



AMC 2026

Session 3

**The Future of Farming:
Legal Strategies for Farm
Succession in Wisconsin**

Presented by:

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About the Presenters...

Dave P. Ruetz is an environmental attorney with the Milwaukee-based law firm, von Briesen & Roper, s.c. He is the Chair of the Milwaukee Bar Association's Environmental Law Section and is also the Chair of the State Bar of Wisconsin's Environmental Law Section. Dave has over 30 years of experience in the environmental field, including work as an environmental attorney, the President of an environmental consulting-engineering firm, an Administrative Director of a Governor-appointed natural resource Advisory Council, as an environmental scientist and as an aquatic biologist. As an attorney, Dave has represented corporate, commercial and industrial clients regarding environmental due diligence and risk assessment in mergers and acquisitions and real estate transactions. He has represented clients in environmental regulatory compliance matters involving the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA - "Superfund"), the Clean Water Act (CWA), the Clean Air Act (CAA), hazardous waste compliance under the Resource, Conservation & Recovery Act (RCRA), medical waste, wetlands and water law. He has also represented industrial clients in matters involving the Toxic Substances Control Act (TSCA) and the Occupational Safety & Health Administration (OSHA), and has been involved in litigation matters, including oral arguments in both State Court and U.S. Federal District Court.

Troy Schneider is a shareholder with Menn Law Firm and works from the Firm's Chilton location. Troy specializes in the areas of real estate, business and estate planning. Troy received his law degree from the University of Wisconsin-Madison. He is a past member of the Board of the Solo Small Firm and General Practice Section and past chair of its agricultural/rural practice committee. Troy is also a member of the American Agricultural Law Association. Troy's grew up on a family dairy farm in Eastern Wisconsin which was operated by his father and uncles.

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THE FUTURE OF THE FARM IN WISCONSIN

“ENVIRONMENTAL ISSUES ASSOCIATED WITH FARMS”

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STATE BAR OF WISCONSIN
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What are the Most Common Environmental Issues Associated with Farm Properties?

1. Soil/Groundwater Contamination

- Most Common Types of Contaminants
- Most Common Contaminated Areas at Farm Properties

2. Environmental Due Diligence

- State of WI “Hazardous Substance Spill Act”
- Regulatory Reporting, Investigation and Remediation Requirements
- Regulatory Cleanup Requirements/Pathway to “No Further Action” Determination
- Types of Environmental Due Diligence Assessments

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What are the Most Common Environmental Issues Associated with Farm Properties? (cont.)

3. Wetlands

- Farming/Cropland Exemption from Permitting
- Permitting Requirements in WI for Development of Non-Cropland
 - Exemptions for Agricultural Development
 - Wetland Delineations
 - Permit Application Process/Practicable Alternatives Analysis
 - Mitigation Requirements

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Soil/Groundwater Contamination

Most Commonly-Regulated Contaminants and their Fate/Transport

1. Petroleum Contaminants –

- a. Petroleum Volatile Organic Compounds (PVOCs) – includes benzene (is the most stringently regulated PVOC), toluene, ethylbenzene, xylene, MTBE
- b. Highly volatile (potential vapor intrusion concern)
- c. Naturally attenuates fairly readily in aerobic environments
- d. Floats on top of groundwater table

2. Polynuclear Aromatic Hydrocarbons (PAHs) – often diesel, naphthalene

- a. Found readily in environment where there has been burning, fuel exhaust, asphalt
- b. Not highly volatile (generally not a vapor intrusion concern)
- c. Floats on top of groundwater table
- d. Migrates slower than PVOCs through soil/along groundwater pathways

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Soil/Groundwater Contamination (cont.)

3. Chlorinated Solvents – trichloroethylene (TCE), perchloroethylene (PERC) most common
 - a. Highest concern of all contaminants by WDNR
 - b. Highly volatile (great vapor intrusion concern)
 - c. Does not readily attenuate in aerobic environments
 - d. Sinks in the groundwater table

4. Heavy Metals – cadmium, chromium, lead, arsenic, copper, nickel, zinc, are the most common
 - a. Generally lower concern by WDNR as compared to other contaminants, with some exceptions (e.g., arsenic in groundwater)
 - b. Some of these are naturally present in the environment (e.g., arsenic, so proving “background level” is important)
 - c. Not volatile (low vapor intrusion concern)
 - d. Does not readily attenuate in aerobic environments

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What are the Most Common Areas that are Contaminated at Farm Properties?

- Above and Underground Storage Tanks (ASTs/USTs)
- Fuel Oil/Home Heating Oil ASTs/USTs
- Farm Machinery Work Areas
- Farm Dumps
- Septic Systems

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Environmental Due Diligence

"Hazardous Substance Spill Act" (Wis. Stats. 292.11) –

1. Reporting - A person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify the department immediately of any discharge not exempted.
2. "Possession or Control" – is the owner/operator of the property where the discharge occurs (Note: WDNR has authority to name either or both as a "Responsible Party" (RP), even if the current owner never caused the contamination).
3. "Who Causes the Discharge" - can be an owner or operator (Note: WDNR most often names the discharger as the "RP." Often this can be a tenant/operator).

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Environmental Due Diligence (cont.)

4. Investigation/Remediation Responsibility - A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.
5. To obtain a "No Further Action" (NFA) letter or "No Action Required" (NAR) Determination, the RP must do two things: 1) demonstrate that the full degree and extent of the contamination on the property has been delineated; 2) Implement the most "practicable" remediation.
6. Most often, in deciding which remediation is most "practicable," the WDNR does not require active remediation (e.g., excavation, groundwater treatment) to issue a "No Further Action" (NFA) letter or "No Action Required" determination.
7. Typically, the WDNR allows the contamination to be left in place - if it can be demonstrated that "natural attenuation" (biological-chemical breakdown) will likely occur over a "reasonable time" period (e.g., 20 years), and there is some engineering or institutional control over the contamination.

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Contamination and Vapor Intrusion and the WDNR Closure Process

1. Since approximately 2010, the potential for vapor intrusion into buildings associated with contamination on a property has become a leading determinant as to when/whether the WDNR will issue a No Further Action Letter or “No Action Required” determination for a property.
2. The RP (typically thru their environmental consultant) must show that the contamination poses a minimal threat of vapor intrusion into a building to get a No Further Action Letter or No Action Required determination. This is accomplished by use of vapor intrusion modeling, or comparison to soil and/or groundwater vapor intrusion screening regulatory concentrations.
3. If the contamination cannot be removed (e.g., due to a building existing directly above the contamination), the WDNR may require a passive or active venting system (similar to a radon reduction system) be installed in the building in order to grant a No Further Action Letter.

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Types of Environmental Due Diligence

Phase I Environmental Site Assessments (ESAs) - ASTM Standard Practice (E1527) for Phase Is

1. Adopted: Originally adopted by the American Society for Testing & Materials (ASTM) in May 1993 - Modifications to the Standard Practice were adopted in 1997, 2000, 2005, 2013 and 2021.
2. Purpose: Define good commercial and customary practice for conducting an environmental assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of CERCLA and petroleum products;

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Types of Environmental Due Diligence (cont.)

Phase I Goal: Identify: "Recognized Environmental Conditions" (RECs)

- REC = "...(1) the presence of hazardous substances or petroleum products in, on or at the subject property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on or at the subject property due to a release or likely release to the environment; or (3) the presence of hazardous substances or petroleum products in, on or at the subject property under conditions that pose a material threat of a future release to the environment." (Section 1.1.1 ASTM E1527-21)

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Components of an ASTM Phase I ESA

- Records Review;
- Site Reconnaissance;
- Interviews;
- Report Content

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Regulatory Agency Records Review (examples)

- Federal NPL Site List;
- State Landfill and/or Solid Waste Disposal Sites;
- State Leaking UST Lists
- State Registered UST Lists

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Standard Historical Sources Review (examples)

- Historical Aerial Photographs;
- Historical City Directories
- Historical Topographic Maps;
- Fire Insurance (Sanborn) Maps

(Note: all uses of the subject property shall be identified from the present back to the property's first developed use or 1940, whichever is earlier.)

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Site Reconnaissance – (Visual/Physical Observations of Subject Site Conditions)

Exterior/Interior Observations:

- a. Hazardous substances/petroleum products in connection with identified current or past uses;
- b. Storage tanks;
- c. Odors;
- d. Pools of liquid;
- e. Drums/Unidentified containers (when suspected as containing hazardous substances/petroleum products);
- f. PCB-containing equipment (e.g., transformers)
- g. Stains/Corrosion on floors;
- h. Drains/Sumps;
- i. Stained soils/pavement;
- j. Stressed vegetation;
- k. Solid waste;
- l. Wastewater;
- m. Septic systems

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Interviews:

- Key Site Manager: person conducting the site visit shall make at least one reasonable attempt (writing/phone) to arrange for an interview. If not successful during the site visit, EP shall inquire whether a person with good knowledge of the site is available.
- Tenants: reasonable attempt shall be made to interview a reasonable number of occupants;
- Local Agency Officials: reasonable attempt shall be made to interview at least one member of any of the following:
 - Local Fire Department;
 - Health Agency;
 - Local Agency having jurisdiction over hazardous waste disposal

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What is Not Required/Not Included in an ASTM Phase I? (i.e.,
What the ASTM Standard does not require, a/k/a ASTM E1527
“Non-Scope Considerations”)

- Regulatory Compliance
- Wetland Identification/Delineation
- Property Condition Assessment (PCA)
- Geotechnical Assessment
- Asbestos
- Radon
- Mold
- Lead in Pipes
- Lead-based Paint
- Endangered Species
- Cultural/Archeological Resources

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Phase II ESAs –

1. Typically includes soil and/or groundwater sampling with samples screened in the field and analyzed by a laboratory.
2. Focus is presence/absence of contamination and not full delineation of degree/extent of the contamination.

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Phase III ESAs/Remedial Investigations (RI)

1. Focus is full delineation of degree/extent (laterally and vertically in the soil/groundwater) of the contamination.
2. Typically involves more samples collected than in a Phase II ESA, and may require multiple rounds (often quarterly) of sampling.

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Wetlands

1. Farming/Cropland Exemption from Permitting – under Section 404(f)(1) of the Clean Water Act (CWA), “normal farming” activities, such as plowing, seeding, harvesting and maintaining existing drainage ditches are exempt from the requirement to obtain a permit for these activities in wetlands.
2. The “General Rule” – (CWA Section 404 Wetland Permitting Requirements) – unless an exemption exists, any “dredging” or “filling” is not allowed in a “wetland” without a permit from the US Army Corps of Engineers and/or the WDNR.

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Wetlands (cont.)

a. Wetland Delineation Process

- WDNR “Assured Delineators” – WDNR doesn’t have to confirm delineations via a field confirmation
- WDNR “Wetland Identification Program” – WDNR conducts site visit to determine if wetlands are present

- Wetland Delineation Science
 - wetland vegetation
 - wetland hydrology
 - wetland soils

- Wetland Delineation Report must be submitted
 - mapping/vegetation-soil sample collection

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Wetlands (cont.)

b. Wetland Permitting Process

- Wetland Permit Exemptions – applies to nonfederal and artificial wetlands
 - Wis. Stats, 281.36(4n)(a)3 – up to 3 acres (for building, driveway, road for agricultural purposes)

- General Permits - for activities that are not exempt

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Wetlands (cont.)

- Individual Permits - for activities that are not exempt
 - Submit: engineering/site plans
 - “Practicable Alternatives” analysis
 - public comment process

- Wetland Compensatory Mitigation
 - wetland mitigation bank
 - WDNR “In-Lieu Fee” program
 - On-site mitigation

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THANK YOU

QUESTIONS???

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**The Future of Farming:
Legal Strategies for Farm Succession in
Wisconsin**

**Attorney Troy R. Schneider
Menn Law Firm, Ltd.**

Section 1: Review and Discuss of the Current Financial Status of the Farm

1. The history of the family farm
2. FMV farm balance sheets (including underlying income tax basis) and a listing and value of the farm real estate
3. Allocation of debt between the Company and real estate
4. Housing situation (both generations)
5. Discuss (but not disclose) outside personal investments
6. Life insurance

Section 2: Discuss General Management and Ownership Transfer Issues

1. What assets are necessary for the farm business to continue?
2. How much can the farm afford to pay for a withdrawing owner's interest in the farm?
3. Who will or may be the successors?
4. Present organization and the duties, responsibilities and authorities of each person and anticipated future changes?
5. Discussion of the strengths and weaknesses of currently involved family members
6. What are the parents/senior owners' goals for moving from full-time to part-time to retirement?
7. Identify, discuss and resolve existing and potential problems and conflicts

Section 3: Discuss "where we are at" in the Ag-Industry, our Community and in our Farm

1. What are the biggest future risks and threats to the farm as a competitive business?
2. What are the best opportunities for the farm's future?
3. What are the most important strengths of the farm and management team?
4. What are the most impacting weaknesses of the farm and management team?
5. What are the frustrations with the business and the other actively involved family members?

Section 4: Important Foundational Issues that Affect our Farm Transfer

1. Common Values: What values do the clients hold most dear and believe are critical to the success of the farm and their relationships as partners? ("Statement of Values")
2. Common Purpose: What is the common purpose in farming together and planning the transfer to the next generation? ("Mission statement")
3. Common Vision: What is the common vision for the farm's future, and what do they vision the farm will be like in 10 years?

4. Compatible Expectations: What is each person's personal and business expectations about his or her work and time commitment, involvement in management and decision-making, and future ownership in the Company and eventually real estate? Are the various expectations compatible? Do they have to work to develop and agree on molding individual personal and business expectations into compatible expectations?
5. Successors. What are the opportunities and requirements for each owner's children as successors in work, management, and eventual ownership of the farm?

Section 5: Discuss the Sharing of Work, Management and Decision-making

How will work and, and over time, management be shared with and eventually transferred to the successors?

1. Commitment to a long-term partnership relationship between generations
2. How will communications be maximized?
3. How will decisions be made, whether important or just substantial?
4. Is there a clear assignment of work and management responsibilities, subject to accountability and sharing of control?
5. How and how often will each person's efforts be evaluated, and corrections or improvements made?
6. What changes, training and education is needed to develop work, management, and leadership skills? What limitations are currently holding a successor back?
7. Is there an understanding how the successors' roles must expand as the senior owners eventually move to part-time and later to retirement?
8. How will compensation be established and changed, from time to time, as work and work time and responsibilities change?
9. How will frustrations and conflicts be managed, mediated, and resolved without damaging relationships?

Section 6: Discuss Business Planning Issues

1. Short-term plan. Does everyone agree on the investment and other business actions that will be taken over the next year?
2. Long term plan. Does everyone agree on the major investments or changes in the business that should occur over the next 5 to 10 years?
3. Investments. Is everyone satisfied that investments are based on potential increase in cash flow and profitability, rather than one participant's individual desires?
4. Budgets. Are the plans and investments based on budgets, projections, and cash flow analysis?

Section 7: Issues regarding Transfer of Ownership in the Company and Farm Real Estate

The senior generation and the successors must understand ownership will eventually transfer.

1. What assets are essential to the farm business?
2. Confirm that: (a) a successor's involvement will be earned privilege, based on work, competence, and full career commitment and willingness to partner with the senior generation, on a long-term basis; (b) transfer of management and ownership will be a long-term process, not an event; and (c) the senior generation does not intend to buy back equity transferred to a successor if he or she leaves early.
3. What equity, if any, have the active successors earned? Should additional equity be transferred at this time? Is there a projected schedule for the transfer of equity?
4. How are differences in work time, performance, duties, responsibilities, and contributions between the successors dealt with?

Section 8: Retirement Planning:

A succession plan must consider the retirement (or partial retirement) of each senior member.

1. The successors are often focused on reinvesting cash flow into the farm, sometime don't fully appreciate the retired person's or his or her spouse's financial needs.
2. If the senior generation is willing to transfer the farm at less than their full equity, the successors should be willing to assure the senior generation with adequate income and financial security.
3. The needed retirement income must be projected, and updated from time to time, as the cost-of-living increases.
4. Retirement income must come from compensation, rent, distributions from the Company, installment sale of farm assets, social security payments, outside investments and/or other resources.
5. Therefore, retirement income should be discussed and projected, and that income should be guaranteed.

Section 9: Life Insurance Planning

It is essential that existing life insurance be reviewed and, if necessary, appropriate alternate or additional life insurance be acquired. Consider the following:

1. Each policy should fill specific needs, such as to reduce debt, purchase the insured's equity, provide all signed funds for the surviving spouse's financial security, or to provide funds for distribution to off-farm heirs.
2. Is the life insurance necessary or unnecessary?
3. Are the right people insured with the right type of insurance, in the right amount of the death benefit?
4. Do existing policies have the correct policy ownership and beneficiary designations?
5. Is there life insurance on the successors to buy back their earned equity?

Section 10: Long-term Care Planning

Farmers are asset heavy and cash tight. The substantial costs of long-term care ("LTC") expenses would create real cash flow problems and extraordinary long-term cumulative costs. Specific planning is needed to deal with these risks, depending on age and health of the family member.

Section 11: Develop the Best Business Structure for the Farm

Generally, the business structure will include an LLC (the "Company") that operates the business and holds all farm personal property and often the main building site. The Company's Operating Agreement establishes the management structure, how equity ("Units") will be held, and how profits and increasing value of the Company will be shared by its members.

The remaining real estate is then leased to the Company. Real estate is either co-owned by the senior generation or held by a separate LLC (a "RE Company") to structure its management, facilitate transfers of partial interests to the next generation and/or simplify sale of units, rather than fractional interest in real estate, for retirement income. Sometimes, a RE Company is formed for purchase of a new real estate by all everyone or just by the successors. Additional LLCs may be established if the farm is engaged in off-farm custom services.

The business structure should include an up-to-date Buy-Sell Agreement (or provisions in the Operating Agreement) setting requirements for continued ownership and restrictions on transfers. It should define when intra-family transfers are permitted and what happens deals with what happens in the event of the owner's death, disability, divorce, termination of employment, change and commitment work time or effort or negative conduct. The buy sell provisions must be Up-to-date, cover all essential assets and be at a price and on terms that the farm can afford to pay and cash flow.

Section 12: Key Provisions of Operating Agreements

1. Classes of Units (i.e. units)
 - a. Common Units: Voting Units and Non-Voting Units having equal share in profits, losses and equity.
 - b. Incentive units (non-voting) “profit interest” awarded for services, and receiving a share of profits, losses and increased equity after the award.
 - c. Preferred units (non-voting), being fixed in value with a fixed interest return on investment.
2. Management structure: Member managed, managing member managed, manager managed or board of directors.
3. Authority of members or managers: general authority or a specific manager position.
4. Required commitments: required hours or scope of service, exclusive employment on the farm, limitation on outside activities, duty to refer business or real estate purchase opportunities, confidentiality and non-compete.

Section 14: Key Provisions of Buy-Sell Agreements

1. Permitted Transferees: Spousal interests under marital property agreements, estate planning trusts, to family members who are approved and qualified, delayed transfers to allow younger children time to get into the farm.
2. Triggering events: The Agreement must cover death, termination of required employment (and exceptions), disability, voluntary withdraw or tender of units, divorce, insolvency, or bankruptcy
3. Contract Price of Units: The Agreement must provide how the purchase price of units will be determined and establish a price the remaining owners can afford to pay.
 - a. Net worth: FMV of assets unless debts, which usually requires a stipulated discount stipulated below fair market value price for certain assets.
 - b. Business valuation: Value based on the farm as a going and profitable business enterprise, completed by a valuation expert, which would normally include a substantial discount for a minority interest
 - c. Stipulated Value: The Members can agree, from time to time, on the value of units in the Company, the value of specific assets or types of assets.

4. Payment Terms: The agreement should provide payment terms which the farm and remaining owners are able to cash flow.
 - a. Minimum cash at closing (to pay income taxes)
 - b. Installment payment over a reasonable term
 - c. Interest at the fixed rate v. prime rate with a maximum and minimum interest rate
 - d. Amortization of monthly payments: blended rate for operating assets v. real estate
 - e. Collateral for the promissory note

Section 15: Estate Planning

1. Estate Planning Documents
 - a. HIPAA Authorization
 - b. Healthcare Power of Attorney
 - c. Durable Power of Attorney
 - d. Marital Property Agreement
 - e. Pour over Will
 - f. Living Trust
2. The Living Trust
 - a. The trust provisions must be updated, from time to time, based on changing circumstances, including lifetime transfers and sales; change in value of farm assets; and cash flow challenges
 - b. General trustees: (i) Consider two or more trustees- “check and balance”; (ii) Possibly, a farm child and a non-farm child; (iii) Consider adding independent trustees or independent farm trust advisors to act as advisors and to resolve disputes; (iv) Consider independent Trustees, if the children are in conflict
 - c. Farm Trust Advisors: consider appointing one or more of the successors as farm advisor(s) having authority to direct the trustee in the management and control the farm business and farm assets, thus avoiding involvement of off farm children.
3. Priority of transfers
 - a. First focus on transfer of operating LLC (i.e. operating assets)
 - b. Second focus on transfer of farm real estate: (i) Facilities and lands necessary for farm operations; and (ii) Sometimes, special provisions for land with high development value.
 - c. Third focus on the transfer of other real estate
 - d. Fourth focus on distribution of non-farm assets
 - e. Fifth focus on the best use of any life insurance
4. Coordinate trust provisions with transfer limitations in the operating agreement or buy-sell agreement
 - a. Provisions may need to be “better than in the buy-sell”.
 - b. Early death can require acquisition of too many assets at one time

- c. How much can the farm afford to pay while still paying existing debt, replace depreciating assets, make improvements and providing for family living?
5. Transfer of operating LLC (i.e. operating assets) to active descendants on an earned basis:
- a. Direct “earned” gift or bargain sale
 - b. Delayed transfer with a farm trust: (i) Assets held in trust and distributed over years as earned; and (ii) Required number of years of farm service
 - c. Determine the value of membership interests
 - d. Establish an effective appraisal process
 - e. Have a reduced price that the farm can afford to pay
 - f. Consider “earned equity”, assumed debt and cash flow limitations
 - g. Have practical terms for installment payment
 - h. Reasonable interest rate: if variable, maximum and minimum interest rate
6. Farm Real Estate
- a. What real estate is essential (or should be kept) for the farm operation?
 - b. What price and terms can the farm cash flow from operations?
 - c. Must be a gift or sale at substantially below FMV
 - d. Must consider any required purchase of operating assets.
 - e. May need to defer real estate purchases.
 - f. Some planning alternatives
 - i. Direct transfer to on-farm heirs
 - ii. Real estate LLC or limited partnership
 - iii. Farm trusts with interests earned through farm services: (i) Opportunity for young child; and (ii) Different years of service and/or different percentages of ownership.
 - iv. Options to purchase at reduced price and favorable payment terms
 - v. Options to lease (for substantial term at favorable rent)
 - vi. Options to purchase during lease
 - vii. Rights of first refusal to lease or to purchase

The Future of Farming: Legal Strategies for Farm Succession

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SWOT Analysis

- Strengths: Characteristics of the farm that give it an advantage over others
- Weaknesses: Characteristics of the farm that give it a disadvantage over others
- Opportunities: Elements of the farm that it could exploit to its advantage
- Threats: Elements of the farm that could cause it harm in the future

A SWOT analysis provides a way to organize information and provide insight into barriers

2

Financial Data

- Balance Sheet
- Profit/Loss
- Financial Benchmarks (debt to equity, cash flow benchmarks etc.)
- Rely on Farm Advisors

3

Different Farm Situations

- Career successors: The farm is sustainable as a business, and the children who stay will commit their full-time careers to the farm.
- Sundown successors: The farm is sustainable as a business, the children want to farm on a part-time basis while pursuing full-time, off-farm careers.
- Investor successors: The farm personal property will be sold in the future, but the children want to own the farm real estate for emotional and/or investment reasons.

4

Parents must develop an exit plan.

- ❖ An exit plan is a plan that moves a farm toward long-term goals and allows a smooth transition to a new phase.
- ❖ A fully formed exit plan takes all of the owners, finances and operations into account.
- ❖ Developing an exit plan requires an in-depth analysis of finances.

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Developing an exit plan early allows:

- ❖ The farm to prepare for unexpected circumstances.
- ❖ Builds purposeful business practices and goals.

6

The cash flow problem

- ❖ Parents' initial thoughts about the farm's transfer may be based on how they bought the farm years ago at lower farm values.
- ❖ But today, additional or alternate transfer methods must be considered:
 - The farm has more cattle, equipment, facilities and land all at inflated values.
 - More existing debt from improvements, expansion or the ups and downs of commodity prices.
 - Greater gross income, but smaller profit margins.
 - The ups and downs of commodity prices.
 - Higher possible income tax in lifetime sales.
 - More interest in equity by children who left.
 - The farm must cash flow before, during and after the transfer

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What do parents want to live on?

<u>Item</u>	<u>Monthly Expenditure</u>
Food and restaurants	\$ _____
Clothing and personal items	\$ _____
House utilities and repairs	\$ _____
Recreation	\$ _____
Gifts and donations	\$ _____
Transportation	\$ _____
Education	\$ _____
Life and health insurance	\$ _____

- ❖ Look to past records to determine amounts
- ❖ Controlling family expenditures may be difficult when farm couple is accustomed to spending large sums for farm inputs
- ❖ Inflation considerations

8

What can the farm afford to pay?

- ❖ Liquidity
- ❖ Solvency
- ❖ Profitability
- ❖ Financial efficiency
- ❖ Repayment capacity

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“What is fair to the children who left the farm?”

- ❖ The cash flow problem: Your farm can only pay off-farm children what the farm can afford to pay.
- ❖ Your legacy: You have made your farm your life’s work and judge your success by whether your farm is a better place than when you got it. You should transfer your farm to the next generation if they will make it their life’s work, holding and improving the farm so it is sustainable for the generation that follows them.
- ❖ The intangible benefits: Your children who left received the invaluable opportunity of growing up on a farm. Farm life provided experiences that helped develop their strength, resiliency and independence. Those experiences are just not available to children who grow up in the city. The children who left are not dependent on your family farm, and they received significant intangible benefits that will serve them well through their lives.

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“What is fair to the children who left the farm?”

- ❖ Expectations: Active children expect to eventually own the farm assets and the other children expect a reasonable inheritance. Discussions are essential to gaining compatible expectations. Ultimately, you have to decide what is fair.
- ❖ Advanced planning: Planning should consider how reasonable assets can become available for the other children.
 - Lifetime gifts to aid them in building their futures.
 - Required payments by the active children to the other children.
 - Co-ownership of farm real estate, with options to purchase and options to lease at prices and rents that cash flow.
 - Parents’ investments separate from the farm can provide funds for their retirement income and ultimately inheritance for the other children.
 - Life insurance to provide funds for estate equalization purposes. The premiums are really pre-payments.

11

Farm succession in a “nutshell”:

Most farmers believe that their son or daughter will earn equity in the farm from their years of work, while the parents continue to draw income or receive sale proceeds for their financial security.

Parents	RIP				
45	55	65	75	85	95
20 Test Period	30	40	50	60	70
	Period to earn farm equity				
Son/daughter	10 yrs.	20 yrs.	30 yrs.		

First, complete test period,
 Then partner with parents and earn equity in the LLC (personal property and possibly building site),
 Then acquire parents’ remaining interest in the LLC,
 Finally, acquire the remaining farm real estate.
 Contingency Plan = The Parents’ Estate Plan

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Farm Estate Planning Issues:

- ❖ Farm transfer provisions
- ❖ Priority of transfers
 - First focus on transfer of operating LLC (i.e. operating assets)
 - Inventory, dairy herd, machinery and equipment, and probably, facilities and assumption of related debt
 - Second focus on transfer of farm real estate
 - Facilities and lands necessary for farm operations
 - Sometimes, special provisions for land with high development value
 - Third focus on other real estate
 - Fourth focus on distribution of non-farm assets
 - Fifth focus on the best use of any life insurance
- ❖ Coordinate trust provisions with transfer limitations in the operating agreement or buy-sell agreement
 - Provisions may need to be “better than in the buy-sell”.
 - Early death can require acquisition of too many assets at one time
 - How much can the farm afford to pay while still paying existing debt, investing in the farm and providing for family living?

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Farm Estate Planning Issues:

- ❖ LLC and operating assets provisions
- ❖ Transfer alternatives:
 - Direct “earned” gift or bargain sale
 - Delayed transfer with a farm trust
 - Assets held in trust and distributed over years as earned
 - Required number of years of farm service
- ❖ Transfer of operating LLC (i.e. operating assets) to the active descendants on an earned basis.
- ❖ Determine the value of membership interests
- ❖ Establish an effective appraisal process
- ❖ Have a reduced price that the farm can afford to pay
 - Consider “earned equity”, assumed debt and cash flow limitations
- ❖ Have practical terms for installment payment
 - Not more than 10 years as real estate needs to be acquired
 - Reasonable interest rate: if variable, maximum and minimum interest rate

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Life Insurance

- Life insurance can play an important role in a farm estate plan.
- However, a farm estate plan should never be designed for the insurance. Rather, the insurance should be designed for the farm estate plan.
- Planning with life insurance
 - Necessary or adequate
 - Right people covered with the right amount
 - Ownership and beneficiary designation correct

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Farmers need three equally important plans:

- A Business Plan, which deals with current structure and terms for management and ongoing relationships
- A Transfer Plan, which deals with the future ownership and management of the farm
- An Estate Plan, which deals with how the farm assets will be preserved, protected and transferred to both the “off-farm” heirs and “on-farm” heirs

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Questions?