Planning for the Future of Your Farm

The Legal Side of Farm Transition Planning

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USDA United States Department of Agriculture
National Agricultural Library

This work is supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

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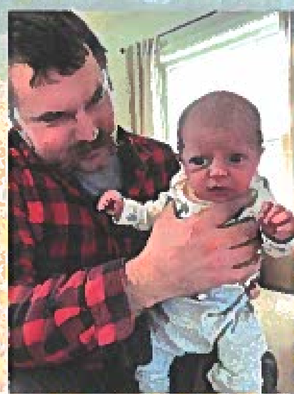
Part 1 topics

Getting started
The legal pieces of a plan
Non-probate transfers
Wills and trusts



Materials

PPT slides
Worksheets
Law bulletins
- Access at go.osu.edu/planforfuture

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The farm transition planning process

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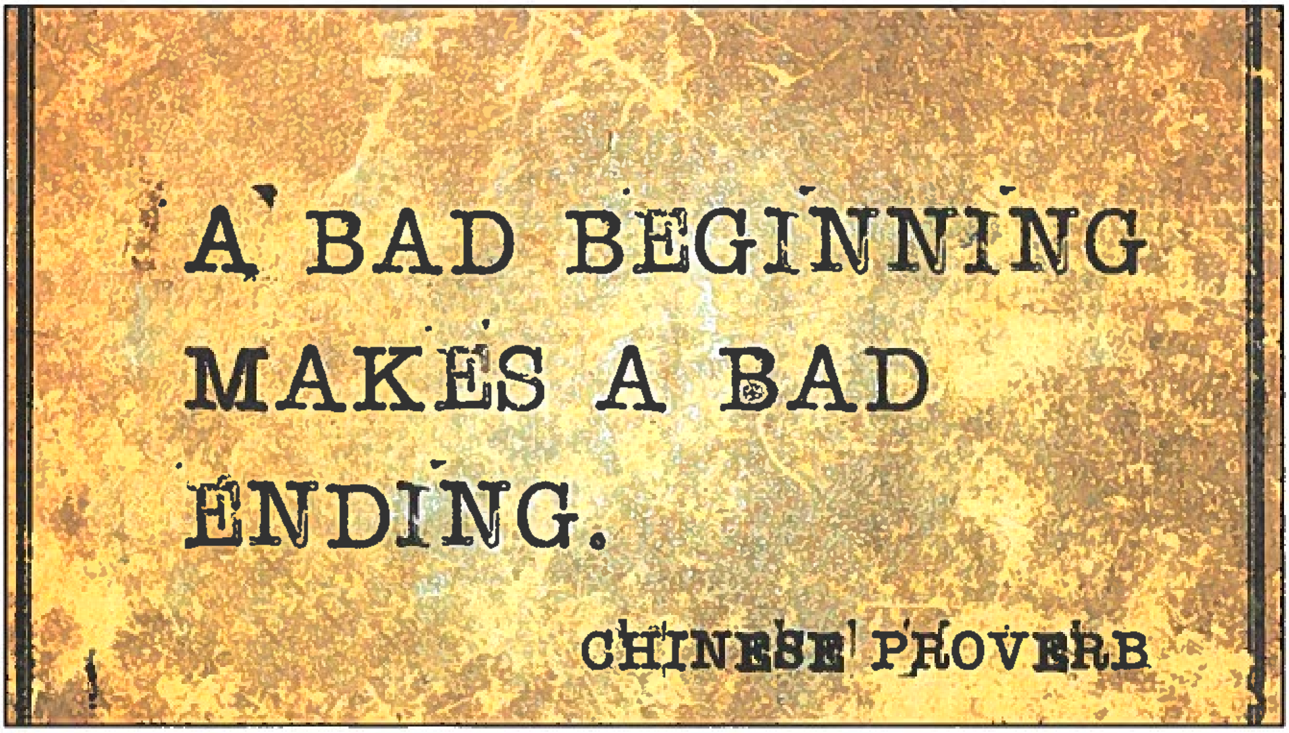

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Good beginnings




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PLANNING FOR THE FUTURE OF YOUR FARM

Legal tools and strategies for farm transition and estate planning

FARM AND ESTATE TRANSITION PLANNING: WHAT IT IS AND WHAT TO EXPECT

Pick up a farm magazine and it's likely to have an article about estate planning. An internet search will yield hundreds of references to passing on the family farm, protecting a farm's legacy, and bringing the next generation into the operation. We focus a lot of attention today on farm transition and estate planning. That's because good planning carries critical consequences for the future of agriculture.

WHAT IS FARM TRANSITION AND ESTATE PLANNING?

Farming is both a unique way of living and a unique way of making a living. It's common for farmers to hope to pass this uncommon heritage on to future generations. "Farm estate planning" uses legal tools to ensure that the next generations receive farmland and farm assets after farm owners retire and pass on. But farmers often want to bring their heirs into the farming operation and hand it along, too. The term "farm transition planning" refers to using many tools, including estate planning and business planning tools, to prepare for and transfer the farming operation to heirs. Whether your goals are to pass on land and assets, hand the farm business down to future generations, or both, learning about farm transition and estate planning will help you accomplish those goals.

THE FARM TRANSITION AND ESTATE PLANNING PROCESS

The farm transition and estate planning process begins with identifying goals for the future of the farm and the farm family. We frequently hear from farmers whose primary goals are to keep farmland in the family and prepare the next generation of managers. Or perhaps a farmer aims to retire, address special issues with children, or plan for long term health care. Whatever the goals may be, healthy family communication and conflict management are often necessary to accomplish this important first step of identifying goals.

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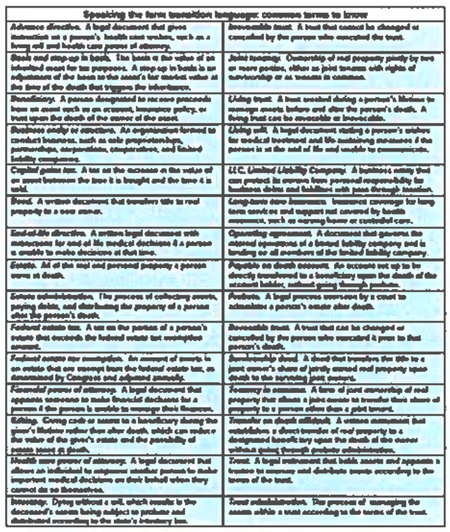

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Besides cost, factors to consider when selecting an attorney

Farm transition competence

- Estate and business knowledge
- Knowledge of agricultural operations

Individual focus

- Tailoring tools to you
- Explaining the plan to you

Comfort level

- Personality Referrals
- Location
- Mode of working

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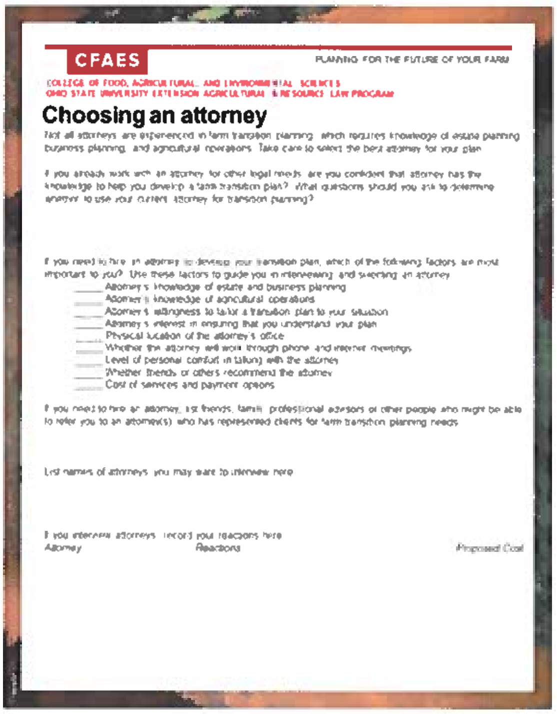

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Choosing an attorney

Not all attorneys are experienced in farm transition planning, which requires knowledge of estate planning, business planning, and agricultural operations. Take care to select the best attorney for your plan.

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

Choosing an attorney: critical questions

1. Is the attorney you have now a good fit for developing a farm transition plan?
2. If you need to find an attorney, which factors matter most to you?
3. Who can provide referrals?
4. What attorneys might you want to interview first?

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What will your attorney be thinking?

- Is there a federal estate tax issue?
- What's the financial situation for the operation?
- What assets are farm versus non-farm?
- What special needs must be addressed?
- What pieces are already in place?
- What needs to be changed?

And more .....

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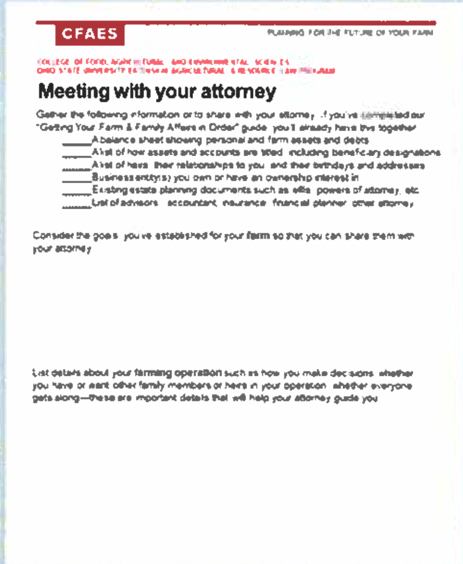
What does your attorney need from you?



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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.

Facts and data:

- Balance sheet of personal and farm assets and debts.
- List of how assets and accounts are titled, including beneficiary designations.
- List of heirs, their relationships to you, and their birthdays and addresses.
- Business entities you own or have interest in.
- Existing estate planning documents such as wills, powers of attorney, etc.
- List of advisors: accountant, insurance, financial planner, other attorney.

Personal:

- Goals
- Details about the family and business

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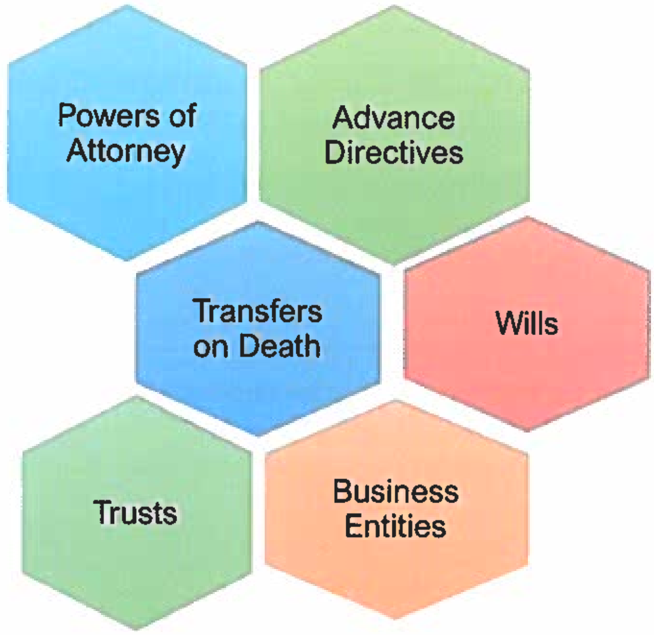
Legal tools and strategies



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Which tools do you have? (poll question)

- Will
- Power of Attorney
- Health Care Power of Attorney
- Living Will
- Trust
- Gifting plan
- LLC, partnership or corporation
- LLC Operating Agreement
- Buy-Sell Agreement with heirs
- Leases with heirs


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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 the 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	Update Needed	May Need	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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Financial Power of Attorney (POA)

- Grants someone authority to make financial decisions for you.
- Scope of authority can be **"general"**
  - All things necessary to manage assets
- Or authority can be **"limited"** to specific purposes, assets, time period
- Unless otherwise stated, a POA is **"durable"** and remains effective if the principal is **"incapacitated."**
  - Impaired in ability or missing

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Health Care POA

- Grants someone authority to make your health care decisions to the same extent you would if you were able:
  - Choose doctors and communicate with them.
  - Choose treatments, surgeries, etc.
  - Set up appointments.
  - Review health care records.
  - Determine long term health care needs.
  - Refuse artificially supplied nutrition or hydration
- Effective if you are **"incapacitated"**
  - Unable to make informed decisions, as determined by your doctor

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THE LIVING WILL DECLARATION

A person may provide instructions on end-of-life care through a Living Will Declaration. If you are in a terminal condition or permanently unconscious state and there is no reasonable possibility that you would regain the capacity to make decisions, a Living Will Declaration directs your doctor to provide only comfort and pain management care and allow you to die naturally. The declaration states that your doctor is not to administer life-sustaining treatment, CPR, artificially or technologically supplied nutrition or hydration, or take any actions that postpone your death. The declaration also authorizes your doctor to issue a "Do Not Resuscitate Order."

Ohio Living Will Declaration

According to Ohio's Rights of the Terminally Ill Act, a Living Will Declaration is valid only if you are either in a terminal condition, which means an irreversible, incurable, and untreatable condition from which there is no recovery and death is likely to occur without life-sustaining equipment, or in a permanently unconscious state, which means an irreversible condition in which you are permanently unaware of yourself or your surroundings. Two doctors must examine you and agree that you are in a terminal condition or permanently unconscious. A Living Will Declaration also directs the attending doctor to make reasonable efforts to notify at least one of three contact persons listed in the document.

ANATOMICAL GIFTS DECLARATION AND DONOR REGISTRY

Gifting body organs and tissues and making arrangements for cremation or burial are also difficult end-of-life decisions. A few options are available to address these issues in advance and relieve stress and discord among survivors. If you wish to make gifts of body organs and tissues, it's possible to do so in a Living Will Declaration or Health Care Power of Attorney. However, Ohio and all other states also maintain a donor registry system that can be helpful in a medical emergency. The Ohio Bureau of Motor Vehicles oversees the registration process, allowing for immediate recognition on your driver's license that you authorize donations of body organs or tissues.

DISPOSITION OF REMAINS, FUNERAL ARRANGEMENTS AND BURIAL OR CREMATION

Ohio law allows you to name a person who can determine what happens to your body after your death, referred to as the "right of disposition." The appointment can give the person the right to make arrangements for anatomical gifts, determine the location, manner, and condition of your funeral, and make burial, cremation, and similar decisions. The form may indicate your preferences on such matters and identify the source of funds to be used to pay for arrangements. The law also provides that a person who acts according to the appointment cannot be held liable for following your preferences.

Advance directives

- Living Will declaration
  - Directive to provide only comfort and pain management, not life-sustaining treatment.
  - If you are in a **terminal condition or permanently unconscious state**, as determined by two doctors.
- Anatomical gifts/donor registry.
  - Via Living Will, Health Care POA, or BMV
- Disposition of remains, funeral arrangements, and burial or cremation.
  - Name person who makes these decisions and provide guidance on what you want.

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Tools for
transferring assets

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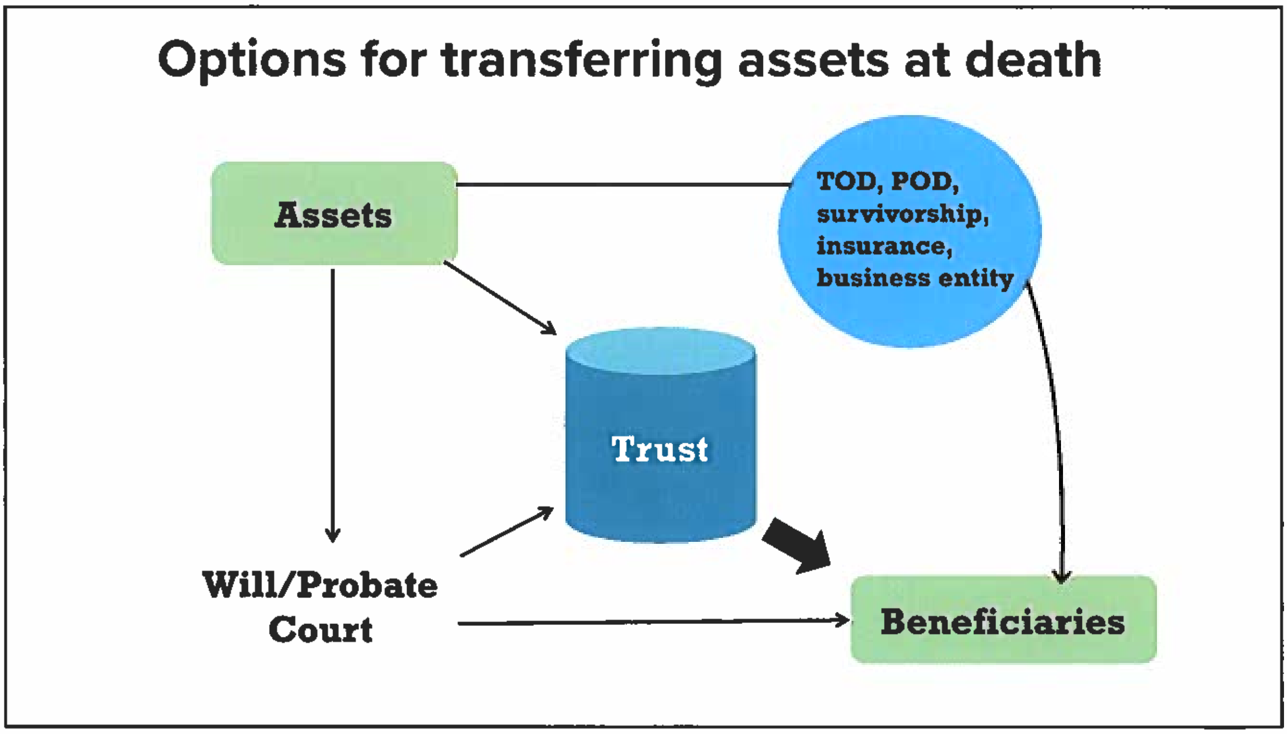
Options for transferring assets at death
Assets
TOD, POD, survivorship, insurance, business entity
Trust
Will/Probate Court
Beneficiaries

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The Will

Wills have **multiple purposes**:

1. Distribute your property.
   - With special rules, restrictions.
   - To beneficiaries or to a trust.
2. Minimize the probate process.
3. Appoint an administrator for your estate.
4. Establish guardianships for minors and incompetent adults.

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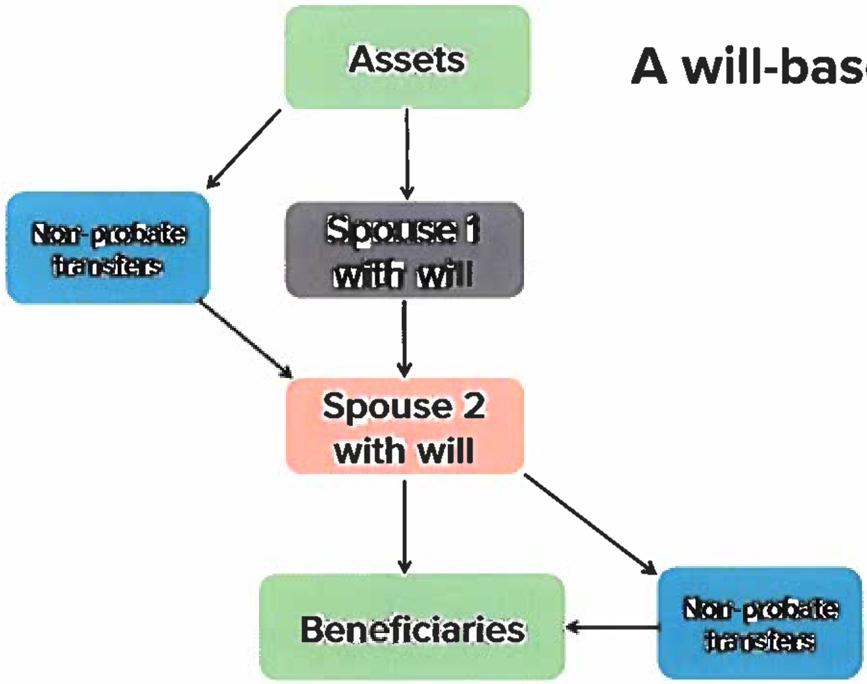
A will-based plan



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Wills and the costs of probate court

- County probate court sets maximum fees attorneys can charge for probate.
  - Charges only apply to assets that go through probate.
  - Estate attorneys are not required to charge this rate, it's negotiable.
  - Client can ask for an hourly fee instead of percentage fee.
- Using tools that avoid probate can save on these costs.
  - And transfer assets more quickly.

Example of county rates:

For personal property including proceeds of real estate sold under power of sale:
- 6% on the first $3,000
- 4% between $3,001 and $15,000
- 2% on the balance

For real property not sold:
- 2% on the first $10,000
- 1% on the balance

For all other property: 2%

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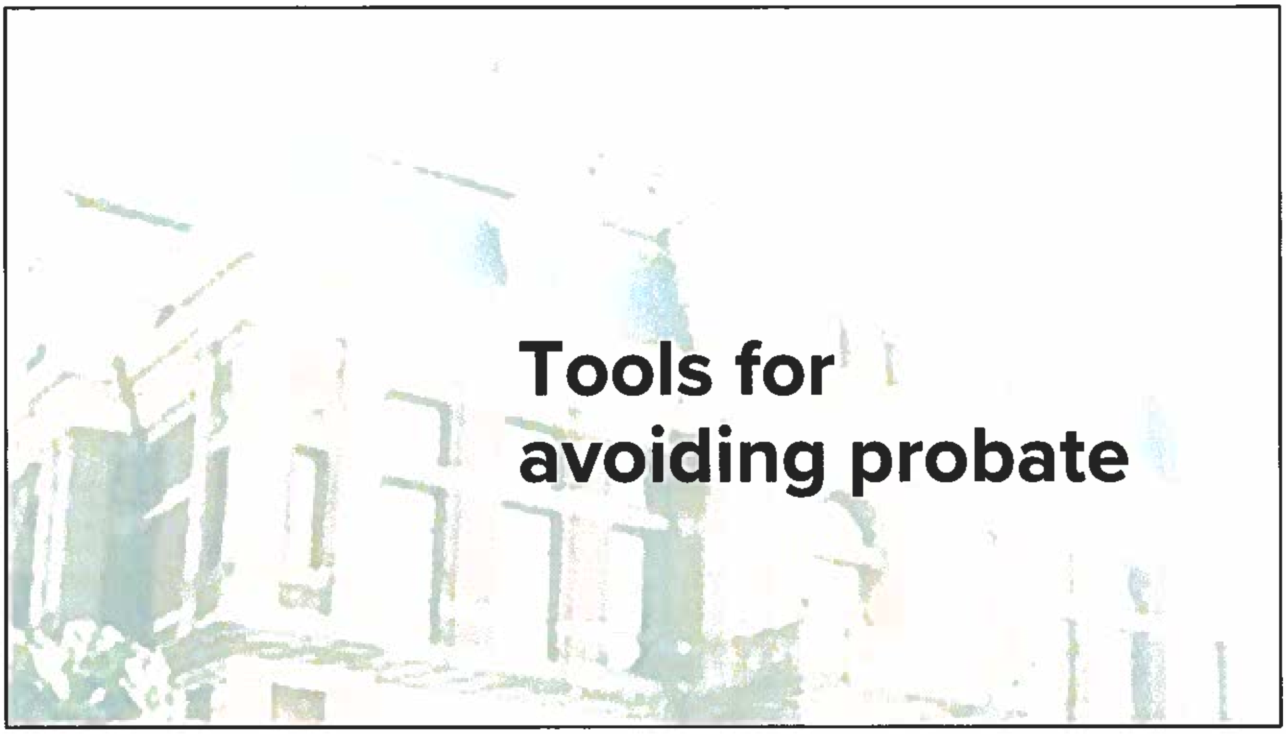

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Joint survivorship deed

- Automatically transfers real property to surviving co-owners upon death, doesn't go through probate.
- Deed must include language to the effect of "for their joint lives, remainder to the survivor of them."
- Typically used with spouses but can be used by any joint owners.

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ALLIANCE TITLE
ATTN: DIANE CLONCH
5000 TUTTLE CROSSING BLVD
DUBLIN, OH 43016

DESCRIPTION APPROVED
FOR TRANSFER
Chris Bauserman
Delaware County Engineer

BK 1081 PG 1496-1497

.RVIVORSHIP DEED

Order No. 11480072

KNOW ALL MEN BY THESE PRESENTS, that DOMINION HOMES INC., AN OHIO CORPORATION, the Grantor, for valuable consideration paid, grants with general warranty covenants to:

ROBERT E. MOORE AND KELLY B. MOORE, HUSBAND AND WIFE

for their joint lives, remainder to the survivor of them,

whose tax-mailing address is:

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Transfer on death designation affidavit

- Ohio law allows landowners to designate that real property will transfer on death, without going through probate.
- Process:
  1. Landowner completes an **Affidavit** that names beneficiary(s).
  2. Files Affidavit with county recorder
  3. After death, beneficiary finalizes the transfer
     - Presents death certificate and beneficiary affidavit to county recorder
- Owner may revoke prior to death.

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TRANSFER ON DEATH DESIGNATION AFFIDAVIT
[O.R.C Section 5302.22]

STATE OF OHIO)
) ss:
COUNTY OF DELAWARE)

1. That Affiant, a single man, is the owner of record of the following real property located in Fayette County, Ohio:

2. That title of record to the above property is held by Affiant as follows:

_X_ Sole Owner
__Tenant(s) in Common
__Tenant(s) in Survivorship
__Tenants by the Entireties

3. That Affiant hereby designates the whole undivided interest in the property held by Affiant for transfer on death to the person or persons named below, as transfer on death beneficiary, to receive the title of Affiant upon his death as follows:

Name of Beneficiary	Undivided Interest of Affiant	Type of Tenancy

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Transfer on death title designations

- May also use Transfer on Death designations for titled assets.
- Use BMV form and file with county title office.
- Beneficiary brings original title and death certificate to apply for new title.

Assets transferable by TOD in Ohio

Real property
Motor vehicles
Boats
Campers
Mobile homes

BUT NOT equipment or livestock

- Aren't titled assets

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Payable on death accounts

- Accounts pass directly to the named beneficiary, don't have to transfer through probate.
  - Must complete proper form with account holder
  - Beneficiary provides death certificate to account holder
- Examples:
  - Life insurance
  - Checking and savings accounts
  - Retirement accounts
  - Investment accounts

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Reviewing Your Transfer on Death and Payable on Death Assets

This worksheet encourages you to review the assets that you can designate as transfer on death or payable on death. List your assets below, consider their values, and note if you have or want to transfer an asset or make it payable to a specific heir upon your death. You and your attorney can use this information to analyze how these assets fit into your transition plan and to ensure that they're designated according to that plan.

Asset	Estimated value	Is there a specific heir(s) you want to receive this asset?	Is this asset involved in the farm operation?	Notes
Real estate				
Motor vehicles, boats, campers, recreational vehicles, mobile homes				
Checking and savings accounts, stocks and bonds, life insurance, annuities, IRAs, investment accounts, 401K				

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So, you have a will . . .

Do you also need a trust?

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Do you need a will-based or trust-based plan?

Issue	*Will Plan*	*Trust Plan*
Complexity of situation	Simple	Complex
Concerns about heirs	Little or none	Some or significant
Remarriage/2nd marriage concerns	Little or none	Some or significant
Transition of operation	Little or none	Some or significant
Estate taxes	Little or no concern	Need to maximize savings
Probate	Don't mind; probate judge is in charge	Want to avoid; trustee is in charge
Privacy	Not important	Important
Legal fees	Less at outset; maybe more later	More at outset; maybe less later

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What is a trust?

- A "container" with rules.
- Assets go into the trust – during life, at death, or after death.
- Assets flow through the trust and eventually come out to the beneficiaries.
- While in trust, conditions and rules can be attached to the assets.
- A trustee oversees trust administration.
- You appoint who is the trustee.
  - Can be you, until your death.
- You can change the trust if it's **"revocable."**
- You can't change an **"irrevocable"** trust.
  - An irrevocable trust requires giving up ownership of the assets in the trust.

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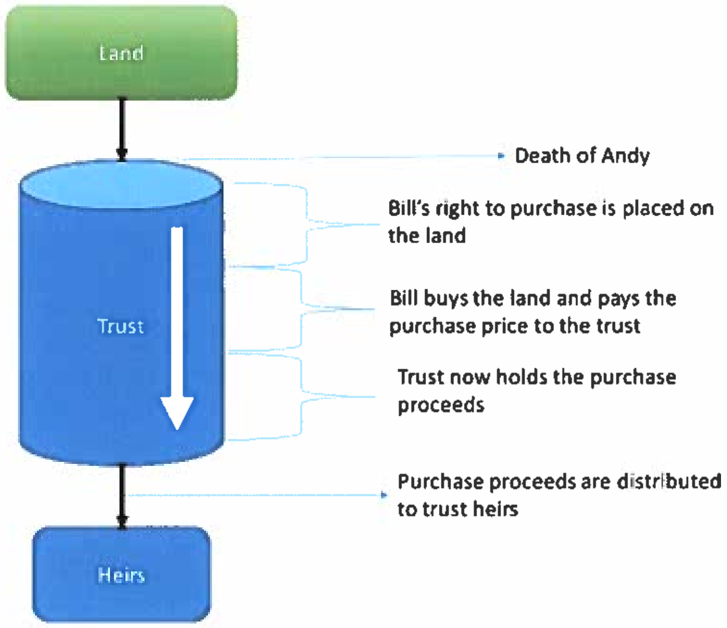
Transition of assets through a trust



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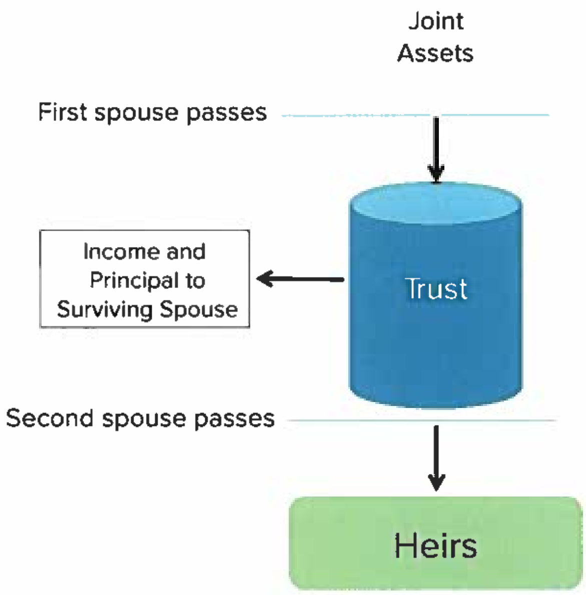
A simple trust-based plan



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Trust "rules" that can accomplish farm transition goals

Conditions of inheritance: *Certain age, blood heirs only, finish education, treatment for addiction, divorce*	How to deal with a second marriage of 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 option to purchase land and machinery with specific terms.	Contributions to church, non-profit, alma mater, etc.

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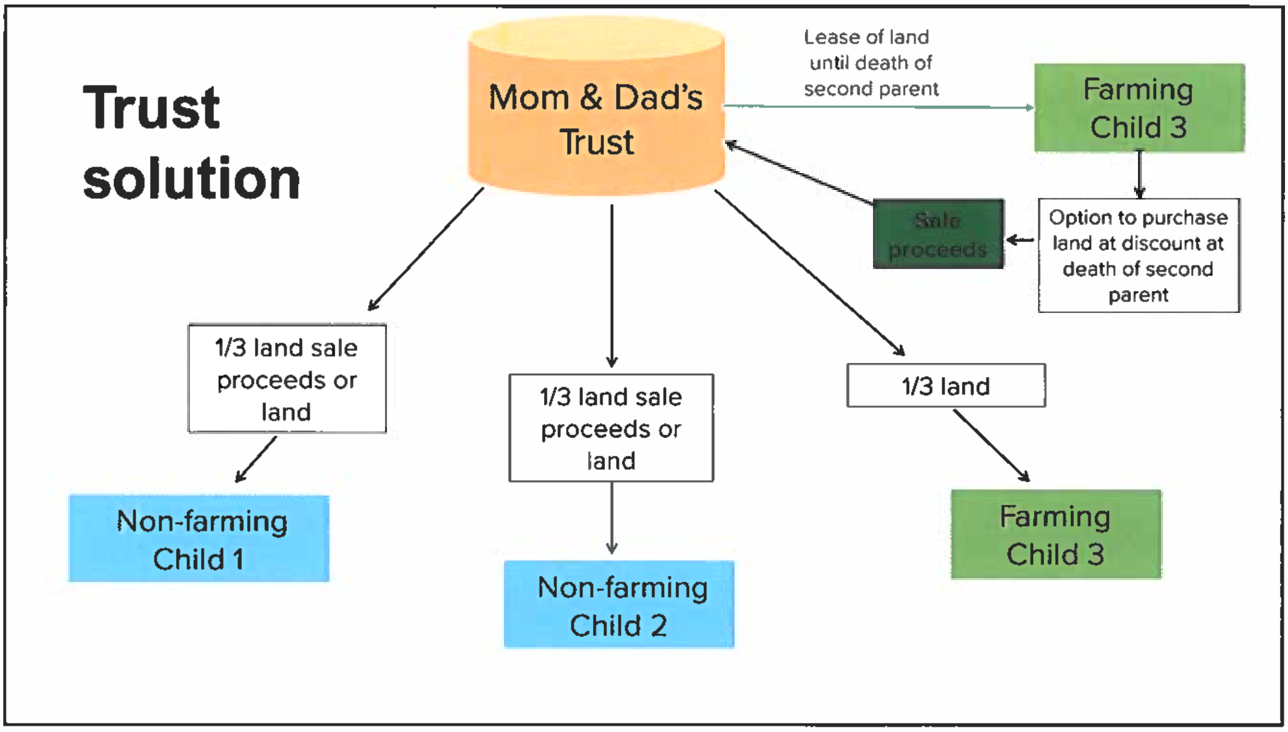
Trust solution
Mom & Dad's Trust
Lease of land until death of second parent
Farming Child 3
Option to purchase land at discount at death of second parent
Sale proceeds
1/3 land sale proceeds or land
1/3 land sale proceeds or land
1/3 land
Non-farming Child 1
Non-farming Child 2
Farming Child 3

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Example:
Using a trust
Family's goals:
Keep farm assets in family after second marriage
Provide income for second spouse

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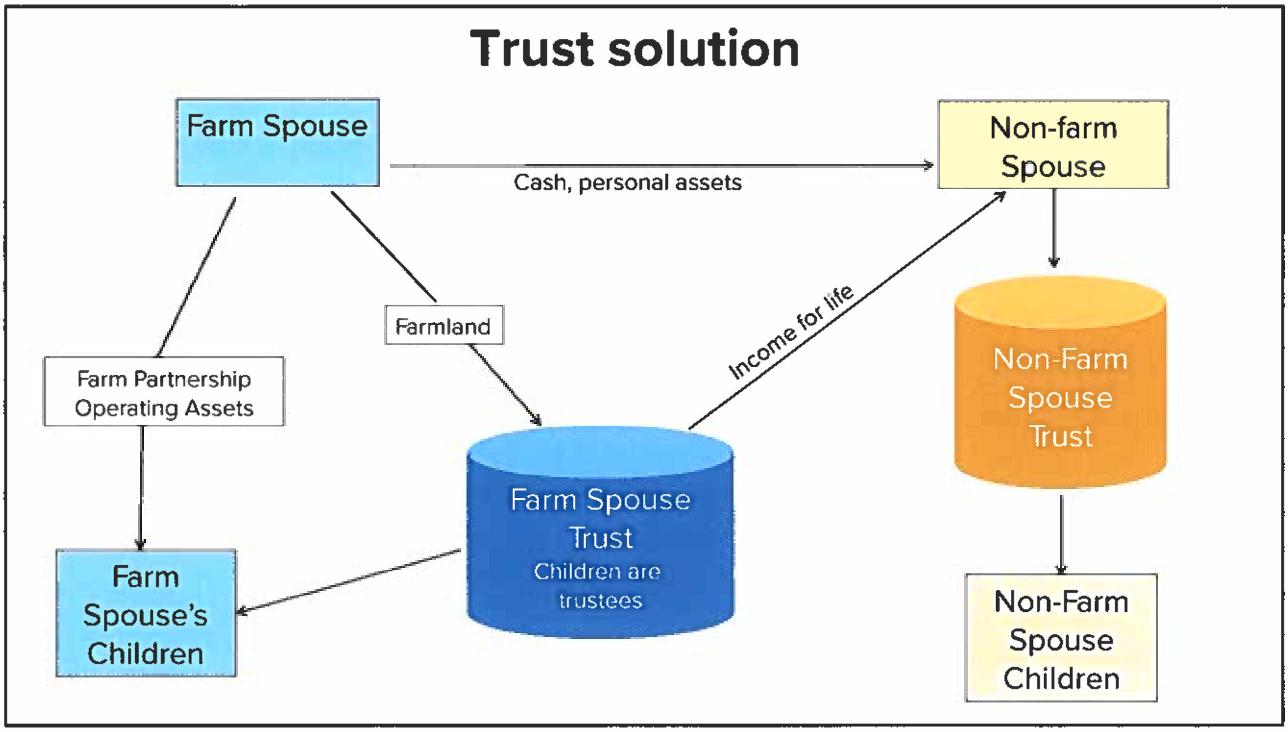

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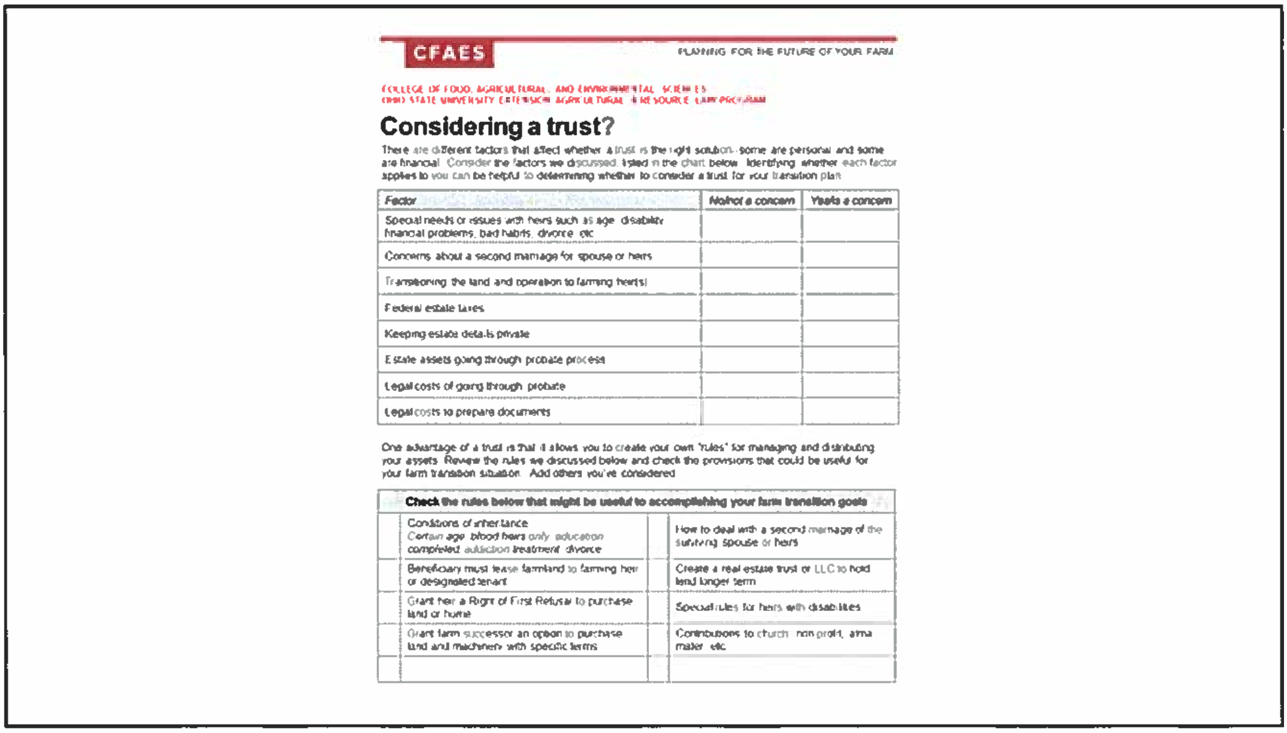

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Considering a trust?

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.

Factor	No/not a concern	Yes/is a concern
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		
Transferring 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: Certain age, blood heirs only, education completed, addiction treatment, divorce		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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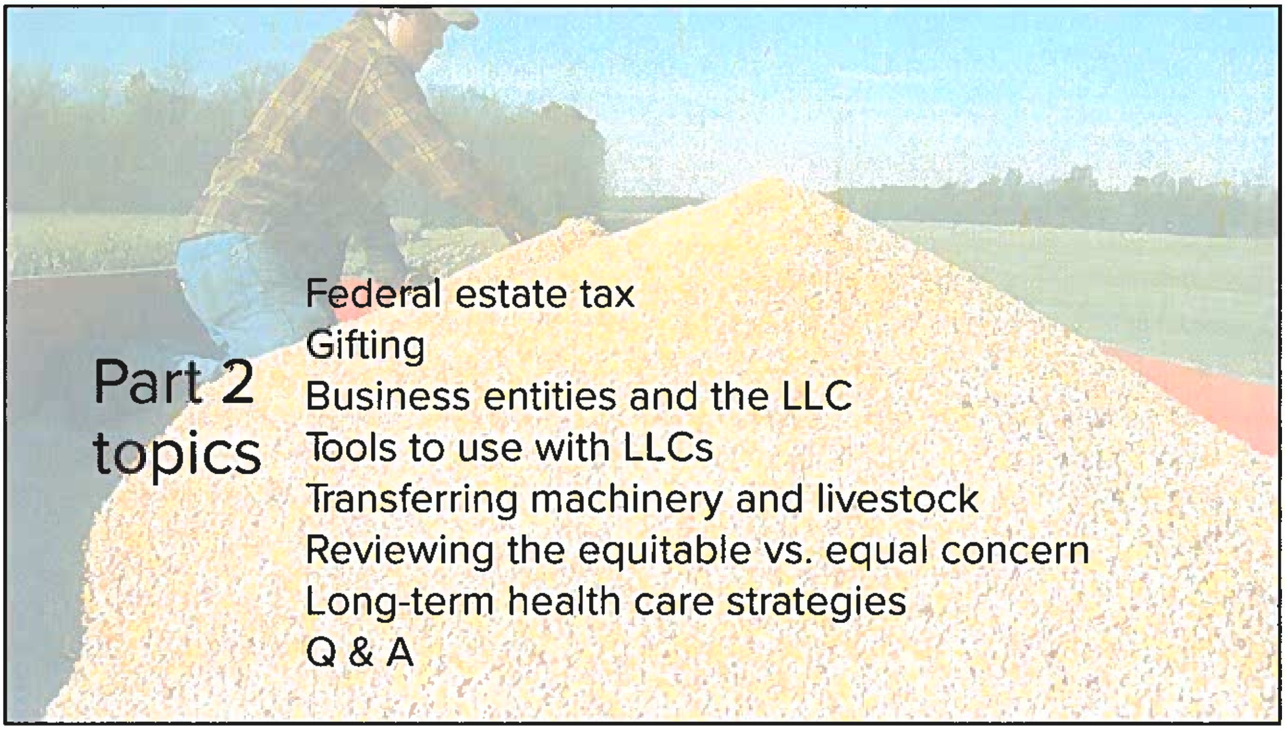

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Seven common mistakes farmers make when transition planning

1. Procrastination
2. Thinking joint property titles will do
3. Overlooking expenses at time of death
4. Assuming no federal estate taxes
5. Trying to be fair to all beneficiaries
6. Failing to consider disability as well as death
7. Avoiding communication

Webster & Garino, Attorneys, Westfield, Indiana

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Federal estate taxes

- Net worth is used for federal estate tax liability.
- $12.06 million per person and $24.12 million per couple is exempt from federal estate tax.
- Portability rule allows using a couple's combined exemption on death of second spouse.
- Strategies can reduce value of the estate to minimize estate tax risk.

Year	Individual	Couple
2021	$11.7 M	$23.4 M
2022	$12.06 M	$24.12 M
2023	2022 + inflation	
2024	2023 + inflation	
2025	2024 + inflation	
2026	Back to $5,000,000 per person adjusted for inflation	

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Gifting your assets

- Gifting transfers an asset now, rather than after your death.
- Gifting can:
  - Reduce the size of your estate and your federal tax risk.
  - Provide equity to the younger generation now.
- Commonly gifted assets:
  - Cash
  - Land
  - Farm machinery
  - Livestock
  - Grain
  - Financial accounts

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Gift taxes

Gifts can be subject to federal (and some state) gift taxes.

- No gift tax in Ohio.
- The giver of the gift pays the tax.

But there are exceptions to the federal gift tax

- Annual exclusion: an individual may gift up to $16,000 per person per year free of the federal gift tax.
- Lifetime exemption: The amount of a gift in excess of the annual gift amount counts toward the lifetime estate tax exemption of $12.06 million.

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Effect of gifting on tax basis

- An heir that inherits an asset receives a **"step-up"** in the tax basis to the fair market value of the asset at the time it is inherited.
  - The heir can re-depreciate the asset.
  - The heir can sell the asset and not pay taxes if sold for no more than the stepped-up tax basis.
- But an heir that is gifted an asset takes the giver's "carry over" tax basis in the asset and does not receive a "step-up" in basis.
  - The heir cannot re-depreciate the asset.
  - If the heir sells the asset, will pay tax on gain in the value of asset from giver's basis to sale price.

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When gifting can be a good strategy

- **Transferring a depreciating asset**
  - If owners don't need income from an asset that is losing value over time, transferring now reduces ownership challenges such as maintenance and liability.
- **Gifting an appreciating asset**
  - Transferring an asset that will continue to appreciate in value reduces the owner's federal estate tax risk.

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Poll question:

What type(s) of business entity do you have in your operation?

- Sole proprietor
- Partnership
- Limited Liability Company
- Corporation
- Cooperative
- Other
- Not sure

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Using business entities for farm transition

- Business entities differ in liability protections, taxation, ownership transfer, and management flexibility.
  - Explained in our bulletin.
- The **Limited Liability Company (LLC)** is often favored for farm transition planning because it allows for considerable creativity to:
  1. Protect land.
  2. Discount asset values.
  3. Designate farm management roles.
  4. Negate the need for a trust.

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Using an LLC to protect the land

- Dividing the farmland among children can put land at risk of being sold out of the family and inaccessible to the operation.
- Making your children co-owners of farmland puts the land at risk of **"partition"** by the children, their spouses, heirs, and creditors.
  - Ohio's partition law allows anyone with an ownership interest in land to file a legal action asking the court to sell the land and divide proceeds among ownership interests.
- But an LLC keeps the land together and extinguishes partition rights because the LLC, not individuals, owns the land.

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Using an LLC to protect the land

You own
600 acres

You have 3 children. One wants to continue farming, the other two do not.

Option A You could give each child 200 acres. The ones who do not wish to farm may sell or rent the land. But this can hurt the ability of the child who wants to farm to continue farming the land depending upon finances.

Child 1	Child 2	Child 3
200 acres	200 acres	200 acres

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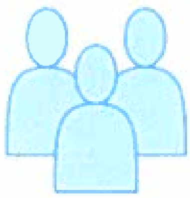
Using an LLC to protect the land

You own
600 acres



You have 3 children. One wants to continue farming, the other two do not

Option B

You could make your children joint owners of the entire land, but each child would have partition rights and could force a division of the farm. There would also be no rules on how the land is managed or rented.

Child 1 1/3 interest	Child 2 1/3 interest	Child 3 1/3 interest

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Using an LLC to protect the land

You own
600 acres

You have 3 children. One wants to continue farming, the other two do not

Option C

By placing your land in a business entity, you can keep the land together and create rules on how the land is to be managed, restrict its sale or transfer, and establish which children get income from the land and how much

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Using an LLC to discount values

- Placing assets in an LLC can be an easy way to reduce value of estate and federal estate tax risk.
- The value of ownership in a closely held company can be discounted to less than the value of the assets in the company due to minority ownership, shared management, and transfer restrictions.
- Discounts can be as high as 30 to 40%.

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Using an LLC to discount values: example

Mom and Dad own a farm and their net worth exceeds the federal estate tax exemption by $1 million, so their heirs will owe $400,000 in estate taxes upon their death.

Mom and Dad own 500 acres of land valued at $5 million. They put the land in an LLC, and each holds 50% ownership in the LLC. They also set up the LLC so that a decision requires a majority vote and ownership interests can only be transferred to direct family members. Neither Mom nor Dad have majority ownership or control, and each is limited as to whom they can transfer their ownership – all important factors to obtaining a discount.

Let's assume a 35% discount applies to Mom and Dad's LLC ownership interest because the discounting factors exist. Now, instead of owning land valued at $5 million, they co-own an LLC worth $3.25 million. Mom and Dad have reduced their net worth by $1.75 million by placing their land in the LLC. They have given up little to receive a significant reduction in their net worth.

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Using an LLC to designate management

- An LLC can designate who will have management and decision-making authority.

Mom and Dad intend for their three children to jointly inherit their farmland. Two children live out-of-state and have never been involved with the land while the third child lives locally and has been involved with the farm.
Mom and Dad's transition plan transfers the land to an LLC, makes the children owners of the LLC, and designates the local child to be the manager of the LLC. The management provisions help ensure that the land will be managed properly and that the out-of-state children's unfamiliarity with the land will not cause disruptions or poor decision making.

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Using an LLC instead of a trust

- An LLC can avoid probate and contain rules much like a trust can do but can save time and legal fees.

Mom and Dad want their children land to inherit their farmland.
They don't want the land sold outside of the family and want one specific child to manage the land.
Instead of a trust, Mom and Dad establish an LLC with their required terms and conditions and make ownership of the LLC "transfer on death" to their children. The children inherit the LLC without going through probate and are subject to the transfer and management terms of the LLC.
Mom and Dad accomplished their transition plan without the use of a trust.

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Using a Buy-Sell Agreement in an LLC

- Sets rules for buying business ownership in event of an owner's death, disability, divorce, or disassociation, whether voluntary or involuntary.
- Owners negotiate the terms of the transfer prior to the event.
- Knowing terms beforehand creates stability for the operation and allows successors to prepare for the sale.
- Life insurance and other accounts can play a role in funding the sale.

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Using leases in an LLC

- Pre-established long-term leases can ensure stability for farming heir
- Terms can be pre-negotiated.
- Leases can continue or arise after death, enable transition to next generation.
- Can provide income for older generation, non-farming heirs.
- Can also address machinery and livestock.

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Example:
Using an LLC
Family's goals:
Bring next generation into the operation
Balance assets between on/off farm heirs

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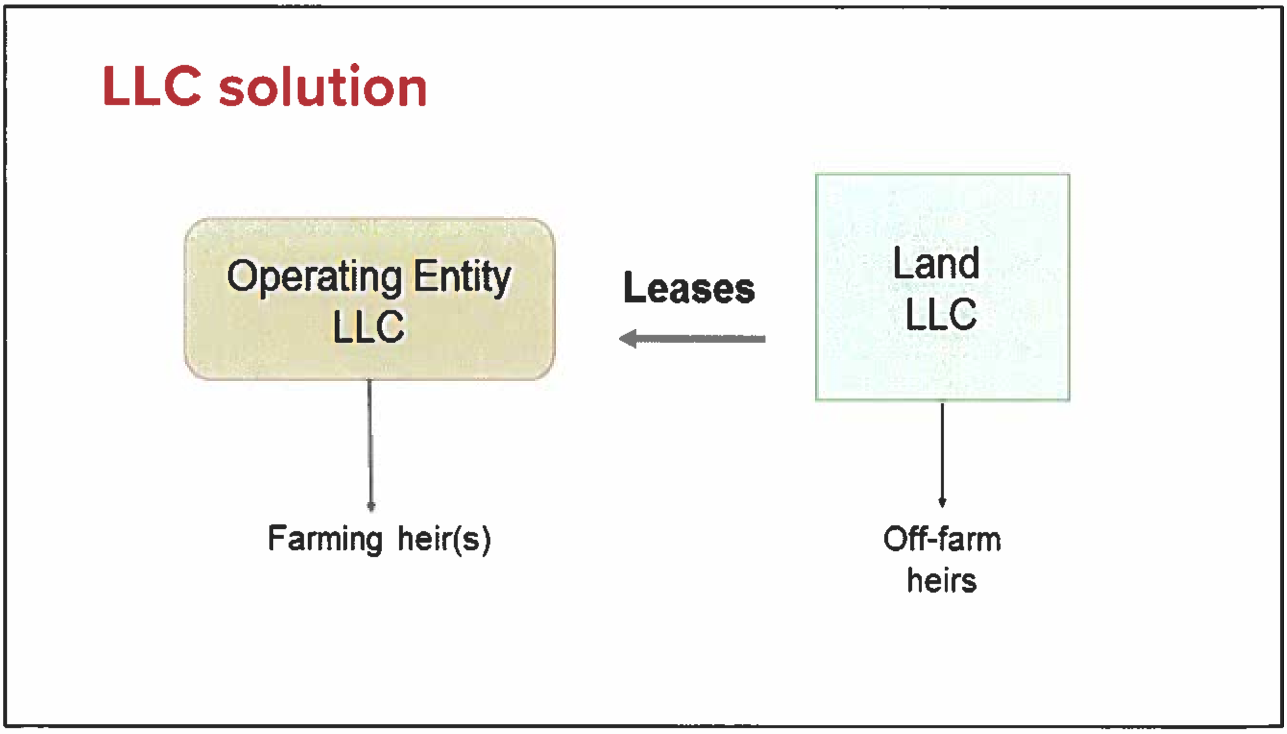
LLC solution
Operating Entity LLC
Leases
Land LLC
Farming heir(s)
Off-farm heirs

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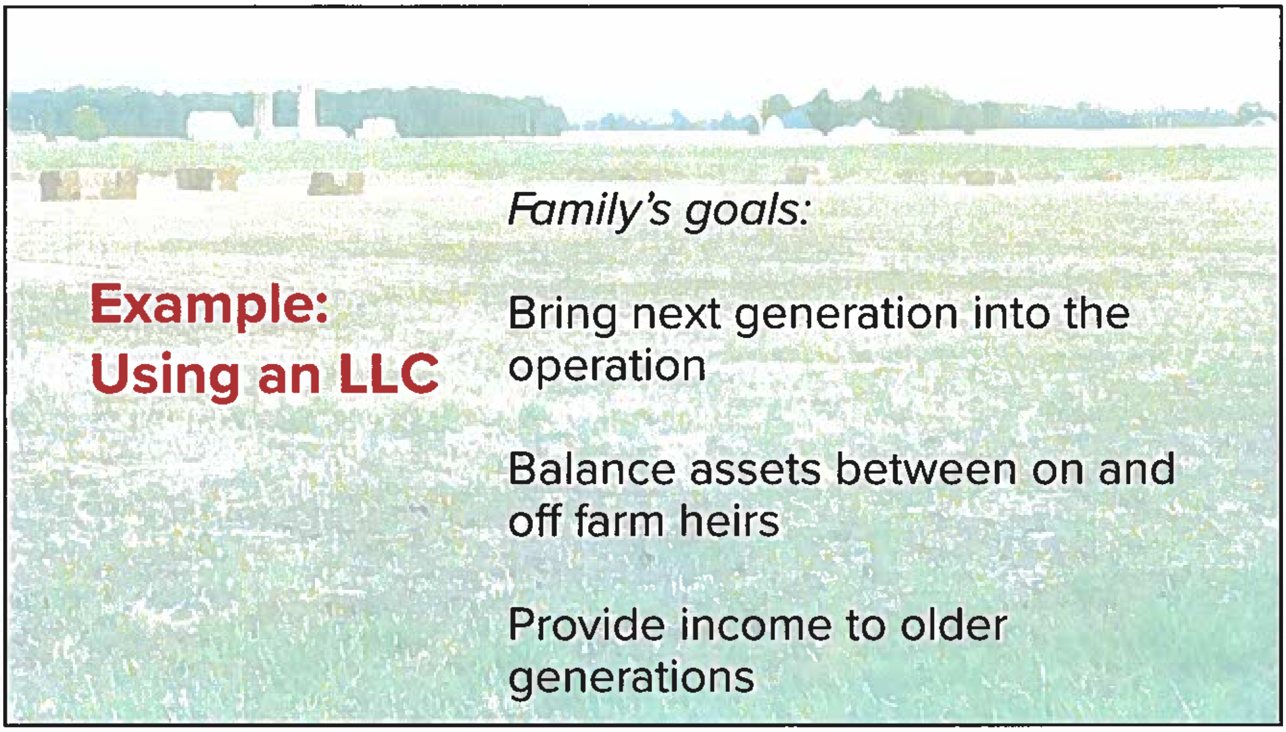

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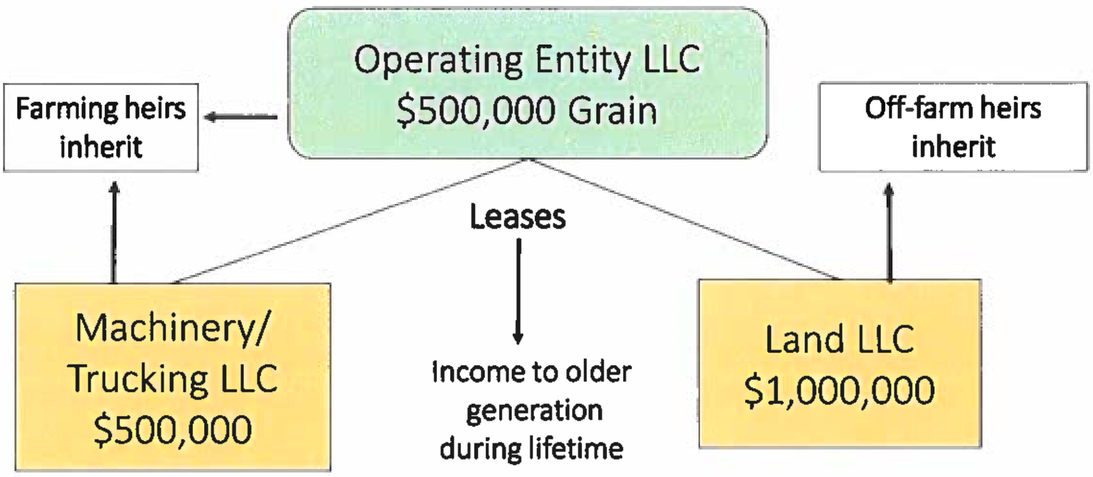
Multiple LLC solution



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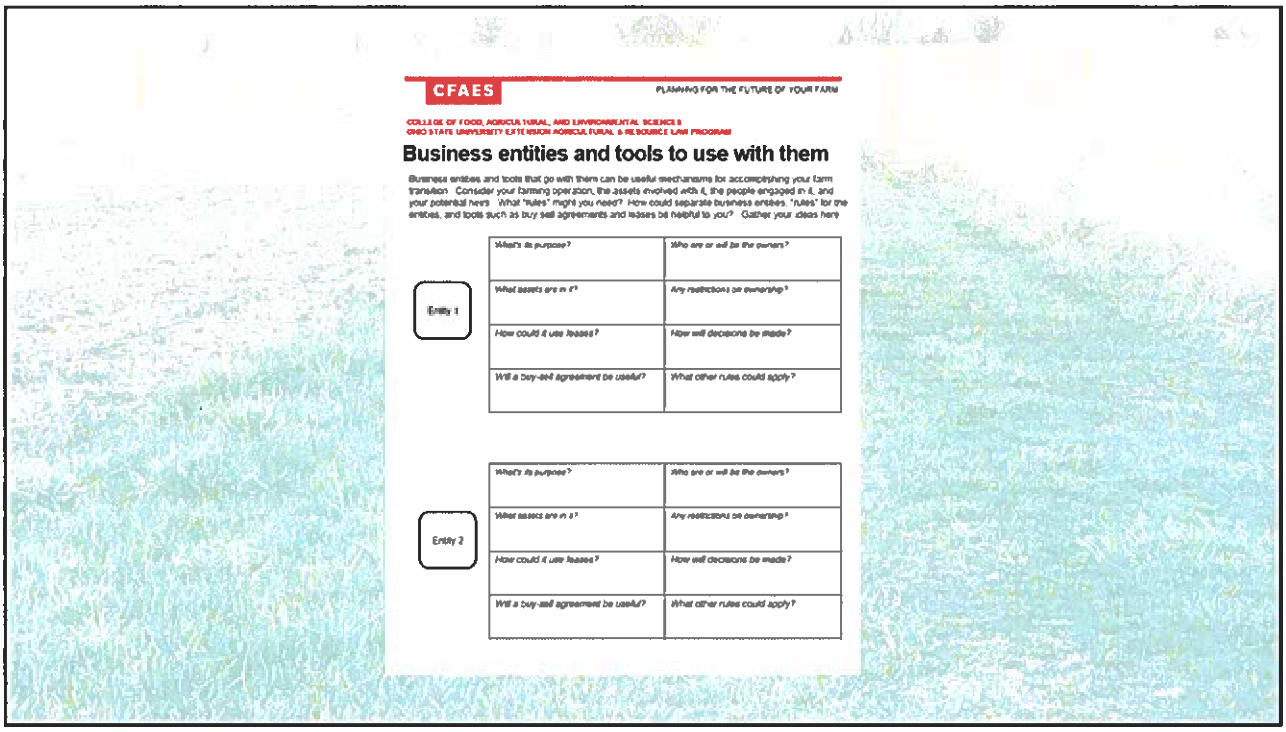

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PLANNING FOR THE FUTURE OF YOUR FARM

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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

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

Entity 2

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

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Challenges with transferring machinery and livestock

Often the most challenging assets to transfer

Important question: what is your **goal** for the machinery/livestock?

- Do you need income from it?
- Do you want to get it out of your name?
- Do you want to control it until after death?

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Transfer options for machinery or livestock

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.
Gifting	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.

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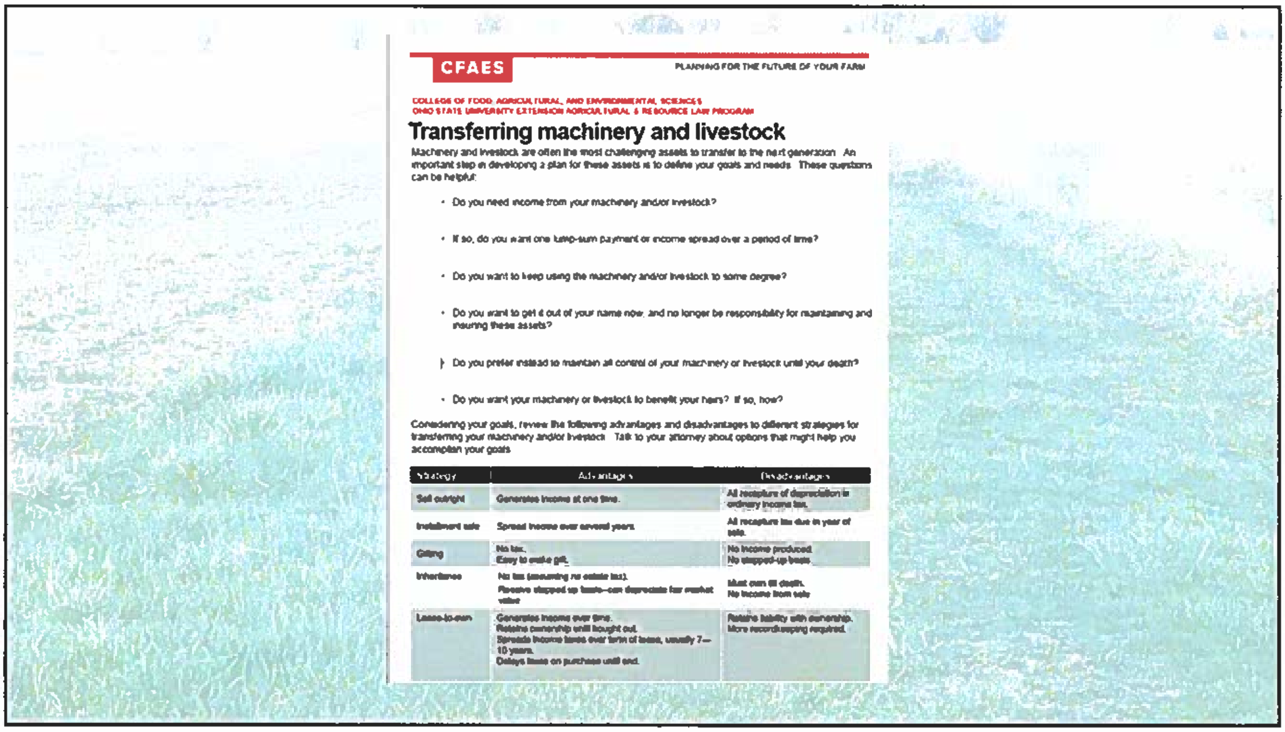

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Transferring machinery and livestock

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.
Gifting	No tax. Easy to make gift.	No income produced. No stepped-up basis.
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Addressing the equitable vs. equal concern

Questions to help you consider what is "equitable" or fair:

- Do any heirs want to continue the farm?
- How many heirs want to be involved in the farm?
- Who has "sweat equity" in the farm?
- Will the estate have a balance of farm and non-farm assets?
- Do some heirs need more inheritance than others?
- Have I helped some heirs more than others during my lifetime?
- How do I define fairness, in my situation?
- What are my goals for the farm?

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Strategies for creating an equitable plan

- Gift assets during lifetime.
- Calculate sweat equity and lost income of on-farm heirs.
- Assign farm assets to on-farm heirs and non-farm assets to off-farm heirs.
- Include an option to purchase or a right of first refusal for farm assets.
  - Address buy-out terms such as price, repayment options.
- Use life insurance to fund buy-out or balance asset distribution.
- Use an LLC to distribute ownership interests differently.
- Use LLC or lease to create income for off-farm heirs.

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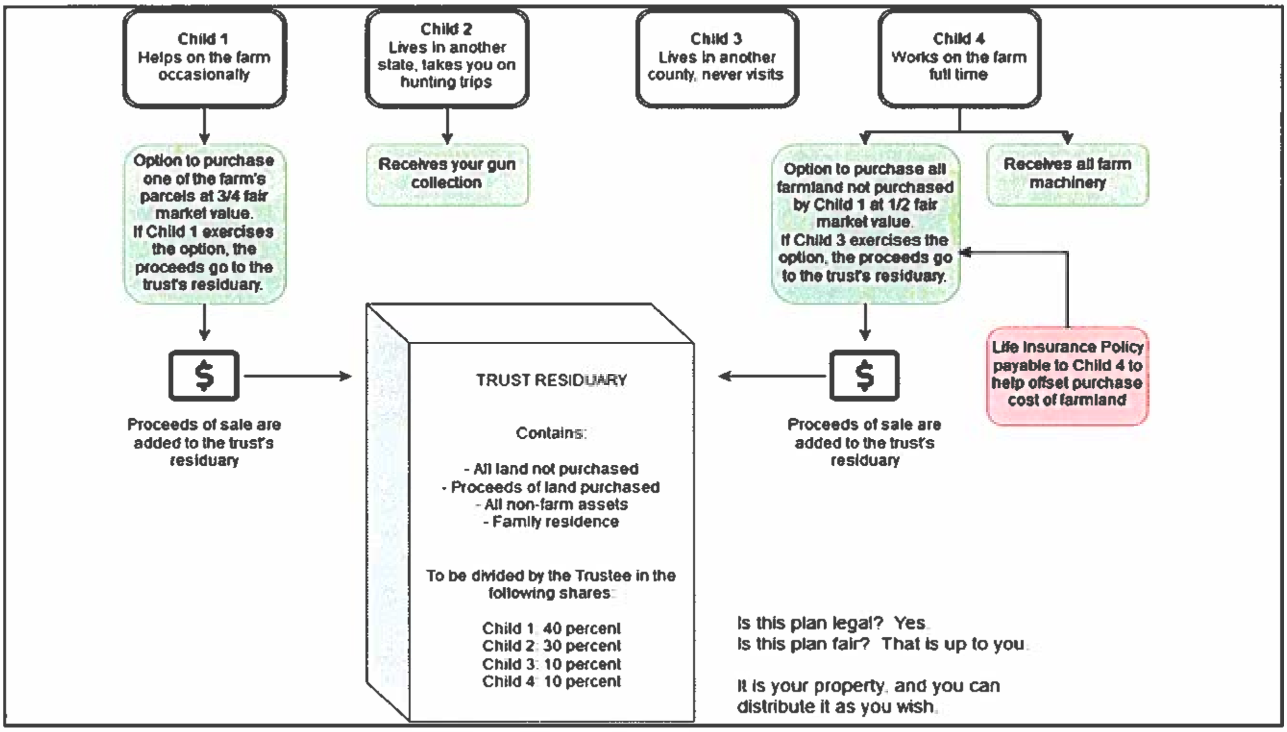
Child 1
Helps on the farm occasionally
Child 2
Lives in another state, takes you on hunting trips
Child 3
Lives in another county, never visits
Child 4
Works on the farm full time
Option to purchase one of the farm's parcels at 3/4 fair market value.
If Child 1 exercises the option, the proceeds go to the trust's residuary.
Receives your gun collection
Option to purchase all farmland not purchased by Child 1 at 1/2 fair market value.
If Child 3 exercises the option, the proceeds go to the trust's residuary.
Receives all farm machinery
$
Proceeds of sale are added to the trust's residuary
TRUST RESIDUARY
Contains:
- All land not purchased
- Proceeds of land purchased
- All non-farm assets
- Family residence
To be divided by the Trustee in the following shares:
Child 1: 40 percent
Child 2: 30 percent
Child 3: 10 percent
Child 4: 10 percent
$
Proceeds of sale are added to the trust's residuary
Life Insurance Policy payable to Child 4 to help offset purchase cost of farmland
Is this plan legal? Yes.
Is this plan fair? That is up to you.
It is your property, and you can distribute it as you wish.

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Strategies for long-term health care

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Nursing home costs

Average annual nursing home costs in Ohio are $85,416 for a semi-private room and $94,896 for a private room.

- Ohio ranks 30th highest in nation.

Average national costs are expected to continue rising:

Room Type	2016	2018	2028
Semi-Private Room	$82,128	$89,297	$120,008
Private Room	$92,376	$100,375	$134,896

Source: seniorliving.org

How will you pay for these costs?

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Long-term care costs

- A long-term care facility requires a contract upon entering.
- The contract will require the person to pay all bills.
- Facility can file breach of contract lawsuit for unpaid bills.
- And can place a lien on and foreclose against assets.
- **This puts farm assets at risk.**

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Long-term care costs and Medicaid

Most farmers don't qualify for Medicaid.

- For married couple, countable assets cannot exceed $115,000.
  - Exempt assets – home (if return within 13 mo. or spouse resides in home), personal belongings, 1 car, burial plot.
  - Exempt assets are subject to estate recovery action by Medicaid.
- Cannot apply for Medicaid until assets have been spent down below the $115,000 threshold.

Medicare is different than Medicaid.

- Medicare may cover first 100 days of nursing home.

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Long-term care costs and Medicaid

The Medicaid "look back" period:

- Medicaid looks back for gifts made in the 5 years prior to applying for Medicaid.
  - Includes transfers to irrevocable trusts.
- For a gift made in the last 5 years, an ineligibility penalty of $6,300/month is assessed.
  - A $100,000 gift in the 5 years prior to Medicaid application would cause 16 months of ineligibility for Medicaid.
  - A $100,000 gift 6 years prior to application would cause no ineligibility.

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Long-term care strategies

1. Do nothing and hope.
2. Self insure with cash available to pay costs.
3. Identify asset(s) to be sold if needed.
4. Gift assets away.
   - Give up control, lose income and wait 5 years.

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Long-term care strategies

5. Put assets in LLC.
   - Nursing home can receive income but can't force sale of assets.
6. Put assets in irrevocable trust.
   - Give up control and wait 5 years.
7. Purchase long-term care insurance.
   - Not always insurable and premiums can be high.
   - Purchase a 5-year policy to cover 5 -year look back period?
8. Use long term leases for land.
   - Last resort to keep land in family but an unproven strategy.

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Final polling question

How are you feeling about planning for the future of your farm?

- Still very unsure of what to do.
- A little uncertain of the next step to take.
- I need more information.
- More informed than I was before this workshop.
- Ready to take steps to create a good plan.
- Confident about the plan that I already have.
- Secure that planning will protect our family and farm in the future.
- None of the above.

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