

Nebraska Farm & Ranch Estate Planning Overview

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Estate planning requires a careful consideration of facts and laws unique to each situation. This publication is provided for educational purposes only; it is not a substitute for consulting an attorney or other estate planning professional.

This publication is an overview of Nebraska farm and ranch estate planning issues. It contains references to other publications that provide more details regarding specific agricultural estate planning topics.

Major farm and ranch estate planning challenges include:

1. having sufficient retirement income to fund a comfortable retirement;
2. determining whether or not the farm or ranch will continue to be operated by the next generation;
3. determining whether to leave more property to on-farm or ranch heirs to allow them to continue the operation;
4. developing an estate plan to accomplish your objectives and sharing your estate plan with your family;
5. planning to transition the farm or ranch business to the next generation;
6. planning for incapacity;
7. planning for long-term medical care;
8. planning for end of life medical decisions; and
9. planning to make your death easier for your family.

Sufficient retirement income. Your financial advisor can help you determine whether you have sufficient property (including stocks, bonds, savings, IRAs, other tangible assets) to provide for a comfortable retirement. The more property needed to provide retirement income, the less property there may be to pass on to your family members.

Continue family farm or ranch. If you have sufficient property, or other source of income, to provide for a comfortable retirement and also to pass the farm or ranch on to the next generation, you need to decide whether that is what all of you want to do as a family. This can be a challenging process—perhaps the most difficult in agricultural estate planning. If you decide not to continue the farm or ranch operation in the family, estate planning becomes much simpler.

Fair or equal inheritance. If you decide to try to continue operating the family farm or ranch into the next generation, you have to be pragmatic about how that can be reasonably accomplished without completely disinheriting the off-farm or ranch heirs. Parents may want to treat all children equally, but that may prevent continued operation of the farm or ranch into the next generation. It is certainly legitimate to give the future operating heir a larger portion of the farm or ranch, particularly if the on-farm or ranch heir has contributed to the financial success of the operation. In other words, consider equitable distribution of the assets, which may or may not be equal.

If there is sufficient property in the estate where all children do receive largely equal shares when Mom and Dad have passed, the concern regarding not treating all children the same is significantly reduced. That will not be possible for some farm or ranch families, however. One approach that allows all children to share financially in the farm or ranch's

continued operation is to have the operation rent the land from all of the kids. This way all kids would receive an annual rent payment from the operation even if their ownership shares are not equal. There is no perfect solution for this issue that will fit all families, but cracking this nut will be one of the biggest challenges in developing your estate plan.

Farm/ranch business transition. If the farm or ranch operation is going to be operated into the next generation, the on-farm or ranch heirs need to learn how to operate the farm or ranch business before Mom and Dad are gone. Otherwise when it is time for them to take over, they won't be able to hit the ground running. There needs to be a gradual process where farm or ranch management decisions are shared between Mom and Dad and the future operating child.

Planning for incapacity. As we age, we may need assistance in doing things we have always done for ourselves. We may need a family financial plan for a child to e.g. be on the checking account, know what bills to pay, etc. Get children's names on the signature card at the financial institution for both financial accounts and the safety deposit box. You can discuss with your attorney options such as powers of attorney to provide a trusted backstop should the time come when you need assistance making business, financial, and medical decisions for yourself.

Long-term medical care. For most families, financing long-term medical care is a frightening prospect. Medicaid does allow property to be transferred to family members free of Medicaid claims, but with a 36 or 60 month look-back period. Unless you are able to implement your estate plan and have sufficient financial resources to fund all your long-term health care costs, Medicaid planning will be an important part of your estate plan.

End of life medical decisions. We have the ability to formally establish what level of medical care we wish to receive in our final illness through advance health care directives. Working through these options can save loved ones from having to make health care decisions for you without knowing what you want them to do.

Letter of last instructions. One way to ease the trauma of family members at our death is to prepare a letter of last instructions to give family members the information they need to know what to do at your death. This may be on the most loving things you can do for your family, and should be part of your estate plan.

For Further Information

Dr. Marsha Goeting, Montana State University Extension has prepared an excellent series of agricultural estate planning materials, available for download at <http://www.montana.edu/estateplanning/eppublications.html>

Omaha attorney Joe Hawbaker has prepared a series of excellent articles on Nebraska farm and ranch estate planning topics, available for download at <http://farmerandrancher.org/articles/>

Sufficient retirement income. Marsha Goeting, *Annuities*.

Continue family farm or ranch. Marsha Goeting, *Estate Planning in Montana: Getting Started; Transferring Your Farm or Ranch to the Next Generation*; Joe M. Hawbaker, *The Estate Planning Questionnaire; Farm & Ranch Estate Planning: an Introduction*.

Fair or equal inheritance. Shannon Ferrell et al, *Farm Transitions*, chapter 3, available for download at <http://agecon.okstate.edu/farmtransitions/index.asp>

Farm/ranch business transition. Shannon Ferrell et al, *Farm Transitions*, chapter 3.

Planning for incapacity. Marsha Goeting, *Power of Attorney; Talking with Aging Parents about Finances*; Joe M. Hawbaker, *Durable Power of Attorney: Planning for Disability*.

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Long-term medical care. Joe M. Hawbaker & Dave Goeller, *Medicaid: Planning for Long Term Care in the Farm and Ranch Context*.

End of life medical decisions. Joe M. Hawbaker, *Health Care Powers of Attorney & Living Wills: Advance Health Care Directives*.

Letter of last instructions. Marsha Goetting, *Letter of Last Instructions* and accompanying worksheet; *Who Gets Grandma's Yellow Pie Plate? Transferring Non-Titled Property*; *Your Important Papers: What to Keep and Where*.