ABOUT YOUR TEAM OF PROFESSIONAL ADVISERS

Putting together a team of professionals to assist you is a necessary part of the farm transfer process. Though your family will accomplish a lot of work on your own, ultimately you will need professionals to advise you on financial matters and legal issues related to the future you want, not to mention drafting documents to get you there. If you consider what is at stake - family harmony, protecting family wealth from unnecessary taxes, protecting the productivity of farm assets, continuing the flow of uninterrupted income to a farm enterprise – the time and money you spend on coordinating the process of farm transfer planning, including the time to carefully select and monitor your professional advisers and their fees, will have a high rate of return.

Members of your team will include attorney(s), a financial planner, and accountant; and could also require the services of appraisers, insurance agents, cooperative extension agents, and agents of financial institutions, including present and future creditors. The realities of putting together a competent “team” of professionals - one that effectively compliments each other's expertise and applies that expertise in a coordinated fashion to your particular circumstances – can be daunting. A primary challenge is determining who will coordinate the communication between professionals in a manner that you remain in the loop, and how to handle differences of opinion among your advisers on your particular situation and strategy.

Sometimes, a member of your family may volunteer for the task of coordinating the many assessments and information gathered as outlined in this workbook. This person may spend many hours reading up on subjects related to farm transfer planning, estate planning, arcane tax issues, as well as many hours on the phone with advisers, gathering information from family members, coordinating family meetings. There are other professionals that can serve in this purpose as well, either as a consultant, or as one of the members of your “team.” Always remember that, unless you and the family have agreed otherwise, the relationship between you and your attorney is one of confidentiality, and much information and likely decisions will need to be kept from other family members.

It cannot be avoided that the advice of some professionals will be tied to their effort to sell a certain product, such as insurance or financial investments. There is nothing inherently wrong with this. Someone with the proper licensing – to protect you as a consumer – has to do it. An attorney cannot take a financial interest – other than compensation for his or her time – in your farm transfer plan in the form of commissions from selling you an insurance policy or investments. Likewise, non-attorneys - such as financial planners, accountants, insurance agents - are breaking state law when giving you legal advice and drafting legal documents. If they offer, you should decline, and you should refrain from requesting them to offer such advice, thinking it will save you money. You should be able to get a satisfactory explanation from each of your professionals on the necessity of each product, not simply that it is what someone else recommended or purchased.

Attorneys
For a number of reasons, it is often practical to have the attorney serve as the central team member, often the point of first contact. One practical reason: Attorneys ethically must accept responsibility for making sure clients fully understand what rights
Section Four: Meeting with Professional Advisers

and opportunities they are giving up by choosing a particular course of action at the recommendation of a non-lawyer professional member of their team.

Remember that the basic legal issues involved in farm transfer are not specific to you as a landowner or farmer, but generally apply to all members of society. What differs is the landed nature of your wealth, your rural values that may govern your decisions, the unique aspects of farming as a small business owner and your role as caretaker of a land legacy. You should be confident your attorney understands this.

Selecting a good attorney can of course be a challenge. The attorney most farmers and landowners come in contact with will be someone local in their community with whom they have done business before or who has served other members of the family. However, the issues surrounding farm transfer fall into a number of areas of legal practice – estate and gift tax planning, elder law, farm business operation (itself a host of practice areas) - and it is a challenge to find all of these in one practitioner. This is not to impugn local general practitioners, but sometimes their range of services to the community (and the extended families therein), precludes expertise in certain critical areas.

A key challenge for the attorney, it must be recognized, is to effectively serve as a counselor to you and your family, not simply act as a plumber who fixes things that go wrong or executes documents at the direction of a non-attorney. You can help them and your family immensely by using the exercises in this workbook. The clearer your articulation of yours and your family’s goals for the farm, the better service you will receive (i.e., you will feel as though you have been understood), and it will save you and your attorney time, which translates into money saved.

In sum, attorneys cannot sell you products such as insurance and investments, and financial planners cannot draft the documents that transfer these assets in the event of an identified occurrence (risk) such as death or divorce or disagreement. Make sure that while both communicate with each other (with your permission), they are independently communicating with you and addressing your needs.

There may be other members of your team, for example:

**Life insurance agents** can review your insurance coverage and help you organize information for your attorney and tax adviser. The agent will suggest ways to help you avoid liquidity (cash flow) problems upon your death. Of course, life insurance agents are usually compensated through commissions on the policies they sell, so you may need to shop around to ensure that you find the right policy at the right price. Nonetheless, price alone should not be the sole basis for purchasing life insurance; an agent with whom you are comfortable and with whom you work well will be worth the commissions paid.

**Accountants** or tax advisers are also knowledgeable
of estate and other taxes. Accountants provide tax advice as do some attorneys. Certified Public Accountants are accountants who are licensed by a state board of accountancy. Accountants or other tax advisers will help you understand the tax consequences of various types of transfers. Accountants or other tax advisers also can advise you about business or property management, valuation of assets, and business continuation or sale. Accountants or other tax advisers are usually compensated on an hourly basis.

**Trust officers** offer management and investment services. Trust officers may be attached to a bank trust department, or they may be independent. Trust officers are usually compensated based upon an annual percentage of the principal in the trust. In general, the larger the trust, the lower the percentage that you can expect to pay. Most trust officers have a minimum amount of money that they are willing to manage.

**Financial planners** review your entire financial situation and identify strategies to achieve your financial goals. They work with other professionals to develop your insurance, investment, retirement, and estate plan. Financial planners are compensated either on a fee basis or on a commission basis. The services of commission-based financial planners may be quite valuable to you, but the scope of their advice may be limited by the products that they sell. Fee-based financial planners generally do not sell any products.

**Forestry professionals** can advise you on an often overlooked asset: your forest stand. The great majority of farms in the Southeast have a forestry component that should be considered an asset and managed as such. It therefore should be critical to have a registered or certified forester. A professional forester can help you a) develop a forest management plan, b) determine the volume and value of your timber, c) conduct timber harvests and sales, properly reforest your land by advising you on how to best establish a new stand of trees, d) reduce your risk of loss from fire, insects, diseases, overstocked stands, and improve tax treatment of income, and e) enhance wildlife habitat and improve hunting success or increase wildlife viewing opportunities.

**Mediator**
In a number of situations, you may find that communication is difficult within your family or those with interests in your farm property. A mediator is trained in consensus-building. Unlike the attorney, who ultimately represents one or more parties, a mediator is known as a “third-party neutral,” one who is paid *not* to take sides. They can enforce the rules of communication, help explain positions, and keep the discussions on track. In a large family situation, this could prove helpful.

**Conclusion - Finding Services in One Store**
For practical reasons, your attorney should be your primary coordinator of your legal and financial decision-making. In some cases, you may find that some of your essential services, particularly tax advice and perhaps accounting, can be housed within your attorney’s firm. There are strict state rules in place to protect you in this arrangement. If there are sensitive matters that must be kept confidential the attorney-client privilege offers that protection.

Ultimately, you may have to travel outside your locality or region to find the right services, particularly legal and tax. Just as you might travel across the state to a farm show to shop for new equipment to enhance your farm income, doing the same to visit an attorney will pay long-term dividends by protecting your wealth, the future of your farm, and the well-being of your family.