



Your Ag Business Needs A Succession Plan

Foster Swift Agricultural Law Update

January 2013

Planning for the future of your ag business is critical. Many owners postpone succession planning and estate planning, thinking they will have plenty of time in the future or that they can "just wait until "X" happens." The problem is that often "Y" happens first and then the business owner's options are limited.

Advanced planning allows the family to transfer management and ownership how they want and to address legal, tax, and family relationship issues sooner rather than being forced to react after the death of a family member.

WHAT IS SUCCESSION PLANNING?

Succession planning is the method used to make sure your ag business continues into the future. It is a process of formally planning for a transition of management and ownership of your business from one generation to the next.

It's important to note that one plan does not fit all. Some of the options you should consider include:

- An outright sale of the family farm to the younger generation (or to a third party), or
- A plan that relies primarily on gifting or on life insurance, or
- A plan to expand a farming operation to help support more families, or to divide a large operation into discrete parts to support different families, or
- Creation of a simple business structure to allow transition in the future.

WHEN SHOULD A SUCCESSION PLAN BE DEVELOPED?

It is never too early. Members of older generations may wish to retire; younger members of farm families may want to take an ownership interest in the farm earlier in life. Often, it takes many years to fully implement a succession plan. It is also common for the plan to change during implementation to accommodate family and business changes. A well-designed plan can accommodate this flexibility. The earlier you

PRACTICE AREAS

Agri-Business

Business Succession Planning



start, the easier it is to remain flexible.

WHAT IS INCLUDED IN A SUCCESSION PLAN?

A comprehensive succession plan tackles many different issues, such as:

- Relationships among family members, for example, whether members of the younger generation can work effectively together for the foreseeable future, and whether the children working "in-the-business" and "out-of-the-business" should be treated equally, or simply fairly.
- Legal matters relating to the ownership of assets and business formation.
- Financial matters, such as the income needs of the older generation and the financial capacity of the younger generation.
- Federal and state tax concerns, such as the impact of any income, gift, estate, and generation-skipping transfer taxes or Michigan real property transfer tax.
- Issues related to the tax basis in family assets. Many family farms that have been informally transferred have complex tax situations
- Medicaid questions for members of older generations.

WHO SHOULD BE INVOLVED IN THE SUCCESSION PLANNING PROCESS?

A comprehensive succession plan requires the participation of all family members and professional advisors, such as the family's attorney, accountant, and financial and/or business advisor. When selecting advisors, it is best to choose those with experience in both the agriculture business and succession planning.

WHAT ARE THE KEY STEPS TO SUCCESSION PLANNING?

The necessary steps include:

1. Talk to each other. Identify all parties to the plan including on-farm and off-farm family members and their interests, goals, and concerns.
2. Gather information. The family should determine what assets it owns, who owns them, and how the ownership is structured. To complete this process, the family members should gather their respective estate planning documents, business organization documents (if any), deeds to real estate, financial statements, loan documents, and documents related to other farm assets. Don't forget that many family farms have equity interests in cooperatives. Written notices of allocation and per-unit retains, which are assets of the family farm, can be overlooked. The more accurate and complete your information is, the smoother the planning process will be.
3. Talk to your advisors. Once you gather your information, schedule a meeting with your team of advisors to begin the planning process. The objective will be to identify the important relationships, goals, and challenges.
4. Develop a plan. This step involves developing an outline for the succession plan, which the family and advisors can critically evaluate.



5. Implement the plan. After the plan has been approved it must be implemented. This may include the formation of business entities, the purchase and sale of business assets, gifting, and drafting estate-planning documents.

6. Revisit the plan. Families should revisit their succession plan every five years, or when major changes occur, such as a death, or a proposed change in ownership or management of the farm business.

Several Foster Swift attorneys have significant experience in succession planning and addressing the unique circumstances presented by agricultural businesses and other family businesses.

To learn more about how we can assist with your succession plan, please contact:

Todd W. Hoppe

Ryan E. Lamb