

Section Four:
**MEETING WITH
PROFESSIONAL
ADVISERS**



Photo courtesy of Washington State University

ABOUT LAWYERS AND OTHER PROFESSIONAL ADVISERS

Putting together a team of professionals to assist you is a necessary part of the farm transfer process. Though you and your family will accomplish a lot of work on your own, ultimately you will need professionals to advise you on financial matters and legal issues related to the future you want. You will need a lawyer to draft the documents to get you there. If you consider what is at stake - family harmony, protecting family wealth from unnecessary transfer costs, protecting the productivity of farm assets, continuing the flow of uninterrupted income to a farm enterprise – the time and money you spend on coordinating the process of farm transfer planning, including the time to carefully select and monitor your professional advisers and their fees, will have a very high rate of return.

Members of your team will include at least a lawyer and probably an accountant. At various times you could need the services of an appraiser, surveyor, insurance agent, and agents of financial institutions, including present and future creditors who must approve or finance certain transactions.

The realities of putting together a competent “team” of professionals - one that effectively compliments each other’s expertise and applies that expertise in a coordinated fashion to your particular circumstances – can be daunting. A primary challenge is determining who will coordinate the communication between professionals in a manner that you remain in the loop, and how to handle differences of opinion among your advisers on your particular situation and strategy.

Sometimes, a member of your family may volunteer for the task of coordinating the many assessments and information gathered as outlined in this workbook. This person may spend many hours reading up on subjects related to farm transfer planning, estate planning, arcane tax issues, as well as many hours on the phone with advisers, gathering information from family members, coordinating family meetings. There are other professionals that can serve in this purpose as well, either as a consultant, or as one of the members

of your “team.” Always remember that, unless you agreed otherwise, the relationship between you and your attorney is one of confidentiality, and much information and likely decisions will need to be kept from other family members.

Most farmers and rural landowners live in rural communities where personal relationships influence decisions. In such a community, one professional you customarily work with, perhaps a lender or insurance agent, refers you to other professionals and so on. In many cases, professionals will refer you to someone they have worked with before on other matters, and already have established mutual trust and lines of communication. Indeed, it makes little sense for one professional to refer you to someone in whom they have little confidence, as that will reflect directly on their professional credibility.

The time and money you spend on coordinating the process of farm transfer planning will have a very high rate of return.

It cannot be avoided that the advice of some professionals will be tied to their offer of a certain product, such as insurance or financial investments, which are often necessary to meet your goals. There is nothing inherently wrong with this, and it is their compensation for offering you their critical expertise. Someone with the proper licensing – to protect you as a consumer – has to do it.

No one professional can provide every basic service. A lawyer cannot take a financial interest – other than compensation for his or her time – in your farm transfer transactions in the form of commissions from selling you an insurance policy or investments. Likewise, non-attorneys - such as financial planners, accountants, insurance agents - are likely breaking state law if they draft the legal documents you end up signing. If they offer to do it, you should decline, and you should refrain from requesting them to offer such advice, thinking it will save you money. You should be able to get a satisfactory explanation from each of your professionals on the necessity of each product, not simply that it is what someone else recommended or purchased. At the least, keep your lawyer and tax adviser informed of what financial products you contemplate purchasing.

About Lawyers

For a number of reasons, it is often practical to have the lawyer (also called attorney) serve as the central team member, often the point of first contact. One very practical reason: Attorneys ethically must accept responsibility for making sure clients fully understand what rights and opportunities they are giving up by choosing a particular course of action at the recommendation of a non-lawyer professional member of their team. Also, all communications are confidential.

Remember that the basic legal issues involved in farm transfer are not specific to you as a landowner or farmer, but generally apply to all members of society. Many transactions are routine. What differs is the landed nature of your wealth, your farm production interests that may govern your decisions, the unique aspects of farming as a small business owner and your role as caretaker of a land legacy. You should be confident your lawyer understands this.

Selecting a good lawyer can of course be a challenge. The lawyer most farmers and landowners come in contact with will be someone local in their community with whom they have done business before or who has served other members of the family. Often the issues surrounding farm transfer fall into a number of areas of legal practice – estate and gift tax planning, elder law, farm business operation (itself a host of practice areas) - and it is a challenge to find all of these in one practitioner. In some situations, families may consider having their local lawyer work with another lawyer on specialized issues on a limited and cost-effective basis.

A valuable lawyer, it must be recognized, is to effectively serve as a counselor to you and your family, not simply act as a plumber who fixes things that go wrong or executes documents at the direction of a non-attorney. You can help them and your family immensely by using the exercises in this workbook. The clearer your articulation of yours and your family's goals for the farm, the better service you will receive (i.e., you will feel as though you have been understood), and it will save you and your attorney time, which of course translates into money saved.

Lawyers are required to use independent judgment in considering how to serve your needs (ie. your goals), even when they have been referred to you by a non-attorney professional with whom you are doing business (e.g. a financial planner or insurance

agent). Beware of any lawyer who simply complies with a recommendation on a course of action without thoroughly explaining it to you its significance. Your lawyer should be someone who makes you feel confident in their skills as a counselor, not just someone who prepares documents for you to sign.

Other professionals you will work with include:

Life insurance agents can review your insurance coverage and help you organize information for your attorney and tax adviser. The agent will suggest ways to help you avoid liquidity (cash flow) problems upon your death, and how to balance land and liquid assets. Be sure to request a proposal from any insurance professional recommending a certain product, and you should share any proposals for policies with your attorney to make sure the premiums and proceeds go in the right place. Price alone should not be the sole basis for purchasing life insurance as policies and the companies that underwrite them vary in strength.

Accountants or tax advisers are also knowledgeable of estate and other taxes. Certified Public Accountants are accountants who are licensed by a state board of accountancy. Accountants or other tax advisers (such as enrolled agents permitted to represent you before the Internal Revenue Service) will help you understand the tax consequences of various types of transfers, such as capital gains and depreciation recapture. Accountants or other tax advisers also can advise you about business or property management, valuation of assets, and business continuation or sale. Accountants or other tax advisers are usually compensated on an hourly basis.

Trust officers offer management and investment services. Trust officers may be attached to a bank trust department, or they may be independent. Trust officers are usually compensated based upon an annual percentage of the principal in the trust. In general, the larger the trust, the lower the percentage that you can expect to pay. Most trust officers have a minimum amount of money that they are willing to manage.

Financial planners review your entire financial situation and identify strategies to achieve your financial goals. They work with other professionals to develop your insurance, investment, retirement, and estate plan. Financial planners are compensated either on a fee basis or on a commission basis. The services

of commission-based financial planners may be quite valuable to you, but the scope of their advice may be limited by the products that they sell. Fee-based financial planners generally do not sell any products.

Forestry professionals can advise you on an often overlooked asset: your forest stand. Many farms in Washington State have a forestry component which should be considered an asset and managed as such. It therefore should be critical to have a neutral, registered or certified forester. A forestry professional can help you a) develop a forest management plan, b) determine the volume and value of your timber, as well as its basis, c) conduct timber harvests and sales, properly reforest your land by advising you on how to best establish a new stand of trees, d) reduce your risk of loss from fire, insects, diseases, overstocked stands, and improve tax treatment of income, and e) enhance wildlife habitat and improve hunting success or increase wildlife viewing opportunities. Someone familiar with your timber stand, its age and value, can serve a valuable role in advising on property division and distribution in your estate plan.

Mediator

In a number of situations, you may find that communication is difficult within your family or those with interests in your farm property. A mediator is trained in consensus-building. Unlike the attorney, who ultimately represents one or more parties, a mediator is known as a “third-party neutral,” one who is paid *not* to take sides. They can enforce the rules of communication, help explain positions, and keep the discussions on track. In a large family situation, this could prove very helpful.

Surveyors and Appraisers

Other professionals you will rely on will be surveyors and appraisers. In many cases, farm property will have been poorly described in previous deeds, and will need to be surveyed to determine the true boundaries for future recording (e.g. when transferring real estate to a limited liability company). Many land transfers will simply require a new survey, and sometimes you will want to separate contiguous property into separate tracts for distribution. Likewise, appraisers will be needed to value assets involved in the sale, gift or purchase of a business, real estate, or assets of a recently deceased parent for estate settlement purposes. They are also a requirement in many transactions, such as the sale or donation of a

conservation easement.

Conclusion - Finding Services in One Store

For practical reasons as emphasized earlier, if you don't have a long-time adviser such as an accountant or insurance professional, your lawyer should be your primary coordinator of your legal and financial decision-making. In some cases, you may find that some of your essential services, particularly tax advice and perhaps accounting, can be housed within your lawyers' firm. There are strict state rules in place to protect you in this arrangement. If there are sensitive matters that must be kept confidential the attorney-client privilege offers that protection.

Ultimately, you may have to travel outside your home county or region to find the right services, particularly legal and tax. Just as you might travel across the state to a farm show to shop for new equipment to enhance your farm income, doing the same to visit a lawyer will pay long-term dividends by protecting your wealth, the future of your farm, and the well-being of your family.

GATHERING INFORMATION ABOUT YOUR ESTATE

Gathering as much information for working with your professional adviser(s) is extremely helpful. The clearer picture they have of your wealth, the type of assets you own personally or as part of your farm business, and where your land is located will give them a clearer picture up front of how to guide you. Otherwise, advice might be given and decisions will be made that could have been improved with better information. That said, it is understandable that there are limits to the time it takes to gather information, and the enormity of the task should not keep you from seeking out professional advice to guide you along sooner rather than later. As a practical matter, your farm transfer planning should be organized into a flexible framework, and by doing that your adviser will gain a clearer picture over time of the extent of your assets and your goals for distributing them.

Below are a number of information categories to help you start collecting and organizing the needed information a lawyer or tax adviser will likely want. The list covers many different types of assets, and may appear overwhelming. Just gather what you can but do not be too concerned that your adviser will not start working with you until it is complete. He or she will help you along with it as your relationship unfolds. There will be certain types of information that your lawyer will be able to uncover on his or her own, particularly real property and its relative value.

Like the worksheets on the following pages, many attorneys, tax advisers, and financial advisers have their own forms that they will ask you to use when compiling this information prior to your initial meeting. Organizing and gathering information by the following categories can greatly facilitate that process.

Personal Information

List the full names of your family members (ie. your children) and any other individuals with whom you own property. Be sure to include all of your children, including those adopted and those already born to your current spouse before you were married (i.e. your step-children). List the names of your grandchildren, and which child of yours they belong to. List the names of other individuals with whom you co-own a business, and the names of your landlords and/or your tenants.

This will be helpful to your lawyer to conduct what is known as a “conflict of interest” check, to make sure that he or she is not stumbling into a situation whereby they cannot serve you. If you are divorced, it is helpful to have copies of any divorce settlements or decrees and any premarital agreements from your current or earlier marriages.

Your personal information should include information about special needs children who may need help when they become adults. Also include information about parents or siblings who may need special provisions in your estate plan due to degenerative diseases or other conditions.

Bank Accounts

Provide as much information as possible for all bank and credit union accounts. Try and include the exact name(s) on each account and the name and location of the branch at which you do business. If any of your accounts are survivorship accounts, you should also provide the name of the beneficiary(ies) for that account. For joint accounts, please identify the joint owner.

Stocks, Mutual Funds and Bonds

Include a general description of all stocks, mutual funds and bonds, as well as their location. If you work with a financial planner, provide his or her contact information to your lawyer. You should give your financial planner a heads up that your lawyer might be calling with questions.

Life Insurance

List the types and amounts of life insurance you own, as well as the beneficiary and the benefit amount. If you have the policies, bring them to your lawyer so he or she can understand your insurance situation. If you have summary statements from your insurance agent or broker, bring those, or otherwise call them and find out what authorization they need from you to provide in-force illustrations of your current insurance holdings directly to your lawyer upon request.

Trusts

If you are a trustee of a trust established by someone else, let your lawyer know. If you have established

any trusts already as a part of earlier estate planning by another lawyer, please bring a copy of the trust to your meeting. If you are the beneficiary of any trusts, let your lawyer know and if at all possible bring a copy of that trust.

Personal or Business Loans Owed to You

Describe any moneys owed to you. Include the debt amount, what it was for, how much is outstanding, the year you made the loan(s), and of course the person(s) indebted to you. Try to include copies of documents that provide evidence of or secure the debt.

Real Estate

If you have maps, aerial photographs, FSA farm numbers, etc. of your land, bring it to your meeting with your lawyer. As a practical matter in this modern digital age, simply providing your lawyer with the names of the counties where you own land will be enough for your lawyer to find out how much land you own, and a snapshot of how much it is worth (at least according to the county tax assessor). If you have deeds and such, bring them. If your county does not have this information online, your lawyer will help provide you a framework by which you can inform him or her more information on your land holdings. If you are not currently farming your land, give the names of any tenants who are.

Personal Property

List numbers of livestock, farm machinery, crop inventory, and any unique or valuable items of home furnishings, jewelry, art, antiques, and personal items. For unique personal items and family heirlooms, try and describe each item's cost and value, and include the names of any co-owners or who you inherited the property from. For farm assets, bring at least a depreciation schedule for the previous year. If you have been storing gold for many years, please let your lawyer know (this is not as uncommon as it sounds).

Personal and Business Debts

Compile a list of all money that you owe to others. This list should include information for each creditor, the amount and terms of the debt, and the security, if any, for the loan. For farm equipment that still has a lien, simply identify it and the remaining balance on the depreciation schedule you provide (see above). For debt secured by your real property, let your lawyer know who you do banking with and your contact there (like with the other advisers, be ready to let your lender know the lawyer will be calling with questions).

If you have other debt attached to your real property, such as tax liens, judgment debt or workmen's liens, include all information to the extent known. Information about all other personal liabilities.

Retirement Benefits

If you have significant pensions or retirement benefits, make these known to your lawyer. Try to list and describe all pensions, profit sharing, deferred compensation, death benefits and social security benefits, their source and amounts paid and when. Be sure to include names of any beneficiaries other than yourself.

Other Financial Information

Be prepared to provide a picture of your income situation from farming operations and land rent. Bring copies of income tax returns for at least the last two years to the first meeting with a lawyer.

Safe Keeping; Safety Deposit Boxes, Safes and Fireproof File Cabinets

If you have a safe deposit box, please let your lawyer know its location and contents. Describe the locations where you keep your important papers (there is a worksheet on the following page to help with this task).