FAMILY FARM TRANSITIONS: KEY DECISIONS

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Melissa O’Rourke  B.S., M.A., J.D.
Attorney –and– Farm & Agribusiness Management Specialist
www.extension.iastate.edu/agdm
morourke@iastate.edu  563-382-2949

We have about 30 minutes together in this breakout session
We’ll talk about . . .
• Key decisions
• Family expectations
• Communication points
• Family conversation skills, approaches
• Resources
• Homework (see handout)
(1) Decide to stop procrastinating. Don’t put off conversations about farm transition and estate planning!

PDF format of articles on Ag Decision Maker
When was the last time you updated your estate plan?

- University studies –
- 60% do **not** have an updated estate plan
- 89% do **not** have a farm transfer plan
- Many keep waiting for the “perfect” plan.
- Others avoid the difficult conversations

(2) Decide what your plans are for when you don’t die -- (well, at least not right away . . . .)

Is your family holding onto old – outdated methods and thinking?

- In years past, families made assumptions – that things would just go on as they had before.
- Without purposeful planning, the operation may cease to exist.

Do you keep your dairy updated?— Or do you get behind the times because that’s the way we’ve always done it?
What happens when you can’t speak for yourself, make your own decisions?


- **Incapacity** = lack of physical or mental abilities that results in a person’s inability to manage personal care, property or finances.

“But I’m healthy and active, and besides – isn’t 80 the new 40?”

- After age 65, chances of becoming incapacitated rise to 50%+.
- At age 80, chance of becoming incapacitated rises to 75%.
- In any year, at any age, your chance of becoming incapacitated is greater than your chance of dying.

Power of Attorney for Business/Financial Purposes

- Allows your “agent” to act in your place if you’re unable to handle your own business/financial matters.
- **Health care decisions? NO!**
- Spells out agent’s **powers** such as:
  - Pay bills, file income taxes
  - Sell, lease assets
  - Collect money due
Power of Attorney for Medical/Healthcare Purposes

- Allows “agent” to make health care decisions if you’re not able to express those decisions.
- Spells out powers such as:
  - Hospitalization
  - Consent/reject treatment
  - Organ donation

Powers of Attorney guidelines:
- Name at least one alternate agent – and avoid “co-POAs”.
- Consider people younger than you!
- Healthcare/Medical and Business/Financial may be different agents.
- You must be “competent” (have legal capacity) when you sign.
- Power of Attorney only good during lifetime.

Living Will: also known as a “Declaration Relating to Use of Life-Sustaining Procedures”

- Purpose: Express what “life-sustaining” procedures are desired.
- Can guide a Healthcare POA.
- Many states have standardized forms for POAs and Living Wills and DNRs (Do-Not-Resuscitate Orders) which may or may not be right for you. Please, consult with an attorney!

Do Not Resuscitate (DNR) Orders – 2 Types

- Physician-issued: Allows emergency care providers and others outside a hospital to rely upon a physician-issued DNR order for an adult in a terminal condition.
- Patient-issued: Directs medical providers to not attempt resuscitation (CPR) if the patient’s heart stops.

[Image of Durable Power of Attorney form]

[Image of power of attorney]

[Image of DNR order]

[Image of Living Will]

[Image of power of attorney]

[Image of DNR order]
Read more about it! – on Ag Decision Maker:

Ag Decision Maker
www.extension.iastate.edu/agdm

(3) Decide to establish ongoing family communication --

-- and take steps to start and continue this practice!

Research: Communication Barriers to Family Farm Succession Conversations

• Penn State study
• Found several key barriers in farm families that kept them from talking about future plans for the family farm

Passive Communication

When responding to questions about how families reached mutual understanding on issues related to family relations and plans for the family farm, respondents placed more emphasis on what was implicitly understood rather than explicitly communicated.
Delays in Planning – due to unresolved issues in lives of adult children

- Waiting for children to make career decisions
- Concern about stability of adult child's marriage
  - Current marriage or possible future marriage

Varying efforts to incorporate children’s perspectives into future planning

- Most parents understand that farm succession planning can’t be driven unilaterally by senior generation – but varied in how they went about accommodating children’s perspectives and concerns.
- Some parents tried to be subtle in their efforts to exert influence with their children.
- Other parents were more direct in their efforts.

Hold Regular Family Meetings: Guidelines

- Not over Thanksgiving or Christmas Dinner
- Schedule, commit the calendar
- Establish agendas.
- Keep minutes.
- Consider meeting facilitation

No “family secrets” in estate or succession planning!

Everyone should know what’s going on!
“Reading of the Will?”

This is an outdated concept!

Communicate, Communicate, Communicate

• Head off conflict, hard feelings among family members.
• Technical details? Involve lawyer, other professionals.
• Include discussions regarding distribution of personal property.

Advantages of Communication

• All may not agree – but it’s better to share, explain your rationale.
• Provides everyone an opportunity to understand and respect decisions.
• Communication allows hurt feelings to heal, jealousy to diminish
• Avoid estrangement or court battles among heirs.

(4) Discuss and decide strategies for how various heirs or family members may be treated – focusing on what’s fair, not necessarily equal.
Make decisions about what is **fair** or equitable to all . . .

. . . even though it may not be **equal**.

► How to pass the farm business to the next generation—but not create animosity among heirs?

► If we divide assets equally among all, will it create such small pieces that successor child(ren) can't make a living operating the family farm?

Non-Farm Children may have received:
- College tuition, down payment on a house, other compensation – receiving some inheritance early.
- Who truly helped to create part of parents’ final estate of by actively contributing to the parents’ business over the years?
- Again – issues of “Contribution versus Compensation” – fair does not always mean **equal**.

Read more about it: University of Minnesota Extension – Transferring the Farm series
(5) Decide how to own property and coordinate estate plans and property ownership strategies.

HOW Property is owned may be part of an estate plan or farm succession strategy.

Real Property

- Land + anything attached to it
- Buildings, fencing, subsurface tiling

Personal Property: Tangible and Intangible

- Tangible = anything you can touch
- Intangible = has value that you can’t touch, but you can use it
Raise your hand if . . . You have TOO MUCH STUFF?

Have a plan to dispose of or pass on personal property:
- Pass on or dispose of some items during lifetime.
- “De-Clutter” your life!
- Example workbook →
- Possessions you want to pass on after death?
  - List
  - Mark
  - Round-robin
  - Auction

Real Property or Intangible Personal Property may be owned individually or jointly

- Most common for real estate = fee simple ownership → Unconditional power to use or transfer the property.

Property Co-Ownership

- Joint tenants with right of survivorship (JTWROS)
- Tenancy in Common (TIC)
**Joint Tenancy with Right of Survivorship (JTWROS)**

- Two or more people
- Equal shares
- Can’t sell, transfer, mortgage without consent of others
- Right of survivorship = like a “built-in” will
- When an owner dies, ownership interest ceases.

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**Tenancy in Common**

- Two or more owners
- Separate but undivided interest
- Shares may be equal, or unequal
- No right of survivorship – shares pass to heirs.

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Fred & Wilma had 3 sons:

As part of their estate plan—they told their lawyer that when Fred died, they wanted each of those 3 sons to get one of the 80-acre parcels owned solely by Fred. Fred died — and then they found out:

Those three 80-acre parcels were owned by Wilma.

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Farmland: Keeping it “in the family”?

What are the consequences?

**Grandma & Grandpa:** Own a section—640 acres

4 Kids — Allan Bill Cathy Donna

Equal Shares—25% each

- Allan: To 4 kids equally, each own 6.25% of 640 acres
- Bill: To 5 kids equally, each own 5% of 640 acres
- Cathy: To 3 kids equally, each own 8.333% of 640 acres
- Donna: 0 kids, leaves to the church (25% share) (and church wants to sell)

- None of the grandkids live in the area.
- Land is rented, farm manager takes 10%
- Checks (income) to grandkids leaves the state
(6) Decide whether you have a Federal Estate Tax or State Inheritance Tax issue.

Quick review of the rules:

- **Federal Estate Tax**: Based on date-of-death estate value.
- **Unified Credit** = Amount of property that can be transferred at death without FET obligation.
- **Unlimited** transfers to surviving spouse & charities.
  - Makes $5 million (indexed for inflation) **permanent** – $5.43 million in 2015; $5.45 in 2016; estimated $7.5 million in 2020.

**ATRA – FET Impact on Farms and Small Businesses:**

- USDA estimates that with the exemptions, only 0.6% of farms would have to pay an estate tax. (Another 2.1% would file returns but owe no taxes.)
- Tax Policy Center estimates: For 2013 deaths, only 120 farms & small business (at least 1/2 assets are in farm or business assets) would pay FET.

Check YOUR State laws re: State Inheritance Taxes

• Example: New York recently doubled its exemption amount from $1 million for deaths before April 1, 2014 to $2,062,500 for deaths from April 1, 2014 thru April 1, 2015.
• New York exemption will rise gradually thru 2019 to match the federal exemption.
• April 1, 2017: New York exemption will be $5.25 million.

Here’s the point regarding FET:

• Do the math: 950 acres of land @ average value of $11,000 per acre approaches $10.5 million – hovering close to a level that could trigger federal estate tax.
• Farmland owners may have a false sense of federal estate tax security because they think their share of the farm is worth less than $5.43 million.
• But adding up all the assets on the balance sheet and estimating increasing farmland values may paint a different picture at the time of death.
• Even considering Special Use Valuation – farmland owners should maintain an accurate balance sheet that reflects the fair market value of assets.

(7) Decide to plan for the time of death – with liquidity and final disposition plans.

Consider the costs that arise at death.

• Farmers accumulate assets: land, equipment, farm buildings, livestock.
• Costs of illness, medical care, funeral expenses add up.
• Settlement (probate or trust administration) has a cost.
• Cash may be needed to continue farm operations at the time of death prior to final estate settlement.
• Maintain assets with sufficient liquidity to convert to cash and cover these costs; or consider life insurance.
• Related: If an heir(s) will want to buy out other heirs’ land interests at the time of death, provisions need to be made for sufficient cash or credit to achieve those purposes.
Have you made final disposition plans?

Funeral Planning Checklist
A list of all the issues to consider when planning a funeral.

Planning a funeral is a complicated process, which is made even more difficult by the emotional stress that accompanies the death of a loved one. Fortunately, many of the arrangements can be made ahead of time, which will decrease the burden on those left behind. Use the checklist below when discussing funeral plans with your loved one, to make sure that his or her final wishes are carried out.

Pre-Planning
All of these items can be arranged in advance of a person’s death.

General Preparations
Assemble personal information for obituary
Choose a charity to direct donations to
Decide if jewelry is to remain or be returned
Choose a funeral home

Iowa: There’s a specific form to designate a person to have authority to make “final disposition” plans.

Check your state and talk to your attorney about this—if it’s important to you.

NEW YORK appears to have a similar law & form.

Plan ahead – buy your casket or urn before you need it.

NORTHWOODS CASKET COMPANY

STARTS WITH YOU

Simple Pine Box
$1,079.00

Plain Pine Box
$1,199.00

Build-Your-Own Casket Kit
$399.00

Iowa: Designation of Agent for Body Disposition

Iowa Code Section 610C
Effective July 1, 2008

I certify, under the penalties of perjury, that I am my agent for body disposition. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations. This declaration becomes effective upon my death. My designee shall act in a manner that is reasonable under the circumstances.

I surrender to my designee any power that I may have held prior to this date and any power herein granted shall be in effect until the date of my death or the date of my revocation, whichever is earlier.

My designee shall be legally bound by this document. My designee shall have the right to revise this document at any time. My designee shall follow the directions contained in this document.

IMPORTANT: If you are the designated agent, you are responsible for ensuring that the requirements of this declaration are met. You are responsible for obtaining the necessary documentation and ensuring that the wishes of the deceased are carried out.

NOTE: If you do not provide the necessary documentation, the wishes of the deceased may not be carried out. It is important to ensure that the wishes of the deceased are carried out as intended.

Below are the spaces for your signature and name:

Signature:

Date:

Name:

Date:
(8) Decide to be organized and maintain good records

Records that can be found, referred to and used by you and other for ongoing conversations, planning, or at incapacity or death.

- Safe place, yet still accessible.
- Safe deposit box, fireproof filing system?
- Have show-and-tell session with others.
- Hard (paper) copies are most accessible.
- Well-organized records, documents?
  Procedures following death are less time-consuming, expensive and frustrating for others.

Consider organizing documents in files or 3-ring binders
(9) Decide to build your estate and transition planning team.

Who should be on your team?

<table>
<thead>
<tr>
<th>Legal Professional</th>
<th>Tax and/or Accounting Professional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Planning or Banking Professional</td>
<td>Other professionals?</td>
</tr>
<tr>
<td>-Insurance</td>
<td>-Real Estate</td>
</tr>
<tr>
<td>-Spiritual</td>
<td></td>
</tr>
</tbody>
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Build a team of professionals to support your planning process.

Read more about it: Ideas on how to find an attorney or other professional.
(10) Decide to continuously discuss your plans and maintain your estate or transition plan documents.

Farm Transition and Estate Planning is never “done.”

- Goals and Circumstances Change.
- Have regular, annual reviews with professionals – legal, tax, financial, insurance.
- Review beneficiary designations on intangible assets – retirement accounts, CDs, bank accounts, life insurance.
- Life event triggers: Births/adoptions, incapacitation or deaths, marriages, divorces/separations of anyone who may be impacted in your estate plan. Moving, changes in income or wealth.
- Don’t expect professionals to call you to come in for a review.
- Schedule annual check-ups – just like you would with your physical health – to review plans and circumstances.

What are your next steps?

- Set Goals
- Seek Resources
- Communicate
- Get Organized

... Take advantage of Extension programs and resources!
- Program options:

CONTINUE OR GET STARTED ON YOUR FAMILY FARM TRANSITION PLAN

Melissa O’Rourke  B.S., M.A., J.D.
Attorney –and– Farm & Agribusiness Management Specialist
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morourke@iastate.edu  563-382-2949
@MelissaISU