



# Ag Business Management

Informing farm families and ag businesses about management issues.

## Preparing to meet with your transition and estate planning team

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### Introduction:

Your business transition and personal estate plan is your road map into the future. The process necessitates discussion between involved individuals resulting in a prioritized list of goals for your business, your family, your retirement and yourself as an individual. It clears up questions and potential misunderstandings between family members. It is the document you take to your transition and estate planning team to begin the process. Without this list, your team cannot begin their work. They need to know what you want to have happen to your assets and more importantly what you do not want to have happen to your assets

The entire process must be based upon your individual, family, business/retirement goals. See *Transferring the Farm Series #1-Preparing to Transfer the Farm Business*.

### Who should be involved in preparation process?

All exiting and entering farm business parties must be involved in the preparation process. This includes spouses as well as in-laws. Spouses and in-laws, who are informed about the process and actively involved in the process, are more supportive than if not involved in the process. They also bring a unique perspective to the process and often ask the kinds of questions needed to be addressed to accomplish a fulfilling end result.

There are a number of steps involved as well as a whole host of questions you will need to address before your preparation to meet with your transition and estate planning team is complete. The key here is to focus on completing your prioritized goals list for your business in addition to your goals for your family, yourself and your retirement. Do not get mired down in all the details of all the complex items around business transition and estate planning: which business entity should I have, do I need a trust or a Will, how does capital gains tax work and how do I avoid the tax, etc. Thinking about that detail will frustrate you, confuse you and ultimately keep you from moving forward with your business transition and estate planning. Again, the key is to focus only on completing your prioritized list of goals. Once that is complete you are ready to meet with your transition and estate planning team.

To aid you in your preparation, here are some items to think about which may help you clarify where you want to go and also help clarify your preparation process. These items can be used to develop your goals list as well.

- How will the land be rented? What are rental rates and payment dates? How will rental rates be determined in the future?
- How will the machinery be transferred - gift, sale, lease with piecemeal buyout or exchange of labor for machine use? Who will pay the insurance, fuel, major and minor repairs? When will the machinery be transferred?

- How will livestock be transferred - lump sum sale, gradual sale, shared income for a few years, or livestock share lease?
- How will buildings and the house be handled? Use rent free? If not, what rental rate? Is it included with land rent? What arrangements are made for the transfer, sale, gift, or tax free exchange of real estate? Who will pay for insurance, real estate taxes, repairs, and utilities? Does the plan make maximum use of the Minnesota Homestead Credit?
- Are arrangements made to improve the security of the entering farmer a€" life insurance on parents, a buy-out provision giving the option to buy assets later, parents' living trust or Will to bind other heirs to sale terms?
- Will land be sold? If so, when and how will price and terms be determined? Would a buy-sell agreement be in order?
- Have adequate and acceptable housing arrangements been made for the long run? Is everyone happy with those arrangements?
- If parents will be working for their children, what is the method and rate of compensation? How much will parents be expected to or want to work on the farm after retirement?
- If families will be working together through several transition years, who will be responsible for what segments of the business? Who will be responsible for and manage the livestock, crops, machinery, marketing, farm records, employees, etc.? How will work be divided? Are hours and vacation times agreeable to all?
- What are the arrangements for transition of management and who is responsible for overall decision making? In other words, who has the final word and when does that right transition to the next generation?
- How will the debt be handled? Does the entering farmer assume the existing debt, borrow elsewhere and pay off old debt? How will this impact existing farmer's tax situation?

### **When should you begin the preparation process?**

The sooner a plan is established and implemented, the more confident the participants will feel. Once you decide to transfer the farm, the planning and preparation process should begin.

The process and resulting plan should provide for the complete transition of the business. Depending upon your situation, this may have to cover a period of 10 years or more.

As your goals, business, or family circumstances change, the transition and estate plan should be reviewed and revised when necessary or appropriate. Also, the exiting generation does not have to stop farming the minute they sign off on the plan.

### **Put it in writing!**

Put your goals and other thoughts in writing. If not written down, details are easily forgotten and often misconstrued as time goes by.

After a first draft, all farming parties should review the goals list and any other thoughts in the list. As soon as the document has agreement from everyone involved, a final list can be completed. As soon as the list is agreed upon, you are ready to meet with your transition and estate planning team.

Example list for your team:

- Parents will purchase a house in town.
- Farming heir (s) will purchase the farmstead.

- Land will remain in parents name until death and will be rented to the farming heir(s) at 75% of high end rents in the area.
- Equipment will be gifted to the farming heir(s) \$28,000 per year and they will buy all equipment not owned in 5 years.
- Livestock, grain and feed will be sold over three years with farming heir(s) buying what they need and can afford.
- Parents will provide labor as available but farming heir(s) should be able to complete work without parents.
- Parents will purchase life insurance on themselves with death benefits going to non-farm heirs along with the house in town and investments.
- Farming heir(s) will get the farm land.
- Parents will establish a Revocable Living Trust with pour over Will for all assets moving into the trust. It will include bloodline language and protective trust provisions.
- Trustees/Co-Trustees of our trusts will be the parents. If parents become incapacitated or die then specified children will become trustees.
- Parents will establish Common Law Durable Power-of-Attorney and all associated documents.
- Parents will establish a Disability Panel: current physician, specialist, and specified children on the panel.
- Parents will complete a Health Care Directive with HIPAA authorization.
- Parents will establish a South Dakota LLC as the farm business operating entity.

Once the final version is complete, all farming parties should review it to see if the transition plan and estate plans are consistent as well as consistent with your goals. You may want to include non-farming heirs in this process as well. If the final plan is what you want, have all farming parties sign the document.

Once complete, parents might want to consider having a family meeting where they share their plan. Share what you did and your reasons for doing it. The plan may not be popular with non-farm heirs but at least they are aware of what was done and why.

If the farm business changes over time or the environment in which the farm business operates changes in the future, it is crucial that all parties review the transition plan. If necessary, the plan can be modified to reflect the current situation.

Developing a transfer plan is critical to the future success of your farm business. It is very important to put together a competent transfer team with an attorney, accountant and others that understand farming, estate planning, elder law and disability planning.

Caution: This publication is offered as educational information. It does not offer legal advice. If you have questions on this information, contact an attorney.