



Special Issues in Non-Family Transfer of the Farm Business

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The Issues

- 30% of principal farmers are over 65.
- 61% are over 55.
- Over 1 million acres in New England likely to be transferred in next 15 years.
- Over 90% don't have a "young farmer" (under 45) involved to take over.
- Hard to get farmers to talk about or plan for it.
- Next generation has options; many seek land.



The Issues

- Non-family transfers typically are more formal → more legal interventions.
- Non-family transfers involve significant trust dynamics.
- Non-family transfers often take more effort and patience.
- Non-family transfers involve—or are perceived to involve—more risk.

First Hurdle - Profitability

- **General Issue** – Farm must be either profitable or have the profit potential to attract the next generation.
- **Accounting Issue** - Farmers needs to have accurate record keeping to properly complete their assessment.
- **Legal Issue** - Earnings presented to a prospective farmer is like a prospectus and will be relied upon for accuracy. What are the potential legal issues if it is not “reasonably” accurate?



First Hurdle - Profitability

- **General Issue:** Non-family buyers have a choice of operations to join and are not “locked in” to the family farm.
- **Legal Issue** – How “creative” or how much can the opportunity be “spun” without distorting the facts?
- How much is “potential” worth?



Second Hurdle – Are they Ready?

- **General Issue** – Are the farmers ready or almost ready to make a decision and act on it?
- **Legal Issues** –
 - When does the transaction become a contract?
What needs to go into it?
 - How much more formal should an agreement be with a non-family successor?

Second Hurdle- Are They Ready?

- **Legal Issues** - Current owners want to work with or for successors.
 - What form of agreement is required?
 - What should be included?
 - Appropriate exit strategies?

Third Hurdle – Financial Ability to Retire

- Determining farmer's financial ability to retire.
 - Do they know what income level they need to retire comfortably?
 - Do they know what “benefits” they currently get from the farm that may not be available when they retire?
 - What do they have saved for retirement?
 - Retirement income streams – Will SS, retirement funds etc. cover it? What revenue or cash does the farm need to provide?
 - What legal instruments are needed to achieve financial objectives?



Third Hurdle – Financial Ability to Retire

- **General Issue** – Can the farmer afford to take less than Fair Market Value for the farm?
- **Legal Issues** –
 - If they do take <FMV and then underestimate what they need to retire, do they understand what they are giving up?
 - Any conflict with heirs?
- Creative use of consulting agreements or other forms of performance or revenue sharing payments.



Fourth Hurdle – Finding the Right Candidate

- Finding the right successor
 - Developing a candidate profile
 - Preparing the offer profile
 - Establishing the search process
- **Legal Issues**
 - Legal restrictions on advertising (e.g., posting v. listing)?
 - Other legal cautions?



Fourth Hurdle – Finding the Right Candidate

- Vetting potential candidates:
 - Do they have the management ability to succeed?
Training needed?
 - Do they have the financial ability to complete the transaction and succeed?
 - Trial period needed?
 - Personality compatibility; comfort to work with successor
- **Legal Issue** – How much and what kind(s) financial and personal information can be requested or required?



Fifth Hurdle – Reaching and Agreement

- **General Issue** – What assets transferred?
 - Farm operation only?
 - Farm operation and real estate?
- **Legal Issues**
 - What documents are required? (more formality)
 - What are good document-drafting processes?
 - What needs to be recorded?



Fifth Hurdle – Reaching and Agreement

- **Transition Timetable:**
 - Straight sale?
 - Installment sale?
- **Exit strategies:** what are they and where do they show up in legal documents?
- **Transition Team:** best practices for attorneys to work with others



Examples and Wrap Up

- Examples (Jon and Kathy)
- Remaining general questions
- Remaining legal questions
- Final thoughts

