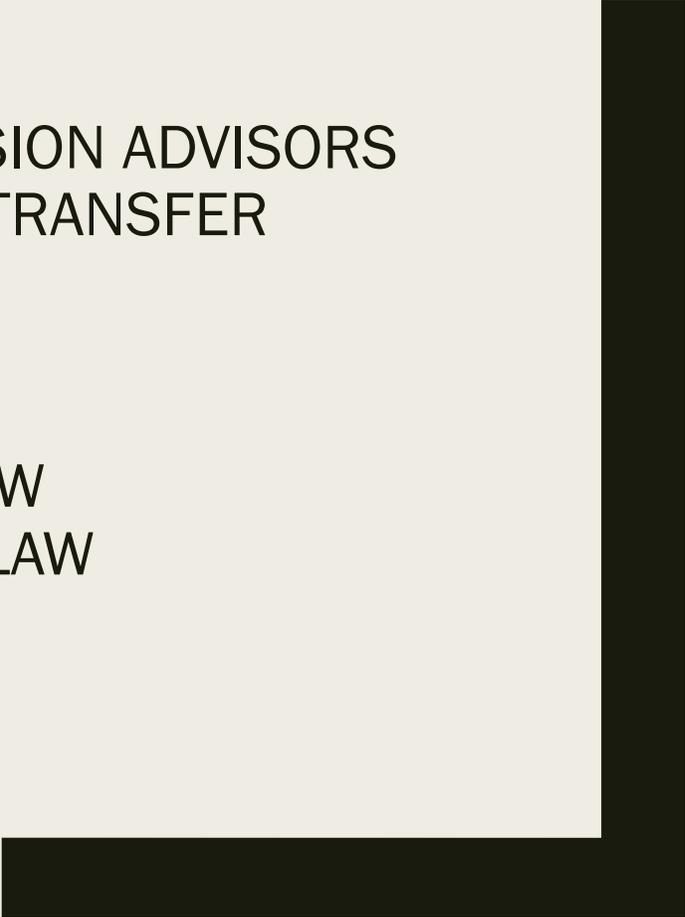


PROFESSIONAL TRAINING FOR FARM SUCCESSION ADVISORS
BUSINESS PLANNING BASICS FOR FARM TRANSFER
EARLY BIRD SESSION
MAY 3, 2017

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Representing the Farm Client

- Intersectional
- Transactional
- The General Rule May not Apply
- Inextricably linked to Farm Viability



Representing the Farm Client

General Intake Questionnaire

- I. The Farm Business
- II. The Nature of the Business
- III. Duration of the Business
- IV. Contributions of Partners/Member
- V. Labor Contributions
- VI. Distributions of Income
- VII. Accounts and Records
- VIII. Management of the Business
- IX. Dissolution of the Business
- X. Insurance & other service providers

Representing the Farm Client

General Intake Questionnaire

I. The Farm Business

- Name Selection
- Who is your client?
- Concurrent Conflicts of Interest
- Joint Representation



Representing the Farm Client

General Intake Questionnaire

Who is your client?

Rule 1.7

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Representing the Farm Client

Who is your client?

Is the conflict “consentable”?



Representing the Farm Client

General Intake Questionnaire

II. Nature of the Business

- **Duty of Loyalty**

To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

Representing the Farm Client

General Intake Questionnaire

II. Nature of the Business

Taxation

- * Partnership
- * S Corp
- * C Corp



Representing the Farm Client

General Intake Questionnaire

IV. Contributions of Members

- * Value of Property – Balance Sheet
- * Dual Legal Structure
- * Services Contribution
- * Future Contributions of Capital

Representing the Farm Client

General Intake Questionnaire

VI. Allocation and Distribution of Income / Losses

- * Treasury Regulation §1.704

- * Economic Benefit / Economic Burden

Representing the Farm Client

General Intake Questionnaire

VII. Accounts and Records

- * Open or Limited Access

- * Article 3.1 and 3.3 in the sample Operating Agreement

Representing the Farm Client

General Intake Questionnaire

VIII. Management of the Business

- * Member Managed
- * Manager Managed
- * Who can bind the Company?



Representing the Farm Client

General Intake Questionnaire

VIII. Management of the Business

- * Voting and Non-Voting Rights
- * Majority, Super Majority, Consensus
- * Outside the ordinary course of business, dissolution, amendment of the Operating Agreement, additional capital.

Representing the Farm Client

General Intake Questionnaire

IX. Dissolution / Buy Sell Agreement

- * Planning for death, disability, withdrawal

- * Terms of the buy out

- * Valuation

- * Sample Operating Agreement at 12.1 and 12.2

Representing the Farm Client

Competence

- * The legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation
- * May accept representation where the requisite level of competence can be achieved by reasonable preparation.
- * Consider whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question

Representing the Farm Client

Engagement Letters and Fee Agreements

- * Party or parties represented: Who is the client?
- * Scope of representation
- * Timing of consultations / deliverables
- * Estimate of fee – hourly or project based
- * Timing of billing / payment
- * Evidence of informed consent

Representing the Farm Client

Rule 1.5: Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.



Representing the Farm Client

Rule 1.5 Fee Setting Factors:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Representing the Farm Client

Closing Letters

- * Concluding representation
- * Record retention



Representing the Farm Client

Professional Liability Insurance

- * Costs vary by specialty
- * Beginning lawyer discounts
- * Selecting a provider



Representing the Farm Client

Recommended Resources

- * National / Regional Gatherings and Trainings
- * Reference Libraries / Publications
- * Listservs and Newsletters