

Farm Management

**REAL ESTATE
TRANSFER CHECKLIST**
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Real estate ownership is important for every type of business, but it is most important for farmers because the land is the primary unit of agricultural production.

Farmers aspire to own land, but every farmer will expire and then own no land. So transferring real estate, planned or unplanned, is a periodically recurring event in a farm family's life.

Whether we are transferring into our ownership or out from us to others, there are some things we need to think about in the process. The list discussed here will not be complete, but it may, I hope, help you to think about some important issues as you plan for changes in real estate ownership.

How You View Real Estate

To some, land may be nothing more than a place to grow crops until it can be sold to the highest bidder. Others might view it as a heritage which has been in the family for centuries that should be passed on to the next generation of the family lineage.

Perhaps some view it as something they hold in sacred trust to cultivate as good stewards and preserve for the long-term benefit of all of humanity. Each viewpoint will have a big impact upon how individuals will acquire and dispose of their real property, and how they will care for it while it is in their possession.

Valuation

A business should place a value on every deeded property every

year for the purpose of analysis. The accountant needs to be tracking "cost basis" annually. This is also called "Tax Basis" or "Basis." It is what is reported to the IRS as the cost of a capital asset plus cost of improvements minus depreciation claimed. The accountant may also periodically update the fair market valuation of the property. The dollar values so derived may not be adequate to arrive at an asking or selling price in a potential real estate transfer.

A fair market value (FMV) for a property can only be established definitively when a willing buyer with money in hand makes a genuine offer for that particular tract. Appraisers will look at "comparable sales" in the same locality, adjusting for differences between those and the subject property, to arrive at their estimate of the FMV. Lending agencies will do their own appraisal to ensure that they have sufficient collateral to protect their loan.

Buyers should be particularly cautious, because the asking price is not necessarily the FMV. Evaluate the soil classes and types, the crop production poten-

tial, and the water-holding capacity of the soils. All this information is available from the Natural Resource Conservation Service in each county.

Farm buildings and structures may be an asset, but obsolete technology and antiquated structures are more likely to be a liability and should be valued accordingly. Livestock or poultry housing should be carefully examined by an agricultural engineer or a production specialist to determine what the remaining useful life might be. Also have them prepare an estimate of repairs and upgrades necessary to operate it commercially for that remaining life.

Both buyer and seller must allocate the total sale price for a farm between business structures and improvements farm residence, and land. The tax treatment of each of these is different, so it is important that at the time of transfer a new "Tax Basis" is established for each class of property. IRS auditors will see flags if there is a significant difference

between the buyer's and seller's allocations.

Liability

Farm real estate ownership can also bring liability for things that happened years ago. Explore the history of the property carefully, lest some day you find that your farm is a toxic polluter of the local aquifers, or requires costly cleanup of other waste.

Deed Restrictions

Explore early by engaging legal counsel to search the deed records in the local courthouse for any recorded deed restrictions which might have been placed upon the property. These would include the transfer or sale of the development rights to the land. These might prevent you from doing some things which you plan for the property. Also be on the lookout for any potential liability issues.

Deed Title

Before going to settlement, make sure that the property will be titled to the right person(s). It does not matter who pays for the property or how many wills you

write giving that farm to your son, it will be owned by the person(s) listed on the deed and will, upon death of one party, transfer to the ownership of those other persons with rights of survivorship listed on the deed.

If parents already own a farm or two and are in partnership with a son or daughter, it makes little sense to title a new property in parents' names. The partnership operation will pay for it, but from an estate planning perspective, it might be better to title it in son's name to ensure that he will not have to share even a part of the property with siblings who contributed no effort to pay for it.

Transfer Vehicles

The deed title, as we have seen, may be a means to transfer property at death. Just make sure that you make the titles of new acquisitions (and rearrange the titles of other deeds) to fit with your overall farm transfer and estate planning goals.

Sales are the normal means of

(Turn to Page A32)

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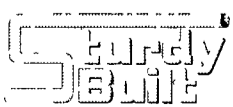


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