

COLLEGE OF FOOD, AGRICULTURAL, AND ENVIRONMENTAL SCIENCES
OHIO STATE UNIVERSITY EXTENSION AGRICULTURAL & RESOURCE LAW PROGRAM

Planning for the Future of Your Farm: Legal Tools for Farm Transition Planning

Congratulations on making a commitment to planning for the future of your family farm by attending our workshop. That's not an easy commitment to make and is equally challenging to carry to its end. But that commitment is an important step toward ensuring long term viability for our farms and families.

What is exciting about farm transition planning is that much of it is self-motivated and within your control. Perhaps you began transitioning long ago, when you taught your children, grandchildren, hired hands, and others about your land and your operation. You may have already taken other steps in the transition process--transferring or assuming management duties, engaging in financial planning, setting goals, identifying successors. There are many steps that require only your own time and action, whatever age you are, whichever generation you're in. But eventually, a bit of legal assistance is necessary. And so the focus turns to understanding and choosing legal tools that can carry you through the planning process. That's what we're here for.

The second half of our *Planning the Future of Your Farm* workshop concentrates on examining the legal tools available to you and your family. We'll explain different legal instruments used for transition planning and discuss how they can implement your goals. Although we can't advise you on which will work best for your situation, we hope instead to help you see the possibilities they offer. Our PowerPoint slides illustrate examples of the possibilities, and we've also provided worksheets to aid you as you move forward and law bulletins you can refer to after our workshop.

OSU Extension supports you in your effort to plan for the future of your farm, and we're here to encourage and assist you through the process.

Best wishes!

Peggy Kirk Hall and Robert Moore

Attorneys

OSU Extension Agricultural & Resource Law Program



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Choosing an attorney

Not all attorneys are experienced in farm transition planning, which requires knowledge of estate planning, business planning, and agricultural operations. If you already work with an attorney for other legal needs, are you confident that attorney has the knowledge to help you develop a farm transition plan? What questions should you ask to determine whether to use your current attorney for transition planning?

If you need to hire an attorney to develop your transition plan, which of the following factors are most important to you? Use these factors to guide you in interviewing and selecting an attorney.

- Attorney's knowledge of estate and business planning
- Attorney's knowledge of agricultural operations
- Attorney's willingness to tailor a transition plan to your situation
- Attorney's interest in ensuring that you understand your plan
- Physical location of the attorney's office
- Whether the attorney will work through phone and internet meetings
- Level of personal comfort in talking with the attorney
- Whether friends or others recommend the attorney
- Cost of services and payment options

If you need to hire an attorney, list friends, family, professional advisors or other people who might be able to refer you to an attorney(s) who has represented clients for farm transition planning needs.

List names of attorneys you may want to interview here:

If you interview attorneys, record your reactions here.

Attorney

Reactions

Proposed Cost

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Meeting with your attorney

Gather the following information or to share with your attorney. If you've completed our "Getting Your Farm & Family Affairs in Order" guide, you'll already have this together.

- _____ A balance sheet showing personal and farm assets and debts .
- _____ A list of how assets and accounts are titled, including beneficiary designations.
- _____ A list of heirs, their relationships to you, and their birthdays and addresses.
- _____ Business entity(s) you own or have an ownership interest in..
- _____ Existing estate planning documents such as wills, powers of attorney, etc.
- _____ List of advisors: accountant, insurance, financial planner, other attorney.

Consider the goals, you've established for your **farm** so that you can share them with your attorney.

List details about your **farming operation** such as how you make decisions, whether you have or want other family members or heirs in your operation, whether everyone gets along—these are important details that will help your attorney guide you.

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Meeting with your attorney

List the goals you've identified for your **family and heirs** to share with your attorney, being sure to note any issues or concerns with "equal versus equitable" treatment of heirs.

What do you want your attorney to know about your family and heir dynamics? Does everyone get along? Your attorney can draft a plan to manage these types of issues.

Are there any unique needs and challenges for you or your heirs? Share these with your attorney to ensure they are addressed in your plan.

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Legal tool checklist

What legal tools do you already have in your farm transition plan and what more might you need? Use this checklist to assess where you are now, tools that may need updating, and tools you want to discuss with an attorney about adding to your plan.

Tool	Have it	Update needed	Explore further	Notes
Financial Power of Attorney				
Health Care Power of Attorney				
Living Will				
Donor Registry				
Funeral Arrangements				
Will				
Joint Survivorship Deed				
Transfer on Death designations –land, vehicles, stocks, bonds				
Life insurance				
Payable on Death designations --accounts				
Trust				
Business Entity				
Operating Agreement/Bylaws/ Partnership Agreement				
Buy-Sell Agreement				
Leases to Heirs				
Gifting Plan				
Agricultural or Conservation Easement				

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Considering a trust?

There are different factors that affect whether a trust is the right solution--some are personal and some are financial. Consider the factors we discussed, listed in the chart below. Identifying whether each factor applies to you can be helpful to determining whether to consider a trust for your transition plan.

<i>Factor</i>	<i>No/not a concern</i>	<i>Yes/is a concern</i>
Special needs or issues with heirs such as age, disability, financial problems, bad habits, divorce, etc.		
Concerns about a second marriage for spouse or heirs		
Transitioning the land and operation to farming heir(s)		
Federal estate taxes		
Keeping estate details private		
Estate assets going through probate process		
Legal costs of going through probate		
Legal costs to prepare documents		

One advantage of a trust is that it allows you to create your own “rules” for managing and distributing your assets. Review the rules we discussed below and check the provisions that could be useful for your farm transition situation. Add others you’ve considered.

Check the rules below that might be useful to accomplishing your farm transition goals		
Conditions of inheritance <i>Certain age, blood heirs only, education completed, addiction treatment, divorce</i>		How to deal with a second marriage of the surviving spouse or heirs
Beneficiary must lease farmland to farming heir or designated tenant		Create a real estate trust or LLC to hold land longer term
Grant heir a Right of First Refusal to purchase land or home		Special rules for heirs with disabilities
Grant farm successor an option to purchase land and machinery with specific terms		Contributions to church, non-profit, alma mater, etc.

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Federal estate tax and gifting

The federal estate tax exemption is currently \$12.06 million per person and \$24.12 million per married couple, but those numbers may reduce to around \$5 million per person and \$10 million per couple in 2026 or sooner, depending on Congress. Although you can't know which amount will apply to your estate, you can work with your attorney, accountant and others to minimize the risk of exceeding the federal estate tax exemption amount. Use these questions to help guide you.

1. Are you keeping up with your estate's current value? Talk with your attorney if your net worth is near the exemption level, and pay attention to events that affect your net worth such as:

- Receiving an inheritance
- Stock market fluctuations
- Marriage or divorce
- Selling or leasing mineral rights, solar rights, and similar resource
- Selling or buying property
- Increasing land values in your area
- Other influxes of cash or assets

2. Do you want or need a gifting strategy? Rely on your attorney and accountant to help you decide if you should develop a gifting plan. Remember, a recipient may lose the stepped-up basis of a gift received during your lifetime as opposed to after your death. Note your thoughts on gifting in this chart.

Gift recipient	Type of gift	Is loss of step-up basis a concern?	Amount of gift per year

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Business entities and tools to use with them

Business entities and tools that go with them can be useful mechanisms for accomplishing your farm transition. Consider your farming operation, the assets involved with it, the people engaged in it, and your potential heirs. What “rules” might you need? How could separate business entities, “rules” for the entities, and tools such as buy-sell agreements and leases be helpful to you? Gather your ideas here.

Entity 1

<i>What's its purpose?</i>	<i>Who are or will be the owners?</i>
<i>What assets are in it?</i>	<i>Any restrictions on ownership?</i>
<i>How could it use leases?</i>	<i>How will decisions be made?</i>
<i>Will a buy-sell agreement be useful?</i>	<i>What other rules could apply?</i>

Entity 2

<i>What's its purpose?</i>	<i>Who are or will be the owners?</i>
<i>What assets are in it?</i>	<i>Any restrictions on ownership?</i>
<i>How could it use leases?</i>	<i>How will decisions be made?</i>
<i>Will a buy-sell agreement be useful?</i>	<i>What other rules could apply?</i>

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Transferring machinery and livestock

Machinery and livestock are often the most challenging assets to transfer to the next generation. An important step in developing a plan for these assets is to define your goals and needs. These questions can be helpful:

- Do you need income from your machinery and/or livestock?
- If so, do you want one lump-sum payment or income spread over a period of time?
- Do you want to keep using the machinery and/or livestock to some degree?
- Do you want to get it out of your name now, and no longer be responsibility for maintaining and insuring these assets?
- Do you prefer instead to maintain all control of your machinery or livestock until your death?
- Do you want your machinery or livestock to benefit your heirs? If so, how?

Considering your goals, review the following advantages and disadvantages to different strategies for transferring your machinery and/or livestock. Talk to your attorney about options that might help you accomplish your goals.

Strategy	Advantages	Disadvantages
Sell outright	Generates income at one time.	All recapture of depreciation is ordinary income tax.
Installment sale	Spread income over several years.	All recapture tax due in year of sale.
Gift	No tax. Easy to make gift.	No income produced. No stepped-up basis.
Inheritance	No tax (assuming no estate tax). Receive stepped up basis--can depreciate fair market value.	Must own till death. No income from sale.
Lease-to-own	Generates income over time. Retains ownership until bought out. Spreads income taxes over term of lease, usually 7—10 years. Delays taxes on purchase until end.	Retains liability with ownership. More recordkeeping required.