

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

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Associate Professor, Agricultural Law
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.