Farm Transfer Planning: How to Begin

Editor's note: Throughout this workbook, emphasis is placed on issues surrounding the transfer of a farm to the next generation. Many of the narratives and worksheets in this book are tilted to assist with that goal. As noted elsewhere, transferring a farm to keep it in production may not be your goal or you may find it otherwise impracticable. So for now, we will simplify the focus to "estate planning," an integral and basic part of farm transfer.

The narrative below is an edited piece originally published as a pamphlet titled *Estate Planning: Where to Begin,* under the direction of Theodore A. Feitshans, J.D., Extension Specialist, Department of Agricultural and Resource Economics, College of Agriculture and Life Sciences, N.C. State University, and is reproduced here with permission.

We usually take life for granted. Few of us choose to think about the cold reality of death. Nevertheless, you owe it to yourself and your family to plan how your property will be used after your death for the benefit of your loved ones, charitable interests, and other beneficiaries.

The farm transfer process begins with a series of questions that must be considered.

- Who will care for your minor children or aging parents?
- Will the family business be continued?
- If you own family land as farm or forest, does your family wish to keep it?
- Will they be able to do so?
- Will your spouse be able to live comfortably on what you leave behind?
- Will estate taxes consume your family's wealth?
- Are there other federal, state, or local taxes, or other expenses, that should concern you?

All of the concerns raised above can be addressed with your plan. Each plan is unique to family needs and resources. Estate planning is for everyone, not just the elderly or rich. The topic of death is not pleasant. But if you avoid planning your estate, you have unconsciously made some important choices. Your family will have to live with them.
Couples with young children who fail to plan their estates have chosen to have a court decide who will raise their children. Parents in a family business who fail to plan their estates may impair the likelihood that their children will succeed in the business. Virginia law provides for the distribution of estates if you die without an estate plan. It is quite likely that the plan set out in state law is not what you want for your family, nor what they would likely choose.

People neglect their estates because "they don't have time" or they think it's "too expensive." But there is no time better spent than planning to protect your family's future. Moderate expense invested in professional assistance is insignificant next to the expense your estate could incur in litigation, taxation and red tape. It's not all about money—family quarreling, confusion and hardship can and does occur when loved ones die without an estate plan. Many families fight and become estranged, even for generations, over the assets of poorly planned or unplanned estates.

What Is Estate Planning?
Estate planning is a set of steps for effective management, enjoyment, and disposition of your property at the least possible cost, both in life and at death. Making a will is a crucial part, but planning doesn't stop there. Estate planning involves a review of your property ownership, insurance needs and your family business structure. This task is simplified into four basic steps:

1. Develop your vision for the future.
2. Determine needed future income.
3. Gather information on your resources.
4. Execute the instruments and agreements needed to fulfill your vision.

People often complain that seeking professional advice costs too much. Expense can be minimized if you take the initiative on the first three steps in this process prior to the first meeting with your chosen professional(s). Time is valuable for attorneys, tax professionals, and other experts who are needed in successfully planning your estate. Take the initiative to conduct family discussions, set clear objectives,

and compile the information that these professionals will need before you employ key professionals. This will save money. Most of the money spent on estate planning often represents charges for resolving these initial issues. These are things you can handle before your first meeting with a professional. If your family finds that its members cannot agree on key issues, you may wish to hire a mediator or other professional counselor.

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Begin the dialogue

Many estate plans never get written because death is a sensitive subject. Adult children don't want their parents to think they are greedy or controlling. Husbands and wives don't want to give the impression that they don't trust their spouses to look after them. And elderly parents often prefer not to think of old age and death at all. As one woman put it, "My father thinks that to make a will is calling it quits. After he draws it up, he may as well crawl away and die."

There is no easy way to begin a discussion on estate planning. One approach is to use this workbook as a springboard. Estate planning books, magazine articles, and seminars in your community also offer natural icebreakers. Often the bad experiences of a family in which someone died without a good plan will start the family thinking. Once the topic of planning your estate has been broached, it should be easier to discuss concerns and goals. Tough choices often must be made. If you don't actively make decisions now, you abandon your right to decide. No one else can plan for your family like you can. Take a deep breath and begin.

Each person's estate is his or her own, and there is no legal requirement that you discuss your plans with anyone else. It is prudent, however, to have these discussions with those most affected by your estate plan. If one of your objectives is maintaining the family farm or business and you do not have these discussions with all family members and other business associates, the farm or business could fail after your death. Successful discussions do not begin over the dinner table or over the holidays because these times can be highly emotionally charged. Gather family members together in a neutral location at another time of year for the specific purpose of having this discussion. Consider the use of a professional counselor to help facilitate the discussion. Some state extension services are associated with farm transition networks or other nonprofit groups who can help with this process, often without charge or for only a modest fee.

Revisit Your Old Plan

Suppose you drew up your will and "put things in order" several years ago? How often should you update your estate plan? Although you may change your will whenever you wish, there are three basic reasons to consider updating your will.

- There has been a change in your life.
- There has been a change in law.
- You have changed your mind.

You should review your will periodically to see if it needs updating. Events that may trigger the need to update your will include the following:

- Marriage or divorce.
- Birth of children or grandchildren.
- Death of a loved one.
- Move to a new state.
- Major change in financial circumstances.
- Changes in the law (taxes, probate, trusts, etc.)
- Beginning or concluding a business.

Your professional team will be glad to help you review and modify your estate plan periodically to keep it current.

Planning for your children and family members after your death can be stressful, but it may be one of the most important decisions you will make. Planning your estate requires your time and willingness to seek essential guidance and help from professionals. Estate planning requires time to gather essential information and coordinate with different professionals. It is in your best interest to begin outlining your objectives and planning how to follow through as soon as you can. If you have currently decided to initiate this process, consider scheduling a family meeting and getting some feedback to begin