information**. Use the information gathered in step two to prepare a simple balance sheet showing farm assets, non-farm assets, debts, and net worth. Full disclosure of your financial situation is necessary to developing a plan that addresses financial challenges and opportunities and is another way to save on the costs of paying your attorney to compile the information.

4. You may need your other advisors, too. Communication among all your professional advisors may be necessary to ensure all strategies align with one another. You may need to check in with financial advisors, accountants, insurance agents, and other professionals you rely upon.

SPEAKING THE FARM TRANSITION LANGUAGE: COMMON TERMS

Farm transition planning uses many legal terms, and familiarization with the terms should help you through the process. Here are definitions to common terms you may encounter along the way.

Advance directive. A legal document that gives instruction on a person's health care wishes, such as a living will and health care power of attorney.	***Irrevocable trust.*** A trust that cannot be changed or cancelled by the person who executed the trust.
Basis and step-up in basis. The basis is the value of an inherited asset for tax purposes. A step-up in basis is an adjustment of basis to the asset's fair market value at the time of the death that triggers the inheritance.	***Joint tenancy.*** Ownership of real property jointly by two or more parties, either as joint tenants with rights of survivorship or as tenants in common.
Beneficiary. A person designated to receive proceeds from an asset such as an account, insurance policy, or trust upon the death of the owner of the asset.	***Living trust.*** A trust created during a person's lifetime to manage assets before and after the person's death. A living trust can be revocable or irrevocable.
Business entity or structure. An organization formed to conduct business, such as sole proprietorships, partnerships, corporations, cooperatives, and limited liability companies.	***Living will.*** A legal document stating a person's wishes for medical treatment and life-sustaining measures if the person is at the end of life and unable to communicate.
Capital gains tax. A tax on the increase in the value of an asset between the time it is bought and the time it is sold.	***LLC, Limited Liability Company.*** A business entity that can protect its owners from personal responsibility for business debts and liabilities with pass-through taxation.
Deed. A written document that transfers title to real property to a new owner.	***Long-term care insurance.*** Insurance coverage for long-term services and support not covered by health insurance, such as nursing home or custodial care.
End-of-life directive. A written legal document with instructions for end-of-life medical decisions if a person is unable to make decisions at that time.	***Operating agreement.*** A document that governs the internal operations of a limited liability company and is binding on all members of the limited liability company.

Estate. All of the real and personal property a person owns at death.	***Payable on death account.*** An account set up to be directly transferred to a beneficiary upon the death of the account holder, without going through probate.
Estate administration. The process of collecting assets, paying debts, and distributing the property of a person after the person's death.	***Probate.*** A court process to administer a person's estate by paying all claims, expenses, and taxes, and distributing remaining property to heirs.
Federal estate tax. A tax on the portion of a person's estate that exceeds the federal estate tax exemption amount.	***Revocable trust.*** A trust that can be changed or cancelled by the person who executed it prior to that person's death.
Federal estate tax exemption. An amount of assets in an estate that are exempt from the federal estate tax, as determined by Congress and adjusted annually.	***Survivorship deed.*** A deed that transfers the title to a joint owner's share of jointly owned real property upon death to the surviving joint owners.
Financial power of attorney. A legal document that appoints someone to make financial decisions for a person if the person is unable to manage their finances.	***Tenancy in common.*** A form of joint ownership of real property that allows a joint owner to transfer their share of property to a person other than a joint tenant.
Gifting. Giving cash or assets to a beneficiary during the giver's lifetime rather than after death, which can reduce the value of the giver's estate and the possibility of estate taxes at death.	***Transfer on death affidavit.*** A written instrument that establishes a direct transfer of real property to a designated beneficiary upon the death of the owner without going through probate administration.
Health care power of attorney. A legal document that allows an individual to empower another person to make important medical decisions on their behalf when they cannot do so themselves.	***Trust.*** A legal instrument that holds assets and appoints a trustee to oversee and distribute assets according to the terms of the trust.
Intestacy. Dying without a will, which results in the deceased's assets being subject to probate and distributed according to the state's intestacy law.	***Trust administration.*** The process of managing the assets within a trust according to the terms of the trust.

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Find all our **Planning for the Future of Your Farm** resources at https://go.osu.edu/farmplanning

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