Lease Communications, Farm Succession, Negotiations, and Provisions

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First – Comments About Farm & Ranch Succession
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• This is not a substitute for actual estate planning
• This program is to generate thought, discussion, and broad goal generation
• Use the efforts from today to make better use of your professional’s time
• With a Global Pandemic – even more motivation to get started!
Farm or Ranch Succession – Why don’t we get that Done?

• About 50% of operations don’t have succession plans, or they are out of date!
• Farmers really don’t ever plan to retire
• They have a hard time giving up control, don’t have other plans
• Newer equipment makes it easier to continue

• However – we haven’t avoided the pine box – so, what happens to our ‘stuff’?
Estate Planning

“.many farm families experience significant difficulty in discussing the future of the family farm. More often than not, planning... tends to be deferred until some critical life event occurs which forces the family to address the matter.” Kaine, et al, Succession and Inheritance on Australian Family Farms, TRDC Pub. #198, The Rural Development Centre, U. of New England, Armidale, NSW
Why Don’t We Plan?

• Too Complicated (we assume)
• Don’t like to Plan
  • It is mental ‘work’
• Facing our own Mortality
  • Some just don’t want to think about death
• We are afraid that if we do something, it will be wrong (in the future)
Near the End of Any Career – Three Types of Planning

End of Life Plans/Documents

- Estate Plan (will, trust, LLC, other structures)
- Business Succession Planning

Communications with Family needed for all three!
CIRCLE OF INACTION

1. I should have a plan.
2. I go to a meeting or meet with a lawyer.
3. No action taken at this time.
4. Wow! This is complicated! I have a headache!
Ideal planning - sequential

1. I should have a plan or there is a catastrophic event
2. I go to a meeting and/or meet with a lawyer
3. Family meets to explore options
4. Options picked
5. Succession plan developed/signed – Congratulations!
6. Review periodically and/or as your situation changes
So – the Lesson is Please Have a plan!

• No plan leads to chaos in many situations

• Causes greed among family members

• Splits families

• See the next video – monkeys!
Test of Fairness - Emotions
Second – Communication Needed for All Farm & Ranch Operations
Communication

- Listening is the Key!
- (Practice) Make partner repeat what they thought you said – to be sure that they heard you, or that you said what you wanted to
- Make sure that you understand the other person’s point of view (seek first to understand, then to be understood)
- Avoid ‘yes’ or ‘no’ questions
- Get to open ended questions – use How, Who, Why (plus more) to start the question sentence
Communication

- Show empathy, show concern
- Focus on the intent
- Signals – Listen more when:
  - Emotion is high
  - You must get to the heart of the issue
  - When you don’t feel you understand
  - When the other person doesn’t feel understood
Communication Mistakes

• Asking a question - not to find out what they will say, but to say what you wanted to say

• Making any assumption of what someone else will say

• Thinking about how we will respond while the other person is talking

• Trying to fix an issue, without being asked (see next video)
It is Not About the Nail!
Third – Emergency Farm Planning
Emergency Farm Plan

• Who is doing chores tonight if you are hospitalized this afternoon?
• Who pays bills by the 20th of the month if you cannot answer for yourself?
• Who knows where “stuff” is at?
  • Keys to safety deposit box, spare keys to the house
  • Garage door codes/openers; pass codes to bank accounts (on-line), other on-line passwords
• Who are the neighbors I work with closest? What are their numbers?
• If fire or other emergency, where are the electrical disconnects?
• Where are the dangerous chemicals, fuels stored?
Final – Lease Considerations for 2022
Crop Share Lease Agreements

Landlords engaged in crop share lease arrangements typically receive a percentage of the actual crop yield as payment for leasing the property to the tenant.

Landowner usually shares input and production costs of raising the crop.
Crop Shares = Fair (Equitable?)!

- A fair way to rent, if the expenses are split properly
- Usually requires both parties to market grain
- Share in the risk and the reward
Crop Shares – Why or Why Not?

**PROS**

- Shared management decisions
- More landowner control
- Opportunity for mentorship
- Tax management (timing of income and expenses)
- Share production risk… if crop is good

**CONS**

- Landlords do not like to…
  - Pay expenses
  - Market their crop
  - Share production risk… if crop is bad
What are Typical Shares?

• Most common 40:60, 50:50, 33:67
  • Less amount going to the landowner
  • Irrigated crop/Eastern and Central Nebraska – 50:50
  • Non irrigated in SE, SC, SW – 40:60
  • Panhandle – 33:67
  • Depends on the crop, neighborhood and expenses

• To avoid paying production expenses, landowners take a smaller percentage
  • Examples 25:75 or 30:70
Share of Crop Income

• Both parties receive their share of:
  • Revenue from crop sales
  • Crop Insurance payments – if purchased by either party
  • Government disaster payments (when paid)
Share of Crop Expenses

Landlord (Landowner)

- ALL Expenses
  - Land taxes
  - Irrigation operation and maintenance fees
  - Irrigation ownership costs – depreciation, insurance, major repairs, taxes, interest
- Their share of:
  - Crop Insurance
  - Fertilizer, insecticide, fungicide, and herbicide
  - Energy for irrigation
  - Seed
- Markets their share of the crop

Tenant

- ALL Expenses
  - Labor
  - Minor irrigation equipment repairs & maintenance
  - All field operations
  - Cost of transporting landlord’s share of crop to designated location (negotiable)
- Their share of:
  - Crop Insurance
  - Fertilizer, insecticide, fungicide, and herbicide
  - Energy for irrigation
  - Seed
- Markets their share of the crop
The Points of Negotiations...

• Irrigation repairs
  • Specific types of repairs
  • Specified amount i.e. “the tenant will pay for the first $X of repairs…”
  • Approval system to make repairs
• Energy for irrigation (usually split)
• Custom Application
• Seed (split at 50:50 typically)
• Marketing their share of the crop

• Whatever you agree to…
Communication

• Identify how you want to be communicated with
  • Letter, phone, email, text, other…

• Ideally, the landlord and tenant need to meet several times per year
  • Sign the lease – renewal
  • Prior to the crop year to review plans
  • During the growing season to review progress
  • At or after harvest to wrap up the lease
Lease Provision - Fertility

• Phosphorus
  • Minimum to be left in soil at end of lease
  • Maximum that can be in soil (manure application)
  • Protect tenant with clause if large amount applied

• Mining of soil
  • Consider soil test at end of lease
  • Minimum nutrients left must be followed

• Lime
  • Typically a Landlord Expense
  • If tenant is applying – then protect with clause in lease
Lease Provisions – Soil Health & Environmental Concerns

- Fixing excessive erosion
  - Typically a landlord’s expense
- Non-crop acres
  - Who controls cedar trees and noxious weeds?
- Tillage vs. No-till considerations
- Organic vs. Non-organic production
- GMO vs. Non-GMO production
- Crop residue removal
  - Grazing stalks vs. baling stalks
Lease Provisions – Other Items

- If there is a pasture, who is taking care of the fencing?

- For pasture – know what happens for the Big 3 Disasters!
  - Fire, Hail, or Drought

- Hunting rights
  - Crop ground vs. pasture
  - Nebraska recreational use law
Lease Provision – Other Items

• Corn stalks use
  • Grazing vs. harvesting as bedding
  • Removing all material (not preferable)

• Manure application
  • How often
  • Limits on P application
For the Tenant - What to Communicate

• Force yourself to share information with the landlord
• Yes – even for cash leases!
• Timely crop updates
  • Include moisture conditions
  • Weed, disease, or insect pressures
• Consider sending as text or emails with pictures
For the Landlord - What to Communicate

• Overall management of the farm (do you have vision or goals?)
• Specifically:
  • Weed control
  • Erosion control
  • Non-crop acre management expectations
• If using farmstead, what is the expectation for managing that asset?
Leasing Considerations

• How is the tenant helping you?
  • Maintaining terraces and waterways
  • Controlling noxious weeds
  • Mowing road ditches
  • Maintaining fences
  • Maintaining the irrigation system
• If the tenant is helping with these landlord expenses – the rent (especially cash rent) should be adjusted
Lease Provision - General

• Have all leases in writing
  • If verbal – end that – get it in writing!
  • In Nebraska – verbal leases for farmland end BY September 1
  • Not the same for pasture
• Start and ending date of lease (length of lease)
• Timing of lease termination – how much notice?
• Holdover clauses?
• When will lease be negotiated? (for the next term)
Summary

- Have a succession plan in place
- Good communication key to all relationships on the farm or ranch
- Have an emergency plan in place
- Consider appropriate lease provisions
- Write lease provisions equitably for all parties
- Communicate!!
Questions?

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