



# **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

