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Estate Planning for Farmers

A Step-by-Step Guide

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Many farmers spend a lifetime building their farm and hope to see it continue into the next generation. An estate plan puts the structure in place to carry out those plans and protect the legacy they have built. Farm families may find estate planning to feel overwhelming. There are decisions to make, information to gather, professionals to consult, and documents to complete. Breaking the process into steps can make it more manageable. You do not have to make every decision at once, and you do not need to wait for a complete farm succession plan before beginning your estate plan.

Step 1: Start with your vision

Before meeting with your attorney, take time to think about what you want your estate plan to accomplish. What should happen to the farm business? What should happen to the land, equipment, livestock, savings, and personal property? How should family members who are involved in the farm fit into the plan? What about family members who are not involved?

You do not need to know which legal documents will accomplish these goals yet. At this stage, focus on the outcome you are trying to create. A clear vision gives you and your professional team a starting point for the decisions that follow.

Step 2: Take stock of your assets

Creating an estate plan that fits your situation requires knowing what you own and how it is currently held. Make a list of your farm and personal assets. Farm business assets commonly include equipment, livestock and land. Also gather information about loans or other debts associated with these assets. Be sure to include your ownership in existing farm and any nonfarm business entities.

Pay particular attention to assets that pass through a beneficiary designation rather than through a will or trust. Bank and investment accounts, retirement accounts, and life insurance policies may fall into this category. These assets still need to fit into your overall estate plan, and your estate planning documents may not control how they are transferred. Your goal is to be able to explain what you own and how you see your plans applying to those assets.

Step 3: Build a planning framework

Once you have a vision and an inventory of your assets, begin developing the basic framework for your estate plan. An estate planning attorney can help you determine how your goals can be translated into an effective legal structure. A farm business consultant or other professional may also help you work through some of the decisions before the legal documents are drafted.

At this stage, focus on the structure of the plan rather than the wording of individual documents. Who will receive different assets? How will farm assets fit together? Who may need authority to make financial or health care decisions if you cannot? If the farm is transitioning to another generation, how should the estate plan support that transition? Once the framework is clear enough, your attorney can begin translating it into legal documents.

Step 4: Align your team of professionals

Farm estate plans can involve legal, financial, tax, insurance, and business decisions. That means one professional may not have all the information needed to see the entire plan. Your professional team may include:

- An estate planning attorney
- A tax professional or accountant
- A financial planner
- An insurance professional
- A farm business consultant

Each professional may be working on a different part of the plan. Your attorney may focus on the legal documents while your tax professional considers tax implications, and your financial and insurance professionals work with accounts, policies, or beneficiary designations. A farm business consultant may be able to help guide you through the process, making sure all the pieces are in place.

The important part is coordination. Your professionals should be working from the same basic framework rather than developing separate pieces that do not fit together. Share relevant information among your advisors and make sure they understand the overall plan you are trying to put in place. In some situations, meeting with more than one professional at the same time can make that coordination easier.

Step 5: Draft the documents

Once the basic framework is established, work with your attorney to draft the documents appropriate for your situation. An estate plan may include several different documents, each serving a different purpose:

- **Will.** A will directs how many of your assets will be distributed after your death. Wills goes through probate, which is a court-supervised process of settling the estate.
- **Trust.** A trust can also provide detailed directions for managing and transferring assets. Assets transferred through a trust avoid the probate process, allowing them to be received more quickly and directly. Trusts may be particularly useful when an estate includes farm business assets or when assets need to be managed over time.
- **Financial power of attorney.** This document authorizes another person to handle financial matters if you are unable to do so.
- **Medical power of attorney or patient advocate designation.** This allows another person to make health care decisions if you are unable.

Drafting your estate plan documents is often an iterative process. Read the documents and ask questions about anything you do not understand. You may need to make changes as you see how the legal documents translate your planning framework into specific instructions. The goal is not simply to have documents drafted. The documents need to accurately reflect the plan you have developed and be consistent across each other.

Step 6: Ensure consistency with your succession plan

If you are in the process of farm succession planning, review your estate plan against that plan. Does ownership transfer in a way that supports the planned farm transition? Does the plan provide for management continuity? Do agreements involving land or business ownership fit with the transition you are building?

Additional documents, such as buy-sell agreements and long-term rental agreements, may be needed as the succession plan develops. However, do not wait until every succession decision has been made before developing estate planning documents. Your estate planning documents can be updated as your succession plan takes shape. The important thing is to keep the two plans consistent as they develop.

Estate planning and **succession planning** often overlap but are not the same process. Succession plans address the full set of issues for transitioning the business, whereas estate plans focus on the entirety of the individual's assets

An ***estate plan*** creates a roadmap for the distribution of your assets after death, as well as decision making roles should you become incapacitated.

A ***succession plan*** focuses on the transition of the business from current owner to a successor. It addresses both ownership and management, and the transition process often begins during the current owner's lifetime.

Step 7: Make your plans official

Drafting the documents is not the end of the estate planning process. The documents and other parts of the plan must be completed and implemented before they can effectively guide what happens.

Sign your documents. Farmers sometimes get stuck in the review process, especially when there are several documents or unresolved details. However, an unfinished document does not put the plan into place. Work with your attorney to complete the required signing process. There may be several documents to sign, and the people that are assigned roles in your estate plan may also need to sign documents. Remember that when the estate plan is eventually needed, you may not be available to explain what was supposed to happen. Completing the documents is what allows the plan you developed to guide the process.

Fund your trust. Creating a trust document does not, itself, make the trust ready to function. Assets that are intended to be held by the trust need to be transferred into it. Work with your attorney, financial planner, and other advisors to determine what needs to be transferred and to complete the necessary steps. A trust can only manage the assets that have been placed within its structure.

Check beneficiary designations. Some assets pass directly to a named beneficiary instead of being distributed through your will or trust. These can include bank accounts, investment accounts, retirement accounts, annuities, and life insurance policies. Review the beneficiary designations on these assets and make sure they are consistent with the rest of your estate plan. An outdated beneficiary designation can cause an asset to be transferred differently from the plan you have developed.

Organize important information. Your family may need more than your estate planning documents to carry out your plans. Organize important information so it can be found when needed. This may include:

- Where your estate planning documents are located
- How to find other important records
- A list of farm and personal assets
- Insurance and financial account information
- Contact information for your key professionals

Make sure the appropriate family members know where this information is kept and how to access it. The FARMS Spreadsheet Tool can help keep this information together and make it easier to update.

Step 8: Communicate with your family

Estate planning is not simply a process between you and your attorney. Your family will eventually be responsible for carrying out the plan or living with the decisions it contains. Communicate the important decisions you have made and the reasoning behind them. This does not mean that everyone must agree with every decision. It does mean that family members understand how the plan is intended to work and why key decisions were made.

Some people may also need practical information. Those who have responsibilities under the plan should know about those responsibilities. Key people may need to know where important documents are located, who has authority to act, who should be contacted if something happens, and what immediate farm responsibilities may need attention. Clear communication can reduce confusion and help the family and farm move forward when the plan is needed

Step 9: Review and update regularly

An estate plan is not something you complete once and then ignore indefinitely. Your farm, family, assets, and succession plans can all change. Review the plan when significant changes occur, such as:

- Marriage or divorce
- Births or deaths in the family
- Major land purchases or other changes in assets
- Formation of a new business entity
- Retirement
- Significant changes to the farm succession plan

Even without a major event, periodically return to the plan and make sure it still matches your situation. One rule of thumb is to review it every five years. Review the documents, beneficiary designations, trust funding, business agreements, and other pieces together rather than assuming that a change to one document automatically updates the others. If your succession plan continues to develop, your estate plan should develop with it.

Completing the process

Creating an estate plan involves more than deciding what should happen and having an attorney draft the documents. A complete process moves from identifying what you are trying to accomplish and taking stock of your assets, through developing the framework and coordinating with your professionals, to drafting, signing, and implementing the plan.

For farmers involved in succession planning, the estate plan also needs to remain connected to the farm transition. You do not have to finish every part of succession planning before putting an estate plan in place. You can start with the plan you need now and update it as the farm transition develops.

The important part is to keep moving through the process. A plan that has been completed, implemented, communicated, and kept current gives the people who eventually carry it out a clear structure to follow.