

# Estate and Farm Transition Planning

## Farminar

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# Why Are These Things Important?

- According to the 2012 USDA Ag Census:
  - The average age of a farmer in 2012 was 58.3 years and this continues to rise (30 year trend).
  - In 2012 there were 3.2 million farmers operating 2.1 million farms.
  - 78% of farmers were on their current farm ten or more years.
- Land prices have come down over the last few years, but are still high, particularly for young and beginning farmers who struggle accessing land.
  - In SW MN, the median per-acre land sale price in 1990 was \$970. In 2016 that price was \$7212.



## Cont.

- Generally speaking, without proper transition planning:
  - Only 30% of businesses survive into the 2<sup>nd</sup> generation.
  - For those that survive, only 10% will survive into the 3<sup>rd</sup> generation.
  - Of those, only 3% survive into the 4<sup>th</sup> generation and beyond.
- Absentee land ownership is up.



# Major Concepts:

- Estate and Farm transition planning takes time. Start early!
- No one method will work for every family. Plan for yours based on your family's needs, not someone else's.
- Define goals and needs early in the process and reassess as time goes on.
- Communicate continuously!



# What is “Estate Planning?”

- Giving what you have to whom you want as quickly and efficiently as possible with the least tax and expenses possible and to the best advantage of yourself and your loved ones.
- Typical Documents:
  - Wills
  - Trusts
  - Power of Attorney
  - Health Care Directive



# What is Transition Planning?

- The process of creating an action plan, timeline, and documents to accomplish the transfer of ownership and management of a farm business to the next generation in a controlled and thoughtful manner to help ensure the future success of the farm business and the successful retirement of the current owner.
- Typical Documents:
  - Written Action Plans and Business Plans
  - Contracts, Leases, Purchase Agreements, Bills of Sale
  - Operating Agreements
  - Buy-Sell Agreements



# Estate and Transition Planning Work Together:

- Common Goals:
  - Avoid Intestacy
  - Name Guardians for Minor Children
  - Nominate Fiduciaries
  - Make Bequests of Assets
  - Minimize, Eliminate or Defer Taxes
  - Streamline the Process
  - Avoid Probate
- Common Goals:
  - Protect the Farm Business
  - Transfer Ownership of the Business During Life
  - Leave a Legacy
  - Train/Prepare the Next Generation of Farmers for Success
  - Keep Land in the Family
  - Allow Mom & Dad to Retire

**Maintain Family Harmony**

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# Beginning the Transition Process:

- When?
  - At least 5 years in advance of a complete transition, but ideally, 10-15 years in advance of the transition.
  
- Start simply.
  - Focus on goal and issue identification. Ask broad questions and discuss desired outcomes. Then narrow in on questions and outcomes.
    - What is the ideal timeline for a transition?
    - What are the family dynamics?
    - On-farm heirs and off-farm heirs – how are they to be treated?
    - Will a family member working in the operation be able to leverage sweat equity in order to obtain an interest in the farm?





# Who Should be Involved?

- Ideally, all family members will have a voice, however, perhaps some louder than others.
- Dad and Mom drive the conversations and the decisions.
- On-farm heirs should be involved in the discussion to ensure the transition plan is feasible for them and to ensure all are on the same page and working together.
- Off-farm heirs should be involved in order to understand the overall concept and to know what Dad and Mom's intent is in regard to the farm and their estate generally.



# Questions for Parents to Ask:

- What is their timeline for transition?
- Who has an interest in the farming business?
- Can an heir participate in the business now?
  - If so, are Mom and Dad ready for this? Is the business ready?
  - If so, is it appropriate to begin transferring ownership of certain assets or should this heir rent?
  - If not, is an heir interested in taking over the farm at some later time or via inheritance?
  - If no heir wishes to farm, what is next for the business and/or the land?
- Are there sufficient assets to treat children “fairly?”



# Working with On-Farm Heirs

- Define the working relationship
  - Trial Run
    - In a trial run, no transfer of asset ownership happens. Both generations can test the viability of the working relationship without getting too complicated.
    - Mom and Dad employ the on-farm heir. The on-farm heir contributes to the business. Both generations have an opportunity to assess whether or not they wish to continue.
  - Intermediate Phase
    - If a trial run is successful or unnecessary, more responsibility can be given to the on-farm heir, although Mom and Dad maintain ownership of the assets.
    - The on-farm heir might rent land from Mom and Dad for use in his/her own operation. Machinery may be used by the on-farm heir in exchange for “sweat equity.”



# Cont.

- Intermediate Phase Cont.
  - On-farm heir takes on more of the responsibility for the day to day management of Mom and Dad's farm.
  - Mom and Dad remain in control.
  
- Co-Ownership
  - Mom, Dad and the on-farm heir are ready to transition ownership of the farming business to the on-farm heir.
  - Formation of a business entity may be appropriate.
    - Be careful and keep taxes, corporate farm and homestead laws, and other legal issues in mind when forming any entity!
  - Mom and Dad can gift or sell assets to the on-farm heir.
    - Assess whether gifting and the resulting carry over basis is appropriate!



# Working with Off-Farm Heirs

- Communicate to ensure these heirs know what is happening and understand it is your intent.
- Ensure your estate plan works with your transition plan to best protect the interests of all heirs from any accidental disinheritance.
- In that regard, consider whether or not certain financial products are appropriate or gifting of other assets to off-farm heirs is desirable:
  - Life insurance
  - Defined benefit programs
  - Other real estate, cash assets, etc.



# Work with a Team of Professionals

- Attorney, CPA, Financial Advisor, Banker, Insurance Broker, Appraisers.
- Establish relationships with professionals early on in the process.
- Commit plans to writing and share goals with the team.
- Communicate!



# Major Concepts Revisited:

- Start early!
  - More options, less stress.
  - Failing to plan = planning to fail.
- Plan for your family's needs!
  - Understand your options and know there is no one-size fits all plan.
- Define goals and needs and understand these may change with time.
- Communicate! Communicate! Communicate!

# Questions?



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