

## Protect Your Assets, Heirs and Heritage

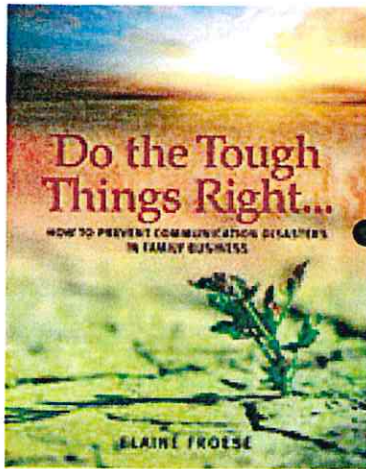
Succession is about more than planning the future of the farm. At its heart, succession planning is about preserving an agricultural legacy and the heirs who inherit it. The process often focuses on leaving the farm to your children and preparing them to succeed as the next generation of operators and stewards of the land. The notion, while romantic, is not always simple—especially if you have multiple heirs.

“A lot of farmers don’t want to treat farming children with any preference [over non-farming children], but that doesn’t bode well for the future of the farm,” explains Dennis Stein, farm management senior educator at Michigan State University. “For succession planning to work, you have to make a decision to treat farm kids different than non-farm kids.”

In succession planning, experts urge farmers to embrace the notion that fair does not mean equal; the distinction, according to Stein, is essential to safeguarding the future of the farm. The reason: There is a risk that non-farming children might be more interested in cashing in on the value of the farm than preserving it, causing conflict with the heir who wants to continue farming.

“The heirs with no ties to farming can become uncooperative or hostile to farming partners,” he says. “A consensus to move forward to operate smoothly isn’t going to happen.”

When it comes to protecting your heirs, assets and the future of the farm, there are five things to consider: >>



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## 1. Splitting farming and non-farming assets between heirs

In this scenario, all farming assets, including land, equipment and livestock are left to farming heirs, while assets outside the farm business, including insurance, retirement accounts, off-farm savings, mineral or oil rights, and rental/vacation properties go to off-farm heirs.

The value of the farm assets might be greater than non-farm assets, but it gives farming heirs full control of the land and operations to pursue their livelihoods and maintain the farm. It's a classic "fair but not equal" scenario.

"We want to be fair, even if it's not equal, because we know the sweat and toil and sacrifice associated with working the land," explains Kevin Bearley, an attorney specializing in agricultural law with the Colorado firm K-Coe Isom.

## 2. Dividing the farm

If there are multiple farming heirs who cannot work together, Elaine Froese, farm coach and author of *Do the Tough Things Right: How to Prevent Communication Disasters in a Family Business*, believes it's better to separate the farm into separate entities and let each heir control their own (smaller) farm.

It might be difficult to imagine dividing up the farm, but it's a better option than risking the dissolution of the farm over time because the heirs can't agree on how to run it.

## 3. Addressing life's uncertainties

Succession planning requires working through—and planning for—multiple scenarios, including unexpected death. A solid plan also minimizes the likelihood that fractured relationships will wreak havoc on the farm.

"Relationships are complicated," notes Robin-Lee Norris, partner in the Guelph, Ontario, office of the Canadian national law firm Miller Thomson LLP. "Divorce, cohabitation and kids from previous marriages all need to be considered in succession planning."

Preuptial agreements, Norris believes, are essential to protect farm assets from unintentionally ending up in the hands of ex-spouses. Corporate shareholder agreements can also be written to prevent spouses or other family members from accessing shares of the family farm.

## 4. Minimizing tax burdens

A USDA Economic Research Service report found that farmers were more than twice as likely to owe federal estate taxes than non-farmers (and owners of commercial farms are 10 times more likely to owe estate taxes than small farm owner/operators).

To preserve farm assets, Bearley recommends using gifts and trusts in tandem. The best option: Establish a trust and make gifts (like land or equipment) to the trust, which protects your heirs and farm assets. (For more information on the tax liabilities of and limits to annual monetary gifts, see "Farm Succession: A Case Study.")

"Trusts benefit heirs, because they can't sell or lose gifts or assets that are placed in the trust," he explains.

Bearley favors Intentionally Defective Irrevocable Trusts (IDITs), which allow farmers to sell assets to the IDIT in exchange for a note, freezing the value of the estate with no gain/loss on its sale and no tax on the interest payments received on the note.

IDITs, which have been around for decades, are, according to Bearley, "The only way I know to protect land for multiple generations."

## 5. Planning for retirement

Handing off the farm means you're giving up the income—and perhaps the homestead—that came with making a living as a farmer. The ongoing need for income into retirement must be addressed through succession planning, according to Stein.

"One of the biggest questions is, 'How do I fund my life if I'm not a farm owner/operator?'" he says.

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**Read It** [Click to read "Farm Succession: A Case Study" online.](#)



One of the advantages of creating a succession plan a decade (or more) before transitioning off the farm is the ability to plan for a successful retirement. With the help of your succession planning team, including a lawyer, accountant and financial planner, ask these questions:

“At each step of the process, you must make sure that you have what you need for ... the future viability of the farm.”

**HAVE I SAVED ENOUGH FOR RETIREMENT?** Use a retirement calculator to run the numbers. If you're not saving enough for retirement, is it possible to allocate extra contributions to retirement accounts like IRAs or RRSPs? It's essential to examine the options for addressing the shortfall. The possibilities, according to Bearley, include remaining a shareholder on the farm or renting the land to farming heirs to keep income flowing.

**WHERE WILL I LIVE?** You might be planning to stay on the farm; if farming heirs need to move into the house, will you buy or rent a new home? In Ontario, for example, building a new home on the farm (called a retirement lot) is prohibited, forcing farmers off of their land if heirs move onto the farm. As with all matters concerning succession, check the laws where you live to understand your options.

If there are no farming heirs, you can establish a tax-free 1031 real estate exchange that allows farm property to be exchanged for property, including a home.

**HOW WILL WE PAY FOR LONG-TERM HEALTHCARE?** The U.S. Department of Health and Human Services established a website ([www.longtermcare.gov](http://www.longtermcare.gov)) to explain Medicare coverage, the costs of long-term healthcare and options to purchase insurance. In Canada, the Canadian Life Health Insurance Association has a guide to supplemental health insurance on its website ([www.clhia.com](http://www.clhia.com)) and provincial programs may help with the costs of prescription drugs and other long-term healthcare needs.

Froese acknowledges that succession planning requires asking difficult questions and engaging in uncomfortable conversations. In fact, farmers often avoid preparing for succession because the process is stressful.

Throughout the process, your succession planning team will help you make informed decisions; as the farm founder and/or current owner, it's essential to engage in the process to ensure your assets, heirs and heritage are protected.

“At each step of the process, you must make sure that you (and your heirs) have what you need for economic security, family harmony and the future viability of the farm,” she says. **FL**

