FARMING FORWARD
PLANNING FOR THE FUTURE!

2025 NDSU TAX WORKSHOP

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Today's Topics

1. Updates – What We Are Seeing
2. Estate Planning –keeping the farm together and protecting assets
3. Transition & Retirement Planning
4. Is an Entity for me?
5. Communication and Working with your Family and Business Partners

What we are seeing (cont.)

Three years ago, a study by Ernst and Young was conducted for several Farm Credit Associations and discovered who influences most farms when it comes to planning for the future of the farm. They are ranked below starting with the most valued advisor:

1. Accountant/ Tax Professional
2. Lawyer
3. Banker
4. Lender
5. Business Consultant
6. Wealth Manager
7. Education related (seminars, internet etc.)
8. Other (clergy, sibling, friend)
9. Insurance provider

What we are seeing

High land values creating some family problems with buy outs of non-farming siblings or relatives that are and will financially stress many operations. This is becoming a real risk to many operations.

Over 60% of farmers and ranchers do not have a fully documented and communicated plan for their transition, estate or retirement plans.

Consolidation continues. To be relevant in the future, most farms need to continue to grow as you will be competing with larger operators who constantly plan for their future.

Per USDA:

1. 6.8 million farms in 1935 in the U.S
2. 2.04 million farms in 2017 in the U.S.
3. 1.88 million farms in 2024 in the U.S.
4. 900 million acres farmed in 2014 down to 876 million acres in 2024 in the U.S.
5. ND farms (Iowa State Sourced): 1950 = 65,401, 2002 = 30,619, 2012 = 30,961
5. 2024= 24,800 farms in ND with an average size of 1552 acres—unchanged from 2023.

What we are seeing

Wealth transfer to a family sometimes happens without consideration to keeping the farmer that is farming/ranching the land financially viable and relevant. Emotional choices are made without regard to a successor's ability to keep the farm going when estate planning is done.

Sweat equity is not always recognized. "Why bother" says one successor to us.

Delayed retirements & transitions as the parent cannot afford to give up land.

Debt usually cascades down to the next generation.

Lawsuits, especially partition actions, are on the rise.

What we are seeing. Recent estate buy-outs for Land

- ND-72 year old buys out siblings for $1.2 million--$525,000 of savings used to get the payment down. Very unplanned.
- ND- 67 year old and 40 year old son buys out deceased brother's children for $1.4 million. Sons borrowing ability for future debt heavily jeopardized.
- ND- Cass County land (1700 acres+/-) sells for $19 million+/-. One buyer.
- MN- land entity buys 80 acres for $15,000/acre. Land is between bins and shop.
- MN- 49 year old buys 2 quarters (about 305 acres) from aunt's estate for $8450 average. Sold another "satellite" quarter to make it work.
- MN-32 and 34 year old brothers negotiating to buy out uncle's 170 acres for $11,000/acre. If a C4D will not work, then parents need to pledge land.
- SD- pasture sale to young rancher for $2350/acre.
- SD- 240 acres sells for $6800/acre average to 52 year old with young successor. FSA was also used.

Estate Plan Focus

Is the goal to:

1. Transfer your farm or ranch as an ongoing business **to a successor** or:

2. Transfer to family members as a group of assets **with no successor**.

A will or trust for situation number one should look different than situation number two. Fair or Equal—they are very different.

Federal Estate Taxes & the One Big Beautiful Bill Act

- ✓ Makes estate tax exemptions permanent
- ✓ Remember, every 3 to 5 years review the estate plan to align with any new federal (or state) rules.
- ✓ Estate tax legislation is very "political".
- ✓ Current Federal Estate Tax Exemption is $13,990,000/person or $27,980,000 for a married couple.
- ✓ For 2026 the exemption will move to $15,000,000/person or $30,000,000 for a married couple.
    - ✓ Portability applies allowing for the full use of both spouse's exemption. 5-year filing rule (2022-32).
- ✓ Annual gift exclusion stays at $19,000/year/grantor/recipient.
- ✓ Larger estates ($15,000,000 plus in equity) should still take a proactive approach and remain flexible if needed.
- ✓ Hearing comments from some operators about "not needing an estate plan" with the high federal exemption.
- ✓ *Reacting to the government is never a good plan.*

Estate Planning Entity Document Reviews

Wills, trusts and entity buy-sell agreements are not being reviewed often enough especially when there is a successor.

Run the balance sheet through each will, trust or entity buy sell agreement to see how it functions if there is a death or a buy-out—use current market values!

Is the buy-out still affordable to the successor or to your business partner(s)?

Show the actual numbers that a buy out will generate. Do the math.

Estate and Entity Reviews

- For entities, agree on a value each year or adjust valuation formulas in a buy sell agreement.
- Reduce the number of acres and/or the number of assets a successor must buy from siblings from your estate.
- Increase discounts or increase buy out duration.
- Buy life insurance (usually a second to die policy) to assist in payment of a buy-out or use life insurance as “equalization” tool for non-farmers.
- Have a family meeting to talk about how a farming sibling may buy out a sibling who does not farm—not always advisable.

Estate Plan Focus (some questions to ponder)

Events that occur at death.

Who represents you and what are the powers you have given them. Usually a spouse. But who succeeds the spouse?

A plan for the land. This is by far one of the most divisive issues with estate planning. Is an equitable distribution of land a priority or is keeping the farm/ranch going a priority. At some point either children, their children or maybe their spouse will sell. Over time, land rent returns will not be as appealing as a large cash payment. What is your priority for your land?

What does keeping the farm together look like for you?

If each child gets their own piece(s) of land, will those that farm have a right to rent and buy land if someday a non-farming child/sibling wants to sell? At what price? Can they rent too?

Estate Plan Focus (some questions to ponder)

How is headquarters set up in your will or trust?

How about the bin site if it separate?

What is the game plan for machinery ,tiled ground and the irrigation system that your farming child maybe helped to pay for? Should they have to pay a higher rate of rent on land they improved that was not paid for by a sibling that did not farm?

Maybe consider a right of refusal to rent land so the faming child keeps farming this land. In your Right of Refusal, do not set rents an “fair market value”. Use ND Trust Lands Survey or MN or SD Extension.

Think too about the lake home, especially if it has some value. If you are both gone will your children be able to pay their share?

Estate Planning Ideas for Consideration to reduce a buy out.

- Sell land to a successor now. The issue here is that the cost basis in the land is usually low, so this does not always work well from a tax standpoint. Sell higher basis land first?

- At the second passing of both parents, you could keep all or most of the land in a trust. The successor then rents the land from the trust for 5 to 10 years, with rental income going to the non-farmers. At the end of the 5-to-10-year time frame, land in the trust goes to the successor.

- Leave all or most of the non-farm related assets to non-farmers. All farm assets to the successor farmer. *Not always possible*. Fair vs. Equal approach conversation usually starts here.

- Land can go into a land entity that puts the farmer in control of the land. The entity should have a buy-sell agreement for a buy-out and a pricing formula to make a buy-out viable.

- **Reminder--the estate plan with a successor needs to keep the business going.**

Estate Planning—Events That Occur During Life

What about disability planning?

- Durable Power of Attorney (POA). Consider updating the POA. Older POAs have many things missing like powers over digital assets. Try to avoid dual successors (2 children serve together).
- Health Care Directive.

What is your approach to planning for the nursing home ($ 300 to $500 per day)?

1. Insure.
2. Self-pay.
3. Protect by transferring assets out of your name (**five-year look back on gifted assets or low rent**)
    - Life estates for land (some limitations in MN).
    - Irrevocable trusts (will not work if land going into trust is mortgaged).

Maybe a combination of two or all three. Please do not wait on this important planning.

State Estate Taxes

North Dakota, South Dakota, and Wisconsin are coupled with Federal law.

- No specific or separate state estate tax.

Minnesota is decoupled from Federal law.

Minnesota Estate Taxes

Minnesota Estate Tax Exemption:

2025/2026 - $3,000,000/person but not an automatic $3,000,000/person

- If you have a farming heir, an extra $2,000,000 for ***qualified*** farmland & small business entity/assets for a total of $5,000,000/person (again, not automatic).
- NO PORTABILITY **between spouses – need to use disclaimer/bypass trusts**
- For estates that exceed the exemptions, there is a graduated tax scale
  - Current rates range from 13% to 16%
- Real Estate owned in MN by non-MN residents may be exempt from Federal estate tax but **not** exempt from MN state estate tax

Nursing Home and Asset Protection

If no or little nursing home insurance, not enough income or existing liquid assets to pay for care, many people will need to apply for Medical Assistance (MA). Now you function under Medicaid and Department of Human Services (DHS) rules.

Planning options:

Gift land to children and reserve a Life Estate to the parents. Children now own land. This means land is transferred to children and after 5 years the land is no longer available to pay for care. Caution—if rent is not at market rental rates, this is considered a gift as well and may disqualify the confined parent from MA.

Three questions and concerns need to be asked whenever parents are considering transferring land to a child(ren) with a life estate interest:

- Are children maritally stable?
- Are children financially stable?
- Are children emotionally stable?

If one of these is a no—then the Life Estate is not recommended (hard to predict the future of our children).

Life Estate Land is stepped up at death (2036 a& b).

Nursing Home and Asset Protection Planning (cont.)

Transfer land ownership to an income only Irrevocable Trust where parents give up ownership of the land and move ownership to the Irrevocable Trust. The parents get the rental income each year but can no longer control the land (trustee(s) control) and only have a right to the income each year. This type of trust is usually deployed when one of the three questions asked when considering a Life Estate is a yes.

After five years of irrevocable trust ownership the land is protected.

Some catches:

- The trust cannot be changed with out consent of children. 5 year look back starts over.
- If trust owned land is subject to a mortgage the land in the trust is not protected.
- The trust must file its own tax return.
- Land can be sold by an irrevocable trust but the sale proceeds need to stay in the trust.
- Land is stepped up at death (2036 a & b)

Transition and Retirement Ideas—Grain Inventory

- Defer
- Fill the 22% & 24% tax bracket 2/3 years ahead of retirement. Maybe sooner.
- Income Average
- Buy new machinery and take the deduction lease it back to successor (not so sure on this idea?)
- Defined Benefit Pension—allows a good-sized tax deduction.
    - The pension is used to stay in the 20% tax brackets.
    - If large enough can be used to equalize the estate with non-farming children.
    - Where will tax rates be in the future when the pension money is taxed at age 73 or older?
- Charitable giving: CRUT or CRAT for machinery and sometimes grain.
- Pay some tax and pay down debt

Retirement Planning –No Successor

Many producers say getting out of farming is more difficult than getting in. No doubt!

There are financial, tax, and emotional challenges as you wind down

- **How much debt is the farm servicing?**
  - Debt can and often does stop most retirements
- **What's your time frame?**
  - When to start Social Security? For most it is FRA.
  - What is the plan to pay for health insurance?
- **How are taxes controlled in the final years—especially the last year?**

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Transition Tools

Machinery, Bins, Buildings, and Infrastructure

1. Sell--maybe a piece here and there but other options are used more often.
2. Leasing for new assets at the farm (Bins, Buildings, the second Combine, the extra Planter…..)
3. Operating Lease for machinery and buildings between parents and successor(s).
4. Gift piece by piece
5. Move the building site to successor.
6. Gift and increase cash rent.
7. How about a combination of some or all of these?

How does the estate plan fit in for machinery, bins/buildings and other infrastructure?

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Transition-Land

Usually, the last asset to transfer---if at all. The step-up rules are paramount in this part of the planning.

- How much of the farm is rented vs. owned? What is the risk level for a successor to have to buy non-family land?
- Is protection a priority? What are we protecting from (nursing home, divorce, unstable child/grandchild)?
- How is the land going to be transitioned?
  - Through the estate
  - Sell on a contract, sell to pay down parent's debt, sell the farm site to buy the house in town…….
  - Trust-owned so terms can be set up for renting or buying land for a successor. Privacy and probate avoidance.
  - Entity-owned to keep the land base together and offer some level of protection—and a "rule book".
  - Life Estate to transfer equity/protect from a nursing home but provide lifetime income to parents.
  - Use of Rights of Refusal and Options for land and machinery that might go to non-farming children.

Note: if possible, avoid leaving land equally to all children in your will or trust—a major source of disagreement and it raises the risk of litigation. Co-owned land means all decisions are unanimous.

Is an entity for me?

What are we trying to do? Will the entity improve something?

- Streamlines administration of the farm/ranch—one checkbook!
- Protects assets and separates business assets from personal assets
- Enhances and might make transition and estate planning easier
- Aid in tax control
- Provide a written document for transferring, valuing and management of the farm

OBBBA changed the FSA program limits for pass through entities:

- S-Corporations and LLC's now receive an FSA limit for each owner.
- Previous rules restricted FSA program limits to just one payment regardless of the number of owners

Importance of Communication

Good communication is the glue that binds you and your family and poor communication is the gun powder that blows it up

- Who ***understands*** your plan?
- ***Expectations*** need to be clearly communicated to each other by both the Sr. farmers and successors—perceptions will become reality. Uncommunicated expectations is where assumptions grow and thrive. Talk to your non-farming children and hear their expectations, too.
- Litigation is on the rise between family members. Communication problems can morph into legal issues.
- Family meetings are important. Your family both wants and needs to know your plan.
    - Communicating **why** you've set up your plan the way you have is every bit as important as **how** you've set it up. Who should attend? Just children? Children and their spouses?
        - Children's spouses in family meetings not always recommended because of ongoing dynamics. Tough decision sometimes.

Lost in Translation: Farm Edition

The "One-Time Announcement"

- *"I told him five years ago what we were doing. He should remember!"*
- Translation: No follow-up, no written plan, just a passing comment during harvest.

The "Grunt Language"

- *Grunts twice instead of once – thinks that's a full conversation.*
- Translation: One grunt = "Yes", two grunts = "Maybe", three grunts = "Ask your mother."

Lost in Translation: Farm Edition

The “Shop Strategy Session”

- *“We talked about it in the shop once, that’s basically a plan.”*
- Translation: Talked about this in passing but never wrote it down.

The “Invisible Ink Agreement”

- *“ Everyone knows what I am thinking.”*
- Translation: No one knows what you are thinking, and your family is guessing like it’s a game show.

Lost in Translation: Farm Edition

The "Mystery Meeting"

- *"We will figure it out when the time comes."*
- Translation: No one knows when "the time" is, and it's already here.

DON'T WAIT, THE TIME IS NOW!

Some Rules That Never Change!

- **Good communication is vital regardless of your planning goals. Talk regularly to both your family and your professionals.**

- Don’t assume anything—especially the fact that someone understands what you are thinking. There are technical terms that are often misused between family members:
    - Trusts are confused with life estates
    - “The farm” is often the entity
    - What if I want to trade “my” combine (owned by the partnership but used by him all the time)
    - We want an LLC for our trucks. Who pays the drivers?

- **If it is not in writing, then it does not exist.**

- **Proper succession and retirement planning adds emotional and financial value to your farm or ranch legacy.**

- **Time is your friend.**

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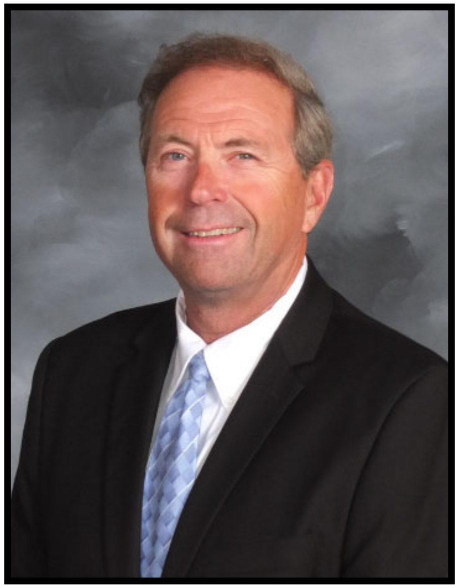
Questions?

Thank you for Attending!



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