

# Estate and Succession Planning for Farmers and Ranchers

## Economic Background of Farm and Ranch Estate and Tax Planning

Prior to the 1950s, farmers and ranchers in the United States were primarily concerned with upgrading farming practices to do a better job of food and fiber production, often to provide food just for their own families. In the fairly agrarian society of the 1950s, the total population of the United States was about 150 million and farmers made up 12.2% of the labor force. One farmer supplied approximately 15.5 persons in the US their agricultural food source and there were about 5.4 million farms in the country.<sup>1</sup> From the 1950 forward, many new technologies, including those developed within the framework of the land-grant universities<sup>2</sup> became available to the American farmer and rancher and, as a result, farm and ranch size began to grow. During these post-1950s decades of tremendous technological and productivity growth, farmers and ranchers invested more and more capital into their agribusinesses. Farm acreage was consolidated into larger production units.<sup>3</sup>

In the 1970s, farmland values began to increase, accelerating throughout the decade, reaching record land prices in the early 1980s.<sup>4</sup> In many cases farmland and ranch land values more than doubled. Inflation had become a major force for landowners to deal with as speculators moved into the land markets trying to seek shelter or "a hedge" against the erosion of buying power due to an oversupply of dollars. Subsequent increases in land and other farm property values made many farmers and ranchers millionaires. (Most of their wealth merely on paper as they were in many cases land-rich and cash-poor.) As our US population became more concentrated in urban and suburban living centers, agrarian statistics changed significantly. In the 1990s, farmers accounted for 2.6% of the US labor force with now only 2.1 million farms in existence;

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<sup>1</sup> Economic Research Service. (2000, September). A history of American agriculture, 1607-2000. (ERS-POST-12.) Washington, DC. The US Department of Agriculture.

<sup>2</sup> Land-grant universities (also called land-grant colleges or land grant institutions) are institutions of higher education in the United States that have been designated by each state to receive the benefits of the Morrill Acts of 1862 and 1890. The Morrill Acts funded educational institutions by granting federally controlled land to the states. The mission of these institutions, as set forth in the 1862 Act, is to teach agriculture, military tactics, the mechanic arts, and home economics, not to the exclusion of classical studies, so that members of the working classes might obtain a practical college education. Land grant universities maintain state cooperative extension offices throughout the country, thus they are a tremendous resource for the agricultural community.

<sup>3</sup> In 1950, the average acres per farm was 216; in 1992, the average acres per farm was 461. 1950 US irrigated acres: 25,634,869; 1992 US irrigated acres: 49,404,000.

<sup>4</sup> Farm income, grain prices, interest rates, return on other investments and 1031 exchanges are often mentioned as reasons for the increase.

farmers had become more productive however, and one farmer supplied approximately 100 persons their food source.<sup>5 6</sup>

Although most farmers and ranchers enjoyed the benefits of inflation in their property values and their technologically-enriched farm and ranch industries, this increase in success and wealth brought new concerns such as property ownership options, business entity selection, estate and retirement preparation and succession planning. This Chapter attempts to address some of the issues surrounding farm and ranch ownership and the special concerns relating to estate planning for the farmer and rancher. Any comprehensive estate, retirement or succession plan will be influenced by the decisions made in these matters and one should be attentive to the consequences of these choices.

## **Property Ownership and Transfer**

Property may be owned by one person or by two or more persons concurrently. The two most important types of co-ownership are joint tenancy and tenancy in-common. The method selected may affect both the size of one's estate and the estate and inheritance tax consequences. Everyone should always consider the federal estate tax exemption limits (and future changes to these exemptions) and the values of their estates when deciding how to hold property, but farmers and ranchers should be even more vigilant of these matters, due in great part to constantly shifting property values.

### **A. Joint Tenancy**

In a joint tenancy, all co-owners are equally entitled to the use, enjoyment, control and possession of the land, or its equivalent in rents and profits. The best-known characteristic of joint tenancy is the right of survivorship. Upon the death of one joint tenant, the decedent's rights pass immediately to the surviving tenant(s). Death of a joint tenant does not affect title, as the title is vested equally in all joint tenants rather than individually. Many persons, and particularly married couples, hold or own much of their property as joint tenants with the right of survivorship. According to common-law, joint tenancy must feature "four unities": time, title, interest, and possession. Joint tenants must acquire title at the same time, be named in the same deed, hold exactly equal interests, and be entitled to equal rights of possession.<sup>7</sup>

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<sup>5</sup> Economic Research Service. (2000, September). *A history of American agriculture, 1607-2000*. (ERS-POST-12.) Washington, DC. The US Department of Agriculture.

<sup>6</sup> For comparison, in 2006 Colorado had 30,700 farms and ranches with an average farm size of 1000 acres. *High Plains Journal*, December 10, 2007, Article 2007-50.

<sup>7</sup> Colorado Revised Statutes § 38-31-101.

When a joint tenant dies, the decedent's interest passes immediately and automatically to the surviving joint tenant. Jointly owned property does not go through probate when a joint tenant dies.<sup>8</sup> The property does not pass according to the property owner's will, nor does it descend to one's heirs according to state law. The decedent's interest merely disappears, and the entire ownership remains in the hands of the surviving joint tenant or tenants. Joint tenancy assures the surviving spouse a fair share of the marital property and the property passes free of the claims of unsecured creditors. Disadvantages of joint tenancy may arise if marital difficulties occur, or if one of the parties has obligations or responsibilities (children) resulting from a previous marriage.

With regard to estate planning, the passing of jointly held property to a surviving spouse may not allow the decedent's federal tax exemption to be fully utilized. Since the property is simply passed on, it is not included in the value of the decedent's estate and therefore cannot have the exemption made against it. For this reason, many estate planning practitioners recommend against holding property in joint tenancy with rights of survivorship, especially for estates which exceed or may potentially exceed the estate tax exemption.

## **B. Tenancy in Common**

Tenancy in common is an estate in land held by two or more persons with only the unity of possession. Unlike joint tenancy, tenants-in-common may hold varying size interests, may take title at different times, and may receive their interests through different deeds. But each is entitled to the undivided possession of the property, according to their proportionate share and subject to the rights of possession of the other tenants. Upon the death of a tenant-in-common, there is no right of survivorship. The decedent's interest passes according to his or her will or the state law of descent and distribution.

Any farmer and rancher must look at his or her overall estate plan to determine if the property they own is held appropriately to permit all allowable tax advantages. Professional advisors will assist in this determination and should be utilized for estate planning purposes as well as property acquisition opportunities.

## **Choice of Business Entity**

Business, including ranches and farms, can be structured in a variety of ways. While sole proprietorship may work for the size of your farm or ranch, it may be advantageous

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<sup>8</sup> An exception occurs when both or all of the joint tenants are involved in simultaneous deaths. The property now goes through probate because there is no surviving joint tenant.

to select a more complex form of business entity. Reduction of taxes, limiting liability, raising capital, expanding operations, bringing a family member or other person into your operations ~ these are just some of the objectives a business owner must consider when determining how their business is best owned. The possible forms of doing business are numerous.<sup>9</sup> The four (4) most basic forms are: the sole proprietorship, the general partnership, the corporation (C and S varieties), and the limited liability company. Consultation with a professional advisor is crucial to provide help with entity selection.

### **A. Sole Proprietorship**

Simply put, a sole proprietor is defined as going into business for one's self. The business is not distinct from one's personal tax and liability concerns. No state registration is needed and the business owner has total control over his or her business operations. When the sole proprietor dies, the business is terminated, without need for formal documentation or procedure. The sole proprietor reports all business income and losses on his or her individual tax return.<sup>10</sup> The largest drawback is that the person has no shield from liability and non-business assets can be sought after to settle debts.

### **B. Partnership**

Like a sole proprietorship, a partnership requires no formal creation documentation.<sup>11</sup> A partnership begins when 2 or more people start doing business together. Partners are responsible for each other's actions, business debt and obligations, including court judgments, jointly and severally. A partnership does not pay taxes on profits. The IRS considers partnerships to be 'pass-through' or 'flow-through' entities ~ the income or losses from the business flow through to the individual partners who then report these items on their individual tax returns. The partnership is required to file an annual Form 1065, which provides information on the entity to the IRS, and each partner attaches Schedule K-1 to his or her Form 1040, setting out each partner's share of profits and losses.

### **C. Corporations**

A corporation is a legal entity, separate from its owners and managers. It is created by state statute with the filing of articles of incorporation with the Colorado Secretary of

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<sup>9</sup> Limited partnerships, registered limited liability partnerships, joint ventures, business trust and others.

<sup>10</sup> There is a separate Schedule F for farms and ranches, but this is part of the individual's Form 1040.

<sup>11</sup> A partnership agreement, however, is a recommended plan. In the absence of an agreement, there are state statutes which govern partnership relationships. Colorado Revised Statutes §§ 7-60-101 et seq. "The Uniform Partnership Law".

State and is governed by the laws of Colorado.<sup>12</sup> A corporation may either be a “C” corporation or an “S” corporation. All corporations are C corporations unless they elect to be treated as an S variety. The election is a tax matter solely; under state law, the election of C or S makes no difference.

The biggest advantage of conducting business as a corporation is the aspect of limited liability or corporate shield. This protects the business owners and shareholders from personal liability for corporate debts and obligations so that only the corporate assets are used to pay corporate debts. In order to maintain this shield, the corporation must conduct itself separate from the personal affairs of its owners. There should be corporate formalities such as, adequately funding the corporation, maintaining separate books and records and bank accounts, no commingling of personal and corporate assets (unless they can be designated as investments to fund the corporation), holding regular meetings of the shareholders and directors, formally issuing stock, and others.

A corporation is the only type of business that must pay its own income taxes on profits. But any justifiable business cost can be deducted as an expense. Net corporate income is taxed to the corporation even if it is retained as earnings or paid out to its shareholders as dividends. Corporations have favorable tax treatment in the form of lower rates, but dividends paid out to shareholders face double taxation ~ taxed once at the corporate tax rate and again as ordinary income to the shareholder (but corporate losses do not flow through to be taken by the shareholders).

S corporations are a hybrid form of entity, combining the legal characteristics of a C corporation and the tax treatments of a partnership. In this type of corporation, with few exceptions, the business profits, losses, credits and deductions pass through the corporation to the owners who report them on their own Form 1040 returns. There are no taxes owed at the entity level, and profits and losses are proportionately allocated based on the ownership interest of the shareholders.

#### **D. Limited Liability Company (“LLC”)**

S corporations and limited partnership have been increasingly replaced as the entity of choice by the LLC.<sup>13</sup> In an LLC, members can retain their limited personal liability while still performing the business affairs of the company. LLCs don’t require the formal management of a corporation, but members still should be aware to shield the LLC from liability by keeping separate books, records and bank accounts, keeping the LLC adequately funded, and best practices would dictate that an operating agreement be

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<sup>12</sup> Colorado Revised Statutes §§ 7-90-101 et seq. “Colorado Corporations and Associations Act”.

<sup>13</sup> See Colorado Revised Statutes §§ 70-80-101 et seq. “Colorado Limited Liability Company Act.”

drafted (similar to corporate by-laws). LLCs are taxed like partnerships, meaning flow through of profits and losses to the members. Single-owner LLCs are treated as sole proprietorships by the IRS and do not file a separate return. The owner reports all income and losses on Schedule C of his or her Form 1040. Like a partnership, a multiple-member LLC is required to file an informational tax return, Form 1065, and provide each member with a Schedule K-1 to report his or her share of profits and losses.

Overall, the LLC provides simplicity and flexibility and the pass-through feature could help save taxes (a corporation and its shareholders are subject to double taxation on the gain from a sale of land, if ever any farm/ranch property must be sold). If your plan is to include multiple shareholders and/or investors in your business operations, or if you have employees to whom you offer benefits, a corporation might work best (a corporation can deduct the cost of health insurance premiums, reimbursement of medical expenses, etc.; in an LLC only a portion of these types of expenses can be deducted).

As stated, every farmer and rancher will have different objectives to meet when selecting the entity by which they want to conduct business. If employees are working in a farm or ranch operation, it would make good sense to protect one's personal assets in the event of accident or death by structuring the business as a corporation or limited liability company. A simple and small farm or ranch operation may work well as a sole proprietor or partnership. Consultation with a professional advisor will assist one in determining the appropriate vehicle to use.

## **Estate Planning**

The fundamentals of estate planning are really no different for farmers and ranchers than they are for individuals in the non-farm world. However, retirement and succession planning perhaps have special significance in that farm and ranch households are often affected by savings and retirement policies in ways that are different from the rest of the US households. For example, farm operators are typically older than the majority of the US workforce.<sup>14 15</sup> Healthcare, medical improvements and technological advances in farming equipment and techniques have all contributed to this phenomenon, not to mention that farming is becoming popular as a part-time retirement activity.

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<sup>14</sup> Over one-fourth of all farmers, and about half of all agricultural landlords, are age 65 or older, compared with only about 3 percent of the overall US labor force. *Amber Waves*, April 2005, a publication of the United States Department of Agriculture, Economic Research Service.

<sup>15</sup> In 2002 the average age of a Colorado farmer was nearly 54 years. *High Plains Journal*, December 10, 2007, Article 2007-50.

In addition to the issue of age, farmers and ranchers often have several income sources and different forms of wealth and savings habits as compared to the general population. Increased personal savings, land and equipment holdings, contributions through self-employment taxes, off-farm income<sup>16</sup>, less reliance on social security ~ all of these factors contribute to a different setting for farmers and ranchers and their retirement and estate planning.

## **A. Getting Started**

As the Chapter on Estate Planning from this Senior Law Handbook provides, there are required basics for anyone contemplating these types of planning decisions. Planning strategies for farmers and ranchers can also include:

- Create and maintain an up-to-date, itemized list of all your property and debts, including, but not limited to, insurance policies, securities, bank accounts, real estate (farm and other), farm and recreational equipment, jewelry and artwork, business interests, pension plans, IRAs, and other retirement benefits.
- Consult with appropriate advisors (estate planning attorney, CPA, financial advisor) to begin the process of creating a will or trust (or maintaining existing documents) and planning for and managing your asset base and tax (income, gift and estate) considerations. Maintain a written list of your current financial advisors, your attorney, and your accountant and keep it with your list of property. Give a copy of this list to your personal representative, successor, trustee, relative, or friend you trust, and to your attorney or financial advisors.
- Consider drafting and safeguarding certain powers of attorney, including a health care power of attorney and directive to physicians.
- Create a viable estate management plan, considering the exemption limits for passing along assets free of transfer taxes. Currently, the 2009 exclusion is \$3.5 million. In 2010, the federal estate tax will be repealed (although the rules relating to the basis in the inherited assets in the hands of your heirs will be changed) and in 2011 it will be reinstated with a \$1 million exclusion.
- Coordinate the marital deduction and the estate tax credit. Simply leaving everything to your spouse is not always the best estate planning, especially if your estates exceed the limits of this tax credit. Remember that each spouse is

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<sup>16</sup> Off-farm income can account for up to 90% of total farm household income ~ outside businesses interests, wages, salaries, interest and dividends, pensions, annuities, military retirement, unemployment, social security, veteran's benefits, other public retirement and public assistance programs, and rental income from nonfarm properties. *Amber Waves*, April 2005, a publication of the United States Department of Agriculture , Economic Research Service.

entitled to the estate tax exemption and all efforts should be made so that both spouses are allowed to take their credit, if needed. When property passes directly to a surviving spouse (such as when property is held in joint ownership with rights of survivorship), then the decedent's estate will not get benefit of the exemption and it is wasted. The unlimited marital deduction (property passes to surviving spouse without any estate tax) should be used in coordination with the estate tax credit to insure that as much property passes to heirs and the surviving spouse without imposition of any estate taxes.<sup>17</sup>

- Be sure to keep in mind the special use valuation tax election available to farmers and ranchers under Section 2032A of the Internal Revenue Code. Basically, this provision allows an executor to value real property according to its actual use, rather than its highest or best use. Allowing valuation at its actual use can result in a lower estate value, thus potentially lower taxes. The 2009 special use valuation limit is \$1,000,000.<sup>18</sup>
- Obtain values for your assets from qualified appraisal agents. Assets to be valued include real estate, farm equipment, machinery and other inventory, homesteads, vehicles, supplies, any tangible asset with value.
- If you own real property in multiple states, you will need to have an estate plan in each state. For example, an estate with ranch land in Colorado and Nebraska will need probate proceedings in each state in order to transfer or convey that property to heirs. In this situation, a trust is the best tool ~ no probate needed and the trustee can dispose of/manage multiple-state real estate.
- Record if/where you maintain a safe deposit box and where you keep your important documents.
- Provide instructions regarding your funeral wishes and any prepaid funeral plans to whoever you think will be involved in making these arrangements.

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<sup>17</sup> Appreciating land values and increasing farm sizes have led to a larger share of farm estates being subject to the federal estate tax. In 2006, approximately two percent (2%) of all estates in the US owed federal estate taxes, but approximately four percent (4%) of all farm estates and nearly eighteen percent (18%) of commercial farm estates owed estate taxes. *United States Department of Agriculture, Farm Bill Forum.*

<sup>18</sup> To qualify for the §2032A limit, 1) The net value of the business property must be at least 50 percent of the decedent's gross estate and at least 25 percent of the decedent's adjusted gross estate (the gross estate reduced by certain deductible debts, expenses, claims, and losses); 2) The decedent must have transferred the business to specified close family relatives; and 3) The decedent or family members must have used the qualifying property for five of the eight years prior to the decedent's death; qualified heirs must use the farm or business property for 10 years after the decedent owner's death.

- Consider charitable transfers to accomplish your estate planning goals. A charitable remainder trust, charitable lead trust, charitable gift annuity, outright gifts to charities and family members.

## **B. Some Estate Planning Transfer and Tax Reduction Strategies**

### **1. Conservation Easements**

A conservation easement is a restriction or encumbrance placed on property which protects the property from certain types of development, often preserving the ecological and open spaces values of the land. It is a legally enforceable land preservation agreement between a landholder and either a governmental agency (a municipality, county, state or federal entity) or a qualified not-for-profit land trust organization. Conservation easements are voluntary and allow the landowner to continue to privately own and manage the land and potentially receive significant state and federal tax advantages if they donate the conservation easement. Perhaps of greater value to a farmer or rancher, by creating this type of environmentally-friendly restriction, they have contributed to the public good by preserving the conservation values associated with their land for future generations.

In order to gain tax advantages from granting a qualified conservation easement on their land, farmers and ranchers must obtain a written appraisal report of the value of the easement. The value described in the appraisal is the fair market difference between the land's value before the easement was granted and the value after the restriction was placed. The amount of the difference is the easement value allowed to the land owner. The value of a conservation easement tax credit is based on the appraised value of the conservation easement.<sup>19</sup> In Colorado, the credit is quite generous ~ up to \$375,000 income tax credit for 50% of the fair market value of the easement or a \$750,000 donation.<sup>20</sup> In addition to the State tax credit, those who donate a "qualifying" conservation easement to a "qualified" land protection organization under the regulations set forth in 170(h) of the Internal Revenue Code may be eligible for a federal income tax deduction equal to the value of their donation.

To qualify for this income tax deduction, the easement must be: a) perpetual; b) held by a qualified governmental or non-profit organization; and, c) serve a valid "conservation purpose," meaning the property must have an appreciable natural, scenic, historic,

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<sup>19</sup> See Colorado Revised Statutes, § 39-22-522.

<sup>20</sup> For example, assume that a farmer has real estate valued at \$800,000. The farmer places a conservation easement on the property, restricting it to perpetual agricultural use and now the property is worth \$600,000 as a result of this encumbrance. The farmer has 'reduced' the value of his property by \$200,000 and therefore his donation value is \$200,000. The amount of the tax credit for this donation is \$100,000 (50% of its FMV).

scientific, recreational, or open space value. Another beneficial aspect of the Colorado law is that donors of conservation easements may transfer or sell their tax credits to other Colorado taxpayers and receive cash for these credits. Not only does this help the land owner who doesn't have enough income to utilize the credit, but it provides cash flow ~ Sellers can receive approximately 80% of the value of their tax credits in 2008. For example, if a Seller wants to sell \$200,000 worth of tax credits, that Seller will receive \$160,000 in cash.

In the last couple of years, the Colorado Conservation Easement Tax Credit program has come under scrutiny from the Colorado Department of Revenue and US Internal Revenue Service.<sup>21</sup> Fourteen other states have similar programs, but Colorado's generous tax credits, and especially the sale or transfer of these tax credits, is what concerns these tax regulatory agencies.<sup>22</sup> The State of Colorado has created an Oversight Commission<sup>23</sup> to review conservation easement application and appraisals of these easements.<sup>24</sup> Anyone considering granting a conservation easement should consult with an attorney to determine the current legal status of these types of encumbrances.

## **2. Installment Sales**

When selling real property and receiving one or more payments in subsequent years, the taxpayer may report the sale as an installment sale. This allows the taxpayer to defer the recognition of gain over many years and save taxes.<sup>25</sup> Under federal tax law, a farmer who sells development rights to his land and receives payment for the sale in installments would be taxed each year only on the capital gain from the sale he receives

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<sup>21</sup> "Colorado is seeking repayment of \$15 million of tax credits granted as part of an innovative incentive program to save endangered lands. And that amount is likely to grow as part of a massive audit the Colorado Department of Revenue has undertaken to determine whether the tax credits were overvalued or were claimed on lands that weren't endangered. The Revenue Department's investigation, one of the largest it has ever undertaken, is looking at more than 10,000 tax returns claiming the credits since 2001. During that time, more than \$274 million of conservation credits were claimed from Colorado's treasury alone. The Internal Revenue Service and the state's divisions of real estate and security also are investigating the credits, the people who received them and the appraisers who valued the land. Rocky Mountain News, *State Disputes \$15 Million of Tax Credits*, Jerd Smith, December 8, 2007.

<sup>22</sup> Colorado is one of three states that allow the sale or transfer of tax credits. Rocky Mountain News, *State Disputes \$15 Million of Tax Credits*, Jerd Smith, December 8, 2007.

<sup>23</sup> See Colorado Revised Statutes, § 12-61-721.

<sup>24</sup> In 2008, Colorado's Appraiser statutes were amended by the passage of HB1353, the Conservation Easement Bill to prevent abuses of the state's land-preservation tax credit program. This new legislation creates a nine-member Conservation Easement Oversight Commission, appointed by the governor, that will meet at least quarterly to review applications for conservation easement holder certification and to review any other issues referred to the commission by any state agency

<sup>25</sup> See 26 United States Code §453.

during that tax year. He would not be required to pay taxes on the full capital gain in the sale year, although he could elect to do so if he wished, even if he is receiving payment in installments.

The installment land (ILC) contract is also a method of affecting a sale. An ILC is a contract for delayed delivery of a deed providing for periodic payments over a term of years, similar to a promissory note. It is distinguished from the typical real estate buy-sell contract in that the buy-sell contract does not usually contain provisions for installment payments. The ILC is merely intended to hold the deal for a short period until the condition of title is completed and title is delivered to the buyer. Installment land contracts are more prevalent during periods of “tight” money or when a property is difficult to finance conventionally. Oftentimes a person with little or no cash for a down payment will be permitted to take possession of property under an installment land contract providing for monthly payments to the seller. The seller will still hold “legal” title, and the buyer will possess “equitable” title. Farmers and rancher with equitable title can still use the property as needed while the conditions to complete the final purchase are met.

## **Succession Planning**

Succession planning is a continuous process to transfer knowledge, skills, labor, management, control and ownership between the generations. Your decisions regarding ownership of assets, choice of business entity, and estate, retirement and tax planning are all part of the overall plan for succession. Successful farm and ranch generational transfer depends in great part on the financial aspects of the farm or ranch operations as well as the personal aspects. So many factors come into play when handing down a business ~ expectations and goals of both the older and younger generation can be similar or quite different. As with any business transaction, open communication is essential and sharing these expectations and goals is crucial to a successful transition.

Recent surveys provide some alarming statistics. Only one percent (1%) of family-owned farm and ranch businesses in North America are transferred to a third generation. Another report shows that thirty percent (30%) of all family-owned farm and ranch businesses have not considered a successor, with only sixty-three percent (63%) having done so after the owner has reached age 65. Another recent survey shows that more than fifty-eight percent (58%) of farm and ranch business owners list inadequate succession planning as the biggest threat facing their business.<sup>26</sup>

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<sup>26</sup> *Amber Waves*, April 2005, a publication of the United States Department of Agriculture , Economic Research Service.

## **A. Handing It All Down**

As difficult as it may be, it's important to envision the day when you no longer will be in charge of your farm or ranch. You could leave your heirs and your business vulnerable to considerable estate taxes and management upheaval if a succession plan is not created.

Typically, succession planning entails several steps: 1) determining the practicality of transferring your business ~ are your farm or ranch operations sufficiently viable for this transfer to make sense; 2) choosing a successor ~ is there a family member, friend, employee who is willing to succeed into your responsibilities and willing to take on the new ownership role and responsibility; 3) beginning the transfer of ownership and management to the successor; and 4) finalizing the transfer of ownership and management responsibilities to the successor. The process of succession planning is typically stretched out over several years. A moderately paced transition will provide the best environment for the bottom line and overall stability of the operations.

Experts in the field of succession planning suggest using these best practices:

- Set a target date as your last day as primary decision-maker on the farm or ranch and start shifting responsibilities ahead of time. You want to be able to oversee the transition while you're still there.
- Assist in the development/training/education of your successors along the way and keep them fully informed of your work ~ schedule regular meetings to review finances, including debt and revenue updates/forecasts, workload expectations and schedules, employee issues, important non-farming topics, equipment and supply, to name a few.
- Work with professional advisors to complete any transfer of assets, debt restructuring, review and modify if necessary existing business structures, and to review/finalize any other legal/financial transfer requirements. Consider having a Buy-Out Agreement in place if multiple successors are involved.
- Set goals and expectations that take into consideration the needs of your successor, including family time, lifestyle, work habits and the successor's expectations and goals, etc.
- Decide with your successor whether to offer an incentive to retain key employees after the transition.

- Consider off-farm family members needs and expectations. Provide for buying out a family member's interest, if necessary (i.e. sons or daughters who are not on the farm or ranch, but with whom you wish to share your inheritance.).
- Review the asset protection and liability insurance needs of your business operations.

## **B. Some Additional Tax Saving devices**

### **1. Trusts**

Trusts are extremely helpful tools to use during estate and succession planning. They can be valuable tools in administering the orderly transfer of assets and management to heirs. Trusts, including charitable trusts, may be used to shelter capital gains tax and provide greater cash flow for the retirees that in some cases may be used in wealth replacement strategies. Trustees can add valuable assistance as an objective third party to issues that arise within families during and after succession transition. Goals of trust creation can be numerous: wealth replacement, providing for a special needs beneficiary and/or minor children, avoiding probate (especially if real property is owned in many states), providing for a beneficiary or spouse without financial management skills, keeping your estate private, asset protection, organizing business assets into one vehicle, allowing for flexible distribution of property, etc.

Charitable trusts might work well for your estate and succession plans as well. Charitable trusts can achieve multiple goals including, removing assets from large estates, providing an income stream to you or other beneficiaries with the remainder left to a charity(s) of your choice, fulfilling your philanthropic goals and desires, passing along assets to heirs with reduced transfer costs, potentially providing you with a significant charitable deduction for the value of assets transferred into a charitable trust, or establishing a means by which you can create a philanthropic legacy or family foundation, and pass along your values to your heirs. Some trusts, like the charitable lead trust, allow you to transfer income-producing assets into this type of trust which provides an income for the charity for a term of years, and the remaining assets in the trust can be transferred free of generation-skipping and other transfer taxes, if the trust is properly set up.

### **2. Gifts**

In 2009, the limit for tax-free gifting is \$13,000 per person per year or for husband-and-wife \$26,000 together. Using this annual gift exemption can be particularly important in cases where the value of the estate of a farmer and/or rancher exceeds the estate tax applicable exclusion amount available to both spouses. These gifts can serve several

purposes ~ perhaps providing 'early' inheritance to those non-farm family members, establishing educational trusts for grandchildren, funding a wealth replacement, irrevocable life insurance trust and more.

## **Conclusion**

A good estate and succession plan can save farm and ranch families thousands of dollars in estate taxes, income taxes and administrative costs. Many farmers and ranchers wait too long to begin their financial, business and estate plans, to the detriment of their families and heirs. Some of the concepts discussed above may not apply to your farm or ranch operations, but they are typical of issues facing all business owners in today's world, including the agribusiness owner. We intended this article to provide an overview of the many business issues facing the farmer and rancher, knowing before we started that we could not address them all adequately. Our hope is that this Chapter will give you ideas and thoughts to take to your professional advisors and come up with an estate or succession plan that meets all of your and your family's needs, goals and expectations. Peace of mind is a wonderful thing.