



EXTENSION

Legal Issues Affecting Farm Transitions

or : 15 credit hours of law school in 15 minutes

Dr. Shannon Ferrell

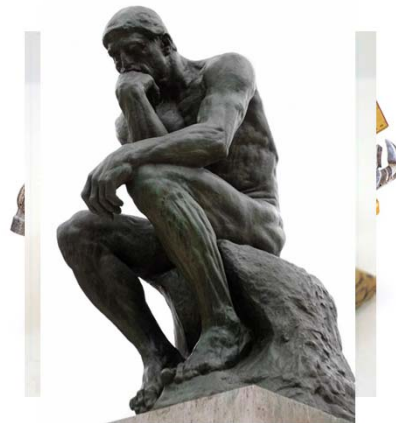
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Outline

- Elements
- Tools
- Barriers
- Conclusions



Why should I care?

Founding Generation

30%

Second Generation

12%

Third Generation

3%

Fourth Generation



An example of a farm-owning family



Elements of Transition: Estate Planning Model



Founder

Successor



Elements of Transition: Business Succession Model

Founder



Ownership

Control

Participation

On-farm heir

Off-farm heir

Separate Entity

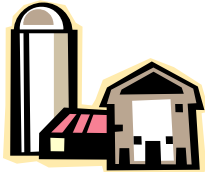
**Unrelated
Successor**

**Liquidation /
Dissolution**



Elements of Transition: Business Succession Model

Founder



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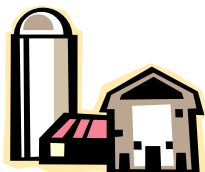
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Estate Tools

Tool	What it does	Consequences
Intestate Succession	Default plan; allocates and transfers property at death	<ul style="list-style-type: none"> •Zero up –front cost •Excludes all outside family •No decedent control
Will	Instructions for disposition of property at death	<ul style="list-style-type: none"> •Property held until death •Probate issues •Does its job, then quits
Trust	Legal entity that holds and manages property	<ul style="list-style-type: none"> •Highly flexible •Requires trustee •Irrevocable/rigid at death

Estate Tools

Tool	What it does	Consequences
Life Insurance	Financial instrument paying amount on death	<ul style="list-style-type: none"> •Add liquidity and/or enhance estate •Question of taxability •Cost : benefit? •Planning horizon?
Transfer on Death deed	Conveyance triggered by death of grantor	<ul style="list-style-type: none"> •Property held til death •Avoids probate •Not universally adopted or understood

Ownership Tools

Tool	What it does	Consequences
Joint Tenancy w/ Right of Survivorship (JTWROS)	Cotenancy that redistributes ownership interest of decedent among survivors	<ul style="list-style-type: none"> •Avoids probate •Reduces flexibility •Unintended consequences
Life Estate	Present interest to holder, remainder interest to successor at death	<ul style="list-style-type: none"> •Avoids probate •Reduces flexibility •Requires cooperation

Business Entities

Tool	What it does	Consequences
Sole proprietorship / general partnership	“Organic” form of business; no separate existence from owner	<ul style="list-style-type: none"> •Cannot survive ANY change to owners •Unlimited personal, joint, and several liability
Limited Partnership (L.P.)	Separate entity consisting of general partner(s) and limited partner(s)	<ul style="list-style-type: none"> •Limited liability for limited partner •Limited management participation by limited partner •Rules evolving

Business Entities

Tool	What it does	Consequences
Corporation (Inc.)	Separate legal entity with limited liability for all owners	<ul style="list-style-type: none"> •Did we say limited liability? •Well-recognized rules •Flexibility in transfers •S/C Corp. taxation •Must follow formalities
Limited Liability Company (L.L.C.)	Separate legal entity with limited liability for all owners	<ul style="list-style-type: none"> •Advantages of corporations w/ more flexibility •Flexibility of tax treatment •Too much flexibility?

Transactional Tools

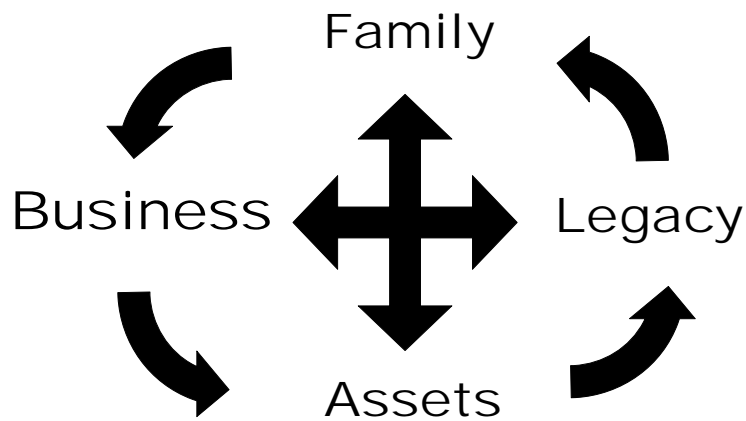
Tool	What it does	Consequences
Installment Sale	Purchase of property by successor with payments over time	<ul style="list-style-type: none"> •Recognize income over time •Remove property from estate •Seller retains security interest •May lose step-up in basis •What if default occurs?
Long-term lease	Transfer of property possession and control to lessee w/ retention of ownership by lessor	<ul style="list-style-type: none"> •Flexible participation by lessor •Does not remove property from estate •Structure of lease dictates tax treatment

Barriers to Implementation

- Communication
- Equitable considerations
 - Farm kid / city kid
 - Sweat equity
- Willingness to transfer



Perspectives for the closely-held farm business



Conclusions

- Producers, we can transfer it. We have the technology.
- Do producers and professionals understand the tools and their impacts?
- Are producers willing to engage in true transitions?



THANKS!

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