



Spring 2023

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Are Non-Farming Heirs Entitled to a Farm Inheritance?

As if farming itself weren't hard enough, now you have to figure out how you are going to get your farm to the next generation. Knowing the options available to you is an important first step in preparing yourself for this process. Establishing your mindset on who should inherit from you and how much is an equally important step.

I've heard, "fair isn't always equal." In farming, fair is NEVER equal!

Equal means everyone gets the same exact amount. In an estate, that usually means the value of assets of the estate. For example, if a farmer has an estate value of \$3 million with 3 children, that would mean that each child receives \$1 million when that farmer dies. But who and when decided that you need to leave *your* property to your children in equal shares? It turns out that there is no surer way to set your farm up for disaster upon your death than if you leave your assets to your children in equal shares.

With most farmers we work with, their goal is to have the farm continue to the next generation. Assuming you've identified your farm successor, the next challenge is setting that person up for success. In a research study conducted by Oklahoma State University, several transition strategies were assessed for their probability of success. The strategy with the *lowest level of success* was dividing assets equally among all heirs. This strategy was determined to be so ineffective that resulted in a **99% probability of failure if all assets are divided equally among all heirs.**

Failure of the farm is the default estate plan.

What happens if you don't have an estate plan in place? The laws of intestacy get to determine how your assets should be divided. These laws require that your assets be divided equally among all your heirs. This means that the default estate plan (no estate plan) for farmers results in a 99% probability of the farm failing after the death of the farmer!

So, what can you do? Well, if your goal is to set the farm up for the next generation, you need to create your own estate plan and not rely on the state's default estate plan. From there, you should put yourself in the shoes of your farm successor. Would you be able to buy the farm right now? Are you able to add more debt to the farm for the next 20, 30, or even 40 years just to allow you to stay in the same place? Did you receive any discounted purchase prices or preferential inheritances when you acquired the farm? Is your goal to keep the farm at status quo or do you want it to grow? The answers to these questions can help inform your estate planning decisions.

Ultimately, if your goal is to allow the farm to continue to the next generation and beyond with the greatest likelihood of success, you cannot treat your heirs equally. Consider that the price of farmland has grown significantly over the last few years. For example, a farm (continued on next page)

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that might have been valued at \$7,000 per acre could now be worth \$10,000 – 12,000 per acre (or more!). This change in value has occurred in the span of less than a year in some cases. If you had died during that time, would it be fair for your farm successor to pay an additional \$5,000 per acre even when net farm income has remained relatively stable? Even for a 200 acre farm, this would be an additional \$1 million that would need to be divided. That's not sustainable.

What can the farming heir handle?

Instead, farmers should consider what the farm can comfortably sustain. In most cases, your farming heir cannot purchase the farm from the non-farming heirs, even if it were at a discount. But it may be that your farming heir could handle a fixed dollar amount to be distributed to non-farming heirs for a fixed period of time. This approach allows your farming heir to have a defined amount that will allow them to better predict their cash flow. It also eliminates the risk associated with the wild variability of farm prices that we are currently experiencing. Your non-farming heirs will still receive an inheritance, but it will not come at the expense of losing the family farm.

You should consider having a frank and honest conversation with all your children. Everyone has strong emotional ties to the family farm, and often non-farming heirs feel that they are entitled to a piece of it. They are not. And, unfortunately, **if the family farm were to be divided among farming heirs and non-farming heirs, research and experience shows that it will, by definition, no longer be a family farm.** In that scenario, the most likely outcome is that the farm will be sold.

Non-farming heirs must also accept that "fair market value" means the price that a *non-family member* would pay for the farm in an open market. Again, by definition, the farm stops being a family farm when "fair market value" is the benchmark for valuation; there is no way to arrive at this value that takes into account family farm considerations. The benchmark should instead be based on a family farm value, which is the price you determine will allow the farm to succeed.

You should start or review your estate plan now.

If it has been more than a few years since you most recently reviewed your estate plan, it is likely to be out of date. The increased value of farm assets and higher interest rates should be reflected in your estate plan. Your farm and your farming heir both need a strong foundation on which to continue the farm into the next generation. Failing to embrace this concept wholeheartedly can result in failure of the farm upon your passing.

We help farmers save and transfer their family farms through estate and succession planning every day. We've been doing it for 50 years.

In North America, only **1%** of family-owned farm businesses are transferred to the third generation. **30%** of family-owned farms have considered a successor and only **63%** have done succession planning after the owners reach **65**.

 WAGNER OEHLER, LTD.
Legal & Title Services

STAFF
UPDATES



Attorney
Jennifer Shabel
Joined the firm
on March 6th .



Real Estate
Paralegal
Sophia Craven
Joined the firm on
February 16th.

The Importance of Having an Attorney Attending the Signing for Estate Plan

Estate planning is a crucial process that involves making decisions about your assets and how they should be distributed after your death. It is not something to be taken lightly, as it can have significant legal and financial implications for you and your loved ones.

One of the most critical steps in the estate planning process is signing the necessary documents. But, believe it or not, there are plenty of attorneys engaged in estate planning that do not take part in the signing!

We believe it is essential to have an attorney attend the signing appointment. For that reason, our attorneys will always walk you through every document and every step of the estate planning signing.

Here are some reasons why it is essential that an attorney attend your estate plan signing:

Legal Expertise

Attorneys who practice in estate planning have extensive knowledge of state laws and regulations governing wills and trusts. They can ensure that all documents comply with legal requirements and are properly executed. This can help prevent challenges to the validity of the documents down the road. After all, wasn't the point to make sure you establish a valid estate plan?

Our attorneys have been working with clients throughout the State of Minnesota in preparing and administering their estate plans for over 50 years. Providing exceptional client service is our foundational mission. Having your attorney guide you through your documents at the signing appointment furthers that mission.

Personalized Advice

Every individual's situation is unique, and estate planning is no exception. An attorney can provide personalized guidance based on your specific circumstances, goals, and wishes. They can help you make informed decisions about issues such as asset protection, tax planning, charitable giving, and more. Often, these circumstances and decisions become more apparent in the signing meeting. The signing meeting is also a good time to reiterate how your assets will align with your estate planning documents.

Peace of Mind

Having an attorney present at the signing appointment can give you peace of mind that everything has been done correctly according to the law. If any issues arise later on, you will know that you took all necessary precautions and did everything possible to protect yourself and your family.

Conclusion

In conclusion, while some firms may operate on the basis that it is not important for an attorney to attend your signing appointment, we strongly believe that having an attorney attend the signing appointment for estate planning documents is crucial for ensuring their validity of your estate plan, receiving personalized advice based on unique circumstances while gaining peace of mind knowing everything has been done correctly.

Your estate plan is an investment in the future. Working with an experienced estate planning attorney throughout the entire estate planning process, including the signing appointment, is a significant benefit of your investment.



#Estate Planning

Importance of Attorney at Signing Appointment

- Avoid expensive mistakes.
- Professional experience.
- Personalized advice.
- Investment in your estate plan.
- Peace of mind.
- Exceptional client service!

WAGNER OEHLER, LTD.
Legal & Title Services

Want to learn more?
www.wagnerlegalmn.com

Office Hours and Locations

Rochester: [1801 Greenview Drive SW, Ste. 102](#)

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

Winona: [65 Johnson Street](#)

Monday – Thursday 8:30 – 4:00

Friday 8:30 – 3:30

To schedule an appointment in any of our offices, please call (507) 288-5567.



Wagner Oehler, Ltd.
(507) 288-5567
www.wagnerlegalmn.com

Events Schedule

3-Part Series: How to Secure a Prosperous New Chapter

Tuesday, May 9th, from 6:00 PM–7:30 PM

Tuesday, May 16th from 6:00 PM–7:30 PM

Tuesday, May 23rd from 6:00 PM–7:30 PM

Be sure to sign up for all three sessions!

Rochester Area Foundation Community Room (2nd Fl)

12 Elton Hills Drive NW, Rochester, Minnesota

Coffee & Conversations: Wills & Estate Planning

Monday, June 12, 2023 from 10:30–11:30 AM

Hosted by St. Charles Public Library

125 W 11th Street, St. Charles, Minnesota

To sign up for our seminars, please email janice.domke@wagnerlegalmn.com or call our office at (507) 288-5567.

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