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**Succession Planning:
Key Legal Strategies**
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Why should I care?

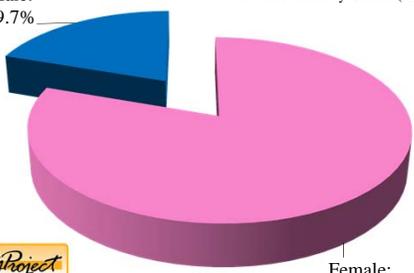


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Image source: <http://www.royal.gov.uk/TheCurrentRoyalFamily/Overview.aspx>

Why should I care?

Male: 19.7% Widowed Persons by Gender (AARP, 2001)



Female: 80.3%

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Why should I care?

3x to 4x

Poverty rate of widows compared to same-age married women

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Why should I care?

64%

Farm and agribusiness owners with no estate plan in place

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Why should I care?

88%

Farm and agribusiness owners with no retirement plan

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Why should I care?

Founding Generation	30%	
Second Generation		
Third Generation		12%
Fourth Generation		3%



Leading causes of intergenerational business failure

- ✓ **Inadequate estate planning**
- ✓ **Insufficient capitalization**
- ✓ **Failure to prepare the next generation properly**



Source: K. Spafford, Legacy by Design: Succession Planning for Agribusiness Owners, xi (2006).

The legal toolbox for farm estate planning

Crucial clichés

- ✓ In not choosing, you have chosen.
- ✓ Failing to plan is planning to fail.
- ✓ It's all connected.
- ✓ Get everything in writing.
 - Your stuff lacks direction and drive.
 - There's a first time for everything.
 - People will lose their minds when you go.



The default principle

Unless a piece of property is handled by an instrument legally enforceable at death, it will be handled by the intestacy rules.



Who's out in intestacy

- ✓ Anyone who is not a spouse or blood relative
- ✓ Anyone more than one living person away on the family tree
- ✓ Anyone who isn't a natural person



Intestacy	
Pros	Cons
Well, uh... its definitely low-effort on your part	Unable to select who handles your affairs (and several people may "volunteer")
	Unable to direct who gets your property – succession rules dictate heirs
	Frequently forces breakup of property among parties with conflicting interests

The critical tools for estate planning

- ✓ Guardian nomination for minor children
- ✓ Beneficiary designations
- ✓ Powers of attorney
 - Business
 - Healthcare
- ✓ Advanced directive for health care
- ✓ Will



The critical tools for estate planning – honorable mention

- ✓ Trusts
- ✓ Life insurance



Guardian nomination for minor children

- ✓ What it is:
 - Document specifying preference of guardians
 - Can be incorporated into will
 - Given great deference by courts
- ✓ Considerations:
 - Discuss in advance
 - Tie to resources for care



Beneficiary designation

- ✓ What it is:
 - Contractual agreement for assignment of asset upon death of current holder
- ✓ Considerations:
 - Is it available?
 - Requires vigilance and upkeep
 - Would asset be better served by another tool?



Power(s) of attorney

- ✓ What it is:
 - Authorizes someone else to act on your behalf; for legal purposes they ARE you
- ✓ Considerations:
 - Must be made "durable" to work in incapacity
 - Supervision
 - Springing power?
 - Specify powers (business, healthcare)



Will

- ✓ What it is:
 - A set of directions for the distribution of your property after you pass away
- ✓ Considerations:
 - MUST have “testamentary capacity”
 - MUST be executed correctly
 - MUST be probated



Requirements for execution of a will

1. **!► WRITTEN ◀!**
2. Signed at bottom (“subscribed”)
3. Presence of 2 disinterested witnesses
4. Acknowledgement of will
5. Witnesses sign at request/presence of testator



Wills

Pros	Con's
Leaves control with testator until death	Must go through probate
Can direct where property goes – almost anywhere	Easily contested
Can select executor	Lengthy and public process
Can name guardians	State-specific
Does its job then goes away	Cannot operate “long-term” w/o other tools

Trust

- ✓ What it is
 - A set of instructions for management of a separate legal entity holding property
- ✓ Considerations
 - Trustor, trustee, beneficiary, trust property
 - Powers and directives



Types of trusts

- ✓ Living (“Inter-Vivos”)
 - Revocable
 - Irrevocable
- ✓ Testamentary



Items to be considered in creating revocable living trusts

1. Trustee
 - Co-Trustee
 - Successor Trustee
2. Beneficiaries
3. Duration of Trust



Items to be considered in creating revocable living trusts

4. Rights of Trustee

- Buy, sell and lease property
- Lease minerals
- Invest funds
- Distribute trust income
- Distribute trust principal



Do you still need a will if you have a trust?

- ✓ YES
 - May need will and/or declaration of trust to point to the trust itself
 - Capture assets left out of trust
- ✓ “Pour over will”
 - Critical backstop in case property not in trust
 - Provide for handling of any property not addressed elsewhere



Living Trusts

Pros	Cons
Eliminates probate for assets in trust	May have trustee fees
Don't need guardian to hold assets for minors	Adds complexity to management of assets in life
Not public information	Requires coordination with other estate tools
Very difficult to contest	Still needs will

The legal toolbox for farm business succession planning

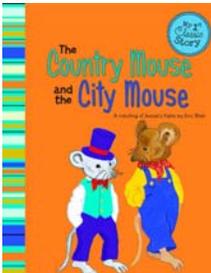
Can the farm support another generation (shoot, can it support this one)?

- ✓ KFMA benchmarks
 - Average farm family living withdrawal \$68,250
 - Gross sales required \$341,250
 - Assets under control (owned/leased) required \$975,000




The challenge of succession planning for farms and ranches

- ✓ Equitable considerations
 - Tied to communication
 - Equal ≠ equitable
- ✓ The Farm Kid / City Kid Conundrum
 - Farm kid: business asset
 - City kid: investment asset




The challenge of succession planning for farms and ranches

- ✓ The problem with sweat equity, a.k.a “someday, kid, this will all be yours” plan
 - Rarely transparent
 - Rarely documented
 - Rarely accurately valued
 - Equal opportunities?





The challenge of succession planning for farms and ranches

- ✓ Communication




Elements of Transition



Founder

Successor



Elements of Transition



Founder
 Ownership
 Control
 Participation

On-farm heir
 Off-farm heir
 Separate Entity
 Unrelated Successor
 Liquidation / Dissolution



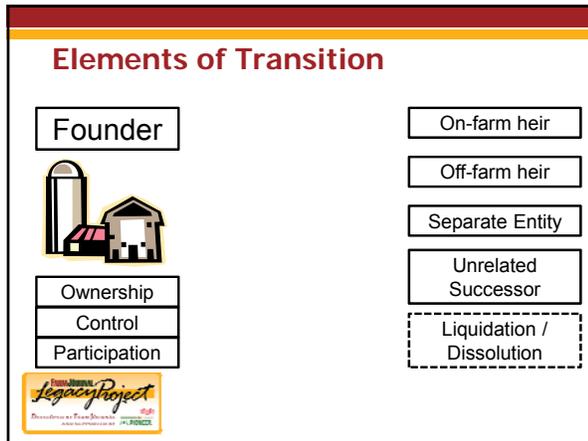
Elements of Transition



Founder
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Business Entities

Tool	What it does	Consequences
Corporation (Inc.)	Separate legal entity with limited liability for all owners	<ul style="list-style-type: none"> •Did we say limited liability? •Well-recognized rules governing control •Allows flexibility in transfers •S/C Corp. taxation •Must follow formalities
Limited Liability Company (L.L.C.)	Separate legal entity with limited liability for all owners	<ul style="list-style-type: none"> •All advantages of corporations w/ more flexibility •Flexibility of tax treatment •More than enough rope to hang yourself

They call us "counselor" for a reason: family communications in transition planning

Who's at the table?

- ✓ Success may take buy-in from all **stakeholders**.
- ✓ Who are stakeholders?
 - Manager(s)
 - Financial investors
 - Emotional investors
- ✓ Engage team of professionals

The image shows a family of seven people. Three black arrows point down towards the photo from the text 'Success may take buy-in from all stakeholders.' and 'Who are stakeholders?'. Three black arrows point up towards the photo from the text 'Engage team of professionals'.



Establishing the environment

- ✓ Who: ALL stakeholders
- ✓ What: a talk about the farm
- ✓ When: NOT a holiday
- ✓ Where:
 - A comfortable place
 - NOT anyone's home
 - Free of distractions
- ✓ Why: so we can discuss ideas for future of the farm and ranch

The image shows a family dining at a table, similar to the previous image. A semi-transparent text box is overlaid on the right side of the image, containing the list of guidelines for establishing the environment.

Have a Plan for Implementing the Plan

- ✓ Prepare for transition of management and ownership
 - If YOU had to take over TODAY, would you be ready?
 - Who could provide help and counsel?
- ✓ Keep tabs on important items
 - Inventories
 - Documents
 - Access codes / permissions



Assembling your team

- ✓ Legal help
 - EXPERIENCE MATTERS!!!
 - American College of Trust and Estate Counsel
 - OBA Estate Planning Section
- ✓ Tax professional
- ✓ Investment advisor
- ✓ Human resources advisor



THANKS!

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