Chapter 16

Estate and Succession Planning for Farmers and Ranchers

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SYNOPSIS

16-1. Economic Background of Farm and Ranch Estate and Tax Planning

Prior to the 1950s, farmers and ranchers in the United States were primarily concerned with upgrading farming practices to improve food and fiber production, often to provide food just for their own families. In the fairly agrarian society of the 1950s, the total U.S. population was about 150 million and farmers made up 12.2 percent of the labor force. One farmer supplied an agricultural food source for approximately 15.5 persons in the United

States, and there were about 5.4 million farms in the country.[1] Since the 1950s, many new technologies, including those developed within the framework of the land-grant universities,[2] became available to the American farmer and rancher and, as a result, farms and ranches began to grow in size. During these post-1950s decades of tremendous technological and productivity growth, farmers and ranchers invested greater capital into their agribusinesses. Farm acreage was consolidated into larger production units.[3]

In the 1970s, farmland values began to increase, accelerated throughout the decade, and reached record land prices in the early 1980s.[4] In many cases, farmland and ranch land values more than doubled. Inflation became a major force for landowners to deal with, as speculators moved into the land markets trying to seek shelter or a "hedge" against the erosion of buying power due to an oversupply of dollars. Subsequent increases in land and other farm property values made many farmers and ranchers millionaires (however, most of their wealth was merely on paper, as they were in many cases land rich and cash poor). As our population became more concentrated in urban and suburban living centers, agrarian statistics changed significantly. In the 1990s, farmers accounted for 2.6 percent of the U.S. labor force, with only 2.1 million farms in existence. Farmers had become more productive, however: one farmer supplied a food source for approximately 100 persons.[5]

Although most farmers and ranchers enjoyed the benefits of inflation in their property values and their technologically enriched farm and ranch industries, this increase in success and wealth brought new concerns such as property ownership options, business entity selection, estate and retirement preparation, and succession planning. This chapter attempts to address some of the issues surrounding farm and ranch ownership and the special concerns relating to estate planning for the farmer and rancher. Any comprehensive estate, retirement, or succession plan will be influenced by the decisions made in these matters, and one should be attentive to the consequences of these choices.

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[1] *A History of American Agriculture, 1607-2000* (ERS-POST-12.) (Sept. 2000). Washington, D.C.: U.S. Department of Agriculture, Economic Research Service.

[2] Land-grant universities (also called land-grant colleges or land-grant institutions) are institutions of higher education in the United States that have been designated by each state to receive the benefits of the Morrill Acts of 1862 and 1890. The Morrill Acts funded educational institutions by granting federally controlled land to the states. The mission of these institutions, as set forth in the 1862 Act, is to teach agriculture, military tactics, the mechanic arts, and home economics, not to the exclusion of classical studies, so that members of the working classes might obtain a practical college education. Land-grant universities maintain state cooperative extension offices throughout the country; thus, they are a tremendous resource for the agricultural community.

[3] In 1950, the average acres per farm was 216; in 1992, the average acres per farm was 461. In 1950, the number of U.S. irrigated acres was 25,634,869. In 1992, there were 49,404,000 irrigated acres.

[4] Farm income, grain prices, interest rates, return on other investments, and 1031 exchanges are often mentioned as reasons for the increase.

[5] *Supra*, n. 1. For comparison, in 2006, Colorado had 30,700 farms and ranches, with an average farm size of 1,000 acres. *High Plains Journal*, Dec. 10, 2007, Article 2007-50.

16-2. Property Ownership and Transfer

Property may be owned by one person, two people, or multiple people concurrently. The two most common types of co-ownership for individuals are joint tenancy and tenancy-in-common. Agricultural land is also sometimes held by an entity, like a limited liability company or a corporation. The entity selected may affect both the size of one's estate and the estate and gift tax consequences. The federal estate tax exemption limits (and future changes to these exemptions) and the values of estates should be considered when deciding how to hold property. Farmers and ranchers should be even more vigilant about these matters, due in great part to constantly shifting property values.

Joint Tenancy

In a joint tenancy, all co-owners are equally entitled to the use, enjoyment, control, and possession of the land, or its equivalent in rents and profits. Joint tenants are also responsible proportionally for their share of the land's expenses, such as taxes and fences. The best known characteristic of joint tenancy is the right of survivorship. Upon the death of one joint tenant, the decedent's rights pass immediately to the surviving joint tenant(s). Death of a joint tenant does not affect title, as the title is vested equally in all joint tenants rather than individually. Many persons, particularly married couples, hold or own much of their property as joint tenants with the right of survivorship.[6]

When a joint tenant dies, the decedent's interest passes immediately and automatically to the surviving joint tenant(s) and does not go through probate.[7] The property does not pass according to the property owner's will, nor does it descend to the property owner's heirs according to state law. The decedent's interest merely disappears, and the entire ownership remains in the hands of the surviving joint tenant(s). Generally, joint tenancy property passes free of the claims of unsecured creditors. Disadvantages or unintended consequences of joint tenancy may arise if marital difficulties occur, or if one of the parties has obligations or responsibilities (such as children) resulting from a previous marriage.

With regard to estate planning, the passing of jointly held property to a surviving spouse may not allow the decedent's federal tax exemption to be fully utilized. Since the property is simply passed on, it is not necessarily included in the value of the decedent's estate and therefore cannot have the exemption made against it. For this reason, many estate planning practitioners recommend against holding property in joint tenancy with rights of survivorship, especially for estates that approach or may potentially exceed the estate tax exemption.

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[6] C.R.S. §§ 38-11-101, *et seq.*

[7] An exception occurs when both or all of the joint tenants are involved in simultaneous deaths. The property now goes through probate because there is no surviving joint tenant.

Tenancy-in-Common

Tenancy-in-common is a way to hold an estate in land held by two or more persons. Unlike joint tenants, tenants-in-common may hold varying size interests, may take title at different times, and may receive their interests through different deeds. Also, each tenant-in-common is entitled to the undivided possession and use of the property, according to their proportionate share and subject to the rights of possession of the other tenants. Upon the death of a tenant-in-common, there is no right of survivorship, and probate proceedings may be necessary. Each decedent's interest passes according to his or her will or the state law of descent and distribution.

Farmers or ranchers must look at their overall estate plan to determine if the real and personal property they own is held appropriately to permit all allowable tax advantages. Professional advisors will assist in this determination and should be utilized for estate planning purposes as well as property acquisition opportunities.

16-3. Choice of Business Entity

Businesses, including ranches and farms, can be structured in a variety of ways. While sole proprietorship may work for the size of your farm or ranch, it may be advantageous to select a more complex form of business entity. Reduction of taxes, limiting liability, raising capital, expanding operations, bringing a family member or other person into your operations — these are just some of the objectives a business owner must consider when determining how the business is best owned. The possible forms of doing business are numerous.[8] The four most basic forms are sole proprietorship, general partnership, corporation (C and S varieties), and limited liability company. Consultation with a professional advisor is crucial to provide help with entity selection.

Sole Proprietorship

Simply put, a sole proprietorship is defined as going into business for oneself. The business is not distinct from one's personal tax and liability concerns. No state registration is required, and the business owner has total control over his or her business operations. When the sole proprietor dies, the business is terminated, without need for formal documentation or procedure. The sole proprietor reports all business income and losses on his or her individual tax return.[9] The largest drawbacks are that the business owner has no shield from liability and personal non-business assets can be sought after to settle debts of the business.

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[8] For example, limited partnerships, registered limited liability partnerships, joint ventures, business trusts, and others.

[9] There is a separate Schedule F for farms and ranches, but this is part of the individual's Form 1040.

Partnership

Like a sole proprietorship, a partnership requires no formal creation documentation.[10] A partnership begins when two or more people start doing business together. Partners are responsible for each other's actions, business debt, and obligations, including court judgments, jointly and severally. A partnership does not pay taxes on profits. The Internal Revenue Service (IRS) considers partnerships to be "pass-through" or "flow-through" entities: the income or losses from the business flow through to the individual partners, who then report those items on their individual tax returns. The partnership is required to file an annual Form 1065, which provides information on the entity to the IRS, and each partner attaches Schedule K-1 to his or her Form 1040, setting out each partner's share of profits and losses.

Limited Partnerships

Limited partnerships are another type of entity that can be created under Colorado law. Limited partnerships include at least one general partner who operates the business and one or more limited partners who contribute investment capital but do not participate in day-to-day management. Liability for limited partners can be limited, but general partners retain unlimited liability. One of the benefits of the limited partnership is that individuals may invest capital without becoming involved in management.

Limited partnerships can be taxed like corporations. Limited partnerships are less common than limited liability companies, but they are still useful entities for family businesses, where estate taxes are often a factor for one or more of the generations involved.

Corporations

A corporation is a legal entity, separate from its owners and managers. It is created by state statute with the filing of articles of incorporation with the Colorado Secretary of State and is governed by the laws of Colorado.[11] A corporation may either be a "C" corporation or an "S" corporation. All corporations are C corporations unless they elect to be treated by the IRS as an S variety. The election is solely a federal income tax matter; under state law, the election of C or S status makes no difference.

The biggest advantage of conducting business as a corporation is the aspect of limited liability or "corporate shield." This can protect business owners and shareholders from personal liability for corporate debts and obligations so that only corporate assets are used to pay corporate debts. To maintain this shield, the corporation must conduct itself separately from the personal affairs of its owners. There must be corporate formalities, such as adequate funding for the corporation, maintaining separate books and records and bank accounts, no commingling of personal and corporate assets (unless the assets can be documented as investments to fund the corporation), holding regular meetings of the shareholders and directors, formally issuing stock, and others.

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[10] A partnership agreement, however, is highly recommended. In the absence of an agreement, there are state statutes that govern partnership relationships, which may not coincide with your own intentions. Uniform Partnership Law, C.R.S. §§ 7-60-101, *et seq*.

[11] Colorado Corporations and Associations Act, C.R.S. §§ 7-90-101, *et seq*.

A corporation is the only type of business that must pay its own income taxes on profits. However, any justifiable business cost can be deducted as an expense. Net corporate income is taxed to the corporation even if it is retained as earnings or paid out as dividends to its shareholders. Corporations have favorable tax treatment in the form of lower rates, but shareholder dividends may face double taxation, being taxed once at the corporate tax rate and again as ordinary income to the shareholder (however, corporate losses do not flow through to be taken by the shareholders).

S corporations are a hybrid form of entity, combining the legal characteristics of a C corporation and the tax treatments of a partnership. In this type of corporation, with few exceptions, the business profits, losses, credits, and deductions pass through the corporation to the owners, who report them on their own Form 1040 returns. There are no taxes owed at the entity level, and profits and losses are proportionately allocated based on the ownership interest of the shareholders. Closely held family businesses like farms and ranches are often S corporations.

Limited Liability Company (LLC)

S corporations and limited partnerships have been increasingly replaced as the entity of choice by the LLC.[12] In an LLC, members can retain their limited personal liability while still performing the business affairs of the company. LLCs do not require the formal management of a corporation, but members still should be careful to shield the LLC from liability by keeping separate books, records, and bank accounts and keeping the LLC adequately funded. Best practices would dictate drafting an operating agreement also (similar to corporate bylaws). LLCs can be taxed like partnerships, meaning flow-through of profits and losses to the members. Single-owner LLCs are treated as sole proprietorships by the IRS and do not file a separate return. When there is a single owner, the single owner reports all income and losses on Schedule C of his or her Form 1040. Like a partnership, a multiple-member LLC is required to file an informational tax return, Form 1065, and provide each member with a Schedule K-1 to report his or her share of profits and losses.

Overall, the LLC provides simplicity and flexibility and the pass-through feature could help save on taxes (although a C corporation and its shareholders are subject to double taxation on the gain from a sale of land, if ever any farm/ranch property must be sold). If your plan is to include multiple shareholders and/or investors in your business operations, or if you have employees to whom you offer benefits, a corporation might work best: a corporation can deduct the cost of health insurance premiums, reimbursement of medical expenses, etc., but in an LLC, only a portion of these types of expenses can be deducted.

Every farmer and rancher will have different objectives to meet when selecting the entity by which he or she wants to conduct business. If employees are working in a farm or ranch operation, it makes good sense to protect one's personal assets in the event of an accident or death by structuring the business as a corporation or limited liability company. Only a simple and very small farm or ranch operation might work well as a sole proprietorship or partnership. Consultation with a professional advisor will assist one in determining the appropriate entity to use.

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[12] See the Colorado Limited Liability Company Act at C.R.S. §§ 7-80-101, *et seq.*

16-4. Estate Planning

The fundamentals of estate planning are really no different for farmers and ranchers than they are for individuals in the non-farm and ranch world. However, retirement and succession planning perhaps have special significance in that farm and ranch households are often affected by savings and retirement policies in ways that are different from other households. For example, farm operators are typically older than the majority of the U.S. workforce. Healthcare, medical improvements, and technological advances in farming equipment and techniques have all contributed to this phenomenon, not to mention that farming is becoming popular as a part-time, retirement activity.

In addition to the issue of age, farmers and ranchers often have several income sources and different forms of wealth and savings habits as compared to the general population. Increased personal savings, land and equipment holdings, contributions through self-employment taxes, off-farm income,[13] and less reliance on Social Security — all of these factors contribute to a different setting for farmers and ranchers and their retirement and estate planning.

Getting Started

Part of estate planning includes organizing and assessing assets. Doing so might include the following tasks:

- Create and maintain an up-to-date, itemized list of all assets and debts, including, but not limited to, insurance policies, securities, bank accounts, real estate (farm and other), farm and recreational equipment, jewelry and artwork, business interests, pension plans, IRAs, and other retirement benefits.
- Consult with appropriate advisors to begin creating a will or trust or maintain existing documents. Appropriate advisors may include an estate planning attorney, CPA, and financial advisor. Estate planning will include managing your asset base and tax (income, gift, and estate) considerations. Maintain a written list of your current financial advisors, attorney, and accountant, and keep it with your list of assets. Give a copy of this list to your personal representative, successor trustee, relative, or friend you trust, and to your attorney or financial advisors.
- Draft estate planning documents, including a health care power of attorney, financial power of attorney, declaration of disposition of last remains, and advance directive to physicians. Consider sharing appropriate documents with health care providers.

[13] Off-farm income — outside business interests, wages, salaries, interest and dividends, pensions, annuities, military retirement, unemployment, Social Security, veterans' benefits, other public retirement and public assistance programs, and rental income from nonfarm properties — can account for up to 90 percent of total farm household income. *Structure and Finances of U.S. Farms: Family Farm Report, 2010 Edition – Economic Information Bulletin No. (EIB-66)* (July 2010).

- Create a viable estate management plan, considering the exemption limits for passing along assets free of transfer taxes. The federal estate tax exclusion is now set at $10,000,000 for an individual, indexed for inflation, so the 2019 exclusion is $11,400,000. This increased amount is set to sunset after the year 2025, when the federal estate tax exclusion will go back to $5,000,000 for an individual, as adjusted for inflation. Public Law 115-97.
  - The federal gift and generation-skipping transfer tax exemption is the same as the estate tax exclusion. The top federal estate tax rate is approximately 40 percent on the largest estates. Transfers from one spouse to the other are typically tax-free.
  - Coordinate the marital deduction and the estate tax credit. Simply leaving everything to your spouse is not always the best estate planning, especially if your combined estates exceed the limits of a single tax credit. Remember that each spouse is entitled to the estate tax exemption, and all efforts should be made so that both spouses are allowed to take their credit, if needed. When assets pass directly to a surviving spouse (such as when assets are held in joint tenancy with rights of survivorship), then one decedent's estate may not get the benefit of the exemption and it is therefore wasted if the estate assets are subject to the exemption amount ($11,400,000 in 2019, adjusted yearly for inflation). The unlimited marital deduction (property passing to surviving spouse without any estate tax) can be used in coordination with both estate tax credits to ensure that as much property passes to heirs and the surviving spouse as possible without imposition of any estate taxes.[14]
  - The American Taxpayer Relief Act of 2012 made portability permanent. "Portability" means that the federal estate tax exclusion amount is "portable" between spouses, so that when one spouse dies, the surviving spouse can typically use the other spouse's unused exemption amount without having to set up trusts or utilize other tax-saving conventions. However, portability is not automatic, and the trouble and expense of a timely filed IRS Form 706 estate tax return is required upon the death of the first spouse in order to utilize portability.

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[14] Over the years, a number of provisions have been enacted to reduce the burden of the estate tax on farms and small business owners. These include a special provision that allows farm real estate to be valued at farm-use value rather than its fair market value, an installment payment provision, and a special deduction for family-owned business interests. A provision encouraging farmers and other landowners to donate an easement or other restriction on development has provided the possibility of additional tax savings. Along with overall higher estate tax exemptions, these provisions have reduced the potential impact of estate taxes on the transfer of a farm or other small businesses to the next generation. *See* "Federal Estate Taxes Affecting Fewer Farmers but the Future is Uncertain: Special Provisions," *Amber Waves* (June 2009). Based on simulations using farm-level survey data from a 2011 Agricultural Resource Management Survey (ARMS), in 2013, only about 2.7 percent of farm estates would be required to file an estate tax return, with a much smaller share of estates (about .6 percent) owing any federal estate tax.

- Keep in mind the special-use valuation tax election available to farmers and ranchers under I.R.C. § 2032A. This provision allows an estate administrator to value real property according to its actual use, rather than its highest or best use. Allowing valuation at its actual use can result in a lower estate value, thus potentially lowering taxes. The 2019 special use valuation limit is $1,160,000.[15]
- Obtain accurate values for your assets from qualified appraisal agents. Assets to be valued include real estate, farm equipment, machinery and other inventory, homesteads, vehicles, supplies, livestock, and any other tangible assets with value.
- If you own real property in multiple states, you need an estate plan that contemplates asset ownership in each state. For example, an estate with ranch land in Colorado and Nebraska may require probate proceedings in each state to transfer or convey that property to heirs. In this situation, a trust is often the best tool: probate can be minimized, and the trustee can more easily dispose of or manage multiple-state real estate.
- Record whether and where you maintain a safe deposit box and where you keep your important documents.
- Provide instructions regarding your funeral wishes and any prepaid funeral plans to whoever will be involved in making arrangements.
- Consider charitable transfers to accomplish estate planning goals, whether they be a charitable remainder trust, a charitable lead trust, a charitable gift annuity, or outright gifts to charities and family members. See Chapter 18.

Some Estate Planning Transfer and Tax Reduction Strategies

Conservation Easements

A conservation easement is a restriction or encumbrance placed on real property that protects the property from certain types of development, often preserving the environmental and open-space values of the land. It is a legally enforceable land preservation agreement between a landholder and either a governmental agency (a municipality, county, state, or federal entity) or a qualified not-for-profit land trust organization. Conservation easements are voluntary and allow the landowner to continue to privately own and manage the land and potentially receive significant state and federal tax advantages by donating the conservation easement. Perhaps of even greater value to a farmer or rancher, by creating this type of environmentally friendly restriction, they have contributed to the public good by preserving the conservation values associated with their land for future generations.

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[15] To qualify for the I.R.C. § 2032A limit, (1) the net value of the business property must be at least 50 percent of the decedent's gross estate and at least 25 percent of the decedent's adjusted gross estate (the gross estate reduced by certain deductible debts, expenses, claims, and losses); (2) the decedent must have transferred the business to specified close family relatives; and (3) the decedent or family members must have used the qualifying property for five of the eight years prior to the decedent's death. Qualified heirs must use the farm or business property for 10 years after the decedent owner's death.

To gain tax advantages from granting a qualified conservation easement on their land, farmers and ranchers must obtain a written appraisal report of the value of the easement. The value described in the appraisal is the fair market difference between the land's value before the easement was granted and the value after the restriction is placed. The amount of the difference is the easement value allowed to the land owner. The value of the corresponding tax credit is based on the appraised value of the conservation easement.[16] In Colorado, the credit is quite generous: if donated on or after January 1, 2015, then 75 percent of the first $100,000 of value and 50 percent of value over $100,000 donated, with an overall cap of $1,500,000 per donation.[17]

In addition to the state tax credit, those who donate a qualifying conservation easement to a qualified land protection organization under the regulations set forth in I.R.C. § 170(h) may be eligible for a federal income tax charitable deduction equal to the value of their donation. To qualify for this income tax deduction, the easement must (a) be perpetual, (b) be held by a qualified governmental or nonprofit organization, and (c) serve a valid conservation purpose. To serve a valid conservation purpose, the property must have an appreciable natural, scenic, historic, scientific, recreational, or open space value.

Another beneficial aspect of the Colorado law is that donors of conservation easements may transfer or sell their tax credits to other Colorado taxpayers and receive cash for the credits. Not only does this help landowners who do not have enough income to utilize the credits, but it provides cash flow.

The Colorado Conservation Easement Tax Credit Program has recently been scrutinized by the Colorado Department of Revenue and the Internal Revenue Service. At least 14 other states have similar programs, but Colorado's generous tax credits, and especially the ability to sell or transfer those credits, concerns the tax regulatory agencies.[18] The State of Colorado created an Oversight Commission[19] to review conservation easement applications and appraisals of the easements.[20] Anyone considering granting a conservation easement should consult with a specialized attorney to determine the current legal status of these types of encumbrances.

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16 *See* C.R.S. § 39-22-522.

17 For example, assume that a farmer has real estate valued at $800,000. The farmer places a conservation easement on the property, restricting it to perpetual agricultural use and now the property is worth $600,000 as a result of this encumbrance. The farmer has "reduced" the value of his property by $200,000 and therefore his donation value is $200,000. The amount of the tax credit for this donation is $100,000 (50 percent of its FMV).

18 Beginning in 2014 and each year thereafter, the cap is $45 million pursuant to C.R.S. § 39-22-522(2.5). The Division of Real Estate administers the cap by issuing tax credit certificates to landowners that submit an application. Approved applications submitted after the cap is reached are placed on a $15 million wait list for the next applicable year pursuant to C.R.S. § 39-22-522(2.5). The Department of Revenue will not allow a tax credit claim unless a tax credit certificate is first issued by the Division of Real Estate.

19 *See* C.R.S. § 12-61-725(1).

20 In 2008, Colorado's Appraiser statutes were amended by the passage of HB 08-1353, the Conservation Easement Bill, to prevent abuses of the state's land preservation tax credit program. This legislation created a nine-member Conservation Easement Oversight Commission, appointed by the governor, that meets at least quarterly to review applications for conservation easement holder certification and to review any other issues referred to the commission by any state agency.

Installment Sales

When selling real property and receiving one or more payments in subsequent years, the taxpayer may report the sale as an installment sale. This allows the taxpayer to defer the recognition of gain over many years and save on taxes.[21] Under federal income tax law, a farmer who sells development rights to his or her land and receives payment for the sale in installments would be taxed each year only on the capital gain from the sale he or she receives during that tax year. The farmer would not be required to pay taxes on the full capital gain in the sale year, although the farmer could elect to do so if he or she wished, even if he or she is receiving payment in installments.

The installment land contract (ILC) is also a method of effecting a sale. An ILC is a contract for delayed delivery of a deed providing for periodic payments over a term of years, similar to a promissory note. It is distinguished from the typical real estate buy-sell contract in that the buy-sell contract does not usually contain provisions for installment payments. The ILC is merely intended to hold the deal for a short period until the condition of title is completed and title is delivered to the buyer. Installment land contracts are more prevalent during periods of "tight" money or when a property is difficult to finance conventionally. Oftentimes a person with little or no cash for a down payment will be permitted to take possession of property under an installment land contract providing for monthly payments to the seller. The seller will still hold "legal" title, and the buyer will possess "equitable" title. Farmers and ranchers with equitable title can still use the property as needed as long as the conditions to complete the final purchase are met.

16-5. Succession Planning

Succession planning is a continuous process to transfer knowledge, skills, labor, management, control, and ownership between the generations. Decisions regarding ownership of assets; choice of business entity; and estate, retirement, and tax planning are all part of the overall plan for succession. Successful farm and ranch generational transfers depend in great part on the financial aspects of the farm or ranch operations, as well as the personal aspects. So many factors come into play when handing down a business — expectations and goals of both older and younger generations can be similar or quite different. As with any business transaction, open communication is essential and sharing these expectations and goals is crucial to a successful transition.

Surveys provide some alarming statistics. Only 1 percent of family-owned farm and ranch businesses in North America are transferred to a third generation. Another report shows that 30 percent of all family-owned farm and ranch businesses have not considered a successor, with only 63 percent having done so after the owner has reached age 65. Another recent survey shows that more than 58 percent of farm and ranch business owners list inadequate succession planning as the biggest threat facing their business.[22]

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[21] *See* 26 U.S.C. § 453.

[22] *Amber Waves* (April 9, 2013), a publication of the U.S. Department of Agriculture, Economic Research Service. For additional economic research, see www.ers.usda.gov/publications.

Handing It All Down

As difficult as it may be, it is important to envision the day when you will no longer be in charge of your farm or ranch. You could leave your heirs and your business vulnerable to considerable estate taxes and management upheaval if a succession plan is not created. Even though estate taxes are historically blamed for the "loss" of the family farm, it is as often a case of ignoring the problem or failing to use the financial and legal tools that are available.

Typically, succession planning entails several steps: (1) determining the practicality of transferring your business (*i.e.*, are your farm or ranch operations sufficiently viable for this transfer to make sense?); (2) choosing a successor (is there a family member, friend, or employee who is willing to succeed into your responsibilities and take on the new ownership role and responsibility?); (3) beginning the transfer of ownership and management to the successor; and (4) finalizing the transfer of ownership and management responsibilities to the successor. Typically, the process of succession planning is stretched out over several years, as a moderately paced transition provides the best environment for the bottom line and overall stability of the operations.

Experts in the field of succession planning suggest using these best practices:

- Set a target date for your last day as primary decision-maker on the farm or ranch, and start shifting responsibilities ahead of time. You want to be able to oversee the transition while you are still living.
- Assist in the development, training, and education of your successors along the way and keep them fully informed of your work. Schedule regular meetings to review finances (including debt and revenue updates and forecasts), workload expectations and schedules, employee issues, important non-farming topics, and equipment and supply, to name a few.
- Work with professional advisors to complete any transfer of assets and debt restructuring, review and modify (if necessary) existing business structures, and review or finalize any other legal and financial transfer requirements. Consider having a buy-out agreement in place if multiple successors are involved.
- Set goals and expectations that take into consideration the needs of your successor, including family time, lifestyle, work habits, and the successor's expectations and goals.
- Decide with your successor whether to offer an incentive to retain key employees during and after the transition.
- Consider off-farm family members' needs and expectations. Provide for buying out a family member's interest, if necessary (*e.g.*, sons or daughters who are not on the farm or ranch, but with whom you wish to share your estate). Accommodating the conflicting interests of the on-farm and off-farm adult children can often be the difference between a successful or unsuccessful transfer of the farm or ranch.
- Review the asset protection and liability insurance needs of your business operations.

Some Additional Tax-Saving Devices

Trusts

Trusts can be extremely helpful tools to use during estate and succession planning. They can be valuable in administering the orderly transfer of assets and management to heirs. Trusts, including charitable trusts, may be used to shelter capital gains tax and provide greater cash flow for the retirees that in some cases may be used in wealth replacement strategies. Trustees can add valuable assistance as an objective third party to issues that arise within families during and after succession transition. Goals of trust creation can be numerous: replacing wealth, providing for a special-needs beneficiary and/or minor children, avoiding probate (especially if real property is owned in more than one state), providing for a beneficiary or spouse without financial management skills, keeping your estate private, protecting assets, organizing business assets into one vehicle, and allowing for flexible distribution of assets, among others.

Charitable trusts might work well for your estate and succession plans as well. Charitable trusts can achieve multiple goals, including removing assets from large estates, providing an income stream to you or other beneficiaries with the remainder left to a charity of your choice, fulfilling your philanthropic goals and desires, passing along assets to heirs with reduced transfer costs, potentially providing you with a significant charitable deduction for the value of assets transferred into a charitable trust, establishing a means by which you can create a philanthropic legacy or family foundation, and passing along your values to your heirs. When properly set up, a charitable lead trust allows you to transfer income-producing assets into this type of trust, which provides an income for the charity for a term of years, with the remaining assets in the trust transferred free of estate, generation-skipping, and other transfer taxes to children or grandchildren.

Gifts

In 2019, the limit for tax-free gifting is $15,000 per person per year or $30,000 for spouses combined. Using this annual gift tax exemption can be particularly important in cases where the value of the estate of a farmer and/or rancher exceeds the estate tax applicable exclusion amount available to both spouses. These gifts can serve several purposes: perhaps providing "early" inheritance to those non-farm family members, establishing educational trusts for grandchildren, funding a wealth replacement trust, creating an irrevocable life insurance trust, and more.

16-6. Conclusion

A good estate and succession plan can save farm and ranch families hundreds of thousands of dollars in estate taxes, income taxes, and administrative costs. Many farmers and ranchers wait too long to begin their financial, business, and estate plans, to the detriment of their families. Some of the concepts discussed above may not apply to your farm or ranch operations, but they are typical of issues facing all business owners in today's world, including agribusiness owners. We intended this chapter to provide an overview of the many business issues facing the farmer and rancher, knowing before we started that we could not address them all adequately. Our hope is that it will give you thoughts and ideas to take to your professional advisors and develop an estate or succession plan that meets all of your and your family's needs, goals, and expectations. Peace of mind is a wonderful thing.

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The Office of Gift Planning at CSU cultivates, designs, facilitates, and stewards planned gifts to the University, and works with donors who contribute non-cash gifts (appreciated stocks, real estate, etc.). In our efforts, we use a variety of financial tools and techniques for giving, including bequests, charitable gift annuities, charitable remainder trusts, and charitable lead trusts. All planned gifts require the assistance of one or more qualified specialists: an attorney, certified public accountant, estate planning specialist, trust officer, and/or an insurance agent can be involved as we work with donors to accomplish their charitable goals.

In addition, we provide education to our donors through marketing and outreach efforts that include advertisements, publications, brochures, website information, e-newsletters, public speaking presentations, and the like. We consider it absolutely essential to make our office a resource for folks who are contemplating a deferred gift or have any questions concerning their estate planning goals. Additionally, we supply technical expertise to our colleagues in the development staff and work closely with them if they have a donor who is considering a planned gift.