

The Mechanics of Building a Farm Legacy: Making Sure Your farm (and family) survive a generational transition

TEPAP 2023

•<u>1</u>







1



YOU (yeah, YOU) **NEED THIS STUFF!**

think about

• Long-term care

insurance

• Trust

Slam dunk without-a-doubt And you really need to

- Guardian nomination for minor children
- Beneficiary designations
- Durable powers of attorney • Life insurance - Business
 - Healthcare
- Advanced directive for health care
- Long-term care planning
- Will



- •<u>6</u>

•<u>5</u>



Mark 6:4

Jesus said to them, "A prophet is not without honor except in his hometown and among his own relatives and in his own household."

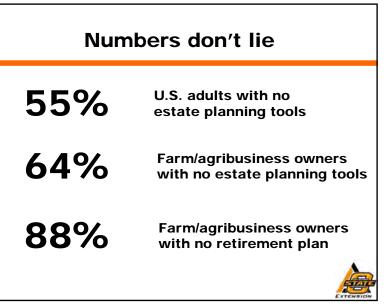
Ferrell's corollary:

You cannot regard someone as an expert if you have changed their diaper.

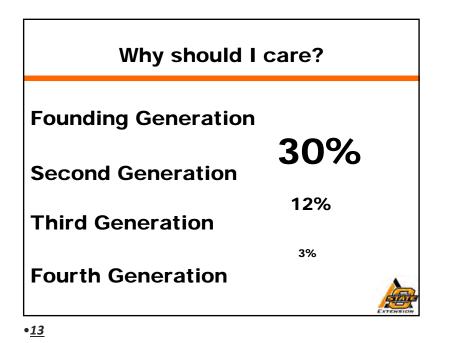


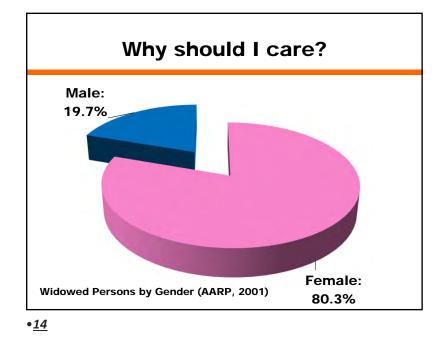


•<u>10</u>



0





<section-header>

Causes of business failure after a generational transfer • Inadequate estate planning

- Insufficient capitalization
- Failure to prepare the next generation properly

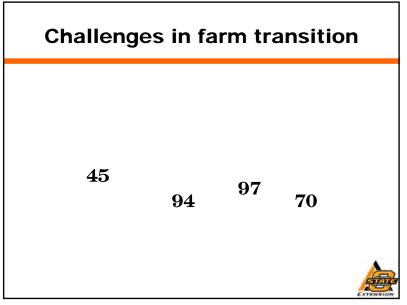
Λ

Who needs a transition plan?

- EVERYONE!
- Especially vulnerable:
 - Young families
 - Farms on verge of "viable size"
 - farms
 - "Complex" families



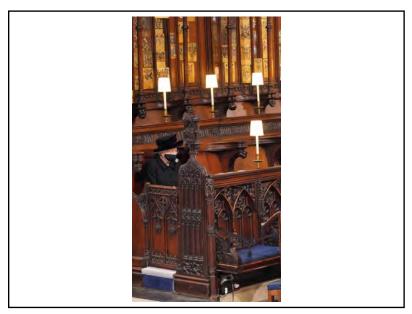
•<u>17</u>

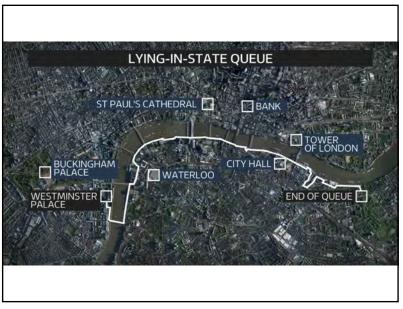


Challenges in farm transition



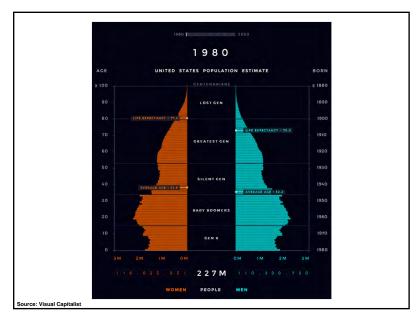
•<u>18</u>



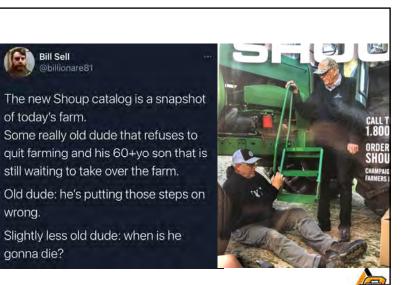


•<u>21</u>





•<u>22</u>



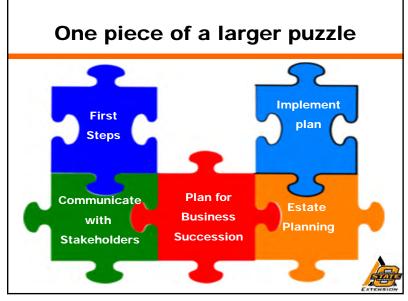


•<u>25</u>

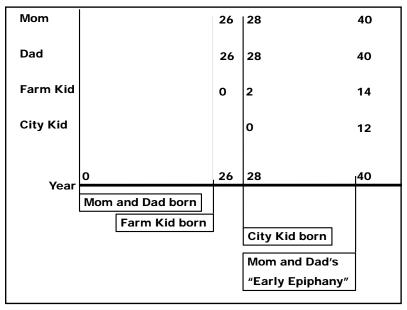
The family

- Mom and Dad: Currently most-senior generation on the farm. One has off-farm job earning median income in their state.
- Farm Kid: The first-born child of Mom and Dad, works on farm and intends to make it his or her primary occupation.
- City Kid: The second-born child of Mom and Dad; does not intend to return to the farm



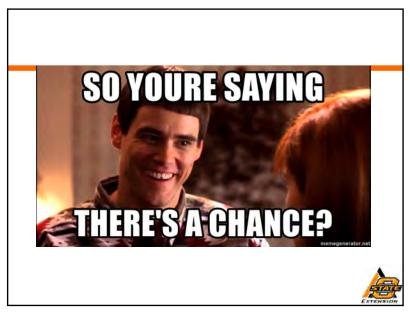


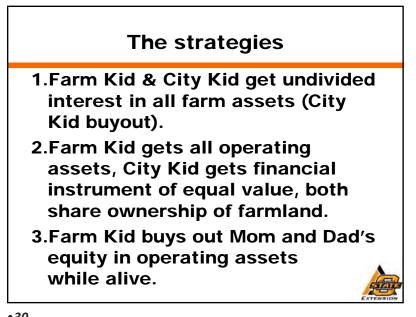
•<u>26</u>



Mom	58	76	81	
Dad	58	76		
Farm Kid	32	50	55	76
City Kid	30	48	53	74
	58	76	81	102
	Mom and Dad's "Average Epiphany"		Mom dies "Early" +41 "Average" +23	
Dad dies "Early" +36 "Average"+18			Farm Kid dies Mom dies +21	
		•		

•29





•30

	Top Third		Middle Third		Low Third	
Breeding Livestock	\$ 56,602		\$ 28,288		\$ 21,442	
Machinery & Equipment	\$ 1,012,499		\$ 499,177		\$ 152,462	
Buildings	\$ 82,894		\$ 27,155		\$ 11,700	
Land	\$ 2,603,650	69%, 1120 acres	\$1,442,237	72% 628 acres	\$ 516,111	74%, 288 acres
Total Assets	\$ 3,755,645		\$1,996,857		\$ 701,715	1 mm
Net Farm Income	\$ 169,059	· · · · · · · · · · · · · · · · · · ·	\$ 98,369		\$ 36,657	
			Succes	Rate		
Strategy	Op. Debt 3yr	No Op. Debt	Op. Debt 3yr	No Op. Debt	Op. Debt 3yr	No Op. Debt
Down the middle, commercial lending	1%	0%	0%	0%	0%	0%
Down the middle, family lending	2%	0%	60%	0%	73%	D%
Op. assets to Farm Kid, split land	82%	65%	100%	100%	100%	0%
I Made and a state and the	D:A > 0.6	Cash >= 0	D:A > 0.6	Cash >= 0	D:A > 0.6	Cash>= 0
Lifetime buyout of Ma and Pa	100%	29%	100%	100%	100%	100%

	cha	ance		
	Net Farm Income			
Year	Top Third	Middle Third	Low Third	
2012	\$269,500.00	\$154,290.00	\$ 74,076.00	
2013	\$262,702.00	\$140,201.00	\$ 55,083.00	
2014	\$ 83,558.00	\$ 69,483.00	\$ 22,645.00	
2015	\$ (25,120.00)	\$ (100.00)	\$ 2,652.00	
2016	\$ (17,851.00)	\$ 17,943.00	\$ (11,980.00)	
2017	\$ 55,111.00	\$ 26,371.00	\$ 17,005.00	
2018	\$182,542.00	\$ 83,956.00	\$ 34,149.00	
2019	\$134,043.00	\$ 55,525.00	\$ 24,558.00	
2020	\$298,835.00	\$198,239.00	\$ 67,869.00	
2021	\$447,270.00	\$237,779.00	\$ 80,508.00	
Average	\$169,059.00	\$ 98,368.70	\$ 36,656.50	

•33



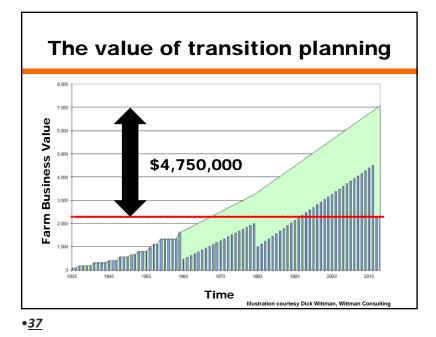
Takeaways

- The runaway #1 strategy choice (used by >64% of farms) is the one zero chance of actually working.
- Nobody thinks about *WHO'S* paying for the planning (or lack thereof).
- Time can be your enemy or your ally – it just depends on when you start.

•<u>34</u>

What'll it cost, man?! What'll it cost?! (Top third operation NFI = \$169,059)

Strategy	Who pays	Annual expense
Buy out City Kid, comm lending	Farm Kid	\$375,565 down; \$198,359; \$97,528
Buy out City Kid, family loan	Farm Kid	\$375,565 down; \$101,443
Op. assets to farm kid, "share" land; investment	Ma & Pa	\$33,901
Op. assets to farm kid, "share" land; life ins.	Ma & Pa	\$20,987
Farm Kid buys op. assets	Farm Kid	\$53,455



SO WHAT?

•<u>38</u>







•<u>41</u>

10 Reasons to hold family meetings

- 1. Build a stronger family
- 2. Build a stronger business
- 3. Plan for the future ownership of the business
- 4. Plan family participation in the business
- 5. Help children manage inherited wealth



Source: Arnoff & Ward (18), 2011

Why are people afraid of family meetings?

- Meetings seem democratic ...and this is a dictatorship, dangit!
- Afraid to share information
- Afraid to hear what you don't want to hear
- Afraid to confront difficult decisions

Source: Arnoff & Ward, 2011



•<u>42</u>

10 Reasons to hold family meetings

- 6. Open up the succession process
- 7. Preserve family values, traditions, history
- 8. Professionalize the business
- 9. Manage relations between family and board of directors
- 10.Recognize and resolve conflict

Source: Arnoff & Ward (7), 2011

Potential agenda for initial family meeting

- Overarching topic: we need to discuss the future of the farm
- Is there existing family conflict that must be resolved before discussions can move ahead?
- What are our individual core values, vision, and mission? Are they compatible if we work together?



•<u>45</u>

Meeting progressions

- Basics, core values, finding elephants in the room
- Where the farm is now
- Where we want to go
- How to get there from here
 - Changes in operations
 - Needed acquisitions / dispositions
 - HR needs
 - How and when roles will change



Moving forward

- Are there concerns about the roles of stakeholders with respect to
 - ownership,
 - business participation,
 - compensation, or
 - responsibility?
- What do the stakeholders envision the farm business looking like in the future?

•<u>46</u>

Keeping momentum in your meetings

- Use record from last meeting to identify topics for following meeting
- Consider rotating locations and responsibilities
- Keep agenda manageable
- Last item on agenda is always discussion of next meeting and work in the interim



Establish the environment

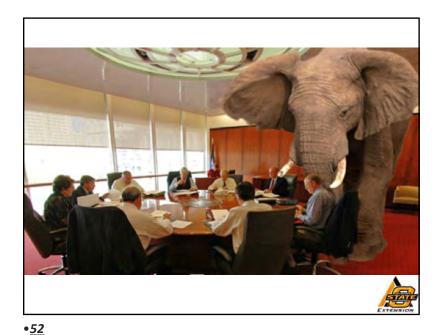
49



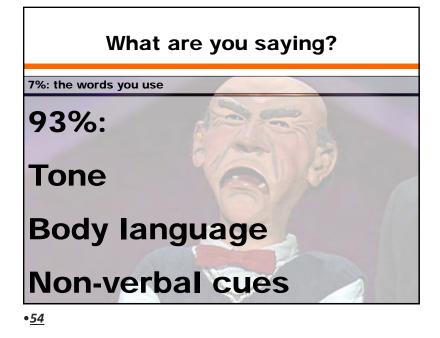
Establish the environmentWho: ALL stakeholders

- What: a talk about the farm
- When: NOT a holiday
- Where:
 - A comfortable place
 - NOT anyone's home
 - Free of distractions
- Why: so we can discuss ideas for future of the farm and ranch

•<u>50</u>







The Speaker / Listener Technique

• Rules for the Speaker

- 1. Speak for yourself. Don't mind read!
- 2. Don't go on and on.
- 3. Stop and let the listener paraphrase.
- Rules for Listener
 - 1. Paraphrase what you hear.
 - 2. Don't rebut. Focus on what the speaker is saying.

• Rules for Both

- 1. The speaker has the floor.
- 2. Speaker keeps the floor while listener paraphrases.
- 3. Share the floor.



Gender communications



- Men
 - Tend to compartmentalize
 - Self-worth tied to business
 - Keep a scoreboard in dollars
 - Retirement may be dirty word (or a tough balancing act)
 - Biggest positive or negative trigger: RESPECT





•<u>57</u>



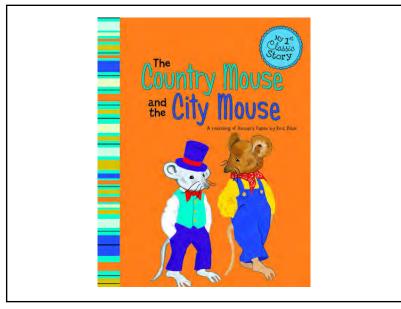
<section-header><section-header><section-header><list-item><list-item><list-item><list-item>

•<u>58</u>

Who gets to participate?

- Participation:
 - Ownership of farm assets
 - Authority to make decisions regarding
 - Acquisition/disposition of farm assets
 - Use of farm assets
 - Farm operations
 - Receive economic returns from farm operations or sale of farm assets





Common ground: a principles-based transition process



Relationships first.

Wherever possible, we will prioritize the relationships of our family and stakeholders, recognizing that this is a mutual obligation. In some cases, relationships may have to be prioritized over economics.



Profitability matters.

The economic well-being of the farm operation directly impacts the economic well-being of those who depend on it.



•62

We seek equity, not equality.

"Sometimes right isn't equal, sometimes equal's not fair." Corb Lund, "The S Lazy H"



•<u>65</u>

Participation is an opportunity, not an entitlement.

Profiting from the farm is not a birthright. It is earned by contributions of labor, management, and capital to the farm.

•66

You deserve the chance to profit from your contribution.

If someone contributes management, labor, or capital, they should have the opportunity to receive an economic return from that contribution.



Wealth without wisdom is a curse.

We have an obligation to prepare those who are about to receive something for it by sharing our experiences and knowledge. It is a disservice to someone to give them something without preparing them to receive it.



Emotional connections matter.

The land carries powerful connections not just for those who work it, but those who were raised on it. We will acknowledge and respect those connections.



Participation requires preparation.

Farming is a complex and challenging profession. Anyone who participates in the farm has an obligation to diligently study all the disciplines that impact it and to study the farm itself.

•<u>69</u>



Those who participate in the farm deserve to know all relevant information about it. We have an obligation to share both that information and our experiences.



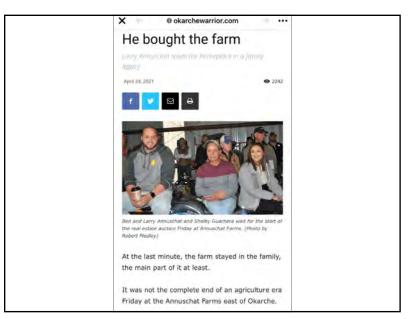
Choice

Participation in the farm must be a mutual choice made with the complete free will of both the current authorities over the farm and those who want to be a part of it.

•70

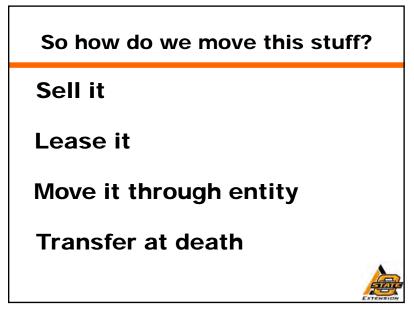


•<u>73</u>



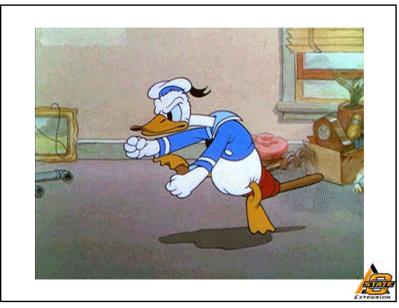
•<u>74</u>

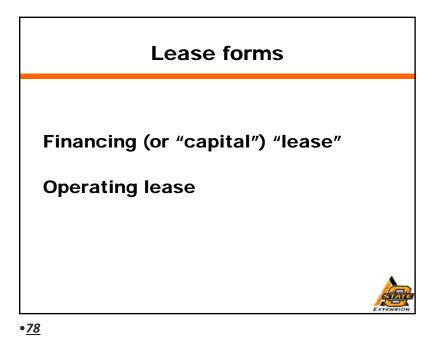


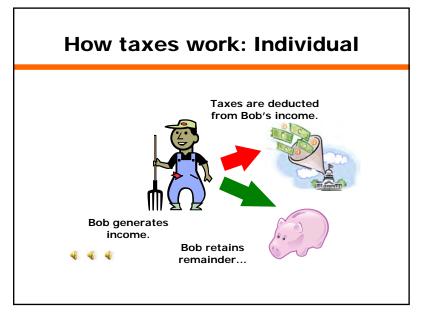


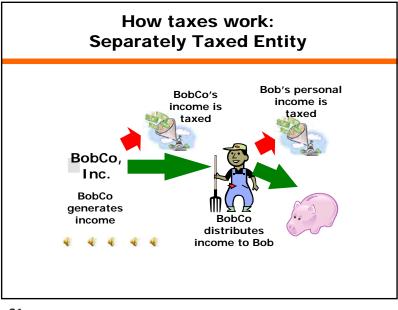










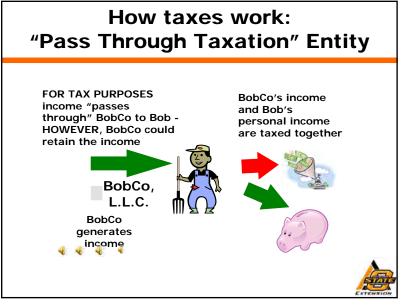


•<u>81</u>

Why the heck would you want a pass-through entity?

- No double taxation!
- Simpler tax treatment (hopefully).
- Tradeoff: Owners are taxed on income of entity REGARDLESS of whether it is distributed to them.
- Moral: you better have a DARN good reason for choosing something other than a pass-through LLC





•<u>82</u>

Special Treatment of Family Farms

As mentioned earlier, family farms receive special treatment whereby every adult member—18 years or older—is deemed to meet the AEF requirements and is potentially eligible to receive farm program payments in an amount up to the individual payment limit. Furthermore, under the 2018 farm bill (§1703(a)(1)), the definition of *family member* was extended to include first cousins, nieces, and nephews.

Multiple Payment Limits for a Partnership

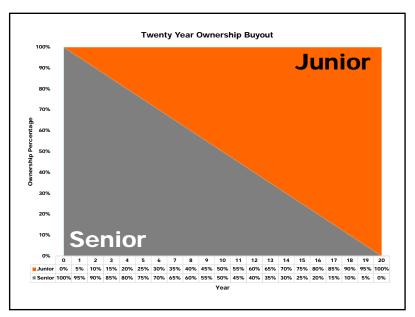
A partnership's potential payment limit is equal to the limit for a single person times the number of persons or legal entities that comprise the ownership of the joint operation plus any additional exemptions or exceptions. Adding a new member can provide one or two (with qualifying spouse) additional payment limits.

Each member of a partnership or joint venture must meet the AEF criteria and must be within the AGI limit. Furthermore, the partnership's total payment limit is reduced by the share of each single member who has already met his or her payment limit (or portion thereof) on another farm operation outside of the partnership.

Single Payment Limit for a Corporation

A corporation is treated as a single person for purposes of determining eligibility and payment limits—provided that the entity meets the AEF criteria. Adding a new member to the corporation generally does not affect the payment limit but only increases the number of members that can share a single payment limit.

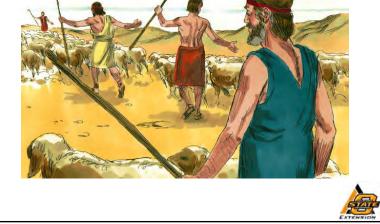




•<u>85</u>





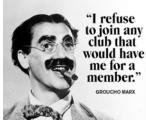


•<u>86</u>

Stage 1	Stage 2	Stage 3
First-Generation Owner-	Second-Generation "Family	Third Generation and Beyond:
Operated Entrepreneurial Stage	Partnership" Stage	The "Family Dynasty Stage
 Management succession planning Ownership succession planning Entry of family members into the business Beginning family meetings Setting up active outside board Mentoring successors 	 Planning compensation for family members Pay and incentives for key non-family employees-+ Family code of conduct Developing shareholder liquidity programs Planning in-laws' role Revitalizing strategy Involving talented third generation family members Career paths for family and non-family managers Planning to perpetuate family leadership 	 Shareholder harmony, commitment, and education Family conflict resolution Planning allocation of capital Structuring a portfolio of businesses Developing a family council or organization Developing a family mission statement Planning a role for inactive shareholders Planning family linkage with the business Articulating family tradition,

Membership, roles, policies

- Who can be a member & classes of membership
 - Profit interests / preferred stock
 - Capital contributions & capital calls
- Manager(s) and succession
- Salaries, guaranteed payments, special allocations
- Profit interests / preferred stock





•<u>89</u>

LLCs and Corporations Buy/sell agreements

- Ensures closely-held nature of business
- Often triggered by involuntary events
 - Death
 - Disability
 - Divorce
 - Debt
 - Don't like 'em – Don't wanna





•<u>90</u>

LLCs and Corporations Buy/sell agreements

- · Valuation methods
 - Appraisal
 - Agreed appraiser?
 - If not, agreed procedure for selecting appraiser?

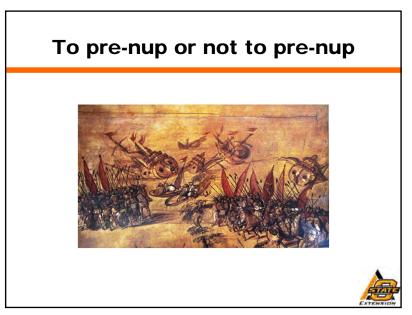


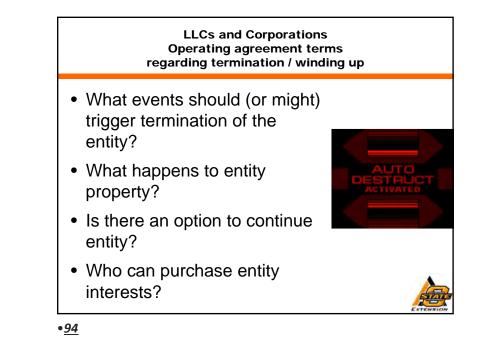
- Experience with the business / industry?
- Valuations based on book value
- Adjustment of prior method by set value

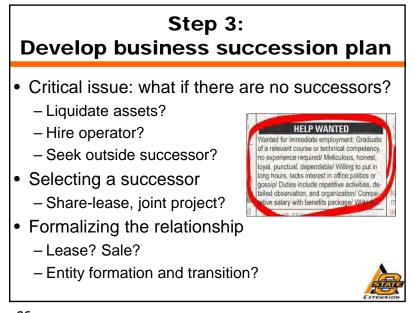




•<u>93</u>









•<u>97</u>

Fun facts

- The long-term human mortality rate is 100%
- Implementation of an estate is NOT an "if" question, it is a "when" question.
- "When" is absolutely unknowable



Pop quiz, hotshot!

• Farmers have way more assets on average than the average U.S. household, so they MUST have good estate plans, right? According to an IFTN survey, how many U.S. farmers have NO estate plan in place?

- 34%

- 44%

- 54%

–<mark>64%</mark>

•<u>98</u>

Three principles

- You won't know exactly what you have or how much it's worth when you pass.
- No one will remember what you <u>said</u> they only remember what is <u>written</u>.
- AT LEAST ONE PERSON will lose their minds with sorrow, fear, confusion, and/or greed.

•<u>100</u>

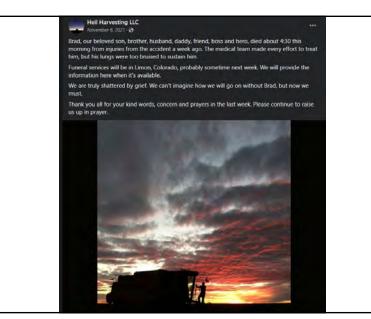
YOU (yeah, YOU) NEED THIS STUFF!			
 Slam dunk without-a-doubt Guardian nomination for minor children Beneficiary designations Durable powers of attorney Business Healthcare Advanced directive for health care Long-term care <i>planning</i> Will 	 And you really need to think about Trust Life insurance Long-term care <i>insurance</i> 		

•<u>101</u>

How does the administration of an estate work?

- 1. Decedent dies
 - Present will to court (if found) and appoint executor
 - If no will, appoint administrator
- 2. Inventory property, debtors, creditors / maintain estate
- 3. Handle creditors of estate
- 4. Submit final inventory and accounting
- 5. Close probate / administration





•<u>102</u>

Distributing property without a will: intestate succession

- A set of "default rules" that apply if
 - there is no will or
 - the will is partially or completely invalidated
 - A trust exists but assets were not transferred to it
- A surviving spouse will ALWAYS take at least some of the intestate estate (exception: prenuptial agreements)
- Only blood relatives/adopted children can take; no stepchildren or in-laws



Intestate succession

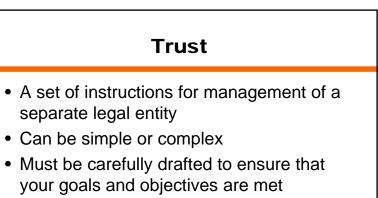
Pros	Cons		
Well, uh its definitely low-effort on your part	Unable to select who handles your affairs (and several people may "volunteer"		
	Unable to direct who gets your property – succession rules dictate heirs		
	No provision for stepchildren, nephews, cousins, charities, etc.		

Wills

- What exactly is a will?
 - A set of directions for the distribution of your property after you pass away
 - ONLY effective once you pass away
- Must have "testamentary capacity"
- Must be executed correctly
- Must be probated

•105

Wills			
Pros	Cons		
Leaves control with testator until death	Must go through probate		
Can direct where property goes – almost anywhere	Easily contested		
Can select executor	Lengthy and public process		
Can name guardians	State-specific		
Does its job then goes away	Cannot operate "long- term" w/o other tools		



Involves trustor, trustee, beneficiary, and trust property

•<u>107</u>

•106

Items to be considered in creating revocable living trusts

- 1. Trustee
 - Co-Trustee
 - Successor Trustee
- 2. Beneficiaries
- 3. Duration of Trust



•<u>109</u>

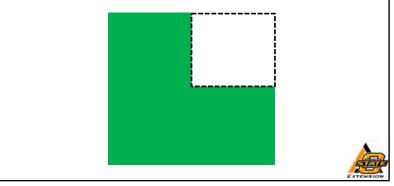
Items to be considered in creating revocable living trusts

- 4. Rights of Trustee
 - Buy, sell and lease property
 - Lease minerals, wind, solar, & other rights
 - Invest funds
 - Distribute trust income
 - Distribute trust principal
- 5. Uses of trust income and principal
- 6. Timing of distribution to beneficiaries



Items to be considered in creating revocable living trusts 4. Rights of Trustee

- Buy, sell and lease property



•<u>110</u>

LIVING TRUSTS

Pros	Cons
Eliminates probate for assets in trust	May have trustee fees
Don't need guardian to hold assets for minors	Adds complexity to management of assets in life
Not public information	Requires coordination with other estate tools
Very difficult to contest	Still needs will



Rigor mortis makes you an inflexible farm manager

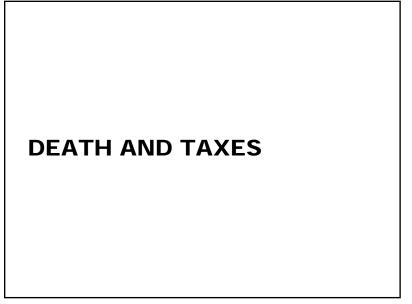


•<u>113</u>

The current estate tax landscape (2023)

- Federal:
 - \$12.92 million unified credit
 - \$25.84 million combined credit
 - Spousal portability retained
 - Stepped-up basis retained
 - \$17,000 / \$34,000 annual gift limit
 - NOT A WALL "unified credit"
- Sunsets and ABCs





•<u>114</u>

Spousal Portability Example

- 2023 Estate Tax Exemption = \$12.92 million per individual
- Total estate value \$20 million
- 50/50 value split between Dad and Mom



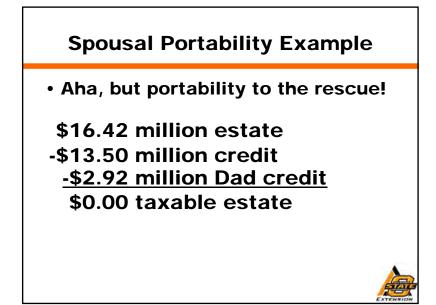
Spousal Portability Example

- Dad dies in 2023 with \$10.0 million in value assigned to his estate
- \$12.92 million credit
 <u>-\$10.00 million value</u>
 \$2.92 million remaining credit

\$0.00 taxable estate



•<u>117</u>



Spousal Portability Example

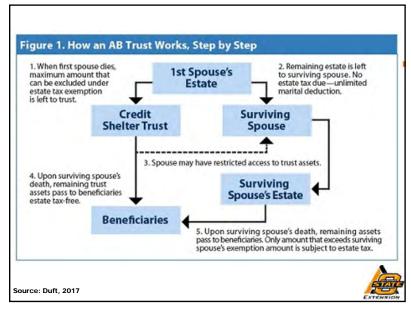
- Time passes, stuff appreciates, and Mom dies in 2025 with a \$16.42 million estate.
- Assume 2025 credit increases to \$13.5 million – still not enough to cover estate.

\$16.42 million estate

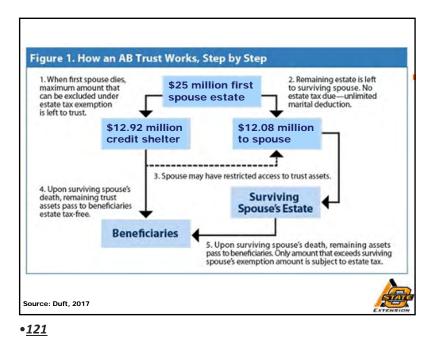
-\$13.50 million credit

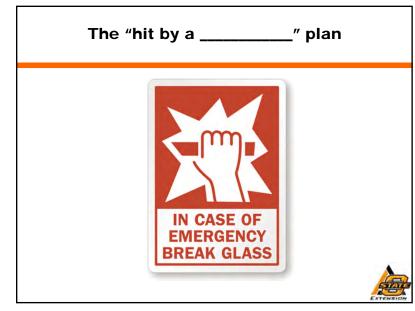
\$2.92 million taxable estate

•<u>118</u>



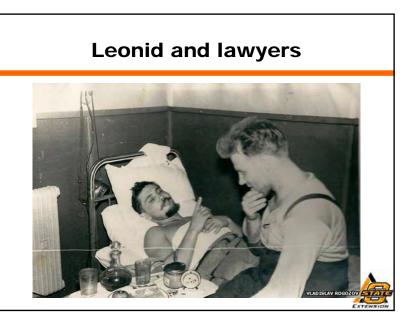






•<u>122</u>





•<u>124</u>



•<u>125</u>

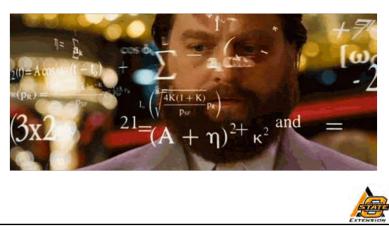




•<u>126</u>



The transition team: The Production Consultant



The transition team: The Investment Advisor



•<u>129</u>



The transition team: The HR Advisor



•<u>130</u>



Pop quiz, hotshot!

- In a survey running across several hundred workshop participants from all segments of farm families, which of the following was consistently the highestranked priority in a farm transition?
 - Equal distribution of assets (value)
 - Preservation of farm asset base
 - Financial viability of operation after transition
 - Preservation of family relationships

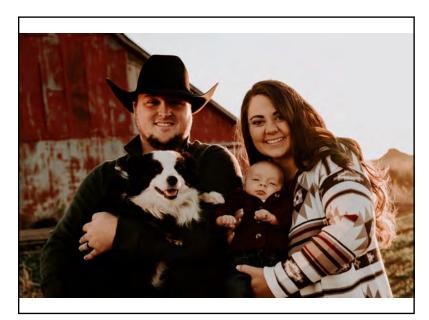




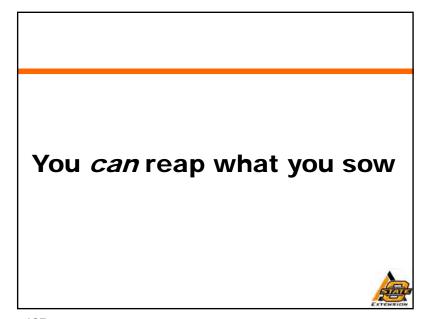




•<u>134</u>



•<u>136</u>



For more information https://extension.okstate.edu/ and search "farm transitions" shannon.l.ferrell@okstate.edu @shanferrell

•<u>138</u>

•<u>137</u>