

THE TIME TO START THINKING ABOUT FARM SUCCESSION PLANNING IS NOW



It's not your grandparents' farm anymore.

Among the unique set of problems farmers encounter, estate and succession planning is often the most challenging. Determining when and how to transfer the farm is a long and not always straightforward process. This can include identifying the farm successor, making decisions about the growth of the farm, venturing into other agribusinesses, and articulating a vision for the future. While these tasks can seem daunting,

having a plan in place is crucial to protecting the farm heritage and ensuring that the farm will pass to the next generation.

Farmers do not have to make these decisions alone. By putting together an "advisory team", farmers surround themselves with key advisors that will guide them through important decisions. Typically, this includes a tax advisor, a financial advisor, and a legal advisor. Often, lenders and other farm professionals are also involved. Through working with this team, farmers get advice from professionals that have helped hundreds of other farmers and farm families keep the farm in the family. In our practice, we regularly work as part of this team as we develop the succession plan. We often hear that farmers don't know where to start when it comes to farm succession planning. We find that many times the best place to start is with the estate plan. By having sound estate planning documents in place, such as a will or trust, farmers can at the very least lay down a pathway for the farm successor to own the farm in the event the farm dies before the transition is completed. Through an effective estate plan, farmers can also minimize estate and transfer taxes.

Once farmers have identified a farm successor and are ready to start transferring assets to him or her, we can get the succession plan underway. There are a number of strategies that retiring farmers can use to pass the farm down to the next generation.

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Why didn't I get an Abstract of Title with my recent real estate purchase?

If you've purchased real estate recently, you might not have received an Abstract of Title from the seller at the closing. An Abstract is a summary of the history of a parcel of real estate showing deeds, easements, mortgages, and other encumbrances going all the way back to the grant of title. An attorney typically uses an Abstract to draft a title opinion, which is a legal opinion setting out the current owners of property and active easements and mortgages.

While Abstracts provide the raw data for an attorney to form a title opinion (and they give history buffs plenty to pore over), Abstracts are becoming much less common. One big reason is that newly created home lots do not often come with newly created Abstracts. Probably the biggest reason, though, is that title insurance is becoming much more prevalent and property records are much more accessible.

Title insurance is very similar to a title opinion in that it shows the current owners of property and active easements and mortgages. An attorney or title company issuing title insurance will first issue a title commitment setting out the requirements for parties to the transaction to complete for the insurance to be issued (i.e. deliver a deed, record the mortgage, etc.). The title insurance company then indemnifies the lender (through the issuance of a lender's policy) and the owner (if an owner's policy is also purchased) if there are title issues later on.

Title insurance companies and attorneys can and do use Abstracts to issue title insurance, but online property records often replace or supplement Abstracts. Many county recorder's offices are actively scanning old property records and all new property records onto online databases that anyone with a subscription can access. This online access provides convenient and affordable access to property records and makes the continuation of an Abstract redundant in many cases. As the reliance on Abstracts becomes less common, they are misplaced and not replaced or even not requested. Notwithstanding, you should absolutely hold on to your Abstract and keep it in a safe place as it still has value and can assist a title examiner when obtaining a mortgage loan or selling your property.

Ward & Oehler provides both title opinions and title insurance for lenders and buyers of real estate. We have online access to property records in **Olmsted, Wabasha, Winona, Fillmore, Dodge, Mower, and Goodhue Counties** regularly conduct closings for real estate throughout Southeastern Minnesota.

Celebrating 44 years of service!

November 1, 2018 marks 44 years of serving the legal needs of clients for Attorney **Robert Ward!** Robert co-founded the law firm in 1974 and helped establish the law firm in the areas of real estate, estate planning, probate, and business law in local communities. Robert worked out of the law firm's office in Hayfield for a time and recalls the "white knuckle" drives to Hayfield on some winter mornings. Many of Robert's clients are family-owned businesses and farmers that have relied on his incisive counsel for multiple generations. As we celebrate the years of service by Robert, we are also looking ahead to the law firm he co-founded going into its 45th year. ***Congratulations and thank you, Robert!***

A simple way to begin succession planning is for the younger farmer to begin purchasing new machinery as the older machinery needs replacement. This gradually moves some of the operating assets of the farm from the retiring farmer to the younger farmer. Another approach would be to use a limited liability entity, such as an LLC, to hold operating assets like machinery and livestock. The retiring farmer can then gift, sell, or bequeath ownership interests in the LLC to the younger farmer to steadily transition ownership of the assets. This strategy can be especially effective for newer, more expensive machinery and livestock operations since it eliminates the need to deal with specific assets. However, the new entity will require its own checking account, tax ID number, and tax return, so careful planning and consultation with trusted advisers should always go into this decision.

Land may or may not be in another entity, depending on the particular situation. Many times it makes more sense to keep land out of a business entity for tax or other practical reasons, though a family limited partnership can be a good choice sometimes. Like an LLC, a family limited partnership can allow for incremental ownership changes. Family limited partnerships can also be a good tool for managing ownership by several different family members. It might also make sense to put the land into a trust for estate planning reasons. Farmers should be especially careful when making ownership changes with farm land so they do not lose the agricultural homestead classification. A knowledgeable advisor should always be included in weighing these alternatives.

While tax and legal advisers can be extremely useful to the planning process, successful transition of the farm also depends on cooperation and good communication between the retiring farmer and the younger farmer. At the end of the day, both careful planning and good communication will better equip the next generation for continuing the legacy.

If something happens to you, what happens to your minor children?

When minor children are in need of a guardian in the event of both custodial parents being deceased or incapacitated, Minnesota examines what is in the best interest of the children when appointing a guardian. One of those factors is the preference of the parents, which can be expressed in a will. But what should parents consider when nominating a guardian? There are several factors:

- ✦ **Age and Health.** It's important to consider the age of your children and the age and health of the child's grandparents at the time you are making your will. If you have small children and aging parents, sometimes it may be more appropriate to choose a sibling or close friends who are younger, healthier, and may even have children around the same age. You should also consider emotional and financial health and wellbeing when making this decision.
- ✦ **Family Status.** What do you want your child's daily life to look like? You probably want your child to live comfortably in a family environment. You may want them to live in a household with two parents and children close to your child's age. You may even want to name a married couple as guardians and conservators for your children.
- ✦ **Values.** List out your values for raising your children. What moral, religious, and spiritual values are important to you? What do you want for your child? Is education a top priority, or is ensuring that your child can follow his or her passion more important? Choosing a guardian with similar values, discipline style, and overall lifestyle are another consideration to take into account.
- ✦ **Ask Permission.** Once you've narrowed down your list of potential guardians and conservators, consider asking their permission. Asking someone to step in as your child's guardian and conservator in the event something happens to you is no small task. Make sure the people you are nominating are comfortable with the decision, talk about how this addition might affect their own family, and discuss your values and what you hope your child's future will look like.

Office Hours and Locations

Rochester: 1765 Greenview Drive SW
Monday – Thursday 8:30 – 4:30
Friday 8:30 – 3:30

St. Charles: 819 Whitewater Ave
Tuesday 12:30 – 4:30
Thursday 9:00 – 12:00
By appointment

To schedule an appointment in either office, call (507) 288-5567. You can also book appointments online at www.wardoehler.com/book-online for appointments in Rochester.

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Oehler's response to Lucy Oehler Swanson's Op-Ed "Attorney Oehler Isn't that Old" in our last newsletter:

Attorney Oehler was an early adopter of technology (Apple II+ in 1985, IBM PC in 1990, cell phone in 1997)---now uses cloud-based platforms, a dedicated website (www.wardoehler.com), and Facebook for legal work and marketing. No Instagram, Snapchat, or Pinterest yet---sorry. And AOL and Sprint were the only services available when Lucy was still in her crib...time (and technology) march on...

It's true – Bill uses email and Facebook! The law firm also maintains its own Facebook page at www.facebook.com/wardoehler to stay connected with clients and is the most "liked" law firm page in Southern Minnesota with nearly 500 likes!



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