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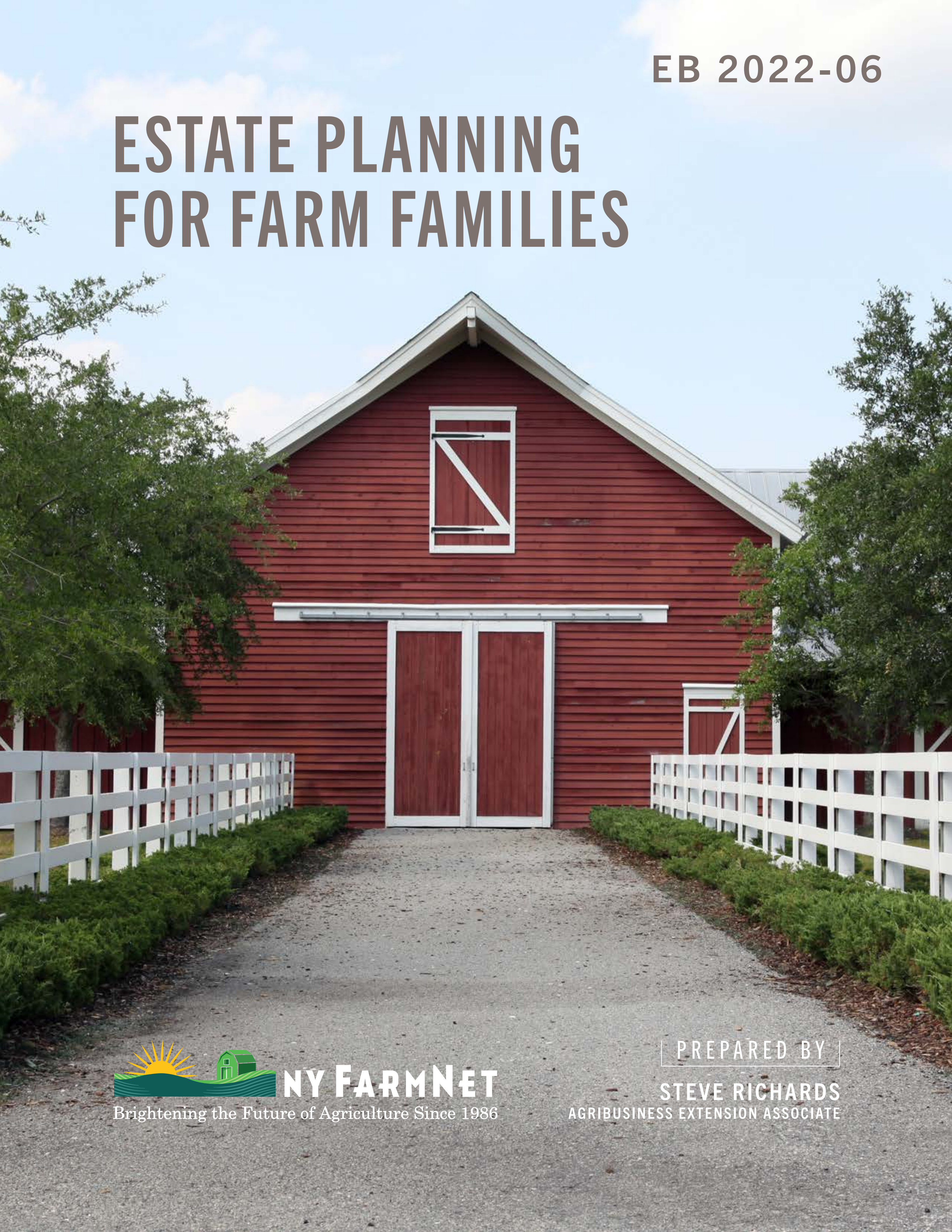
ESTATE PLANNING FOR FARM FAMILIES



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Estate Planning for Farm Families

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ESTATE PLANNING FOR FARM FAMILIES

USING THIS WORKBOOK

Farm retirement decisions can be complicated, but they don't have to be. This workbook takes you through some options, step-by-step, at your own pace, or with the help of a trained business consultant. The steps in this workbook are just a guide—you may use them in a different order if you wish. Skipping steps is not recommended; you should review the materials in each chapter before moving forward.

No retirement formula or plan is suitable for everyone. Each plan will differ based on your goals and your financial situation. If you need assistance with your retirement planning, please contact the South Carolina Center for Cooperative and Enterprise Development at clemson.edu/extension/agribusiness/sccced/.

Discussion points

There will be many questions to answer and discuss along the way. This heading will alert you to stop and discuss an important point or fill out a worksheet. All worksheets are included in this workbook

Decision Point

At each step in this workbook, you will be asked to make decisions regarding the future of your farm. This will help you narrow down the options that fit your particular situation. *Before you move to the next step in the process, you need to answer these questions!*

WORKBOOK OVERVIEW

This workbook is designed to help you through the process step by step. Once you have in mind what you want to do, the rest is easy. The essential components of a Will and/or estate plan are outlined in the following chapters:

- ☐ **Chapter 1: Get to know the basics of estate planning.** This chapter lists the frequently asked questions about estate planning and gives some good tips on thinking ahead.

- ☐ **Chapter 2: Providing for young children.** This chapter will help you work through the idea that you will need to decide who will raise your children and who will manage the money left to them if you should die. If you don't have these items spelled out in a Will, the courts could decide custody of minor children contrary to your wishes.

- ☐ **Chapter 3: Choosing your beneficiaries.** This may be a tough decision depending on your estate, your farm business, and how many heirs you have. This chapter will help you think through the complex decision of how to balance the farm business needs with your desire to provide for your heirs.

- ☐ **Chapter 4: Estate taxes.** Everyone is worried about estate taxes. This tax has been called the "only voluntary tax in America," as there is no need for most farms to pay any estate tax. This chapter will show you that there are many ways to avoid the estate tax through proper planning.

- ☐ **Chapter 5: Irrevocable trusts.** Irrevocable trusts are being used more frequently in family farm estate planning. Today's trusts are very flexible and can be used to solve a great many estate planning dilemmas. This chapter will show you the advantages and potential drawbacks of using a trust to bequeath property.

- ☐ **Chapter 6: Life Insurance.** Life Insurance can play a significant role in estate planning. This chapter will explain the uses of life insurance to help pay estate taxes and expenses or even out the estate between on-farm heirs and off-farm heirs.

- ☐ **Chapter 7: Planning for incapacity.** More estates are at risk of events that occur before death. A disability may cause you to have to delegate your business, financial, and medical decisions to someone else. Without the proper documents, the process could be delayed, or the court could appoint someone to make those decisions for you. This chapter will review the critical documents that you should have in place should you become incapacitated.

- ☐ **Chapter 8: Implement the plan.** The plan is no good unless it is made legal and implemented. This chapter will help you choose the right professionals to get your plan written. This chapter will also help with tips on how to discuss this plan with your family.

CHAPTER 1

ESTATE PLANNING BASICS

Estate planning is planning for what happens if somebody dies. The estate plan is not for the benefit of the deceased. Instead, it is for the benefit of those left behind. A well-planned estate can encourage family harmony and the continuation of the family business. A poorly planned estate can result in fighting among family members and the loss of the family business. Below are some frequently asked questions that illustrate estate planning basics.

GET ORGANIZED

Before you start meeting with your estate plan advisors or your family, you need to get organized. This is harder than it sounds! Below is a list of documents that you should have ready. Once this information is collected, you should copy it all and store the originals in a safety deposit box.

- ☐ Available money
- ☐ Pensions/retirement plans
- ☐ Stocks/bonds
- ☐ Real estate deeds/contracts
- ☐ Business interests
- ☐ Vehicle titles
- ☐ Home inventory
- ☐ Insurance policies
- ☐ List of personal advisors (attorney, accountant, etc.)
- ☐ Tax records
- ☐ Money owed to you; money that you owe others
- ☐ Passwords to computers, alarm systems, etc.
- ☐ Personal documents (birth certificate, marriage license, etc.)
- ☐ Family information (a basic family tree)
- ☐ Final arrangement details (funeral, burial site, etc.)
- ☐ Existing wills, estate plans, trusts

NOT ALL PROPERTY GOES THROUGH THE ESTATE

Although all property is counted for estate tax purposes, a common misconception is that all the deceased's property goes through his or her estate. Many items are transferred immediately upon death and do not go through that person's estate or probate. This can be a problem if your beneficiary forms do not match your wishes or your estate plan. Some examples of items that do not go through the estate:

- Pay on death accounts: Any kind of contract where you specify a beneficiary. Typical items include bank accounts, government bonds, retirement accounts, and stocks and certificates.
- Joint tenancy on property deeds: These usually specify rights of survivorship to the person who owns it jointly with the deceased person.

- Revocable living trusts: Similar to Wills, except they avoid probate proceedings. A living trust Will can be costly to create. A living Will also keep estate details private and does not provide a forum for somebody to challenge the Will (as does probate).

- Life Insurance: The owner and the beneficiary of the life insurance policy can be someone different than your estate if you set it up that way. Life insurance proceeds can be excluded from estate taxes if you set up an appropriate life insurance trust (explained later).

- Contracts, gifts, and other actions: The estate only governs the property that exists as of the moment of death. The estate plan cannot undo a contract.

IF YOU DIE WITHOUT A WILL, YOU ARE CONSIDERED INTESTATE

Some people think that the state will receive the deceased's property. That isn't true. However, the consequences for not having a Will can be just as bad for a family business, as the state does spell out who gets your property. In South Carolina, if you die without a Will, this is what happens to the property in your estate:

INTESTATE DIVISION OF PROPERTY	
SURVIVORS	ASSETS ARE DISTRIBUTED
Spouse & Children	Half of the estate goes to spouse, half goes to children
Just a Spouse	All of the estate goes to spouse
Just Children	All of the estate goes to children
Parents	All of the estate goes to parents
No Parents, Just Siblings	All of the estate goes to siblings
No Parents, Spouse, Children, or Siblings	The estate looks for grandparents, aunts, uncles, and so on.

THERE ARE RULES FOR DISINHERITING FAMILY MEMBERS

While most decisions on who is in the Will and who isn't are up to you, there are a few things that you cannot do. First, you cannot disinherit a spouse completely. Second, you may not be able to disinherit a minor child or a child born after your Will was written (it will be assumed that you overlooked this child by accident).

The most common problem encountered by farm families is the spouse's right of election (or elective share). In South Carolina, a spouse is entitled to ⅓ of the deceased's estate. If the spouse was not included in the Will, they would have to go to court to elect to receive ⅓ of the property in the Will. If the spouse does not make this election, then the Will stands as it was written. If the elective share could be a future problem, the spouse could sign a written waiver of their elective share.

PROBATE PROCEEDINGS ARE HOW MOST ESTATES ARE SETTLED

Other than providing for young children, most of the mechanics of settling an estate deal with the distribution of property. The legal mechanism to do this is called probate. Probate proceedings include:

- Proof that the deceased person's Will is valid

- Identifying and appraising the deceased person's property, debts, and taxes

- Distributing property as directed by the Will

IF PROBATE HANDLES ALL OF THIS, WHAT DOES AN EXECUTOR DO?

The Executor is like a conductor of an orchestra—they don't necessarily do anything different from what the Will directs, as they are responsible for ensuring that everything gets done satisfactorily. Some duties of the Executor:

- Locate the deceased person's assets and debt to provide them in the probate proceedings.

- Deciding whether or not to liquidate assets to pay debts or to provide for inheritance.

- Managing the deceased's affairs. The estate can act much like a person once the Executor is in charge. The estate can pay bills, shift bank funds, and manage business property (leases, for example). Estates can collect money that is owed to the deceased person.

- Filing a final income tax return covering the period from the beginning of the tax year to the date of death. This is called a fiduciary return.

- Supervise the distribution of the deceased person's property.

HOW DO I CHOOSE AN EXECUTOR?

An executor doesn't have to be a financial wizard or an attorney. You should choose an executor that is honest and detail-oriented. You want to make sure that the job is done right. If the person has a financial interest in the estate, that is fine. In fact, that may encourage them to make sure that everything is taken care of in an expeditious manner. Also, make sure that the person you pick is willing to be your Executor.

WHAT ABOUT FINAL ARRANGEMENTS?

Your Will won't be read until a couple of weeks after your death. If you want your final arrangements known, you should have these requests written down and give them to your spouse and children. They will most likely be the ones who have to make the decision on your final arrangements. You could also leave these arrangements with your attorney or the funeral home that you plan on using.

WHAT IS AN ETHICAL WILL?

Often, during life, there are things that we wish we had said to those people that we love—an Ethical Will is a way to do this. Write an Ethical Will to leave the next generation with something more than just your legal wishes. The contents of an Ethical Will varies, but most address one or more of these topics:

- Your beliefs: What you think is most important in life, what life has taught you, and why you made the choices you made at the time.

- Family stories: Preserving family history through telling personal, life-changing events. Stories can also be used to add some light-heartedness to the grim Will-reading affair.

- Personal messages: Telling your family and friends how much they have meant to you, what you hope for them in the future, and what you would like to forgive or be forgiven for.

It is not uncommon for the Ethical Will to contain items relating to family history, the love of farming, and stewardship of the land and animals in a farm family. It could explain why the continuation of the farm is essential or explain to non-farm heirs that they are viewed equally, even if they did not inherit any farm assets.

CHAPTER 2

PROVIDING FOR YOUNG CHILDREN

This is probably the number one reason that most young parents have Wills. If just one parent were to die, the surviving parent would naturally retain custody of the children. However, suppose both parents of minor children were to die without a Will. In that case, the children's custody can be decided by the courts, not by the deceased parent's wishes. To protect against an event like this, everybody with minor children needs to appoint a guardian.

Some things you might want to consider in a guardian:

- Do you have confidence in the guardian?
- Does this person have a genuine concern for your child's welfare?
- Is this person able to handle the job? Do they have the time?
- Do they have kids of similar ages to your own?
- Can your prospective guardian afford to raise your children?

You can appoint more than one guardian, or you can appoint different guardians for different children. You can also specify somebody different than the guardian to control the money you leave your children (called a custodian or trustee). This is wise if the guardian is not good with money.

LEAVING PROPERTY TO MINOR CHILDREN

Suppose the property left to minor children is of any significant amount. In that case, the law requires that an adult manage the money for those children until they turn 18. If you don't specify who this person will be, the probate court will appoint a "property guardian." This could be anyone. Even if there is a surviving parent, they are not automatically appointed the property guardian. Sound pretty scary? Best spell out who will manage any property left to your children while they are minors. In your Will, this would be called appointing a custodian. Suppose you have special wishes for the money that is left for the children. In that case, those instructions should also be in your Will (to pay for a college education, for instance).

SETTING UP TRUSTS FOR CHILDREN

An alternative to appointing a custodian would be to set up a trust in that child's name (see Chapter 5 for more information about trusts). This trust could be set up within your Will (called a testamentary trust). The people you appoint to control the trust money are called trustees. The benefit of creating a trust instead of relying on the laws governing custodians is that you could specify your own instructions on how the trust money should be used. A common reason why many families use testamentary trusts is to increase the age when the child can access the trust money (not many 18-year-olds could handle receiving a large sum of money all at once).

For minor children, list some ideas for guardians, custodians, or trustees.

Guardians: ______________________

Custodians: ______________________

Does a trust sound like a good idea? ☐ Yes ☐ No

Trustees: ______________________

CHAPTER 3

CHOOSING YOUR BENEFICIARIES

Sounds simple, doesn't it? Just choose who inherits the property you own, and that's it! For most people, this probably rings true, but not for farm families. The unique challenge that farm families face is that most of the assets in their estates are necessary for the operation of the farm. The stickiest part is how to divide assets among the heirs without disrupting the farm business.

AN EXAMPLE OF THE FARM ESTATE DILEMMA...SOUND FAMILIAR?

My husband and I are 70 years old, and we still own the family farm. I keep trying to get my husband into the attorney's office to update our Wills, but he keeps putting me off. I think he is procrastinating because we need to make some hard decisions—mainly, how will the inheritance get split up? One of our children has elected to stay at home and has helped make the farm successful over the years, but we also have 3 other children. Do you have any suggestions that may make this decision easier?

SOLVING THE FARM ESTATE DILEMMA

First of all, I never recommend that you let the Will decide the fate of the family business. A Will should be used as a backup for your primary transfer plan. As one New York attorney said: "a Will and a transfer plan are like belts and suspenders—one or the other may be sufficient, but it is best to have both." It is much better to transfer the family business assets while you are alive and working with your children. There are many different ways to do this. If you are interested, contact the South Carolina Center for Cooperative and Enterprise Development at *clemson.edu/extension/agribusiness/sccced* for resources to help with partnerships and farm transfers.

But let us assume that you do have farm property that you want to transfer through your Will. Some farm families decide that the farm heirs will get the farm lock, stock, and barrel. Other farm families wish an equal split among all heirs—whether or not they have ever worked on the farm. There is no correct answer to this question—what you want to do with your property is up to you. There are, however, right and wrong ways to accomplish whatever it is that you want for the family farm. If continuing the family business is important to you, don't destroy it by leaving chunks of the business to children who aren't involved in the farm. Life insurance could be a way to equalize your estate without disrupting business operations (explained more in Chapter 6).

EQUAL VERSUS FAIR: SPLITTING THE FARM PROPERTY PROPORTIONATELY

Maybe you have a child who has helped make the farm successful over the years, and you feel that they should receive more of your estate. How much more? Make it proportional to what you think they have contributed to the value of the farm over the years. If there are farm assets to be divided among heirs, make sure that the on-farm child has the option to either buy or rent these assets from their siblings at a reasonable price.

Are you considering splitting the farm proportionately?

This is a crucial decision for your estate plan and the future of your farm. Take time to discuss this. What are some ways to split the farm proportionally but still be fair to the other children?

EQUAL VERSUS FAIR: SPLITTING EVERYTHING EQUALLY

Maybe you have children who have all contributed to the farm equally. Or, perhaps the farm property will no longer run as a business in the future. In any case, some families decide that they want to split the farm equally between all their heirs. Suppose the farm is going to be continued by one of your heirs. In that case, you will still want to make sure that the on-farm child can continue the operation—either by buying or renting the property owned by his siblings. Suppose the farm is to be co-owned by all your heirs. In that case, consider placing farm property into trust for them, as you will be able to give the trust explicit instructions on how each heir can use or sell their property without causing harm to another heir. The worst way to pass property equally to all your heirs is to do so without any instructions. Many farm estates are tied up for years by siblings who cannot agree on the property's value and cannot run the business together. By the time these estates are finally settled, the farm business can be in shambles, and the heirs may never talk to one another again.

Are you considering splitting everything equally?

This is a crucial decision for your estate plan and the future of your farm. Take time to discuss this. What are some ways to split your estate equally yet not harm the future farm business?

MAKE YOUR DECISION AND SHARE IT WITH YOUR FAMILY

Keeping the farm’s future secret until the reading of your Will is not a good idea. Once you have an idea of what you want to do, you should have a family meeting to discuss your estate plans.

This can be a difficult meeting, but it may also ease tension in the family. Your on-farm child may agree that they should share some of the inheritance with their brothers and sisters.

Your other children may not be disturbed that they aren’t receiving any farm assets as an inheritance. Your children shouldn’t determine how you write your Will; ultimately, that decision resides with you. However, your willingness to sit down with all the children to discuss this tough decision will show that you respect them enough to share your concerns.

Do you have a good idea of how you want your estate divided upon your death?

CHAPTER 4
ESTATE TAXES

ESTATE TAXES: BARK WORSE THAN BITE?

Since 2001, the tax exemptions on property passed through an estate (after the owner dies) have been gradually rising. The current estate tax exemption is $11.7 million per person or $23.4 million for a married couple—most farm operations in the U.S. fall below this threshold. South Carolina currently has no estate tax.

Are you exposed to estate taxes?

If your estate is worth more than $11,700,000 (single) or $23.4 million (married couple), then you do have exposure to estate taxes.

WHAT ARE SOME WAYS TO REDUCE YOUR ESTATE TAX EXPOSURE?

These are just some basic ways to reduce your estate tax burden. If your estate is well in excess of the exemptions listed above, then you need some estate planning advice beyond the scope of this book.

1. Are you married? Through proper planning, married people can combine their exemptions in a manner that allows one to double the current federal and state exemptions. The tools used to do this are usually called *credit shelter trusts*.

2. Is life insurance part of your estate? You can remove life insurance from your estate by changing the policy's ownership or placing the policy in an *irrevocable life insurance trust*. Important note: this needs to be done three years before your death, or it will be added back into your estate.

3. Gifting. You can give away part of your estate while you are alive and reduce your estate's value. Keep in mind that gifts have *carryover basis*. Meaning that the person to whom you give the property also receives the same tax basis that you had. For example, if you paid $10,000 for a piece of property in 1950 and it is now worth $100,000 when you give it to your son, he gets your tax basis of $10,000. If he then sells the land for $100,000, he has to pay capital gains tax on the difference of $90,000.

4. Charitable contributions. Part of your estate can be given to charity to reduce the estate tax burden. Charitable bequests can be made outright or in trust.

5. Spend it. You could always spend down your estate before you die. Go on that cruise you have been putting off for the last 10 years! If you live a long time after retirement or have health problems, you may end up spending down your estate anyway.

STEP-UP IN BASIS CONSIDERATIONS

Unlike carryover basis (explained in gifting above), property that passes through an estate has the advantage of an automatic "step-up" in tax basis (to current market value) when it is passed on. This has significant benefits for the heirs of the property. Taking the same example used above in the gifting scenario (your tax basis is $10,000 in a piece of property worth $100,000), if that same property were to go through your estate, your son would get a step up in tax basis to $100,000. If he were to sell the property for $100,000, he would owe no capital gains tax.

Keep in mind that while tax considerations for the next generation are important, it is wise to remember family goals. If it makes more business sense to give the property to your heirs while you are alive, then you should do it. Step up in tax basis considerations is only important if the property is sold. For many farms, selling farm assets means the end of the business.

Do you know what your estate is worth? ______________________________

Are you exposed to estate taxes? ______________________________

If you are exposed to estate taxes, what are some tax-saving strategies you want to explore with your accountant?

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CHAPTER 5

IRREVOCABLE TRUSTS

The most common ways irrevocable trusts are used are avoiding estate taxes, limiting or controlling an heir's access to his/her inheritance, or creating options for those who may return to the farm but haven't yet. The most common trusts are differentiated below by what purposes they serve. Here are some key terms you should know about trusts:

The Trust: An entity given instructions on how property is to be held, used, and disbursed. A trust can own business interests and pay taxes just like a person. A trust includes the following duties/people:

Grantor: The person(s) who sets up the trust

Beneficiary: The person(s) who will receive the property in the trust

Trustee: The person(s) in charge of following the directions of the trust

Note: A grantor cannot be a beneficiary or a trustee. However, some beneficiaries can be trustees. These rules usually hold true, but you should check with your attorney on the guidelines for your specific trust.

AVOIDING OR MANAGING ESTATE TAXES

These trusts seek to maintain both spousal estate tax exemptions, control assets, contribute to charity, and remove the value of life insurance proceeds from the estate.

Credit shelter trusts: These trusts are for the married couple, whose individual assets may be beyond the estate tax exemption but whose combined assets are less than their combined federal estate tax exemptions. Meaning, if one spouse dies before the other, there will be estate taxes due when the second spouse dies. To avoid this situation, a credit shelter trust is created within each spouse's Will. If one spouse dies, a portion of the couple's assets is put into an irrevocable trust. If designed correctly, when the second spouse dies, the assets in trust will pass outside the second spouse's estate, free of estate tax. In this manner, a family can preserve both spouses' exemptions. Some other common names for credit shelter trusts are AB trusts and disclaimer trusts.

Marital Property Control trusts: This is similar to a credit shelter trust but places further instructions on what can be done with the marital property. The deceased's estate is transferred to an irrevocable trust upon death. Beneficiaries are named in the trust so that the surviving spouse cannot change this. Also, one may stipulate how the surviving spouse uses the estate (i.e., how much they can spend). The property in the trust is transferred to the final beneficiaries when the surviving spouse dies.

Charitable trusts: There are many ways to reduce your estate tax burden through charitable giving. If this is your goal, these types of trusts may benefit you as well as the charity of your choice. The most common charitable trusts are charitable remainder trusts and charitable lead trusts.

Irrevocable life insurance trusts: The most commonly used life insurance trust is the irrevocable life insurance trust. These trusts are used when the owner of the life insurance does not want the value of the life insurance proceeds included in their estate. While changing the ownership of the policy to someone else could do the trick, that is risky as the policy is now someone else's to control, change, or sell. The answer is to change the ownership of the policy to an irrevocable life insurance trust. Once placed in the trust, the beneficiaries are locked in, and the policy's proceeds will pass outside the deceased person's estate—providing that they put the policy into a trust at least three years before their death.

LIMITING AN HEIR'S ACCESS TO HIS OR HER INHERITANCE

Sometimes parents want to make sure that the money they leave to their children is spent appropriately. Below are some examples.

Special Needs trusts: A trust that is formed to help pay the expenses of a disabled person. With this trust, you must find a good trustee that can manage the money for the disabled person.

Education trusts: A trust that designates money to help pay for beneficiaries' education needs. There are other options to consider if you are looking to put money away for someone's education— such as the *section 529 plan* or an *Educational IRA*.

Spendthrift trusts: This requires you to designate a trustee to decide how your beneficiaries use the money from your estate after you die. Used when your heirs cannot handle money.

Trusts for minor children: These trusts may have spendthrift provisions, educational provisions, or any provision you wish to impose on a minor child.

FLEXIBLE TRUSTS: FOR THOSE UNIQUE SITUATIONS

This trust designates trustees to decide how to distribute and/or manage assets. You can also add stipulations that the trustee must follow when distributing assets out of the trust. Almost any directions can be written into a trust document. You must be careful, however, on being too restrictive, as times and circumstances may change. Some examples:

Irrevocable income only trust: sometimes there can be problems with putting income-producing property into a trust—especially while the grantors are still alive. In the case of a farm, the farm owners may rely on land rent or other income. If they put the property into a trust, how will they receive their income? The answer is an *income only trust*. An income only trust bends the rules a little—allowing the grantors of the trust to receive the income from the property in the trust. This bending of the rules also places the value of the trust property back into the estate of the deceased grantors—allowing for a step up in basis.

Special provisions trust: you could write in directions that beneficiaries must follow to receive their share of the trust property. For instance, maybe you do not know which heir will be running the farm in the future, but you want to ensure that the heir running the farm gets the farm property. For example, you could write directions into a trust that specifies how long an heir must work on the farm before receiving property.

Do you think trusts will be part of your estate plan?

☐ Yes ☐ No

Which trusts do you want to discuss with an attorney?

____

____

CHAPTER 6

LIFE INSURANCE

As mentioned in previous chapters, life insurance is a good tool for providing for widowed spouses and minor children and helping equalize your estate between farm heirs and non-farm heirs. There are some other uses of life insurance that might be of interest to you. This chapter will help you think about life insurance as a tool to help meet your estate planning goals.

DO YOU NEED LIFE INSURANCE?

For estate planning purposes, life insurance can help achieve your goals by providing cash at a critical time. If you were to die, what would be the impact on your business? By having cash on hand at the time of your death, a life insurance policy can:

1. Provide liquidity to the farm finances at a time when they are most needed.
2. Provide for off-farm heirs, so the on-farm heirs don't have to buy them out.
3. Provide for your own buy-out if you are in a partnership with someone.
4. Pay off any business or personal debts that you want to take care of.
5. Pay for estate taxes, if there are any due.
6. Pay for your final arrangements.
7. Provide for a surviving spouse.

LIFE INSURANCE CHOICES (FOR EXAMPLE PURPOSES)

Term insurance is the cheapest form of life insurance coverage. It provides a pre-determined amount of cash if you were to die within the terms of the policy (and kept up with paying your premiums). For instance, a $100,000 ten year term policy would payout $100,000 if you were to die during the 10 years you were paying premiums.

Whole life (or straight life) insurance provides a set dollar amount of coverage in exchange for fixed premiums. Sometimes whole life is represented as a savings tool: if you pay into a whole life policy, you accumulate cash reserves, which you can borrow against. You can also surrender your policy in exchange for the cash reserves.

Universal life attempts to combine term insurance with whole life. With universal life, you can accumulate cash reserves to adjust your premium payments. You may also be able to vary the amount of coverage that you want.

Variable Life Insurance products invest the cash reserves. You can grow or lose some of your cash reserves depending on the performance of the investments.

Variable Universal Life is like combining whole life insurance with variable life insurance. Cash reserves generated through investments in the financial markets can be used to vary the premium and/or the coverage level.

Single-Premium Life is a policy where you pay all the premiums upfront, in a lump sum.

Survivorship or "second to die" life insurance. This policy insures two lives (usually spouses). When the first of the two dies, no payments are made from the policy. The policy only pays off after the second of the two dies. This is usually used to help pay for estate taxes if they are due upon the second spouse to die.

First to die policies are the reverse of the survivorship policies. These are usually used in the event of two business owners. The proceeds of the first to die are used to buy out that person's interest in the business (usually through a buy-sell agreement). For more information on partnerships and buy-sell agreements, see the *Partnership Guide* published by the SC Center for Cooperative and Enterprise Development at clemson.edu/extension/agribusiness/sccced.

Annuity life insurance policies are used if the policy beneficiary doesn't want to receive the proceeds all in one lump sum. Instead, they receive the proceeds in payments over time. These policies are sometimes used in place of trusts for minor children or spendthrift trusts.

BUYING LIFE INSURANCE/FINDING A GOOD INSURANCE AGENT

When buying an insurance product, it is good to seek out a broker—someone who represents multiple companies and can find the best insurance product for you. Of course, the agent should be knowledgeable and trustworthy. Ask your neighbors and other farm business advisors whom they trust. A good policy should be priced reasonably. There are many add-ons to insurance policies, which you should only consider after weighing the costs and benefits of the particular add-on.

Do you think life insurance will be part of your estate plan?

☐ Yes ☐ No

Do you have a life insurance agent?

☐ Yes ☐ No

Which policies do you want to discuss with your agent?

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____

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____

CHAPTER 7

PLANNING FOR INCAPACITY

More estates are at risk from incapacitation than from estate taxes. The crucial documents that you should have prepared are listed below. Another consideration that is becoming a huge factor in today's society is long-term care. Basically, if you don't plan for long-term care, you could lose most of the net worth in your estate before you die.

PLANNING FOR INCAPACITY

The documents listed below go into effect when you become incapacitated. These documents answer the critical questions about who will handle your medical and financial affairs if you become unable to do so.

Power of attorney for finances: This document gives someone else the ability to make financial decisions on your behalf. Sometimes called a "Durable Power of Attorney." You can have the document take effect immediately ("springing") upon an incapacitating event. The person you name responsible for your finances can have limited control or complete control of your finances. You could also name more than one person so that they have to agree on decisions regarding your finances. In addition, you should always name additional persons as a backup (secondary, tertiary) in case your first choice for power of attorney happens to be dead, incapacitated, or otherwise unavailable.

Health care power of attorney: This document gives someone else the ability to make medical decisions (about you) on your behalf. This document is essential in light of new laws regarding the privacy of personal health records. Without a health care proxy, hospitals will not release any medical information—even if that information is to a spouse or another close family member. You may end up choosing a different person than your power of attorney to hold your health care proxy. The person you select should be somewhat knowledgeable about health care and should be able to make timely decisions.

Living Will: This document expresses your wishes about whether or not you want to be kept alive under certain conditions (i.e., if you are in an irreversible coma or are on life support). While this may seem redundant to the Health Care Proxy, it's not. For end-of-life decisions, this document has to be precise. Without your clear mandate in your living Will, your family may not have the power to follow your end-of-life wishes.

LONG TERM CARE PLANNING

Although assisted living is often thought to be synonymous with nursing home care, it is not the case. People who need long-term care or assisted living may still be living at home or living with relatives or friends. However, Americans are living twice as long as a century ago. The more we age, the more likely we need for some form of long-term care. Forty-four percent of people reaching the age of 65 can anticipate spending some time in a nursing home. One in five people will stay in a nursing home for five years, while the average stay is 2.5 years. These odds are good enough to prove two things: you need to plan for the possibilities of needing long-term care, and you need to figure out a way to pay for it.

HOW WILL YOU PAY FOR IT?

If you have a family business, then this question becomes, “How will the business pay for it?” There are a few options, depending upon what type of long-term care you will need. These options are: paying for it yourself, Medicare, Medigap Insurance, Medicare Managed Care, Medicaid, and Long Term Care insurance.

Paying for it yourself: You will need to estimate how much money you will need to save to provide yourself with your long-term care needs. Judging from the statistics, to cover the high end of the average, you should save at least $300,000. This could be part of your retirement goals as well. After all, that is what a retirement fund is for—taking care of yourself after you stop working. The negatives of this plan are that it could use all of your savings. The positives of this plan are that your choices for what type of care you receive are left open.

Medicare. Medicare pays for items that are deemed “medically necessary.” Custodial or “personal” care, like feeding, bathing, etc., is not covered. Medicare may pay for home care but on a short-term basis. Medicare will not pay for residential care and will only pay for a limited amount of nursing home care if it is immediately following a three-day hospital stay.

Medigap Insurance. Some policies provide limited coverage for short-term home care. Many of the policies may supplement what Medicare agrees to cover (same rules as above). Long-term coverage and residential care are not covered.

Medicare Advantage Plans. Similar to both Medicare and Medigap Insurance coverage. Some managed care plans will help more with home care, but again, this is short-term.

Medicaid. Medicaid will pay for home care: both personal and medical. This may be of limited duration as well. Residential care is not covered, but nursing home care is covered without any time limits imposed. Eligibility rules are strict. The person applying has to have very little income and few assets. This could be a problem if business assets are still in possession of the person applying for Medicaid. Medicaid administrators could put a lien on the business property to recoup the nursing home expenses. Never apply for Medicaid without first consulting your attorney.

Long Term Care insurance. The policies may vary depending upon what you want the policy to cover. Home care and nursing home care are the two items that are covered. Depending on the coverage, these items may not fully cover all costs associated with care. Coverage levels depend upon how much of a premium you can afford to pay.

Do you currently have an up to date power of attorney?

☐ Yes ☐ No

Do you currently have an up to date health care proxy?

☐ Yes ☐ No

Do you currently have an up to date living Will?

☐ Yes ☐ No

Do you have a plan to cover long term care costs, should they arise?

☐ Yes ☐ No

Which documents do you want to discuss with an attorney?

____

____

Which long term care strategies do you need to discuss with your family and/or insurance agent?

____

____

CHAPTER 8

IMPLEMENTING THE PLAN

WHICH PROFESSIONAL SERVICE PROVIDERS DO I NEED ON MY TEAM?

The most common planning mistake made is having too few people on their planning team! Often, a single trusted family advisor (such as a lawyer or an accountant) is depended upon to execute the entire process. While this may get the job done faster, one individual may overlook certain aspects of a complete retirement plan. Below is a list of specialties that need to be represented while planning for retirement:

Family/business members: Everyone who is affected by the estate plan

Lender: Loan security, financing

Accountant: Tax implications

Business management specialist: Someone who knows the industry

Neutral 3rd party facilitator: Keeps the process moving while you are busy

Financial planner: Investments, estate planning, life insurance, etc.

Lawyer: Reviews and drafts the legal agreements

Other: Production specialists, insurance agents, counselors, other service providers, etc.

Realize that you will not need to meet with all these people every week. Nor will you have to meet with all these people at the same time. However, your professional team needs to be able to collaborate with one another to double-check each other's work and create a transfer plan that works for all parties.

HOW DO I FIND A GOOD SERVICE PROVIDER?

After reviewing the list of team members, you may notice that you need to find more people to be on your team. How do you go about finding the right service provider? Here are some tips for finding the right team member:

1. **Compile a list of names.** List all the people you can find in that particular service area. Ask around—your family, other service providers, and even your neighbors.

2. **Check the person out.** Find out who has used that person's services and call them for references. Treat this like a job interview—this service provider will be doing important work for you, so you want the best!

HOW DO I GET THE MOST FROM PROFESSIONAL SERVICE PROVIDERS?

Service providers are busy people like you. They have other cases to handle besides yours. Here are two good pieces of advice to getting the most from your service provider:

1. **Keep in contact.** Ensuring that your service provider gives you the attention you need is like the old adage: "the squeaky wheel gets the grease." You need to be in regular contact with your team—don't wait for them to call you.

2. **Ask the right questions.** Ask questions in the service providers' expertise (i.e., don't ask your accountant legal questions). Also, do your homework so that you ask the most direct, concise question possible. Don't be afraid to get clarification on items that you don't understand.

3. **Make expectations known upfront.** What do you expect from your service provider, and how much is it going to cost you? How is this person going to cooperate with your family and the other team members? It is a good idea to write these things down and review them with your service provider to see if they are willing to meet your expectations. Get agreements in writing.

4. **Don't be afraid to change providers.** Although you may have time and money invested in a particular person, don't be scared to replace that person if he/she isn't doing the job you want. The future of your business depends on getting the job done right.

WORKING WITH YOUR ATTORNEY

Working with your attorney is exactly the same as working with any other service provider. However, people who have the law at their fingertips can intimidate us. This doesn't have to be the case. One key point to remember is that attorneys specialize in different aspects of the law. For an estate plan, you need an attorney with experience in estate planning, elder law, and business transactions.

Check off which specialties will be represented on your team & identify them.

- ☐ Business members: ____________________
- ☐ Lender: ____________________
- ☐ Accountant: ____________________
- ☐ Management Specialist: ____________________
- ☐ Farm Transfer Facilitator: ____________________
- ☐ Financial Planner: ____________________
- ☐ Lawyer: ____________________
- ☐ Other: ____________________

APPENDIX
ESTATE PLAN CHECK-OFF LIST

Check the boxes if you have completed that part of your estate plan

ITEMS FOR YOUR WILL

- ☐ Do you have a Will? Is it up to date?
- ☐ Do you need/have you designated a guardian for minor children?
- ☐ Do you need/have you designated a custodian for property left to children?
- ☐ Have you decided on your beneficiaries?
- ☐ Have you decided how to treat non-farm heirs and on-farm heirs?

ESTATE TAX ITEMS

- ☐ Does the value of your estate expose you to estate taxes?
- ☐ Do you have strategies in place to reduce or eliminate your estate tax burden?

IRREVOCABLE TRUSTS

- ☐ If you have decided that you need a trust, is it set up in your will?
- ☐ If you have decided to start a trust today, have you set it up?
- ☐ If you want your life insurance proceeds in a trust, have you done so?

LIFE INSURANCE

- ☐ Is life insurance going to be part of your estate plan?
- ☐ Have you had a life insurance check-up to make sure it is going to do what you want?

PLANNING FOR INCAPACITY

- ☐ Do you have an up-to-date Power of Attorney?
- ☐ Do you have an up-to-date Health Care Proxy?
- ☐ Do you have an up-to-date Living Will?
- ☐ Have you made provisions to pay for Long Term Care?

THE ESTATE PLANNING TEAM

- ☐ Do you have an accountant that knows farm accounting and estate accounting?
- ☐ Do you have a competent estate/elder law attorney?
- ☐ Do you have a reliable insurance broker?
- ☐ Does your family have the contact information for these people, should you pass away?

THE MOST IMPORTANT QUESTION: IF YOU WERE TO DIE OR BECOME INCAPACITATED:

- ☐ Would the farm business be able to operate without a hitch?
- ☐ Would it be clear to your family what your wishes were?
- ☐ Would you be satisfied with your plan?

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