

**FARM SUCCESSION
PLANNING**

**DALE, HUFFMAN
& BABCOCK
LAWYERS**

**PASSING ON
THE FAMILY
FARM**

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**DALE, HUFFMAN
& BABCOCK
LAWYERS**

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- Getting Started: The Family Discussion
- Making and Planning for Dispositions: Using Various Instruments
- Organizing Your Assets: Making the Transition
- Conclusion
- Questions

**TODAY'S
PRESENTATION**

**A
ROAD
MAP**

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GETTING STARTED

The Family Discussion

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WOMEN INVOLVED IN FARM ENTITIES

THE FAMILY DISCUSSION

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STARTING THE CONVERSATION


- Not an easy one to begin
- If you aren't the owner of the farm and are instead a possible beneficiary the conversation could be seen as much more awkward




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WHY IS IT AWKWARD?

- We often avoid difficult conversation because we perceive or expect a negative reaction from the other person



- Children may be afraid that in raising this topic their parents and siblings will perceive them as ungrateful, impatient or greedy



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WHO STARTS THE CONVERSATION: FINDING THE INITIATOR

- Who owns the farm?



Someone Else?



More Than One Person?

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WHO STARTS THE CONVERSATION: THE LARGER FAMILY DIALOGUE

- A family member?
- A trusted Professional Advisor?
 - Accountants,
 - Financial Planners, and
 - Lawyers....

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**WHAT
ARE EVERYONE'S EXPECTATIONS?**

“Each family member has his or her own concept of what has happened in the past, what is going on now, what each wants in the future, and what constitutes a fair or equitable solution in an estate plan”

Alan Schroeder, Agricultural & Natural Resources Law Specialist, Cooperative Extension Service, University of Wyoming

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**WHO WILL SUCCEED IN CARRYING ON
THE OPERATION, IF ANYONE?**

- All of the children?
- Some of the children?
- In Laws/Out Laws?
- None? (Outside Operator)
- Estate Plans should not be a surprise!


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**WHERE IS EVERYONE BEST SITUATED TO
BE IN THE ORGANIZATION?**

- Are some relatives or children off the farm?
- Do they have helpful professions?
 - Is someone... an?
 - Accountant,
 - Financial Planner, or
 - Lawyer....

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WHEN WILL THIS TRANSITIONAL TIMELINE TAKE PLACE?



- During your lifetime?**
 - Turn the farm into a retirement stream of income
 - Transfer interests as gifts
- After your Lifetime?**
 - Testamentary Dispositions (Wills, Trusts, etc.)

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WHY DO WE NEED TO DO THIS?



What are they?
They likely depend a lot on your **Who What Where and When...**

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HOW ARE WE GOING TO ACCOMPLISH OUR GOALS?

- **Group of Assets?**
- **Business?**
 - If a Business, does it make sense to take advantage of forming some sort of business entities?

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MAKING AND PLANNING FOR DISPOSITIONS

Using Various Instruments

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- Wills
- Trusts
- Beneficiary Designation Instruments

Other Important Instruments and Plans

- Powers of Attorney
- Health Care Representatives
- Nursing Home Cost Planning

TESTAMENTARY INSTRUMENTS

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WILLS

- Like almost everything—they have varying degrees of complexity



And Everything In-between...

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WILLS
WHAT CAN MAKE THEM MORE COMPLEX?

- Trusts
- Special Needs Trusts
- Pour-over Provisions
- Purchase Options

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WILLS
PURCHASE OPTIONS

- What's a Purchase Option got to do with it?
 - Essentially writing a contract between the beneficiaries and a purchaser
 - By taking the time to do this now, you hedge the possibility of disagreements and give beneficiaries peace of mind as well as direction.



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WHY USE A PURCHASE OPTION?

- Some children/descendants are interested in farming and others are not.
 - This gives interested children a way to purchase under the terms of the will
- Purchasing children/descendants have likely added value to the farm if they have worked along side you for years—so you can provide for a small discount
- Protects equal shares of children

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TRUSTS COMMON TYPES

- **Inter vivos Trusts: A trust made during your lifetime.**
 - Revocable Trust
 - Irrevocable Trust
 - Pour-over Trust: Receives property from a will
- **Testamentary Trust: Created under the terms of a will and does not take effect until the settlor dies**

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TRUSTS USES IN THE FAMILY FARM CONTEXT

- **Familial Situations**
- **In the past Trusts were extremely helpful in estate tax planning**
 - Current Federal Estate Tax Exemption at 5 million, effectively 10 million for a married couple.

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TRUSTS (TAXES CONT.)

Indiana Inheritance Tax Schedule

TAXPAYER: Class A, B, or C transferees:
Class A - Ancestor or Descendent.
Class B - Sister, Brother, descendant of brother or sister, daughter-in-law, son-in-law.
Class C - All other transferees who are neither Class A nor class B, or spouse.

Exceptions: Transfers to a surviving spouse, life insurance payable to a named beneficiary, real property owned by tenancy by the entireties, transfers for charitable purposes, and transfers to a cemetery association. Additional exemptions include:
 Class A transferees \$100,000
 Class B transferees \$ 500
 Class C transferees \$ 100

Net Taxable Value of Transfer		Inheritance Tax		
From	To	Amount +	% of Excess	Over
Class A Transferees				
\$0	\$25,000	\$0	1%	\$0
25,000	50,000	250	2%	25,000
50,000	200,000	750	3%	50,000
200,000	300,000	5,250	4%	200,000
300,000	500,000	9,250	5%	300,000
500,000	700,000	15,250	6%	500,000
700,000	1,000,000	31,250	7%	700,000
1,000,000	1,500,000	52,250	8%	1,000,000
1,500,000	and above	92,250	10%	1,500,000
Class B Transferees				
\$0	\$100,000	\$0	7%	\$0
100,000	500,000	7,000	10%	100,000
500,000	1,000,000	47,000	12%	500,000
1,000,000	and above	107,000	15%	1,000,000
Class C Transferees				
\$0	\$100,000	\$0	10%	\$0
100,000	1,000,000	10,000	15%	100,000
1,000,000	and above	145,000	20%	1,000,000

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BENEFICIARY DESIGNATION INSTRUMENTS

- **Commonly: Transfer on Death or Payable on Death**
 - Savings Accounts, Checking accounts, Certificates of Deposit (CDs) Most anything at a Financial Institution
- **Transfer on Death Property Act**
 - Allows you to add Transfer on Death to just about anything
 - Real Estate
 - Titled Vehicles
 - Securities



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WHAT IS THE MOST POWERFUL AND IMPORTANT INSTRUMENT? (IN OUR OPINION)

A WILL?

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WHAT IS THE MOST POWERFUL AND IMPORTANT INSTRUMENT? (IN OUR OPINION)

A TRUST?

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WHAT IS THE MOST POWERFUL AND IMPORTANT INSTRUMENT? (IN OUR OPINION)

A POWER OF ATTORNEY!

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THE POWER OF ATTORNEY

It is an instrument that gives another (your Attorney in Fact) the power to do almost anything that you could do for yourself.

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POWER OF ATTORNEY MOST USEFUL WHEN IT IS:

- Durable
- Immediately Effective
- Unlimited
- Contains a Gifting Clause

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HEALTH CARE REPRESENTATIVE

- Directs who is to make health care decisions in the event you are unable to
 - Not a substitute for a discussion 
 - Health care professionals may ask if you have a living will, but these are of little value for ongoing health care concerns.
- Health care by committee 
is not a proper plan

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NURSING HOME COST PLANNING

- In 2011, the average cost of Nursing Home care was \$5,139.00/mo, that is on average \$61,668.00/year.
- Long Term Care insurance is a way to protect assets from the cost of Nursing Home costs if you can afford it.
- Medicaid can also pay for care
 - A Power of Attorney is the crucial document in this planning
 - So long as that is in place, little need be done until someone needs Nursing Home Care.

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ORGANIZING YOUR ASSETS

Making
The
Transition

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**PARTICULAR CHALLENGES
FACING FAMILY FARMS**
(AND THE AGRICULTURAL BUSINESS GENERALLY)

- Illiquid Estate
 - “Land Rich but Cash Poor”
- High Overhead
- “Compensating with Capital”
- Risk



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**PLANNING FOR AND AVOIDING
UNNECESSARY CHALLENGES**

- Business Entities

Corporation *S-Corp*
General Partnership
Limited Liability Partnership
Limited Partnership *Limited Liability Company*

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BUSINESS ENTITIES AND FSA

General Partnership *Limited Liability Partnership*
Limited Partnership

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BUY-SELL AGREEMENT/RESTRICTIONS

- Generally used when there has been a formation of a business entity and now you want to protect those interests because you are
 - Selling Interests
 - Gifting Interests
- Both offer an opportunity to avoid any possible estate taxes, if done properly.
- Selling interests may also create a revenue stream for retirement while allowing younger generations to buy into the farm.

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PERIODICALLY REVIEW YOUR ESTATE PLAN

- Be actively aware of when your circumstances change
- Do not hesitate to make changes when they are needed
- The most complex of plans is not a plan at all if it does not reflect your wishes



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10 WAYS TO SABOTAGE FAMILY ESTATE TRANSFER PLANS

Robert Fetsch

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**#1.
PROCRASTINATE**

Don't write a will or transfer plan. Let the children worry about it after you're gone

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**#2.
AVOID
PLANNING OR
MAKING
DECISIONS**

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**#3.
DON'T DISCUSS
THE SUBJECT OF
ESTATE
TRANSFER**

Keep information from younger family members. This is a sure way to increase family conflict

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#4.
BLAME OTHERS
FOR PROBLEMS.
STAY ANGRY.

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#5.
DO ALL YOU CAN TO
BLOCK THE YOUNGER
GENERATION FROM
ANY INVOLVEMENT IN
GOAL-SETTING OR
DECISION MAKING
UNTIL THEY ARE
MIDDLE AGED

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#6.
REFUSE TO
LISTEN TO
OTHER FAMILY
MEMBERS'
VIEWPOINTS

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#7
**HOLD ONTO
TOTAL CONTROL
OF THE FAMILY
BUSINESS**

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#8.
**ASSUME OTHERS
KNOW WHAT YOU
WANT. AVOID
DISCUSSING YOUR
WISHES ABOUT
TRANSFER WITH
FAMILY MEMBERS**

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#9.
**MAKE SURE ALL YOUR
SENSE OF WORTH,
YOUR IDENTITY, AND
LIFE'S MEANING COME
SOLELY FROM THE
BUSINESS. RESIST
TRANSFERRING TO
THE NEXT
GENERATION.**

This way they have the least influence and the most stress

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10.
**PAY NO ATTENTION
TO WAKE-UP CALLS
LIKE A
FARM/RANCH
ACCIDENT, ILLNESS,
DEATH, OR MAJOR
CHOICE POINT BY AN
OFFSPRING.**

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QUESTIONS?

**DH DALE, HUFFMAN
& B BABCOCK
LAWYERS**

PASSING ON
THE FAMILY
FARM

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