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FARM TO MARKET

PLANNING SUCCESSION FOR FAMILY FARMERS

By Scott A. Hall



Daddy said the river would always lead me home.
But the river can't take me back in time, and Daddy's dead and gone.
And the family farm's a parking lot for the Walton's five and dime.
Am I the last of my kind?
Am I the last of my kind?

—Jason Isbell and the 400 Unit, “Last of My Kind”
from the album *The Nashville Sound* (2017)

In 1964 my grandpa Edward Hall purchased 150 acres of prime farm ground in Madison Township, Poweshiek County, Iowa, just northwest of the town of Brooklyn (a town my ancestors helped to pioneer and develop in the middle 1800s) located in the eastern part of the state. He bought the ground for \$350 per acre, and my dad and uncle can still recall Edward's brothers gathered in the family living room right after the purchase, scolding him for spending so much money on that farm. One brother called Edward a “fool” for paying that price and declared that he would never get that much money out of that farm. Edward paid no heed to his brothers' warnings and forged ahead, his lifelong dream of owning a farm planted firmly within his grasp.

Edward and his wife, Laura, spent years of their life, all their savings, and most of their spare time building that 150-acre farm into a crop farm, a livestock operation, and a home. By the time I was born in 1976, Grandpa and Grandma were farming corn, soybeans, oats, and alfalfa. They raised pigs, milk cows, beef cattle, and chickens. The homestead cradled a two-story white farm house, a detached garage, a machine shed, a corn crib, a hay barn, and numerous other out-buildings and lean-tos that were used to house farm tools and equipment. As I grew up living on the farm (for my first two years) and later visiting the farm on evenings, weekends, and during the summer breaks from school, I fell in love with that place, the various buildings, the hay mow, the grove of trees where Grandpa kept all his “spare parts” machinery, and that beautiful buckeye tree at the end of the drive as one arrived at the farm.

In 1984 Edward met his reward, and Laura had no choice but to hold an estate auction and move into town. She sold all Grandpa's livestock and equipment,

including his beloved Allis Chalmers WD45, the only tractor he ever bought new, but she kept the farm. Laura knew that land values had continued to grow in Iowa, and she couldn't bear to part with the dream she and Edward had made real. From 1984 to 2016, Laura Hall rented out the crop ground to friends and neighbors and made sure the land was stewarded as Edward would have wanted. Eventually she sold the homestead portion to the longtime farm tenant who had cared for the land for so many years, but she still kept the crop acres. When Laura passed away last year, she still owned the 150 acres in Madison Township, and she had acquired more farm ground in southern Iowa, leaving a legacy to her two sons that would fill any farmer with pride. Grandpa Edward's farm appraised at a little over \$9,000 per acre in the fall of 2016.

This is every farmer's dream: to work the land, make enough money and produce to provide for the family, and leave that farm in a condition even better than when it was acquired to a family member who will continue to care for it and farm it for years to come. For many reasons, this dream is a difficult one to realize in modern times. As attorneys, how can we help?

SPEAK THE LANGUAGE

The best communicators are those able to communicate in a method and manner in which the audience will most easily understand the message. My wife ribs me about the way I talk when I am visiting family or friends back in Brooklyn, Iowa, versus the way I talk at home in my everyday vernacular. I agree with her that my dialect changes at times when I find myself in different settings, but I swear that change is not contrived or planned, but instead it is a natural tendency for me to speak the language of my audience,

and it works. The best trial lawyers I've ever witnessed speak to their juries in the same manner. They spend voir dire searching for a common tone, if there is one to be found, and then they live in that tone during trial.

So how do we speak the language of our farmer clients? Talk to them, listen to them, read about the issues concerning them on a daily basis: crop prices, commodity prices, machinery prices, farm input prices, environmental regulation, conservation programs, property taxes, and 4-H, state, and county fairs, to name a few. Most Iowans are either related to or just removed from a farmer in their lives. I talk to my dad, my uncle, my brother, my cousins, and members of my local Kiwanis Club—they all farm. They don't know it, but they teach me every day, even if it's just how to listen to the farmer.

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then the in-person meeting soon follows.

As any service provider to the agricultural industry will confirm, meeting farmers in person is not an easy thing to do unless you are willing to go out to meet them where they live and work. There is a reason seed, feed, and implement salespeople still travel. This is why I make it clear to potential clients who happen to farm for a living that I am willing to meet them in mutually convenient venues. I recall one daughter of a farmer calling me and begging me to meet with her father because she knew he had no estate planning completed for his numerous farms and she, her sister, and her mother needed the guidance and certainty that a proper estate plan can bring. I agreed with her, but then she told me that her dad would never agree to come to my office, especially because I was located in downtown Des Moines. After



MEET THEM ON THE ROAD

Most farmers I know don't want to meet with attorneys unless they absolutely must. They really don't want to meet with an attorney to talk about drafting estate plans or otherwise planning for death and the disposal of their land. However, when a family member broaches the subject with the farmer, or when the subject of losing all or part of the farm owing to poor planning is presented to the farmer, then I find them to be more receptive to a meeting. Most of the estate planning meetings I've had with farmers began with a family member recommending the meeting with me. Often the farmer will call me up and feel me out over the phone to see if I am a trustworthy and knowledgeable source of advice and services. If I pass that test,

some brainstorming, we decided the best place for me to meet her dad was at the Iowa State Fair, which he hadn't missed in more than 60 years. After setting up a phone consultation between her dad and me, the daughter scheduled a meeting for us to meet in person behind the Bill Riley talent stage at the State Fairgrounds. I wore blue jeans and a plaid collared shirt, and at the meeting I received instructions from the farmer and his wife as to how the land should be used to care for his wife after his death, and how it should be split between the daughters upon the wife's death, all at a picnic table at the fair. I recommended how to best accomplish these goals and for several weeks after that meeting we corresponded by mail and e-mail until the estate plan was finalized and executed. Just a couple years later the farmer died, and

his wife joined him soon after. The plan we started at the Iowa State Fair kept his farmland in the family just as he desired, and did it in a private and efficient manner.

IDENTIFY AND INCLUDE THE STAKEHOLDERS

Each family farm operation is different. Traditionally the children of farmers would grow up on the farm, working with their parents in all ways required by the operation. When the kids were old enough, they'd farm other land, normally nearby, until they could afford to buy it from the landowner. The families would share the costs of farming and the abundance generated by their farms, and they would hope to continue to grow their operations, ensuring prosperity for generations to come. Some family farms still work this way, but most do not. Most family farms are still run by a patriarch with the assistance of some, but not all, family members. With increased education, industrialization, and communication across America, more people raised on farms have left those farms to pursue other employment and lifestyles.

Identifying which family members are still active in farming, especially the grounds being conveyed through the estate plans you will be drafting, is extremely important. The family farmers you meet with will have specific goals for their lands. Some farms hold special meaning, like Grandpa Edward's farm, and the patriarch will want some assurance that those farms will not be sold unless absolutely necessary. Other farms will not hold as much significance. Similarly, some family members will have a special relationship with the farmer, either because they farm with them daily or they remain active participants in the operations in some way. Tradition will compel most farmers to leave their estate assets in equal shares to their children or grandchildren, but this plan will not always be the easiest or smartest way to achieve the goals the farmers hold dear. It also may not be what the heirs want to occur. Although you may get some resistance from your clients in discussing their estate planning desires with the future heirs, it is imperative to do so when possible because these discussions will

reveal each party's expectation and desire in relation to the farms, and it will make the estate planning process more successful. If you have handled any number of farm probate administrations, you likely know how easily the wants and needs of the heirs can conflict with those of the testator. Communication among the stakeholders during the estate planning process gives the family a chance to plan together, creating a much more harmonious succession after the triggering event.

PROFESSIONALLY PLAN FOR CONTINGENCIES

Listen to the desires of the farmers when you meet to begin the estate or succession planning process, but bring your own experience and expertise to bear on the process and employ a professional team of advisors. If the family farm does not have relationships with a CPA and a financial planner/insurance provider, refer the client to those experts in your network. The transfer of farmland from one generation to the next can have very serious tax consequences, and planning for the retirement of family farmers, without liquidating the very farms they spent their lives building, requires the expertise of attorneys, accountants, and financial planners. Bringing this team to the table with the family farmers will reveal the best path for each situation. For some, long-term care insurance or life insurance with long-term care riders will be the best plan. For others, certain lands will be designated as the ones that can be parted with if the retirement nest egg runs out, and if that contingency occurs, the family farmers will likely have opinions about to whom the disposable ground should be sold. Yet for others, there will be no retirement plan, other than to keep the farm running, so it may sustain the farmers until death. This option is the riskiest and should be supplemented if possible. Of course, we all should keep a close eye on the federal and state estate taxes—although they do not affect a large portion of Americans, family farmers with any number of acres can be affected without proper planning.

We may convince family farmers to plan for death, but it is more difficult in practice to get them to plan for disability

or incompetence. Like any other estate plan, durable powers of attorney for financial decision making and medical durable powers of attorney or living wills should be executed so it is made plain who will handle the farm operations for the family farmers when they no longer possess those abilities. Broaching these decisions with the family farm will normally reveal which family members are really trusted to handle both the personal financial affairs as well as the farm operations, and that information will

requiring less human labor to achieve its results, and as commodity crop prices have dropped in value, the migration continues. Although the population shift between metro and nonmetro counties nationwide has been somewhat stable, here in Iowa the shift has been dramatic and palpable. With an estimated state population of just over 3.1 million people in 2016, and being home to only about 20 “metro” counties of its 99 counties, Iowa typifies the rural to urban migration experienced all over the Midwest.

I live in Adel, the county seat of the



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certainly assist with the rest of the succession planning. Beware of using form powers of attorney, or if you do, consider adding specific language authorizing the attorney-in-fact to make any and all decisions required of the farm operation (be that buying/selling livestock, storing or selling crops, buying crop futures, renting additional land, or renting out land already owned).

THE TIME IS NOW

Since 2010, counties considered to be “non-metro” by the U.S. Department of Agriculture (USDA) have lost population as a steady stream of Americans have relocated from rural to urban settings seeking employment, housing, education, business, and industry. As farming operations have grown far more technologically advanced,

fifth-fastest growing county in the nation, Dallas County, Iowa. It's a town built on the agriculture surrounding it and struggling with the urban growth rapidly spreading its way westward from the Des Moines metro area. In our small community we see firsthand the growth of the urban sprawl westward and the initiatives spurring development of farm ground for residential and commercial purposes. With the Greatest Generation entering its golden years, the Baby Boomers marching toward retirement, technology marching toward artificial intelligence, and populations moving from rural to urban lands, there has never been a more important time to engage the family farmers in proper succession planning to ensure that those who feed the world are cared for at home. ■



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