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PLANNING FOR THE FUTURE OF YOUR FARM

Initial Thoughts

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1

2

Ohio Farm Resolution Services

- Issues that can be addressed by OFRS include:

- Family communication
- Farm transition planning
- Business entities/ practices
- Energy leases
- Farm leases
- Zoning
- Land Use
- Labor
- Neighbor issues
- Lender/creditor
- Property disputes
- Farmland drainage
- Crops/Agronomics
- USDA/ODA appeals
- Estate disputes

- Primary Facilitators/Mediators: Peggy Hall, David Marrison, Jeff Lewis, Robert Moore
- External mediators will be used for overflow, unique issues/situations, conflicts of interest
- Educational and consulting services available now, mediation services available January 2024
- OFRS is a USDA Certified Mediation Program with funding support from USDA/ FSA
- For more information contact Robert Moore, moore.301@osu.edu, 614-247-8260 or go to farmoffice.osu.edu

3

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Initial Thoughts

- This discussion will be in general terms
  - Your plan should be specific to you
  - The goal is to provide ideas, not a specific plan for you
  - If you already have a plan, don't worry if we discuss something not in your plan or different than your plan
- There is a plan for you
  - There are many legal strategies that can be used, you need to find the strategy(s) that work for your specific situation
  - If you don't already have an attorney, get with one that can help you with your plan
  - Part of the attorney's job is to help guide you through the plan from designing to implementing

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- We have developed an asset management spreadsheet to help with farm transition planning
- This may be a tool that helps with your planning
- We will look at examples
- If you are interested in using for your plan, we will have opportunities for training

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Topics

- General Documents
- Avoiding Probate
- Will or Trust?
- Irrevocable Trusts
- Gifting
- Estate Taxes
- Keeping Farmland in the Family
- Long-Term Care
- Life insurance
- LLCs – protecting farmland
- LLCs – non-farm heirs
- LLCs – transition to farming heir
- Transferring farm assets
- Selecting an attorney

6

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General documents

7

THE BASIC DOCUMENTS

These documents should be a part of every estate plan. The basic documents are typically form documents that an attorney can prepare quickly and relatively inexpensively.

1. Financial Power of Attorney
2. Health Care Power of Attorney
3. Living Will

8

Financial Power of Attorney

- Principal and Agent
  You, the Principal, names another person, the Agent, to make financial decisions for you if you are unable to make decisions for yourself.
- Avoids Guardianship
  Without a POA, the probate court may need to appoint a guardian for you if you are incapacitated. Guardianships are burdensome.
- When Does Agent's Authority Begin?
  Agent's authority can begin only upon Principal's incapacitation or upon execution of POA. Often make authority active upon document execution because it can be difficult to have the Principal deemed incapacitated.
- Who Should Be Agent?
  Spouse and children are often best agents. Can be multiple people. Attorneys and banks can also serve but will usually charge a fee.

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9

Health Care Power of Attorney

- Principal and Agent
  Similar to Financial Power of Attorney. The Principal identifies the Agent to make health care decisions for them.
- Avoids Guardianship
  Without a POA, the probate court may need to appoint a guardian for you if you are incapacitated. Guardianships are burdensome.
- Authority Begins Upon Incapacitation
  Agent's authority only begins when Principal is incapacitated.
- Who Should Be Agent?
  Spouse and children are often best agents. Can be multiple people.
- Standard Form
  Hospitals, Physicians and Attorneys have developed a standard form for Ohio.

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10

Living Will

- End of Life Directive
  This document states your wishes to have artificial life support discontinued if permanently unconscious. Two physicians must determine permanent unconsciousness.
- Can Use Health Care Power of Attorney Instead
  A Living Will is optional. Without a Living Will, the Health Care Power of Attorney Agent will have authority to withdraw artificial life support if permanently unconscious.
- Physicians are Required to Notify
  You name those people who are to be notified before the the physicians or hospital discontinue life support.
- Standard Form
  Hospice, Hospitals, Physicians and Attorneys have developed a standard form for Ohio.

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11

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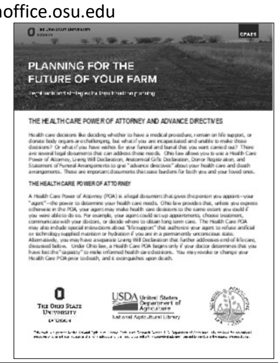
THE FINANCIAL POWER OF ATTORNEY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THE HEALTH CARE POWER OF ATTORNEY AND ADVANCE DIRECTIVES

12

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Avoiding Probate

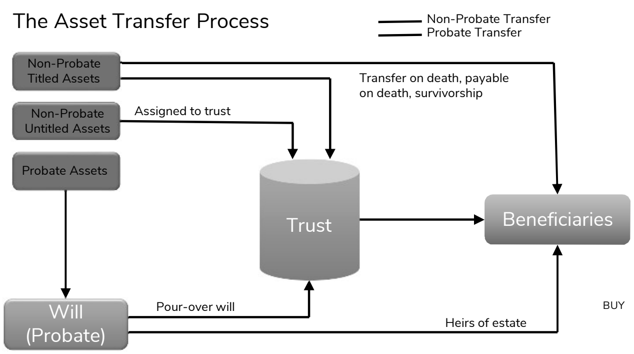
13

What is Probate?

- The Legal Process
  Each county has a probate court that administers certain types of property owned by someone who has died and distributes the assets to those who are entitled to receive the assets.
- Will or No Will
  If someone dies without a will or trust, their estate is intestate. The Ohio Revised Code identifies the beneficiaries of an intestate estate. Conversely, a Will or Trust identifies who is to receive the deceased person's assets. Intestacy Rules can be very different than what the deceased person would have intended.
- Probate Assets
  Assets that have been designated with a Transfer on Death or Payable on Death beneficiary are not subject to probate. Most assets can avoid probate with a beneficiary designation.

14

The Asset Transfer Process



15

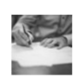
How to Avoid Probate

Any titled asset can avoid probate.

Real Estate
All real estate can avoid probate. Joint owned land can be titled "Survivorship" and individually owned land can be titled "Transfer on Death".

Business Entities
Ownership in business entities can be made "Transfer on Death".

Bank/Financial Accounts
All bank and financial accounts can include one or more payable on death beneficiaries.



Life Insurance
Insurance policies with designated beneficiaries will avoid probate.

Retirement Accounts
Payable on death beneficiaries can be added to 401k and IRA accounts

Vehicles
A "Transfer on Death" designation can be added to any vehicle title.

16

Non-Titled Assets

- What are Non-Titled Assets?
  Machinery, Livestock, Crops, Grain, Inputs
- Can Probate be Avoided?
  Yes, but only with a trust. The non-titled assets can be assigned to a trust and outside of probate.
- Should I Have a Trust to Avoid Probate?
  If the avoidance of probate is the only reason to establish a trust, it may not be sufficient to justify the cost of creating one. However, there may be other reasons that make forming a trust a worthwhile investment, even beyond avoiding probate.

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17

Special Rule for Surviving Spouses and Personal Vehicles

- The surviving spouse may transfer an unlimited number of vehicles valued up to $65,000 and one boat and one outboard motor without going through probate
- Only applies to personal vehicles, not trailers or commercial trucks.

18

Who Does the Titling of Assets?

- Real Estate
  An attorney should draft the deed or transfer on death affidavit to title the real estate non-probate.
- Other Titled Assets
  Most other assets can have beneficiaries added or changed without the assistance of an attorney.
- Non-Titled Assets
  An attorney can prepare a simple assignment document to cause the non-titled assets to be transferred to the trust.

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19

Probate Costs - County Rates

Most county probate courts have established rates that probate attorneys can charge, and these fees will be approved automatically.

The county rates are a % of the value of the estate, usually 1% - 5%.

County rates may be appropriate for smaller estates and simpler estates.

Using county rates for farm estates can cause legal fees to be excessive. For example, transferring a farm valued at $1,000,000 will incur $10,000, or more, of fees using county rates.

County rates are optional, the probate attorney is not required to charge the county rates. They can charge something less or base their fees on an hourly rate. Ask the probate attorney to compare what fees will be using county rates and an hourly rate.

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20

What if You Do Not Have a Will or Trust?

- This is called intestacy
- Intestate estates are subject to probate court
- If you do not have a will or trust, Ohio law has an estate plan for you

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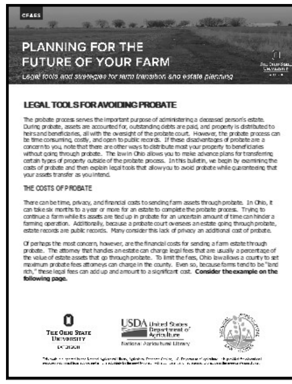
21



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PLANNING FOR THE FUTURE OF YOUR FARM

Legal tools and strategies for farm transition and estate planning

LEGAL TOOLS FOR AVOIDING PROBATE

The probate process serves the important purpose of administering a deceased person's estate. During probate, assets are accounted for, outstanding debts are paid, and property is distributed to heirs and beneficiaries, all with the oversight of the probate court. However, the probate process can be time consuming, costly, and open to public records. If these disadvantages of probate are a concern to you, note that there are other ways to distribute most your property to beneficiaries without going through probate. The law in Ohio allows you to make advance plans for transferring certain types of property outside of the probate process. In this bulletin, we begin by examining the costs of probate and then explain legal tools that allow you to avoid probate while guaranteeing that your assets transfer as you intend.

THE COSTS OF PROBATE

There can be time, privacy, and financial costs to sending farm assets through probate. In Ohio, it can take six months to a year or more for an estate to complete the probate process. Trying to continue a farm while its assets are tied up in probate for an uncertain amount of time can hinder a farming operation. Additionally, because a probate court oversees an estate going through probate, estate records are public records. Many consider this lack of privacy an additional cost of probate.

Of perhaps the most concern, however, are the financial costs for sending a farm estate through probate. The attorney that handles an estate can charge legal fees that are usually a percentage of the value of estate assets that go through probate. To limit the fees, Ohio law allows a county to set maximum probate fees attorneys can charge in the county. Even so, because farms tend to be "land rich," these legal fees can add up and amount to a significant cost. **Consider the example on the following page.**

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Will or Trust?

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Will or Trust?

- Common questions is: which is better, a will or trust?
- The answer is: it depends.
- If possible, we try to get by with will because they usually incur less legal fees than a trust. However, for many farm plans, a trust is required because of complexity and succession planning issues.
- In this discussion, we will address revocable trusts, not irrevocable trusts.

INCOME CAP TRUST

ARTICLE 1

NAME OF TRUST

This irrevocable trust shall be known as the ____ INCOME CAP TRUST.

ARTICLE 2

PURPOSE OF THE TRUST

ARTICLE 3

TRUST FUNDING

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24

Will or Trust?
Factors to Consider

	Will Plan	Trust Plan
Legal Fees		
Complexity of the plan		
Probate		
Concerns about heirs		
Surviving Spouse/ 2nd Marriage		
Transition of Farming Operation		
Estate Taxes		
Privacy		
Control		

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25

Legal Fees for Wills and Trusts

- Generally, legal fees will be less for wills
- Trusts are more complex documents and time must be spent titling assets to the trust to avoid probate
- A trust-based transition plan will usually cost several thousand dollars (or more) than a will-based plan.
- Ask the attorney for an estimate of legal fees before starting the process

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Complexity of Plan

- The Biggest Reason Farm Plans Often Include Trusts
  Trust plans, particularly those with on-farm and off-farm heirs often include complicated provisions to assist with transferring a farming operation to farming heirs.
- Limited by Wills
  Wills can include complex provisions but it is much harder to administer. Wills are better suited to simple estates without complex provisions.
- Trusts Allow for Creativity and Flexibility
  It is possible to be more creative when designing succession plans through the use of trusts compared to those made with wills, as almost any provision can be incorporated into a trust.

8
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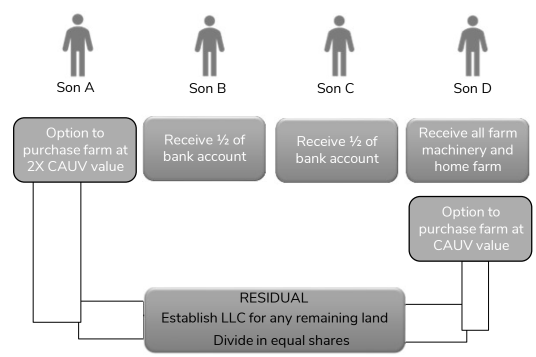
27



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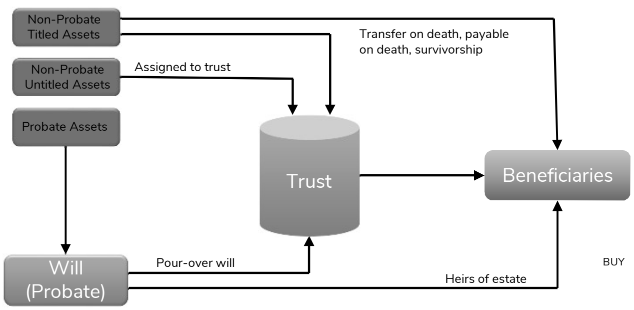
28

The Asset Transfer Process



29

Problem Heirs/Beneficiaries

Managing Inheritance

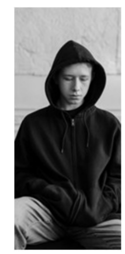
Sometimes we have heirs or beneficiaries for whom we may have uncertainties about how they will manage their inheritance.

Many Different Issues

- Poor money managers
- Substance abuse
- Credit/financial problems
- Bad marriages

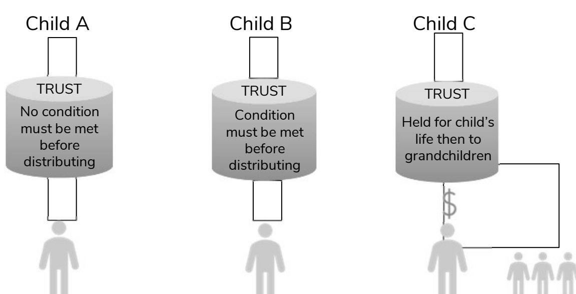
Trusts Can Help

A trust can hold the inheritance for the beneficiary, managed by the trustee, short-term or for their lives.



30

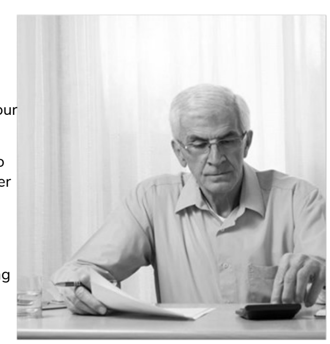
Using Trust Shares for Heirs/Beneficiaries



31

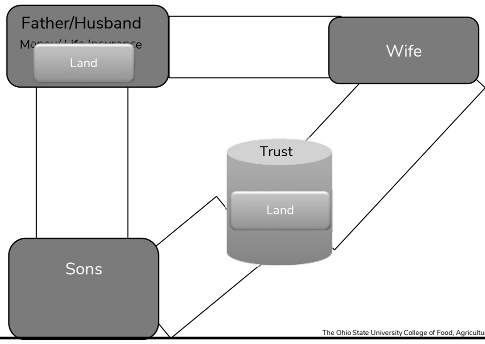
Second Spouse Marriages

- We may have concerns about leaving our assets to a second spouse
- If is possible for the surviving spouse to transfer all assets to their children rather than the deceased spouse's children/heirs
- Trusts can include plans to provide for the surviving spouse while also ensuring the deceased spouse's children/heirs inherit the property



32

Using Trust for Second Marriages



33

Transition of the Farming Operation

- Farm assets can get held up in probate
- It may take time for the executor to receive authority to act on behalf of the estate
- Examples:
  - Selling livestock and grain
  - Renewing licenses on vehicles
- Avoiding probate can allow required actions to occur faster so that the farm can be properly managed

34

Estate Taxes

- Revocable trusts can help with estate taxes for married couples who will be over the federal exemption limit
- Assets of the deceased spouse can be held in their trust and the asset frozen until the death of surviving spouse
- Provides more flexibility in dealing with estate taxes
- Avoiding probate can allow required actions to occur faster so that the farm can be properly managed
- In some cases, irrevocable trusts can reduce or eliminate estate taxes

35

Privacy

All probate documents are public information including the Will, assets, values and heirs

Trusts are not public documents, privacy can be protected using a trust. Only the trustee and beneficiaries are entitled to see the trust.

36

Control

- We will sometimes want to retain some control over assets after death
- Wills can do this but will probably require a testamentary trust
- A trust is better at providing control
- A trust is well suited to hold assets for an extended period while certain conditions are met

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37

Will or Trust?

Factors to Consider

	Will Plan	Trust Plan
Legal Fees	✓	✗
Complexity of the plan	✗	✓
Probate	✗	✓
Concerns about heirs	✗	✓
Surviving Spouse/ 2nd Marriage	✗	✓
Transition of Farming Operation	✗	✓
Estate Taxes	✗	✓
Privacy	✗	✓
Control	✗	✓

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38

A Will or Trust?

It Depends
Whether you need a will or a trust depends on the different factors discussed earlier. This analysis should be done on a case-by-case basis.

Many Farm Plans Include Trusts
Many farm plans include trusts due to the size of the estate, complexity of plan and different types of assets.

Which is right for me?
Discus which is right for you with your attorney. Some farm transition plans can be effective only using wills.

Understanding the differences between wills and trusts can help you make an informed decision about which option is best for you.

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39

Is a Will or Trust Better for Your Farm Transition Plan?

Robert Moore, OSU Agricultural & Resource Law Program
Anna Marie Poole, Law Fellow, National Agricultural Law Center

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Irrevocable trusts

41

Types of Trusts

- Revocable Trusts
  A revocable trust can be changed or terminated by the grantor during their lifetime. The assets are usually returned to the grantor upon revocation.
- Irrevocable Trusts
  An irrevocable trust cannot be changed or terminated by the grantor. The assets are transferred permanently to the trust.

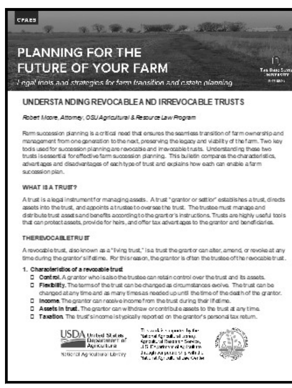
42

The Irrevocable Trust Strategy

Turning the keys over to your assets

- Establish an irrevocable trust and name someone else as trustee
- Transfer assets to the irrevocable trust
- Give up all ownership and control of the assets
- Because the original owner has no ownership or control of the assets, creditors cannot get to the assets
- Can be set up to not include assets in estate

43



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PLANNING FOR THE FUTURE OF YOUR FARM

Legal tools and strategies for farm transition and estate planning

UNDERSTANDING REVOCABLE AND IRREVOCABLE TRUSTS

Robert Moore, Attorney, OSU Agricultural & Resource Law Program

Farm succession planning is a critical need that ensures the seamless transition of farm ownership and management from one generation to the next, preserving the legacy and viability of the farm. Two key tools used for succession planning are revocable and irrevocable trusts. Understanding these two trusts is essential for effective farm succession planning. This bulletin compares the characteristics, advantages and disadvantages of each type of trust and explains how each can enable a farm succession plan.

WHAT IS A TRUST?

A trust is a legal instrument for managing assets. A trust "grantor or settlor" establishes a trust, directs assets into the trust, and appoints a trustee to oversee the trust. The trustee must manage and distribute trust assets and benefits according to the grantor's instructions. Trusts are highly useful tools that can protect assets, provide for heirs, and offer tax advantages to the grantor and beneficiaries.

THE REVOCABLE TRUST

A revocable trust, also known as a "living trust," is a trust the grantor can alter, amend, or revoke at any time during the grantor's lifetime. For this reason, the grantor is often the trustee of the revocable trust.

1. Characteristics of a revocable trust
   - **Control.** A grantor who is also the trustee can retain control over the trust and its assets.
   - **Flexibility.** The terms of the trust can be changed as circumstances evolve. The trust can be changed at any time and as many times as needed up until the time of the death of the grantor.
   - **Income.** The grantor can receive income from the trust during their lifetime.
   - **Assets in trust.** The grantor can withdraw or contribute assets to the trust at any time.
   - **Taxation.** The trust's income is typically reported on the grantor's personal tax return.

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44

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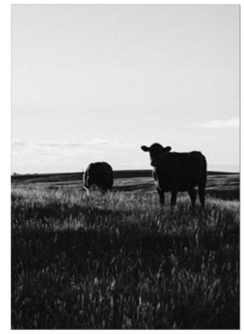
Gifting

45

INTRODUCTION TO GIFTING STRATEGIES

Gifting strategies can be an effective way for farm families to pass on their assets to the next generation. These strategies can help to reduce the tax burden and ensure that the family's legacy is preserved. However, there are significant tax implications of gifting. Often, it is better to transfer assets through inheritance rather than gifting.



46

THE ANNUAL EXCLUSION

What is the Annual Exclusion?

The Annual Exclusion is the amount of money that can be gifted to an individual without incurring a gift tax.

Who is eligible for the Annual Exclusion?

The Annual Exclusion applies to gifts made to any individual, including family members. Annual Exclusion gifts can be made to an unlimited number of people.

How much is the Annual Exclusion?

The Annual Exclusion is currently set at $18,000 per person per year.

What assets can be gifted?

Any asset can be gifted. Money, real estate, machinery, grain, livestock, business entity ownership.

Understanding the Annual Exclusion and how it applies to gifting strategies is essential for farm families looking to maximize their gifting potential.

47

LIFETIME EXEMPTION GIFTS

Based on Federal Estate Tax Exemption

You can use your federal estate tax exemption at death, gift it during life, or a combination of both

No Gift Tax

There is no gift tax on large gifts provided a gift tax return is filed and the gift does not exceed the federal estate tax exemption.

Gift Tax Return

Must file a gift tax return if exceed annual exclusion. The gift tax return informs the IRS the size of your gift so it can be deducted from estate tax exemption.

Exemption Amount

The current exemption amount/ lifetime gift exemption is $13.61 million

48

LARGE GIFT EXAMPLE

- Father gifts a farm to Daughter valued at $1,018,000.
- The first $18,000 is applied to annual exclusion.
- The remaining $1,000,000 is deducted from federal estate tax exemption.
- Father's federal estate tax exemption is reduced from $13,610,000 to $12,610,000.

49

THE DOWNSIDE OF GIFTING: NEGATIVE TAX CONSEQUENCES

Gifting money or assets to family members can have serious tax implications. The biggest downside is the lost of stepped-up basis that is gained upon inheriting an asset. With everything else being equal, it is better to inherit assets than to receives assets as a gift.

50

GIFTING EXAMPLE STEPPED-UP TAX BASIS

- Father owns a tractor with a FMV of $100,000 and a tax basis of $0.
- Father gifts the tractor to Daughter. Daughter receives the tractor with a $0 tax basis. Daughter has no depreciation to use.
- Instead, Father keeps the tractor and Daughter inherits. Daughter receives the tractor with a $100,000 tax basis. Daughter can re-depreciate the tractor or sell the tractor and not pay tax (if sold for $100,000 or less)
- Gifting is usually not the best tax strategy, unless avoiding estate taxes.

51

TAXES AREN'T EVERYTHING: WHEN GIFTING MAKES SENSE

Avoid Estate Taxes

For people in estate tax bracket, usually better to pay capital gains than estate taxes.

Rid Yourself of Liability of Ownership

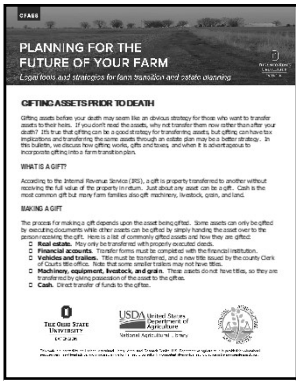
If you want to avoid the potential liability that comes with owning assets, it might be wise to transfer them now.

Timing

It may be more beneficial to give away the assets now rather than waiting for inheritance. There are numerous reasons why doing it now may be the preferable option.

Stepped-up basis at inheritance is an importance tax consideration. However, sometimes other factors justify gifting the assets and forgoing the stepped-up tax basis.

52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GIFTING ASSETS PRIOR TO DEATH

Gifting assets before your death may seem like an obvious strategy for those who want to transfer assets to their heirs. If you don't need the assets, why not transfer them now rather than after your death? It's true that gifting can be a good strategy for transferring assets, but gifting can have tax implications and transferring the same assets through an estate plan may be a better strategy. In this bulletin, we discuss how gifting works, gifts and taxes, and when it is advantageous to incorporate gifting into a farm transition plan.

WHAT IS A GIFT?

According to the Internal Revenue Service (IRS), a gift is property transferred to another without receiving the full value of the property in return. Just about any asset can be a gift. Cash is the most common gift but many farm families also gift machinery, livestock, grain, and land.

MAKING A GIFT

The process for making a gift depends upon the asset being gifted. Some assets can only be gifted by executing documents while other assets can be gifted by simply handing the asset over to the person receiving the gift. Here is a list of commonly gifted assets and how they are gifted:

- **Real estate.** May only be transferred with properly executed deeds.
- **Financial accounts.** Transfer forms must be completed with the financial institution.
- **Vehicles and trailers.** Title must be transferred, and a new title issued by the county Clerk of Courts title office. Note that some smaller trailers may not have titles.
- **Machinery, equipment, livestock, and grain.** These assets do not have titles, so they are transferred by giving possession of the asset to the giftee.
- **Cash.** Direct transfer of funds to the giftee.

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53

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Estate taxes

54

Estate Taxes

- Ohio abolished estate taxes in 2013
- Federal estate tax exemption for 2025 is $13,990,000
- On January 1, 2026, the federal estate tax exemption is scheduled to go to $5,500,000 plus inflation
  - Probably around $7,200,000
- Congress can extend the current limit or make permanent

55

Estate Taxes

- We need to watch our net worth and any developments regarding the federal estate taxes
- If the exemption does go to $7,200,000, do not wait until the last minute to plan
- If your net worth is near or over $7,200,000, starting planning now
- Attorneys, accountants and appraisers may be very busy the last part of 2025

56

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PLANNING FOR THE FUTURE OF YOUR FARM

Keeping farmland in the family

57

Threats to Keeping Farmland in Family

- Poor planning
- Partition
- Divorce
- Debt/Creditors
- Lawsuits

58

58

Poor Planning

- No estate plan or a poor estate plan can jeopardize family land
- No business plan or a poor business plan can jeopardize family land
- Poor planning can cause land to be more exposed to the risks of partition, divorce, debt and lawsuits
- There are many strategies that can be implemented to help keep land in the family. Some simple, some more complex.

59

59

Partition

- Ohio law allows a co-tenant (co-owner) of real estate to file a petition with the common please court for partition
- Partition is the process of the court selling the real estate and dividing the proceeds among the co-tenants
- Partition is the absolute right of any co-tenant although the other co-tenants have the first chance to buy the property at fair market (appraised) value
- Having multiple family members own land together invites the risk of partition

60

60

Divorce

- Ohio law classifies assets are marital or non-marital
- Non-marital assets are not subject to divorce
- Non-marital assets
  - Assets owned prior to marriage
  - Assets inherited or received as a gift during marriage
  - Passive income and appreciation non-marital property
- Marital assets include "… all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage."

61

61

Debt

- Do you have debt on land?
- Does your transition plan address debt?
- If you pass away, will your heirs be able to pay the debt?
- Which of your heirs will be responsible for paying debt?
  - Debt can be assigned to go with the land being inherited

62

62

Multiple Strategies Available

Transfer to heirs with no restrictions or limits | Conservation/ Ag Easement | Rights of First Refusal | Long-Term Leases | LLCs | Trusts that do not allow sale of land

Spectrum of Strategies To Protect Farmland

Least Protection — Most Protection

63

63

Conservation/Ag Easements

- Do not prevent transfers outside of family
- Ensures land will state undeveloped
- Help reduce value of land

64

64

Rights of First Refusals

- Allows a family member the first right to purchase a property before it is transferred outside of the family
- If family member does not purchase, can then be transferred outside of family
- Can include favorable purchase terms

65

65

Long-Terms Leases

- Ensures that farming heir has a land base to farm
- Can be for a few years up to 99 years
- Should include a mechanism to periodically adjust lease rate
- Greatly limits what the the landowner can do with the property
  - Probably will not be able to sell the land with a long-term lease

66

66

Limited Liability Companies (LLC)

- Eliminates partition rights
  - Partition rights only apply to real estate
- A well-designed LLC will only allow land to leave the family if the family, together, decides to transfer
- If multiple family members will own land together, consider an LLC
- Good for multiple generations to own the land together

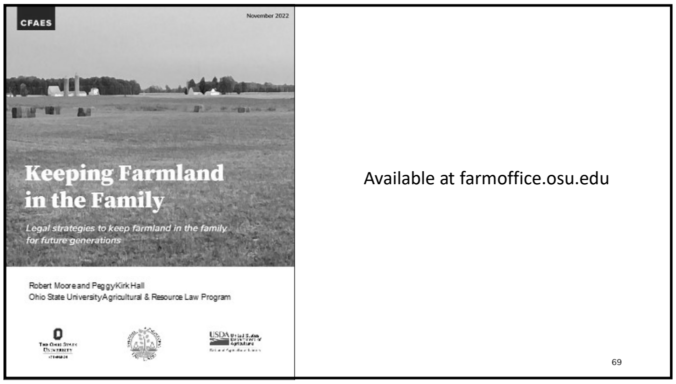
67

67

Trusts

- Provides the most flexibility and protection
- A trust can hold land for a beneficiary's life
  - If a beneficiary does not own the land, they cannot force the sale and their misfortunes cannot jeopardize the land
- A trust can ensure that land will not be transferred out of the family, even if the family wants to transfer
- Provides the most "from the grave" protection

68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November 2022
Keeping Farmland in the Family
Legal strategies to keep farmland in the family for future generations
Robert Moore and Peggy Kirk Hall
Ohio State University Agricultural & Resource Law Program
Available at farmoffice.osu.edu
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69


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PLANNING FOR THE FUTURE OF YOUR FARM
Long-term care
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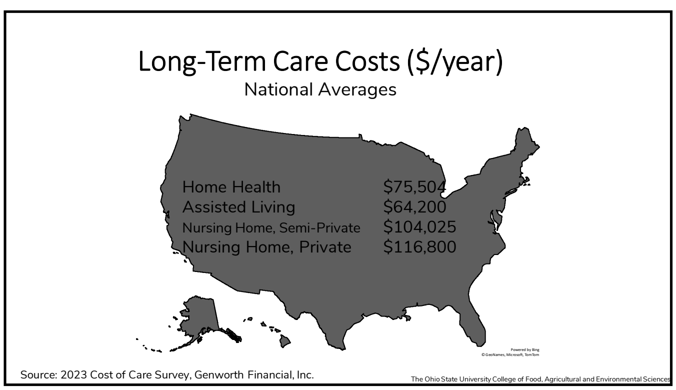
70


Long-Term Care Costs ($/year)
National Averages
Home Health $75,504
Assisted Living $64,200
Nursing Home, Semi-Private $104,025
Nursing Home, Private $116,800
Source: 2023 Cost of Care Survey, Genworth Financial, Inc.
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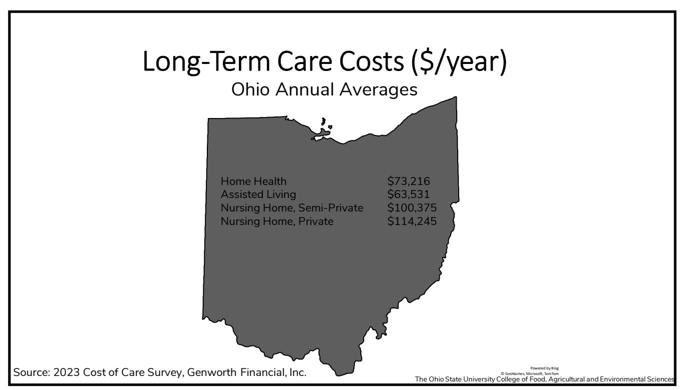
71


Long-Term Care Costs ($/year)
Ohio Annual Averages
Home Health $73,216
Assisted Living $63,531
Nursing Home, Semi-Private $100,375
Nursing Home, Private $114,245
Source: 2023 Cost of Care Survey, Genworth Financial, Inc.
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72

Long-Term Care Statistics

69% for 65

Someone turning age 65 today has a 69% chance of needing some type of long-term care services in their remaining years

Women Have Longer Lifespans

Women will need an average of 3.7 years of care and men will need 2.2 years

Some Need None, Some Need More

One-third of 65-year-olds may never need LTC, but **20% will need LTC for longer than 5 years**

Source: Administration for Community Living (acl.gov/ltc/)

Distribution and Duration of LTC Services (69% of 65-year-olds)

The Average Scenario

3 Years of LTC

1 year unpaid home care	$0
1 year paid home care	$75,504
1 year facility care	$104,025
Total	**$179,529**

The Outlier Scenario

5 years of LTC costs = $491,604

Source: Administration for Community Living (acl.gov/ltc/)

Planning Around the Outlier Scenario

- Most farms probably have enough income and savings to cover average LTC costs
- Most farms can also cover some above average costs by selling machinery, livestock and other operating assets
- Many farms' land is in jeopardy if they are an outlier
- The outlier scenario is what most farmers worry about
- We all know someone who has been in a nursing home for many years
- The average LTC scenario does not jeopardize most farms, the outlier scenario does

The Role of Medicare

- Medicare is a federal program providing health insurance to mostly people over 65
- If the LTC costs are related to a hospital stay/skilled nursing, Medicare will pay:
  - 100% of first 20 days
  - Some portion of days 21-100
  - Nothing after day 100
- Medicare should not be included in LTC strategies

Medicaid

- Medicaid is a joint federal and state program that provides health coverage for people with limited income and resources
- If a person does not have resources to pay for LTC, Medicaid will pay
- Medicaid eligibility is dependent upon wealth test and income test
- Few farmers will qualify for Medicaid without aggressive planning
- Medicaid has state specific rules, check your state rules

77

Medicaid Asset Limits ($)

BasBasi	Single	Married (both applying)	Married (one applying)
Ohio	2,000	3,000	150,620

Source: American Council on Aging

78

Exempt Assets for Asset Limit Determination

- Some assets are not included in the asset limit analysis
- Rules are state specific, some assets exempt from asset limit may include:
  - Home
  - One automobile
  - Burial plot
  - Some retirement accounts
  - Property used in trade or business
- Exempt assets may still be subject to estate recovery

79

Five-Year Lookback

- Assets transferred for less than FMV for the five years prior to Medicaid application are considered an improper transfer
- Improper transfer ineligibility is essentially capped at 60 months
- This rule prevents someone from giving away all their assets today and being eligible for Medicaid tomorrow
- It is a necessary rule to keep Medicaid solvent
- This rule causes LTC planning to be done five years in advance which makes LTC planning difficult and always speculatory to some degree

80

Five-Year Lookback

- For each $7,787* of improper transfer, the applicant is ineligible for Medicaid for one month
  - A $100,000 gift will cause ineligibility for 14 months
  - A $1,000,000 gift will cause ineligibility for 135 months. However, by waiting 60 months to apply for Medicaid, the gift is no longer improper, and eligibility is not affected
- Timing of Medicaid application is important

*Ohio, 2025. Will vary by state and year

81

The Medicaid Strategy

1. Transfer those assets to be protected by gift or other improper transfer
2. Spend down other assets, if any, to Asset Limit amount
3. Apply for and receive Medicaid to pay for LTC costs
4. Any additional assets received in the future must be spent down to regain Medicaid eligibility

82

Disadvantages of The Medicaid Strategy

- May not get to select care facility
- Probably not eligible for a private room
- Receive same level of care?
- Rely on government program for care

83

Long-Term Care Strategies

- Long-Term Care Insurance
- Do Nothing
- Gift Assets
- Irrevocable Trusts
- Self-Insure
- Wait and See

84

Long-Term Care Insurance Strategy

- Purchase an insurance policy that will pay for at least some LTC costs
- Many types of policies and coverages
- Advantages
  - Provides protection to assets without giving up control of assets
- Disadvantages
  - Premiums can be costly, must purchase long before needed
  - Some people are not insurable
  - How much coverage to carry? How long is the term?

85

Do Nothing Strategy

- For some people, adequate income is available to pay all LTC costs so no need to do anything
- For other people, must keep assets to pay expenses and/or cannot afford to transfer assets away
- The most common strategy
- Advantages
  - No cost
  - Keep full control of assets
- Disadvantages
  - No assets are protected

86

Gift Assets Strategy

- Gift assets that are to be protected from LTC costs and wait for Medicaid ineligibility period to pass
- Advantages
  - Relatively inexpensive to execute
- Disadvantages
  - Loss of ownership, control and income from the assets
  - Giftee may develop their own financial issues and jeopardize the assets
  - Loss of stepped-up tax basis at death

87

What Happens if Gift, Then Run Out of Money before Eligible for Medicaid?

- Gifts can be returned by giftee to avoid improper transfer status, nursing home/Medicaid cannot undo gift
- The giftees can keep the gifts and pay the LTC costs
- Giftor can apply for a hardship but must show they did everything possible to get the gifts back and no alternative income or resources are available

88

Irrevocable Trust Strategy

- Transfer assets to an irrevocable trust
- Advantages
  - Trust can include an estate planning component
  - Trust can be set up to retain the income and stepped-up basis at death*
  - Can protect against giftee's financial problems and/or poor management

*Check state rules

89

Irrevocable Trust Strategy

- Disadvantages
  - Can be expensive to establish and maintain trust
  - Transfer to the trusts are improper transfers, subject to five-year lookback
  - Loss of ownership and control of the assets
  - Loss of stepped-up tax basis if income or LPOA is not retained
  - Trust cannot be changed except for beneficiaries (LPOA)

90

Self-Insure Strategy

- Intentionally reserve assets for LTC costs
- Usually, savings or investment accounts but can be land or other farm assets
- Advantages
  - No fees or expenses required
  - Keep full control of assets
- Disadvantages
  - How much is needed? All assets at risk if LTC costs exceed reserves
  - Impoverished spouse issue

91

Wait and See Strategy

- Wait to see if LTC will be needed
- Have enough resources to pay for five years of care
- Gift assets to be protected at beginning of five-year look back period
- After five years, gifted assets are protected
- Advantages
  - Provides flexibility
  - Reduces unknown aspect of LTC planning
- Disadvantage
  - Does not protect five year's worth of assets

92

Conclusion

- There are no easy solutions for LTC planning
- What is the true risk to the farm?
- Best strategy depends on risk assessment
- Each situation is different, and planning should reflect the situation

A farmer has little control over the long-term care they may need, but they do have options as to how to plan for those costs

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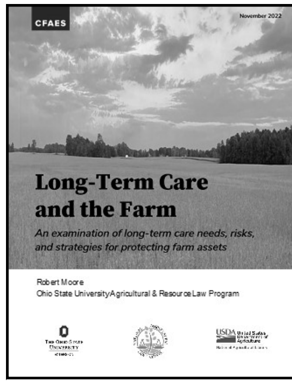

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Life Insurance

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Types of Life Insurance

- **Term** - provides coverage for a specific period
- **Whole Life** - provides lifetime coverage with a guaranteed death benefit and includes a cash value component that grows over time
- **Universal** - insurance offers permanent coverage with more flexibility than whole life
- **Variable** - provides permanent coverage with investment options for the cash value
- **Second-to-Die** - covers two individuals, typically a married couple, and pays the death benefit only after both individuals have passed away

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Uses of Life Insurance in Farm Transition Planning

- **Liquidity for Estate Taxes and Debts**
  - **Payoff debt**
  - **Pay estate taxes**
- **Equalization Among Heirs**
  - **Asset for non-farm heirs to inherent**
  - **Create cash for inheritance**
- **Succession Planning**
  - **Ownership buyout**
- **Protection Against Loss**

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Disadvantages of Life Insurance

- Cost of premiums
- Insurability
- Complexity of policies
- Limits cash flow
- Includable in taxable estate

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PLANNING FOR THE FUTURE OF YOUR FARM

LLCS in Farm succession – protecting farmland

99

Partition Example

- Father and Mother own 600 acres
- They have three children
- They want all three children to inherit the land equally (or gift ownership to children)
- They do not want an in-law, ex-spouse, creditor, etc…. to be able to force the sale of the land
- What is the best way to accomplish the plan?

3

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Partition Example

Land is distributed to children as co-owners

Child A | Child B | Child C

600 Acres

Each child has partition rights

101

Partition Example

Land is distributed to children as co-owners

Grandchild | Creditor | Spouse

600 Acres

Every future owner has partition rights

102

Partition Example

Land is distributed to children as individual owners

Child A 200 Acres | Child B 200 Acres | Child C 200 Acres

Each child can sell their farms without triggering partition

103

Land in the LLC

Land is put into an LLC

LLC

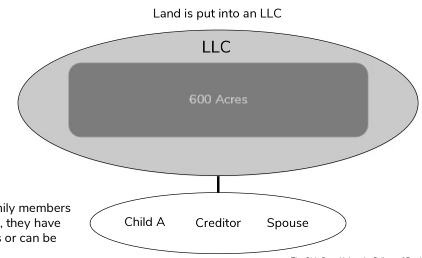
600 Acres

Children become co-owners of the LLC and must make decisions together

Child A | Creditor | Spouse

104

Land in the LLC



Even if non-family members take ownership, they have no voting rights or can be outvoted

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PLANNING FOR THE FUTURE OF YOUR FARM

LLCS in farm succession – non-farm heirs

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Challenges of Providing for Off-Farm Heirs

- Most farmers' wealth is in farm assets
- It can be problematic for the farming heir if the non-farm heirs receive farm assets.
  - The farming heir and non-farm heirs may not have same goals for assets.
  - We don't want to interfere with farming heir's ability to operate a viable farming operation.
- If non-farm heirs only receive non-farm assets, the results may not be fair or equitable.
- We often must find a way to provide at least some farm assets to the off-farm heirs for an equitable plan.
- Farming heir will still often receive more assets than non-farm heirs.

107

Example: Smith Family

- Andy and Betty Smith are 60 years old and have operated a grain farming operation for 40 years
- Chris, their 30-year-old child, has been farming with them for five years and plans to take over the farming operation
- David and Elaine, their two other children, left the farm after college and have established careers off the farm.
- Andy and Betty's assets include:

$2,000,000	Land
$800,000	Machinery/Operating Assets
$200,000	Cash
$3,000,000	Total Assets

- After their deaths, Andy and Betty would like to leave about 50% of their assets to Chris and do not want to interfere with Chris' ability to operate the farm

108

Example: Smith Family

Challenges for the Smith Family

- Andy and Betty want David and Elaine to receive about $750,000 each of inheritance
- There are not enough non-farm assets to satisfy the $750,000 inheritance goal
- David and Elaine will be required to receive farm assets as part of their inheritance
- David and Elaine are not active in the farming operation and we do not want their ownership of farm assets to interfere with Chris' ability to farm and make decisions.

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Andy and Betty's Estate Assets
$2,000,000 Land
$500,00 Machinery/ Op. Assets
$500,000 Cash
$3,000,000 Total

Chris
Land LLC 50% ($1,000,000)

David
$250,000 Cash
Land LLC 25% ($500,000)

Elaine
$250,000 Cash
Land LLC 25% ($500,000)

Land LLC
Chris – 50% ($1,000,000)
David – 25% ($500,000)
Elaine – 25% ($500,000)

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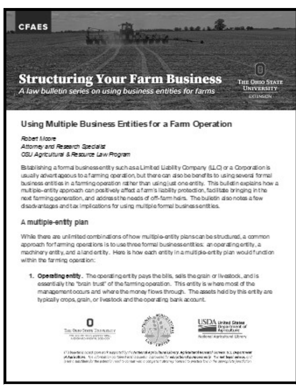
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Structuring Your Farm Business
A law bulletin series on using business entities for farms

The Ohio State University Extension

Using Multiple Business Entities for a Farm Operation

Robert Moore
Attorney and Research Specialist
OSU Agricultural & Resource Law Program

Establishing a formal business entity such as a Limited Liability Company (LLC) or a Corporation is usually advantageous to a farming operation, but there can also be benefits to using several formal business entities in a farming operation rather than using just one entity. This bulletin explains how a multiple-entity approach can positively affect a farm's liability protection, facilitate bringing in the next farming generation, and address the needs of off-farm heirs. The bulletin also notes a few disadvantages and tax implications for using multiple formal business entities.

A multiple-entity plan

While there are unlimited combinations of how multiple-entity plans can be structured, a common approach for farming operations is to use three formal business entities: an operating entity, a machinery entity, and a land entity. Here is how each entity in a multiple-entity plan would function within the farming operation:

1. Operating entity. The operating entity pays the bills, sells the grain or livestock, and is essentially the "brain trust" of the farming operation. This entity is where most of the management occurs and where the money flows through. The assets held by this entity are typically crops, grain, or livestock and the operating bank account.

USDA United States Department of Agriculture National Agricultural Library

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LLCS in farm succession – transition to farming heir

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Using LLCs to Bring Next Generation Into Farming Operation

There are many ways to bring the next generation into the farming operation. Using LLCs or other business entities is a strategy worth exploring.

113

Challenges of Bringing In Next Generation to Farming Operation

- The farming operation may have many assets and a high value
  - Farming heir may not have money to buy in
  - Parents may not want to make a large gift to transfer ownership to farming heir
- Co-owning assets with farming heir
- Gradual transfer of management/decision making
- Concerns that farming heir may not stay in farming
- Spouses, creditors, liability of farming heir

114

Example: Smith Family

- Andy and Betty Smith are 60 years old and have operated a grain farming operation for 40 years
- Chris, their 30-year-old child, has been farming with them for five years and plans to take over the farming operation
- Andy and Betty own all the farm assets together which include:

$3,000,000	Land
$800,000	Machinery
$500,000	Grain
$200,000	Cash
$4,500,000	Total Farm Assets

- Andy and Betty would like to bring Chris in as a 1/3 owner of the farming operation
- Chris is newly married

115

Example: Smith Family

Challenges for the Smith Family

- 1/3 of the value of all farm assets is $1,500,000
  - Chris does not have the money to buy a 1/3 interest and Andy and Betty do not want to pay tax on the sale of a 1/3 interest
  - Andy and Betty are reluctant to make a $1,500,000 gift to Chris as it would be unfair to their other children
- Andy and Betty are concerned about co-owning assets with Chris, what if they were to get divorced?
- Chris likes all the latest technology and thinks they should upgrade their machinery inventory. What if Chris spends money on something that Andy and Betty thinks they can do without?
- How do they make decisions together? Especially if they disagree on an issue?

116

Farming Operation
Andy and Betty
$3,000,000 Land
$800,00 Machinery
$500,000 Grain
$200,000 Cash
$4,500,000 Total

Andy and Betty

Machinery LLC

Land LLC

117

Farming Operation LLC
Andy, Betty, Chris
$200,000 Cash

By dividing assets among entities, the value of the farming operation can be reduced, making it easier to bring the next generation into ownership.

The machinery and land can be leased back to operating entity. Next generation can buy/gift into machinery/land or purchase their own over time.

Andy and Betty
$500,000 Grain

Machinery LLC
$800,00 Machinery

Land LLC
$3,000,000 Land

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118

Farming Operation LLC
Andy, Betty, Chris
$200,000 Cash

Andy and Betty keep 100% ownership of land and machinery, easing their concerns about co-ownership and buying back assets.

The LLC can be set up to not allow ownership to be transferred out of the family to spouses, creditors, etc…

Andy and Betty
$500,000 Grain

Machinery LLC
$800,00 Machinery

Land LLC
$3,000,000 Land

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119

Multiple Entity Strategy

- May not work well if the farm is already an established corporation
  - Will causes taxes if transfer assets out
- Each entity will require a bank account, accounting and tax return
- Lease payments should be made between entities to provide liability protection and legitimacy

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120

Establish New Farming Operation for Next Generation

- Sometimes it may not be feasible to bring in next generation into the current operation
  - Taxes
  - Not interested in being co-owners
- A new farming entity can be established for the next generation
- The current farming operation will subsidize with favorable lease rates, prices or other financial help
- Eventually the current farming operation transitions into an asset holding entity and does not farm

121

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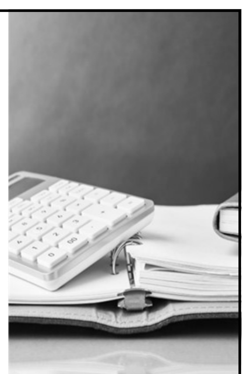
Transferring farm assets

122

Transferring Assets During Life

- Transferring assets during life has many implications, some good some bad
- There is no perfect solution
- Each strategy has advantages and disadvantages
- Work with a tax advisor, each strategy has significant tax implications
- Gifting is not always the best strategy
- Timing is important, taxes aren't everything



123

The Tax Issue

- Depreciation Recapture. Selling assets that have been depreciated will result in depreciation recapture. The recapture is treated as ordinary income.
- Capital Gains. Assets that have appreciated in value will show a capital gain when sold. Capital gains tax rates are usually lower than ordinary income rates.
- Stepped-up Tax Basis. Gifting assets does not provide a stepped-up tax basis. Inherited assets do receive a stepped-up tax basis.

124

Gifting

- Transfer assets without receiving any compensation or retaining control.
- Advantages
  - Simple
  - Low cost
  - Ownership transferred immediately, relieves owner of risk
- Disadvantages
  - Owner receives no compensation
  - No stepped-up basis

125

Gifting Example

- Farmer decides to retire
- Farmer does not need income from the farm machinery
- Machinery is valued at $600,000 and has $0 tax basis remaining
- Daughter is taking over farming operation and needs the machinery
- Farmer does not want to continue to own the machinery nor be responsible or liable
- Farmer gifts the machinery
- There is no tax on the gift but Daughter receives the machinery with $0 tax basis

126

Outright Sale

- Sell machinery and receive one, upfront payment
- Advantages
  - Creates income
  - Ownership transferred immediately, relieves owner of risk
- Disadvantages
  - Significant tax liability
  - If selling to family, will use their resources that they could otherwise use to expand the farm

127

Gradual Sale

- Sell a few items over time
- Advantages
  - Creates income
  - Spreads out income and possibly keeps in a lower tax bracket
- Disadvantages
  - Owner must wait on receiving the full amount of the sale
  - Owner retains ownership and liability of at least some of the assets

128

Installment Sale

- Sell assets but receive payments over time
- Advantages
- Ownership transferred immediately, relieves owner of risk
- Disadvantages
- All depreciation recapture is due in year of sale
- Risk of not being paid
- This is usually the worst option because of the high initial taxes. The tax liability can be greater than the first year's payment.

129

"Lease to Own"

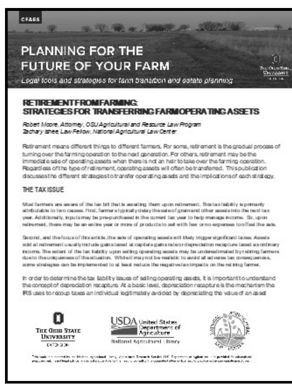
- Lease assets for a specific number of years
- At end of lease, assets are purchased (owner could gift rather than sell)
- Payments are a deductible expense
- Taxes are paid on each payment
- Does not increase tax basis (unless purchased at end of lease)
- Avoid disguised sales
- Owner will continue to own asset until end of lease

130

Using a Business Entity

- Transfer assets into an LLC
- Transfer ownership of the LLC gradually through sale or gift
- Potentially, a way to conduct an installment sale without triggering the recapture tax in year 1
- Be sure to discuss with your accountant before implementing

131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PLANNING FOR THE FUTURE OF YOUR FARM

Legal tools and strategies for farm transition and estate planning

RETIREMENT FROM FARMING: STRATEGIES FOR TRANSFERRING FARM OPERATING ASSETS

Robert Moore, Attorney, OSU Agricultural and Resource Law Program
Zachary Ishee, Law Fellow, National Agricultural Law Center

Retirement means different things to different farmers. For some, retirement is the gradual process of turning over the farming operation to the next generation. For others, retirement may be the immediate sale of operating assets when there is not an heir to take over the farming operation. Regardless of the type of retirement, operating assets will often be transferred. This publication discusses the different strategies to transfer operating assets and the implications of each strategy.

THE TAX ISSUE

Most farmers are aware of the tax bill that is awaiting them upon retirement. This tax liability is primarily attributable to two causes. First, farmers typically delay the sale of grain and other assets into the next tax year. Additionally, inputs may be pre-purchased in the current tax year to help manage income. So, upon retirement, there may be an entire year or more of products to sell with few or no expenses to offset the sale.

Second, and the focus of this article, the sale of operating assets will likely trigger significant taxes. Assets sold at retirement usually include gains taxed at capital gains rate or depreciation recapture taxed as ordinary income. The extent of the tax liability upon selling operating assets may be underestimated by retiring farmers due to the uniqueness of the situation. While it may not be realistic to avoid all adverse tax consequences, some strategies can be implemented to at least reduce the negative tax impacts on the retiring farmer.

In order to determine the tax liability issues of selling operating assets, it is important to understand the concept of depreciation recapture. At a basic level, depreciation recapture is the mechanism the IRS uses to recoup taxes an individual legitimately avoided by depreciating the value of an asset

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PLANNING FOR THE FUTURE OF YOUR FARM

Selecting an Attorney

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Factors to Consider When Selecting an Attorney

- Expertise in Estate and Business Planning
- Experience with Agricultural Operations
- Tailoring the Farm Transition Plan
- Explaining the Plan
- Location of Attorney
- Level of Personal Comfort
- Legal Fees

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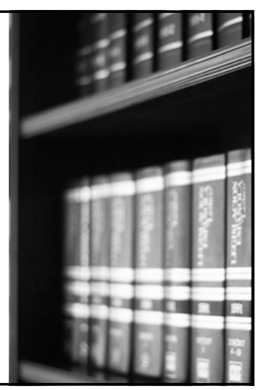
134

Referral Sources to Find an Attorney

- Family
- Friends
- Accountants
- Insurance agents
- Financial advisors
- Farm Bureau
- Farmers National
- Ohio State University Extension



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135

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PLANNING FOR THE FUTURE OF YOUR FARM

Thank You!

Robert Moore
Attorney/Research Specialist
OSU Agricultural and Resource Law Program
moore.301@osu.edu
614-247-8260

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136