



*Estate and Transition Planning  
Workshop for Agricultural  
Producers*

**Good Morning!**

**Please fill out the Pre-Workshop Demographics Form**

**- and -**

**Start working on the Estate and Transition Planning**

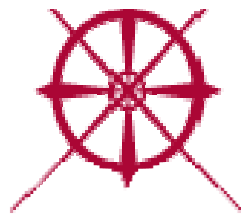
**Objectives and Vocabulary Matching Exercise.**

*Estate and Transition Planning  
Workshop for Agricultural  
Producers*

# Thank you to our partners for assistance in funding this program



United States Department of Agriculture  
National Institute of Food and Agriculture



SOUTHERN  
RISK MANAGEMENT  
EDUCATION CENTER

TEXAS A&M  
AGRI LIFE  
EXTENSION



Extension Agricultural Economics  
Department of Agricultural Economics

*Estate and Transition Planning  
Workshop for Agricultural  
Producers*

# Today's Presenters



**Dr. Wayne Hayenga, J.D.**

**Professor Emeritus, Agricultural Economist & Attorney**

**(979) 845-5446**

**w-hayenga@tamu.edu**



**Dr. Jason Johnson**

**Texas A&M AgriLife Extension Economists**

**Stephenville**

**(254) 968-4144**

**jljohnson@tamu.edu**



**Dr. Blake Bennett**

**Dallas**

**(972) 952-9273**

**b-bennett@tamu.edu**

*Estate and Transition Planning  
Workshop for Agricultural  
Producers*

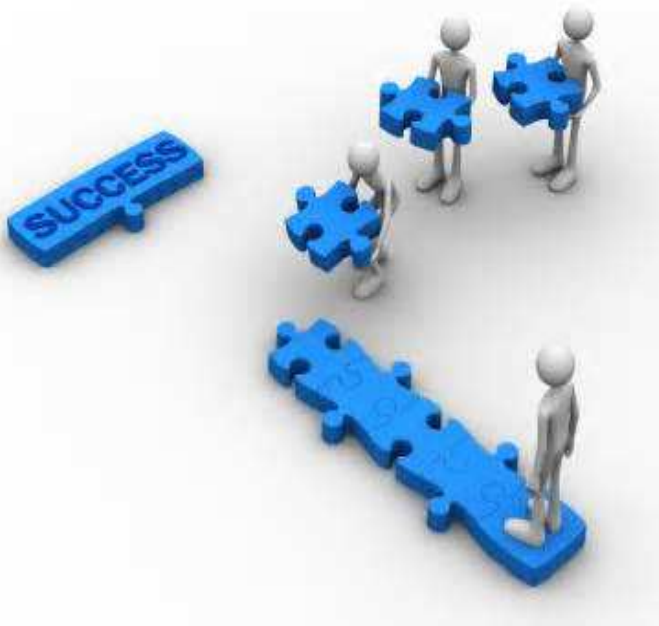
---

# Purpose of Today's Workshop

- Introduction to Estate, Retirement, and Transition planning issues relevant to agricultural producers
- Establish an outline of strategies and procedures to consider when developing or updating your Estate/Retirement/Transition plan



# The Goals for Today's Workshop



You leave with knowledge and confidence to assist you to . . . .

- Compile & review your own information....
- Communicate an outline to your professional team.... and
- Create or modify a transition / estate plan that is right for your circumstances.



## *Estate and Transition Planning Workshop for Agricultural Producers*

### **Workshop Agenda**

- **Estate Planning Basics**
- **Lunch and Case Study Discussion**
- **Estate Planning Basics (continued)**
- **Retirement Planning Basics**
- **Transition Planning Basics**

*Estate and Transition Planning  
Workshop for Agricultural  
Producers*



*Estate and Transition  
Planning Workshop for  
Agricultural Producers*

## **Estate Planning Essentials**

- **Estate Planning Goals**
- **A Lawyer's View of Your Farm/Ranch**
- **Laws of Estate Planning**
- **Estate Planning Documents**
- **Tax Planning Issues**
- **Dealing with Incapacity**

*Estate and Transition Planning  
Workshop for Agricultural  
Producers*



---

# Common Estate Planning Goals

- Minimize taxes at death.
- Minimize probate costs and delays.
- Conserve property during life and after death in accordance with goals.
- Provide financial security:
  - Parents in retirement.
  - Family member with a disability.



---

# Key Areas of Concern

- Guardian for minor children or adult children with special needs.
- Providing income for a surviving spouse or children.
- Management of estate property, assets, investments.
- Minimization of probate and settlement expenses.
- Minimization of estate and inheritance taxes.
- Flexibility.
- Liquidity for necessary and unavoidable expenses.
- Gift planning.
- Continuation and/or transfer of the business.

---

# Family Considerations Triggering a Review of Estate Plans and Objectives

- A. Family changes
- B. Divorce
- C. Second marriage
- D. Special needs

---

# Estate Planning Goal Setting

- Take care of #1
- Take Care of Family
- Business Succession Planning / Control
- Taxes
- Decision-making



---

# Taking Care Of ....

- #1 Do we need to say more?
- Spouse
  - How Good?
  - How Long?
    - Till wedding bells ring again?
    - Till he or she has some fun?
- Grandpa's Farm
- Children and Grandchildren – share and share alike?
  - Fair vs. Equitable
- Parents ~ Parent-in-Laws

# Children = or ≠ In-laws

- Do children include in-laws?
- The in-laws **now** or **later** when we read the will?



---

# A Lawyer's View of Your Farm/Ranch

- Operations
  - Crops, Cattle, operating money, equipment, etc
- Land
  - Surface to produce crops, grass and feed
- Minerals
  - Oil, gas, and other minerals
- Other
  - Wind, easements, gravel, recreation, water

---

# Ownership of Your Farm/Ranch

- Operations
  - Personally
  - LLC
  - S Corp
  - Partnership – general
  - Partnership – limited
  - C Corp



---

# Ownership of Your Farm/Ranch

- Operating Company
  - Little Value, High Risk, Lots of Decisions**
  - Corporation or LLC
    - Limit liability, decision making to owners

**Leases Land FROM Land Owning Entity**

---

# Ownership of Your Ranch

- Surface or Land

  - High Value, Little Risk, Few Decisions**

    - Personally

    - Trust

    - Limited Partnership

      - Little risk for Limited Partners

      - Decisions in hands of General Partners

## Land Leased TO Operating Company

---

# Ownership of Your Ranch

- Minerals
  - May want to add to surface ownership
  - May want to use Dynasty Trust
  - May want to do something else

---

# Sharing Ownership

- Co-owners
- Partners
  - Limited and General Partners
- Shareholders of Corporations
- Members of Limited Liability Companies

---

# Protections with Shared Ownership

- Buy-Sell Agreements
- Restricted Stock, etc.
- But, what happens when an outsider gets ownership?
  - Buy him/her out - but what if no cash?
  - Will they be an owner or assignee?

---

# Shared Ownership

- Look for the way out *before* getting in the deal



---

# Sources of Income

- Traditional Production: Crops & Livestock
- Wildlife hunting
- Wildlife looking
- Recreation
- Water
- Gravel
- Oil, gas, minerals



---

# Sources of Income

- Country living
- Utility towers
- Wind
- Easements
- Signs
- Disposal wells
- Coal

---

# Sources of Income

- Rocks
- Trees
- Environmental mitigation
- Other -
- Other -
- Other -

---

# Laws of Estate Planning

- Property Ownership
  - It's Ours - Community Property
  - It's Mine – Separate Property
- It's all “community” unless one can prove it is “separate”

---

# Laws of Estate Planning

- Separate Property is
  - Owned before marriage
  - Acquired by Gift or Inheritance
- Can change from Community to Separate
- Can change from Separate to Community

tax savings, equalize estates, be nice, and/or be stupid

---

# Four Ways to Pass Property

- Contract
  - Retirement plans, Life insurance
- Operation of Law
  - Joint Tenancy with Survivorship, POD
- Trust
  - If Trust is **funded**
- Probate
  - Testate, Intestate

---

# Questions

- Who do you want to get into your safety deposit box? Is their name on the card?
- Does your will/trust provide for designating personal items?
- Where is your most recent will located?
- Who needs to know your plan? Why?
- Have you compiled all critical information in one place and who knows where it is?

---

# 8 Documents to Consider

## A. Will

- Names Executor
- Passes Property to heirs

## B. Trust – Revocable Living

- Can manage your property while mentally or physically disabled
- Can change while competent

## C. Trust – Irrevocable Living

- Same as above, but can not change
- (Next marriage? Abusive/aggressive family member?)



---

## 8 Documents to Consider (Cont.)

### D. Durable General Power of Attorney

- To manage business affairs if you cannot

### E. Guardian if Needed

- Select the person to be a guardian if needed
- Prevent anybody you do not want to be in charge of business/personal matters
- (Next marriage? Abusive/aggressive family member?)

---

## 8 Documents to Consider (Cont.)

### F. Directive to Physicians

- If no quality of life left, remove life support

### G. Medical Power of Attorney

- Allows someone else to make medical decisions if you are unable to communicate

### H. HIPPA Information Release

- Allows somebody else to obtain medical information

---

# Basic Will

- A. Payment of debts, expenses
- B. Payment of taxes
- C. Disposition of personal property
- D. Disposition of other property
  - residuary clause

---

# Basic Will

E. Selection of executor

Independent?

Without bond?

F. Selection of Trustee

---

# Selection of Executor

## Executor's Main Duties

1. Collect property
2. File reports
3. Distribute property
  - (manage estate for short time)

## Executors Can Hire Professional Help

1. Attorney
2. Accountant
3. Any others

---

# A Trust

- An arrangement whereby, a **Trustee** holds legal title to property for a **Beneficiary** for a **purpose** as defined by a **Settlor**

---

# A Trust Is...

- A Management Tool
  - Long time control of property
  - A look back at goals
- A Separate Taxpayer when Irrevocable
  - Separate income and deductions
  - Trust gets a deduction for payments to beneficiaries

# Types of Trusts

- Irrevocable
- Revocable
- Testamentary
- Living





---

# Extra Special Needs for Trusts

- A. 16, 14, 4
- B. Second marriage children
- C. Step-children
- D. Long-term illness
- E. Senility
- F. Tax Planning

---

# Extra Special Needs for Trusts

- G. Property in 2 or more states
- H. “Spendthrift” children
  - I. “Well off” children
- J. Business Property
- K. “Shared” ownership property
- L. Successive beneficiaries
- M. Train Trustees

---

# Special Trust Provisions

- A. Income sprinkling
- B. Use of principal
- C. Power of beneficiary to withdraw principal
- D. Beneficiaries with disabilities
- E. Anti in-law

---

# Special Trust Provisions

- F. Cost cutting
- G. Inflation and recession-proofing
- H. Power to change Trustee
- I. Hold-Back

---

# Trustees' Main Duties

## A Trustee is a Fiduciary

- A. Get more money or property
- B. Invest money – manage property
- C. Spend money as directed  
(value judgments in spending)

---

# Trustee Selection

## A. “The Adjectives”

- |              |                   |
|--------------|-------------------|
| 1) Ability   | 5) Durability     |
| 2) Integrity | 6) Experience     |
| 3) Judgment  | 7) Understanding  |
| 4) Solvency  | 8) Responsiveness |

## B. Fees

## C. Corporate or Individual Trustee

## D. Successor Trustee

## E. Ways to Change Trustee

---

## **Problem: Can the Trustee MANAGE the Property?**

- A. Do you have unusual property?
- B. What may be normal to you may be unusual to Trustee

---

# Trustee Fee

- A. Often based on a “flat fee” plus a small % of assets in the trust
- B. Additional costs for accepting, distributions from trusts, termination
- C. Google “trustee fee schedule”
- D. Family members may charge, or may not charge
- E. Put fee schedule in document???



# Estate Planning Tax Issues

- Estate Taxes
- Gift taxes
- Generation Skipping Taxes
- Income Tax
- Social Security Tax
- State Tax
  - Income
  - Business
  - Inheritance



---

# Your Taxable Estate

- A. All separate property
- B. Half of community property
- C. Gifts of life insurance made within 3 years of death
- D. Transfers with a retained life estate
- E. Transfers taking effect at death
- F. Transfers which can be revoked

---

# Your Taxable Estate (Cont.)

- G. Annuities payable to others
- H. Powers of appointment without restrictions
- I. Proceeds of life insurance
- J. Transfers for insufficient consideration
- K. Previous marital deduction property

---

# Property Ownership

## **SEPARATE**

All owned before marriage

Property inherited or received by gift

## **COMMUNITY**

Property from fruits of marriage

Income from separate property

## **PRESUMPTION**

All property is community unless proven otherwise

Title makes no difference

---

# **Estate & Gift Tax**

is on

**Transfer of Dominion**

and

**Control of Property**

---

# Valuation Rules

- A. Date of death or 6 months later
- B. Fair market value
- C. Special Use Value for Agricultural Land
  - 1. Value at ag value, not market value
  - 2. Reduce total estate up to \$1,000,000+ (indexed)
  - 3. Estate, heir, and property must qualify

---

# Estate Tax Deductions

- A. Expenses, indebtedness
- B. Casualty losses
- C. Charitable deduction
- D. Marital deduction



---

# Estate & Gift Tax Marital Deduction

- Unlimited property transferability between spouses
- Sweetheart Wills – “all to my loving spouse.....”  
–OK, unless .....



---

# Lifetime Exemption

- 2014– **\$5,340,000** indexed up by inflation
- Estate Tax Rate above this amount: **40%**
- **BUT MAY CHANGE**

<b>Calendar year</b>	<b>Estate and GST tax death time transfer exemption</b>	<b>Gift tax lifetime transfer exemption</b>	<b>Highest estate and gift tax rates</b>
<b>2001</b>	<b>\$675,000</b>	<b>\$675,000</b>	<b>60%</b>
<b>2002</b>	<b>\$1 million</b>	<b>\$1 million</b>	<b>50%</b>
<b>2003</b>	<b>\$1 million</b>	<b>\$1 million</b>	<b>49%</b>
<b>2004</b>	<b>\$1.5 million</b>	<b>\$1 million</b>	<b>48%</b>
<b>2005</b>	<b>\$1.5 million</b>	<b>\$1 million</b>	<b>47%</b>
<b>2006</b>	<b>\$2 million</b>	<b>\$1 million</b>	<b>46%</b>
<b>2007, 2008</b>	<b>\$2 million</b>	<b>\$1 million</b>	<b>45%</b>
<b>2009</b>	<b>\$3.5 million</b>	<b>\$1 million</b>	<b>45%</b>
<b>2010</b>	<b>N/A (taxes repealed)</b>	<b>\$1 million (not repealed)</b>	<b>35% (gift tax only)</b>
<b>2011</b>	<b>\$5 million</b>	<b>\$5 million</b>	<b>35%</b>
<b>2012</b>	<b>\$5.12 million</b>	<b>\$5.12 million</b>	<b>35%</b>
<b>2013</b>	<b>\$5.25 million</b>	<b>\$5.25 million</b>	<b>40%</b>
<b>2014</b>	<b>\$5.34 million</b>	<b>\$5.34 million</b>	<b>40%</b>

# Lifetime Exemption: New Concept - PORTABILITY

2<sup>nd</sup> spouse to die of married couple can use unused exemption of 1<sup>st</sup> to die if done properly.

- A. File estate tax return to preserve election
- B. Don't get married again
- C. File estate tax return again



---

# PORTABILITY

- Administrative tool, not a planning tool
- Will lose family income tax savings tool
- May lose Social Security tax savings for spouse
- Will lose asset protection

---

# Paying the Estate Tax

- A. Taxes due 9 months after death  
(generally)
- B. Tax deferral provisions -  
15 year deferral, 2% interest
- C. Investment policy

---

# Installment Payment of Taxes

- A. Closely held business
- B. 35% of gross estate
- C. 2% interest only for 4 years, then 10-yr payout
- D. Amounts up to \$1,000,000 estate  
(less equivalent exemption)

# Gifts



- Elements of a gift.
  - Must have a donor.
  - Must have a donee (recipient) of the gift.
  - Must have actual or constructive receipt of the gift.
- Gifts must be given free of any restrictions.
- Gifts in any amount are not income to the recipient.
- Gifts in excess of \$14,000 (2014) per year to any one recipient will affect the gift tax credit.

---

## Gifts To...

- Spouse - unlimited amount
- Any other person \$14,000
- A \$5,340,000 gift to whoever
  - Give now, reduce future income and appreciation

**Why?**

**Why Not?**



---

# Double Trust Plan or Married Couples

Common Goals:

- A. Maximum benefit to surviving spouse
- B. Save estate taxes if possible
- C. Pass on to children
- D. Can increase flexibility in planning

---

# Double Trust Plan or Married Couples

- E. Provide property management for later life
- F. Income tax planning for survivor
- G. Asset Protection
- H. Others

---

# The Double Trust Plan

## A. Bypass Trust

1. **INCOME** to spouse, descendants for Health, Education, Maintenance & Support
2. **PRINCIPAL** to spouse for Health, Education, Maintenance & Support

## B. Marital Trust

1. **INCOME** to spouse – required
2. **PRINCIPAL** as directed by deceased spouse

---

# The Double Trust Plan

- Revocable
- Developed so Spouse can be Trustee
- Will obtain “2” estate tax exemptions
- Provides for income tax savings
- Will allow for property management while mentally or physically incapacitated
- Can treat children same or differently

---

# Trustee of Double Trust Plan

- Husband and Wife while alive
- Surviving Spouse if competent
- Then can be child, children, other person(s) or bank

---

## Double Trust Plans Can . . .

- A. Provide for Income Tax Savings
- B. Provide for Social Security Tax Savings
- C. Provide Asset Protection
- D. Will defer Tax Bill
- E. May increase Tax Bill

---

## Double Trust Plans Can . . .

- F. Allow spouse to put assets in Trust
- G. Need special provisions for Spouse to be Trustee
- H. Protect against inflation
- I. Basis increase with General P/A

---

# Reducing the Taxable Estate

- Gifts
- Valuation of property
- Ownership of property
- Opportunity shifting



---

# Property to Give Away

- A. Property you won't miss
- B. Property that won't be sold
- C. High basis property
- D. Property that will appreciate

# Basis Rules

- Buy – Cost Less Depreciation
- Gift – Donor's Basis
- Inherit – Estate Value

**Basis Example: Current Land Value \$3,500 / acre**

	Purchase Price		
	<u>\$1,000</u>	<u>\$3,500</u>	<u>\$5,000</u>
Die	\$3,500	\$3,500	\$3,500
Gift	\$1,000	\$3,500	\$3,500*
Sell	\$1,000	\$3,500	\$5,000*

\* gifting or selling to family, 2 year rule

# Limited Partnership Discount

- Discount gift tax value
- Discount estate tax value



---

# Limited Partnership Example

\$4,000,000 ranch

- Create Limited Partnership
- Last for 75 years
- Distribute all earnings
- General Partner – An LLC 1%
- Limited Partners – Former Owner(s) 99%

---

# Limited Partnership

- 1% Limited Partnership interest is calculated to be worth \$40,000
  - But what price can the owner get at sale?
  - Discount for
    - Lack of control
    - Lack of marketability

---

# Special Use Value for Land

- Value real estate at “ag” use, not Fair Mkt. Value
- If more than 50% of estate is Business Property
  - Land, cattle, trucks, tractors, etc
- And more than 25% is real estate
- May qualify for another \$1,100,000+ exemption **movable target**

---

# Special Use Value Requirements

- A. Business use
- B. Material participation
- C. 50% ag property
- D. 25% land
- E. Qualified heir
- F. Keep for 10 years in business use
- G. Proper reporting

---

# Special Use Value of Land

- Get **Basis** of Special Use Value
  - If fail to use for 10 years, pay tax
  - If fail to use for 10 years, pay interest if want step up in basis



---

# Special Ag Use Formula

$$\frac{\text{Rent - Taxes}}{\text{FLB Rate}} = \text{SUV}$$

---

# Life Insurance

- A. View as an investment
- B. View as source of liquidity

---

# Life Insurance

Taxable in your estate if you can...

- A. Borrow against it
- B. Designate beneficiary
- C. Have potential of receiving benefit from it

Called “**incidents of ownership**,” these exist on an insurance policy if an individual has the right to:

- change the beneficiary,
- transfer ownership of the policy,
- use the policy value as collateral for a loan, or
- any other traditional rights of ownership.

---

## How to get life insurance out of your estate?

- A. Use an irrevocable trust (but must live 3 years after transfer)
- B. For new or continuing payment insurance, use a **Crummey Trust**

---

# An Irrevocable Life Insurance Trust

---

# Final Considerations

- Power of Attorney –
  - Who to trust with business affairs
- Selection of guardian if needed
- Second marriage concerns
- Health Care Decisions
- Directive to Physicians – Living Will

---

# Dealing with Incapacity:

## When you can't make decisions for yourself

- A. Guardianship
- B. Power of Attorney
- C. Trust

---

# Power of Attorney – Business

Person who acts for you

-in special situations

-in general situations

When you can't act for Yourself

-“Durable, General Power of Attorney”



# Power of Attorney

- Grant of power to another to look after assets and manage affairs.
- Anticipates possibility of incompetence; avoids need for incompetency hearing or approval of guardian.
- Statute defines powers (plenary – complete, unqualified):
  - Should also include express powers for tax returns, life insurance matters, making gifts, transferring property into trust,
  - Accessing safe deposit box, dealing with retirement plans and Social Security.
- May be contingent or present:
  - Contingent: effective only upon incompetence.
  - Present: effective when executed and continues in spite of incompetence.

---

# Other Documents to Consider

- A. Health Care Power of Attorney
- B. Living Will – Directive to Physicians
- C. Designation of Guardian if needed
- D. Marital Property Agreement

---

# Durable Power of Attorney for Health Care

- **Allows you to:**
  - Choose a person (agent) to make health care decisions for you if you cannot speak for yourself.
  - Communicate instructions about your health care.
- **Your responsibilities:**
  - Think about your values and wishes.
  - Choose someone you trust.
  - Choose an alternate agent.
  - Talk to family members and the agent concerning your wishes.
  - Complete, sign and make copies for the agent and family members.
- **Agent responsibilities:**
  - Understand your wishes.
  - Evaluate choices about your health care.
  - Make decisions in accordance with your wishes.
  - Keep the original document.

---

# Advance Directives

- Durable power of attorney:
  - A grant of authority to make financial decisions and conduct business on your behalf if you become incapacitated.
- Durable power of attorney for health care:
  - A grant of authority to make health care decisions on your behalf if you are unable to make such decisions.

---

# A Living Will

Becomes effective when death is the alternative to treatment and you are unable to make that decision.

- Allows you to:
  - Direct physician to withhold or withdraw treatment that could prolong the dying process.
- Your responsibilities:
  - Clarify wishes with your family and with your physician.
  - Complete the proper forms.
  - Make copies for your family and physician.
- Doctor's responsibility:
  - Follow your wishes.

---

# Estate Planning Tools Include

## Testamentary Instruments

Wills

Pourover Wills

Standby Trusts

Account Title/Review Change

---

# Estate Planning Tools Include

## Lifetime Planning

Declarations of Guardian

Powers of Attorney/Escrow Letter

Management Trust

Directive to Physician

Health Care Power of Attorney

---

# Estate Planning Tools Include

## Planning for Children

Guardian Designation

Uniform Transfers to Minors

Minor's Trust

Crummey Trust



---

# Estate Planning Tools Include

## Life Insurance

Tax Planning

Beneficiary Designation

Ownership Review

Life Insurance Trust

Policy Review

---

# Estate Planning Tools Include

## Employee Benefits

Tax Planning

Beneficiary Designation

## Charitable

Gifts

Foundations

Community Chest

Lead and Remainder Trust

---

# Estate Planning Tools Include

## Value Shifting

Installment Sales

Self-Canceling Notes

Sale of Remainder Interests

Gifts

Limited Partnerships

Corporate Plans

Grantor Retained Income Trust

---

# Estate Planning Tools Include

## Defensive Planning

Homestead

Partition Agreements

Trusts

Split Interests

Gifts

Parents' Wills

Inheritance Trust

## Marital Property Agreements

---

# Put Together a Team of Advisors

- Start with referrals and interview potential advisors
  - Accountant
  - Banker
  - Insurance agent
  - Investment advisor
  - Lawyer
  - Financial Planner

---

# Getting Started

- Determine what you own and how much it is worth.
- Consider changing property ownership (community/separate)
- Who to “provide for”
- When to pass ownership – gift early, death, trust
- Review parents’ and grandparents’ estate plans
- Coordinate all 4 ways to pass property
- Look at lifetime tax savings for beneficiaries

---

# Final Considerations

- It is your will
- It is your trust
- It is your business
  
- Think about how you want to take care of your family
  
- As Burger King says, **“Have it your way”**

---

# Thank You

