

# THE TOOLS OF FARM TRANSFER

In Section One of this workbook, we emphasized the importance of exploring core values and developing a long term vision for the family's relationship to the farm. Also in that section, we discussed inherent risks to that vision: death, disability, divorce, disaster, and disagreement (the "5 D's"). If you consider these two concepts together, they demonstrate how the tools of farm transfer work.

Consider your life as a timeline, and identify two points: the "here and now" and the "there and then." If you have taken steps advised earlier in this workbook, both can somewhat be identified in your mind. Now, imagine one or more of the Five D's between those two points, and you can picture the essence of the decisions involved in farm transfer tools. The development and execution of estate planning and farm transfer tools are what lawyers and other advisers prescribe to address the 5 D's, the challenges to the future you envision. Because such events are foreseeable, legal agreements are meant to keep your wealth and your farm fairly intact as it is visited by a D risk event.

The timeline image is useful to illustrate another point about transfer tools. Picture each half of the line (with the D risk event still in the middle!) to identify a generation. As you plan to pass an asset to the next generation, consider what affect the D has on the recipients' rights to that asset. Without a clear distribution plan, and in many cases an actual agreement between both generational sides of the equation on how those rights are protected, many of those D risks will be poorly addressed.

When it comes to agreements in farm transfer, it is helpful to consider that you are transferring three rights in an asset: Income, Management, and Control of Equity (ownership). The agreement you form with the person or persons to whom you are transferring the asset - say a farm - will govern all parties' rights to these three things.

For example, when you transfer land, you transfer the right to earn income from it. If you sell it outright or make a gift of it, you completely relinquish your right

to earn income from it. If you form a lease agreement with a farmer to use the property, you can retain income from the property in the form of rent, while the farmer receives the return on the sale of his or her crops. With a lease, you also allocate management while retaining control of the equity.

As outlined in this section, there are a number of legal instruments - wills, trusts, partnerships, limited liability companies, leases - that can transfer rights to assets. For some tools such as wills and trusts, one generation can decide what is going to be done with the assets without the consent (often without the input) of the successor generation, and that generation simply lives with the result.

*If your goal is to pass your farm intact and in use across to the next generation, you will likely have to have some sort of agreement with that generation.*

Again for example, when you transfer land in your will, you often transfer the rights to income, management and equity to several people in equal shares. However, the rights in the income and management, while legally defined as equal rights, are nonetheless ambiguous between the new owners. Three people may have the right to manage the property, but what if they disagree? All have the right to income, but can all agree (and contribute equally) to the production of that income?

Often to keep a farm intact, there must be a set of instructions, say in a trust or an agreement between owners. Sometimes this can be a lease, sometimes a business entity such as a limited liability company, whose operating agreement clearly defines all the owners' rights to income, management and equity. It is helpful to remember that regardless of the differing tax treatments, management and reporting of business entities, all are essentially a contract between owners that describes, often in great detail, the rights of all owners in the income, the management, and the equity of the property that is owned by the entity. The agreement also prescribes the reaction or options in the event of a risk event occurring. Care must be taken to make sure your advisers fully understand your desires, values and risks.

In sum, to give your vision for the future of your farm its best shot, you will likely have to form an agreement with those to whom you entrust that future.