



# **SURVEY SAYS:**

## **The Current State of Farm and Ranch Estate and Succession Planning**

CARI RINCKER, ESQ.

When exploring farm and ranch estate and succession planning solutions that address increasingly challenging farm family dynamics, it is prudent to look first at the data. Rincker Law, PLLC performed a survey<sup>1</sup> of agricultural producers. This article discusses the data from that survey and what it reveals about farm and ranch estate and succession planning. It (a) describes the survey respondents' demographics, (b) examines the results, and (c) provides recommendations about how to encourage farming families to implement estate, business, and succession planning.

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1 The survey was sent via Survey Monkey.

## DEMOGRAPHICS

**Role in the industry.** The survey results were collected from fifty-eight respondents from July 27 to October 27, 2020. Among the survey participants, 46.55 percent were farmer-landowners and 1.72 percent were tenant farmers. Among the respondents, 17.24 percent identified themselves as both a landlord and a tenant farmer. Those who responded that they were farmers with an off-farm job—a scenario familiar to the Rincker family—amounted to 18.97 percent. Four participants stated that they were agribusiness owners, and two noted that they were agriculture employees.

**Age.** Interestingly, 46.55 percent of the survey respondents were between thirty-five and forty-four years old, which may be the age range during which farm and ranch heirs become interested in estate planning. Few survey respondents were younger than thirty-five (6.9 percent were between the ages of twenty-five and thirty-four, and one respondent was in the eighteen to twenty-four range). The second-largest demographic group, 25.86 percent, was between the ages of forty-five and fifty-four, highlighting the growing interest in estate planning as the respondents reach the age when their parents may soon become unable to farm.

**Marriage.** Nearly 85 percent of the survey respondents said they were married, and 15 percent answered that they were unmarried. There were no questions about the number of marriages, spouses' deaths, or unmarried cohabitation.

**Children.** More than one-third (i.e., greater than 36 percent) of the survey respondents said they had two children and approximately 19 percent had one child. Approximately the same number of participants had either three children or no children: 15.52 percent and 17.24 percent, respectively.

**Geographic area.** All participants were in the United States. The majority were from Illinois, but there were survey takers from coast to coast, including New York and California, as well as Nebraska, Wyoming, Indiana, Oklahoma, Kansas, Colorado, South Dakota, Nevada, Michigan, Texas, New Mexico, Arizona, New Jersey, and Virginia.

## ESTATE PLANNING

**The basics.** Multigenerational farming businesses pose unique challenges for estate planning attorneys because estate planning, succession planning, and business planning overlap to some extent. This section focuses on estate planning and subsequent sections focus on business and succession planning.

Surprisingly, only 56.14 percent of the survey respondents indicated that they had an estate plan. Fourteen respondents found a local lawyer on their own, but an equal number (25

percent of the total) found their estate planning lawyer through a referral by someone they knew.

**PRACTICE TIP:** Estate planning attorneys in cities and suburbs should network with attorneys who practice in rural communities, closer to agricultural producers.

**The documents.** On a positive note, 72.7 percent of the participants had a last will and testament. The survey did not ask how old the wills were or when they were last reviewed. Although nearly three-fourths had a will, 27.59 percent of the respondents had no last will and testament. It was also disappointing that only 50 percent of the participants had a power of attorney for property. Unsurprisingly, only 27.9 percent of the participants had a trust.

**PRACTICE TIP:** Trusts are underused by agricultural producers. Often, farm families do not understand their usefulness as an estate planning tool. Trusts can be particularly useful for owners of farms that participate in federal farm programs. Many farm families in rural communities are also interested in avoiding probate and maintaining privacy; trusts can help achieve both.

**Life insurance.** It is easy to forget that life insurance is part of the estate planning puzzle. Nearly 90 percent of participants noted that they had life insurance; however, in response to a survey question inquiring whether they had ample life insurance to cover their farm, agribusiness, and personal debt, only 67.39 percent answered affirmatively, indicating that many producers are probably underinsured.

**PRACTICE TIP:** More education is needed to better inform farmers and ranchers about how life insurance fits into the larger estate planning picture.

**Priorities.** The interesting part of estate and succession planning is that it should be tailored to reflect clients' changing goals. Participants provided a variety of responses to a question about their top priority for their estate plan:

- Make sure transfer of assets goes to the right beneficiaries
- Avoid taxes
- Enable family to remain united



- Successfully transfer farm over
- Avoid probate
- Provide comfort and security
- Transfer land and wealth, and pass on the legacy of our business
- Provide for my minor children and have a proper place for my kids to go
- Be able to leave a viable business
- Keep the family speaking when this is all over
- Provide clear direction for the treatment of assets before death or during incapacitation
- Carry out wishes in the manner we desire
- To have repeat customers and breed marketable herds
- Have an easy transfer of ownership
- Pass the estate to the next generation at no cost
- Preserve family farm and business, and keep the farm intact
- Allow the next generation to keep farming
- Keep it all together if the kids want it and ensure kids are happy
- Create continuity
- Ensure open communications
- Enjoy my own money
- Set up a special needs trust for son with a disability

The goals were diverse, and estate plans that would work best should be tailored for each individual family.

**PRACTICE TIP:** Estate planning attorneys should be cognizant of their agricultural clients' unique goals, and their estate plans should be modified to reflect changing goals over time.

**Fears.** Estate planning attorneys should be aware of the roadblocks that could prevent a multigenerational farm family from putting a solid estate plan in place. The respondents provided the following answers about their biggest fears connected with creating an estate plan:

- Making sure it is done right
- Trying to make everyone happy without someone feeling like they were cheated

- Other family members feeling entitled and having to pay them off
- That our father will never fully retire until he dies and will not have things in order
- Fear that something will be missed or forgotten
- Cost is expensive and will not adequately protect my family
- Future in-laws will not grasp the whole picture
- Time and focus needed to be thorough and include partners' differing views
- That I will mess it up and it will be a nightmare for my son
- Arguing with my siblings
- Losing or damaging family relationships
- Older family members not wanting to talk about unpleasant end-of-life decisions
- It needs to consistently be reviewed to keep the plan fresh, up-to-date with changing laws, and to see if changes are needed
- There is always the potential for confrontation with a child not getting what they think is fair, because fair is not always equal and vice versa
- Taxes
- The sibling not interested in the farm will feel empty-handed for inheritance
- Arguments and misunderstandings among family members
- Losing everything our family has worked for for generations; being taxed so much that it will cause financial damage
- No one will cooperate
- No one from our next generation is interested
- Making decisions now that might need to be changed later

**PRACTICE TIP:** Every farm and ranch family should budget for and implement an estate and succession plan. To reduce these clients' anxiety about achieving all their goals in their initial estate plan, their attorneys could suggest that they start with a simple estate plan and perfect it over time. To address affordability concerns, a comprehensive plan can be created in steps. To alleviate clients' fears regarding an estate plan's cost, reassure them that there is an estate plan at every price point.

In response to a question about the ideal budget for preparing a farm or ranch estate plan, approximately 30 percent of the survey respondents said that they had “no clue how much is a reasonable budget.” About 20 percent stated that \$1,000 to \$2,000 was reasonable, whereas 20 percent answered \$2,000 to 4,000. One-eighth of the respondents estimated \$4,000 to \$6,000. Two survey takers indicated \$6,000 to \$8,000, and three said \$8,000 or more. The remaining four participants specified \$1,000 or less as their ideal budget.

**PRACTICE TIP:** Lawyers serving farming clients should strive to be more transparent about pricing for clients in the agriculture industry so that the cost is not mysterious and intimidating for those considering an estate plan. Attorneys should highlight that there are estate plans that can fit within each of the budget ranges mentioned above. The initial plan may not be perfect to fulfill all the needs of the farm or ranch, but it can leave room for later adjustments.

**PRACTICE TIP:** To address clients' fears about changes in the law, some estate planning attorneys offer subscription services or send periodic updates to clients informing them of such changes (for example, changes in the estate tax exemption amount). It is important to recommend that clients meet with their estate planning attorney every few years and revisit their plan to address changes in the law that may affect their game plan.

**Revisiting the plan.** Approximately 30 percent of survey takers noted that they had revised their estate plan twice, 20.69 percent had revised their estate plan only once, and 10.34 percent had revisited their plan three times. Trusts and estates attorneys should emphasize to clients that estate plans are a work in progress. In addition, they should consider offering farm and ranch families a “starter plan” that can be customized and improved over time.

Part of reviewing an estate plan is considering beneficiary designations. It was surprising to see that more than 40 percent of participants have reviewed such designations within the last year. This number is higher than expected; part of the uptick may be because of the COVID-19 pandemic, which prompted people to double-check their beneficiary designations, or it may be due to more effective education in this area. Among

the respondents, 21.05 percent had checked these designations within the past two years, and 26.32 percent had checked them more than two years ago.

## ESTATE PLANNING ROADBLOCKS

When asked to identify their biggest roadblock to creating a farm or ranch estate plan, the respondents provided the following answers:

- Family members do not want anything to change from the last forty years
- Time, and then setting aside time to review and update
- Farming seems to always be the priority—it is never-ending work and projects
- We feel our estate plan is premature and want our parents to put together a plan first, which they have not; previous generation does not want to address it
- Priorities and distractions
- Waiting to see what my kids want to do after college
- Getting my kids through college and into a career
- Oldest generation still has not passed down estate to the next generation, who are ready to retire
- Cooperation from partners
- Not knowing what to create: a trust, a business entity, or something else?
- Potential familial changes when one partner gets married
- I don't know what an estate plan is
- I do not see value at my age and with my asset values
- COVID-19
- Cost; it is too expensive
- Family
- Lack of professional assistance
- Getting everyone together
- Getting everyone on board
- Wondering what to do about family members that are shareholders in the ranch but not involved in the operation
- Feelings versus what makes good business sense
- Appraisals

**PRACTICE TIP:** Time should never be a roadblock, but it often is; after all, life is busy. Trusts and estates attorneys should recommend that clients put estate planning on their calendar and treat it like any other deadline in life.

Also, cost should not be a roadblock, and estate planning attorneys should consider offering options for farm families at different price points.

Other family members' failures to have a plan should not be an excuse. Clients should be encouraged to invite their parents or grandparents to the conversation or consider an estate planning mediator to discuss this issue among a multigenerational farm family.<sup>2</sup>

A common issue faced by nearly every multigenerational agriculture business is dealing with off-farm heirs. Estate planners should be cognizant that farm and ranch parents may wish to treat their children equally; however, "equitable" does not necessarily mean "equal." Thoughtful planning should address the future of the business, and estate planning attorneys should consider the issue of "sweat equity" and how it may affect the family.

Finally, COVID-19 should not be an excuse. If anything, the silver lining of the pandemic is that many estate planning meetings can occur virtually using Zoom, GoToMeeting, FaceTime, or other video conference platforms, with only the signing meeting occurring in person. Furthermore, it has highlighted that life is precious and terminal, and people of every age, sex, and socioeconomic status are vulnerable to viruses that may take their own or a loved one's life.

## BUSINESS PLANNING

It was encouraging to see that 75.44 percent of survey respondents had created some type of business entity. This number was higher than expected but lower than it should be. Some survey respondents operate their farm businesses as sole proprietorships or general partnerships, which provide no protection against personal liability.

**PRACTICE TIP:** Nearly every farm or ranch should consider a business entity to reduce personal liability in the event of an injury on the property, a food safety concern, or other risks associated with agricultural production.

Among the forty-three survey takers who noted that they had a business entity, the limited liability company was the most popular choice, with twenty-one respondents reporting they had chosen it. Eight respondents had a corporation, and three had a limited partnership. The remaining participants had either a general partnership or a sole proprietorship or had marked "Not Applicable." Twenty-two participants stated that they had multiple business entities, an advantageous choice for most (but not all) farms and ranches.

**PRACTICE TIP:** Although it is not appropriate for every farm family, a frequently recommended technique for farm businesses is to create one business entity to own the land and another to own the farm equipment, livestock, and farm operation, with a farm lease between the two entities. Some clients may wish to implement this strategy in a two-step process as they become more comfortable with corporate formalities.

## SUCCESSION PLANNING

One of the encouraging findings from the survey was that 51.79 percent of the participants had identified an heir interested in taking over the farm, ranch, or agribusiness. Nevertheless, it is important that this number increase dramatically. Among the respondents, 26.7 percent explicitly stated that they had identified no interested heir, and 14.29 percent were unsure. Many farms and ranches may have off-farm heirs, but it is unclear whether they wish to come back to the agriculture enterprise. Agriculture organizations should consider matching systems to help farm families connect with potential third parties interested in being groomed and mentored to eventually manage the farming enterprise. A far-too-low 56.9 percent of the participants stated that their agriculture family openly communicated about their estate plans.

<sup>2</sup> Some agriculture mediation programs funded by the US Department of Agriculture (USDA) have considered adding estate planning mediation to available options (presently federal farm programs and Right-to-Farm).

**PRACTICE TIP:** Open communication is the first step to a successful succession. Advisors should facilitate open communication among farm families. With growing frequency, multigenerational farm families are using agriculture mediators to facilitate an open discussion.

The families that have been successful provided the following responses for how they were able to accomplish open communication:

- Monthly, annual, or other regular meetings
- Just being upfront about it, being straightforward
- My parents have been open about their estate plans
- Third-party mediator
- Face-to-face family meetings (I learned from an uncomfortable sibling experience with my parent's estate)
- Plan a meeting with an attorney and invite the family members, and if they do not attend, then they get cut out of the planning
- A parent who died intestate forced the conversation for us; we have since set up an LLC and wills, etc.
- We talk about it with our advisor
- We have had several family dinners where we discuss the future of the farm and what is to happen if someone passes away unexpectedly
- Make suggestions, state opinions, and ask questions to stimulate discussions
- Our immediate family decided to be very well-planned and purposeful with our planning after our 'source' farm family was secretive and refused to discuss plans and ultimately provided an estate plan that all three children found unfair, that caused mostly avoidable heartache and damaged relationships
- We were forced to have a conversation when a family member became disabled and we had to look at long-term rehabilitation
- In person and use of conference calls for out-of-town members
- Kids are spread out so we have not had a family meeting, but they know the basic plan
- Family meeting over a supper to discuss the wishes of the grantor and how the grantee should carry them out

- We dug our feet in and insisted on a family plan with our parents, but who knows when it will be reviewed and updated
- My grandparents on the ranch were open about estate planning, and my wife's family also encouraged estate planning
- Our estate plan discussions are most open after we attend agriculture conferences; however, discussion does not always transfer into action

It was frustrating that nearly 48 percent of the survey respondents admitted that they did not have a succession plan that provided methods for the transfer of knowledge and management skills from one generation to the next. Only sixteen of fifty-seven (28.07 percent) had an ascertainable game plan.

**PRACTICE TIP:** Trusts and estates attorneys should consider engaging in conversations about succession planning with agricultural clients. Succession planning is arguably more important than the estate planning documents for farming families, and it should receive urgent attention in education for agricultural producers.





## PRENUPTIAL AGREEMENTS

For clients who are part of the food and agriculture industry, prenuptial agreements are often considered taboo. However, they can be a prudent component of an estate plan. Many believe that prenuptial agreements are planning for a divorce; instead, consider a prenuptial agreement as akin to a life insurance policy for a marriage. After all, one of the big Ds that harm family farms is divorce (along with death and destruction).

Unfortunately, only one survey respondent out of fifty-eight noted that a child or heir had a prenuptial agreement. Among the respondents, 47.3 percent noted that this question was not applicable to them, but the 50 percent who had married children admitted that their children had no prenuptial agreement. Divorce can devastate any family, but it has an even greater impact on a family's agriculture business.

**PRACTICE TIP:** Estate planning attorneys should provide more education in this area to farm and ranch families so they can make decisions about whether a pre- (or post) nuptial agreement is appropriate for family members.

## SUMMARY

Nearly all farm and ranch families intend to pass their operation on to a farm or ranch heir or to a third party. Estate planning, business planning, and succession planning work together to provide a game plan that can be individually tailored for each farm and ranch family. Estate planning attorneys who understand the special challenges faced by these families have an opportunity to assist them in meeting their unique goals. 

