

# **Planning the Future of Your Farm and Forest**

**One Lawyer's 2013 Comments on  
Farm Transfer and Estate Planning**



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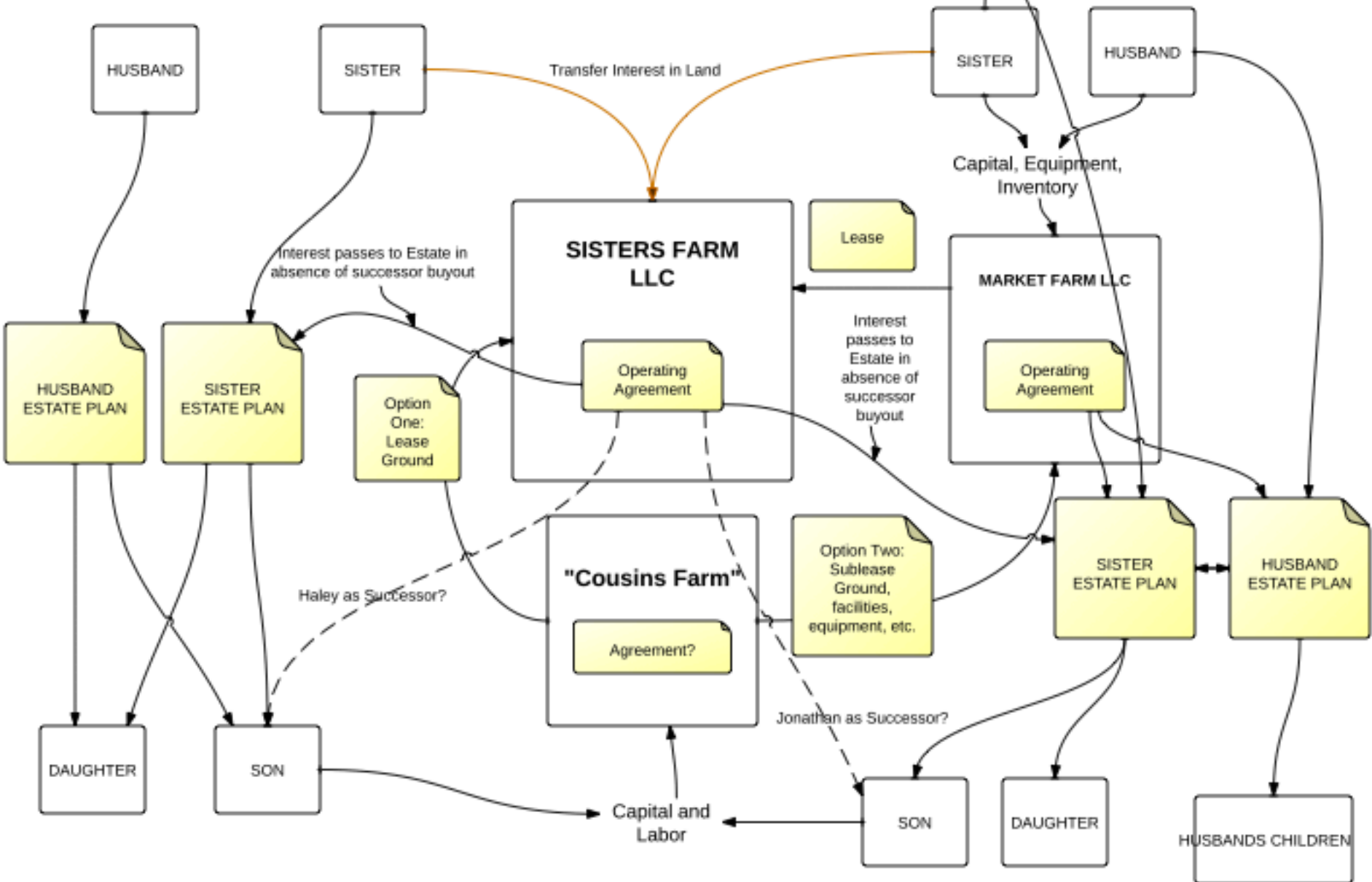
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# Diminished Estate Tax Threat

- Effectively 10,000,000 per married couple
- A high estate tax exemption reduces “government threat”, but potentially exposes other risks due to lack of focus on planning
- Real Property Common Law for 1000 years has been designed to alienate property
- Questions of distribution of assets remain more important

# GENERAL ASSET DISTRIBUTION PLAN

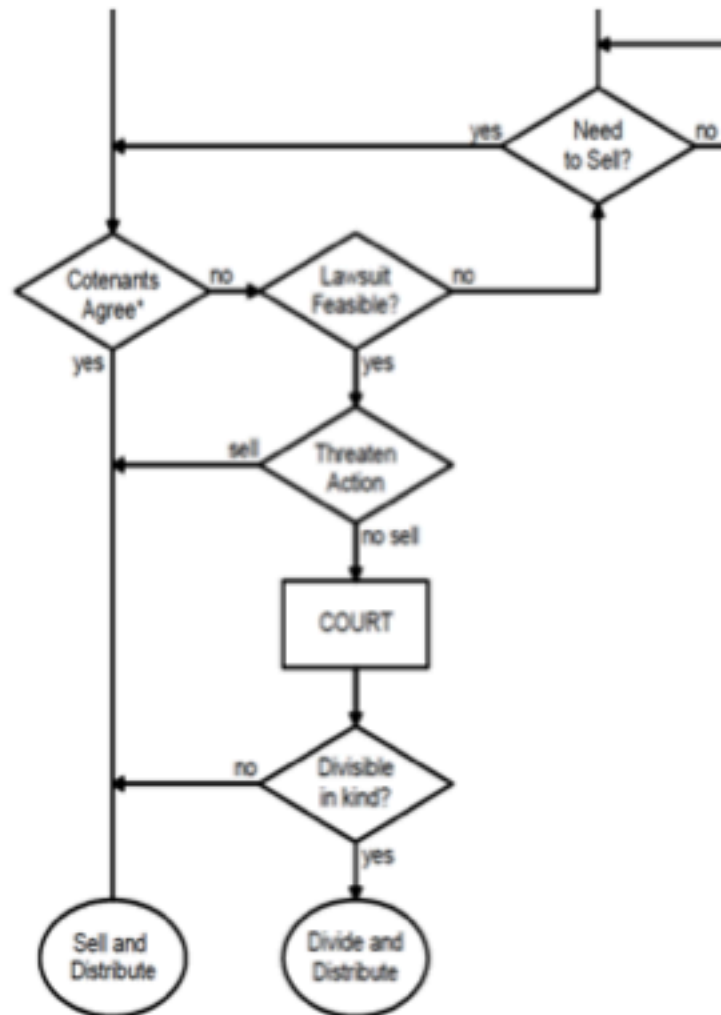


# Today's Talk:

## Law practice from my perspective

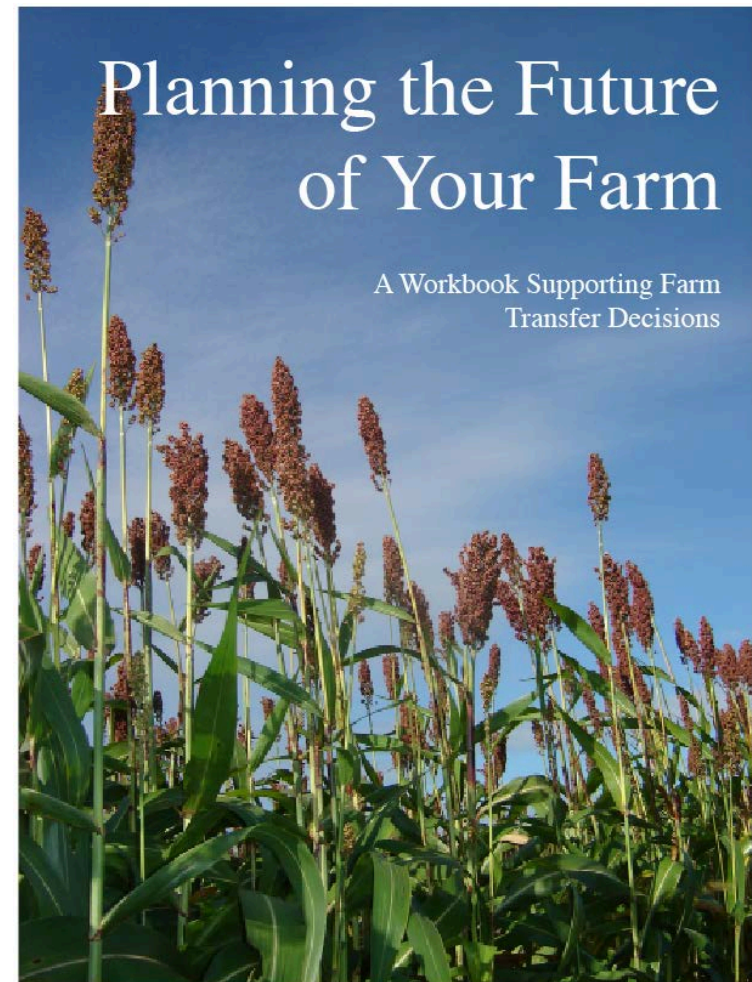
- A Few big picture thoughts
- What happened in the Fiscal Cliff
- Property and its transfer
- Comment on Estate Tax
- The Case for the Estate Plan
- Introduction to Business Entities

# Non-Farm Heirs Inherit Land

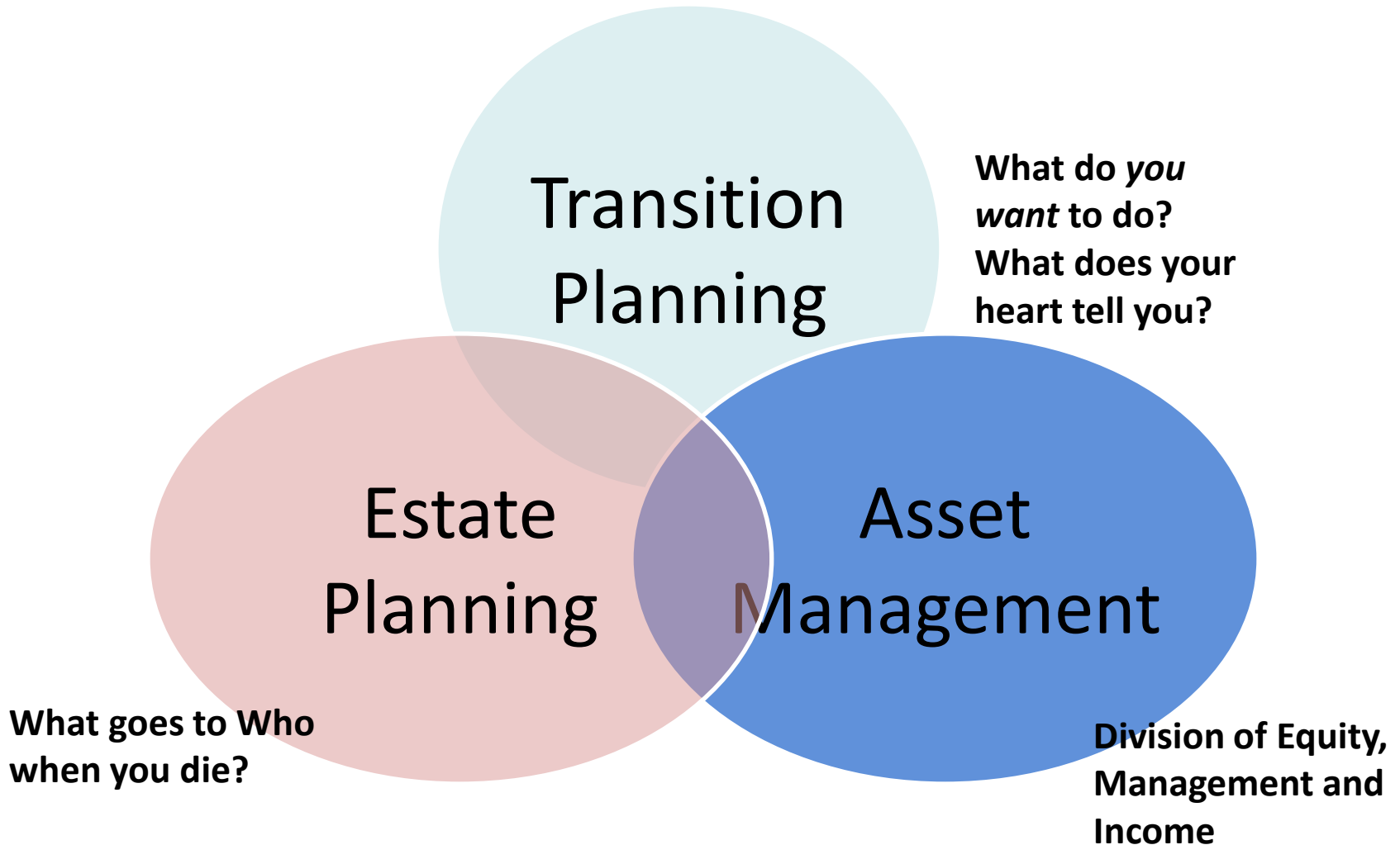


“‘Help me’ is more  
affordable,  
than ‘Fix me’”

-Guido van der Hoeven, NCSU



# Transfer Planning and Execution



# Planning Process: Three questions

What do you *want*?

What do you *have*?

What do you *need*?





### Worksheet 1.3

## RATING FAMILY VALUES

To help start your planning, read and rate the questions below. Rate the importance of each item below, with 1= not important, 2 = somewhat important, and 3 = very important. You can use these ratings to support your family discussion. Copy and have each family member complete to help get a clearer picture of what is most important to each in the farm transfer process. Conflicting values can then be discussed.

I want the farm to remain in our family's possession. <i>Why is this important/not important to you?</i>	1	2	3
I want the farm to continue to be farmed after I/we retire. <i>By who?</i>	1	2	3
I would like to remain physically involved in the farm after I/we retire. <i>Why is this important/not important to you?</i>	1	2	3
I want our children to have the opportunity to continue management of the family farm. <i>In what capacity?</i>	1	2	3
I would like the division of farm property to be equal in dollar value among our children.	1	2	3
I want the division of property among our children to be fair (not necessarily equal).	1	2	3
I want to give financial help to our children who choose a farm career.	1	2	3
I want to have the financial resources to do new things after farming. <i>What do you want to do? (see Sketch Your Lifestyle Plan)</i>	1	2	3
It is important that our children agree with our plans for the farm's future. <i>Why is this important/not important?</i>	1	2	3
I would like to maintain some measure of financial control over the farm while I am alive. <i>Reason:</i>	1	2	3
I would like to be involved in the decision-making of the farm throughout my life. <i>Reason:</i>	1	2	3
I want to receive what the farm is worth when it is transferred. <i>What is your farm worth to you? (E.g. full market value?)</i>	1	2	3
I want our children to play a part in the decision-making for the farm's future. <i>Why is this important/not important?</i>	1	2	3
I would like everyone in the family to be satisfied with the plan for the future of the farm.	1	2	3
It is important to me that our children's requests regarding the farm transfer be honored.	1	2	3

# Risk Management

Death □ Disaster □ Disability

Divorce □ Disagreement

Disengagement

What is the compelling reason



to *NOT* divide this up equally?  
(forget equal)

# By Gift...

- No strings attached
  - Loss of income
- Gift Tax
  - Annual exclusion: \$14,000
  - Lifetime exemption: \$5,000,000 (\$10,000,000 for couples)
- Carryover basis
- Medicaid Look back (5 years)
- “Deal the deeds with a warm hand”
  - If you want, let the recipient choose to take their chances
- Reservation of timber = partial gift (includable in gross estate)
- 3 year limitation on valuation challenge

# By Death...

- Distribution through Will to Trust
  - Ensure ease of probate
- Place in Trust of guide use of assets
  - Consider who will be Trustee
- Subject to transfer tax
  - Estate tax exemption
- Step-up in basis

# Estate Orientation

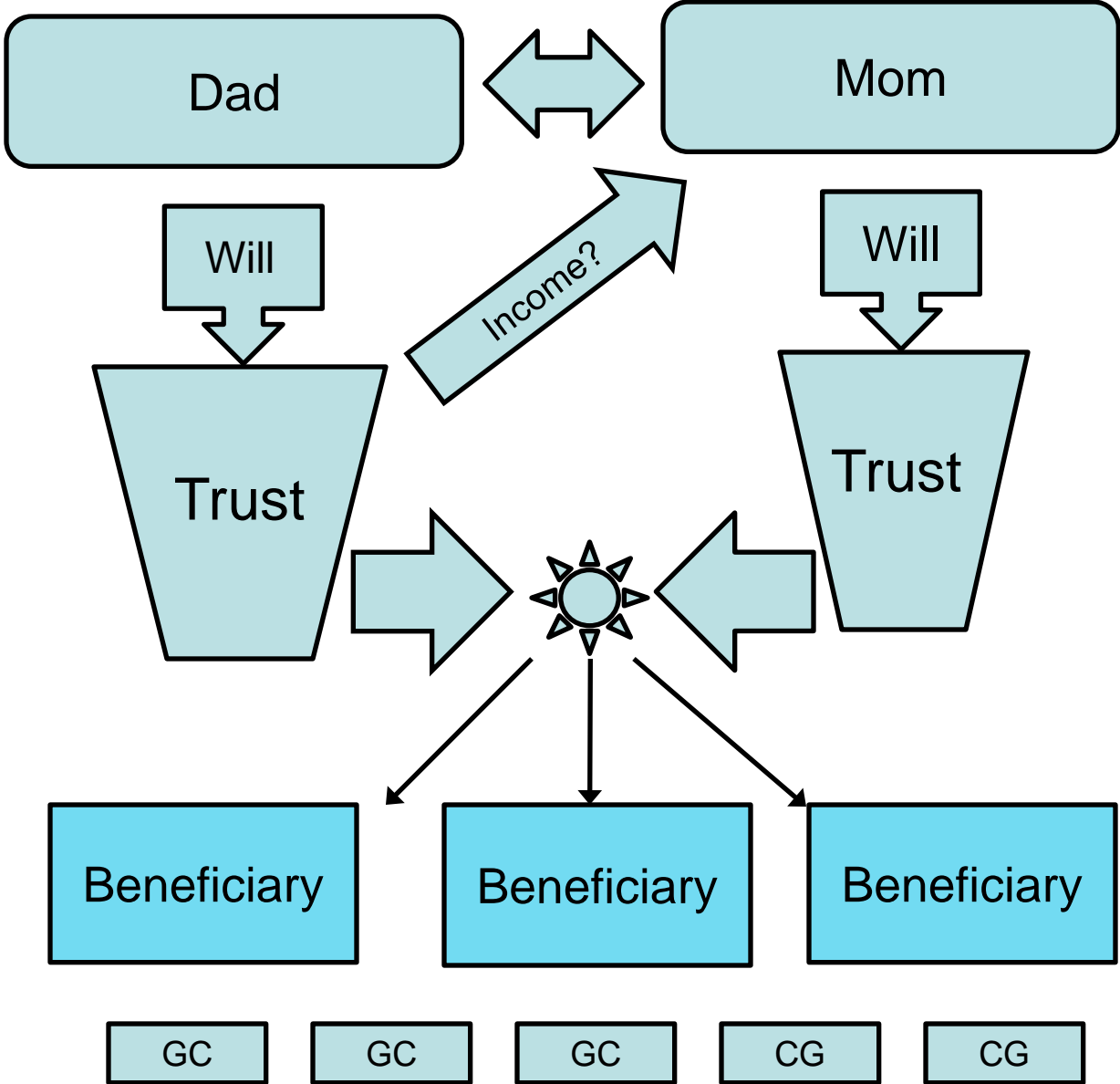
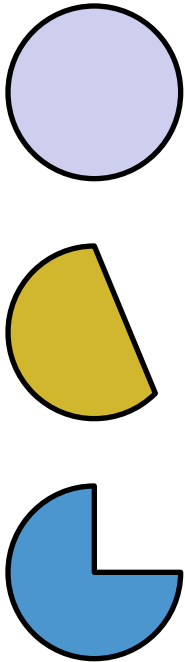
Taxable Estate

Probate Estate

Augmented Estate  
(Elective Share)



# Estate Plan



# Wills

- Must be properly executed (self-proving)
- Executor pays debts
- Executor distributes property
- Clerk of County Court oversees process
- Suggest Guardianship for minors
- Establish trusts for minors/special needs (?)
- Direct Assets to Trust
- HAND WRITTEN WILLS...



# Trusts

- Trustee holds legal title
- Beneficiary holds beneficial interest
- Revocable or irrevocable
- Intervivos or testamentary
- Trustee to ‘wait and see’
- Trustee: You, then spouse, then designate
  - Balance of “executing creator’s intent” with “well-being of beneficiaries”
    - Uniform Prudent Investor Act. "A trustee shall invest and manage trust assets as a prudent investor would"



# Trusts in Farm and Forest

- Distribution to ‘farming heir’ of assets and land
  - Options to purchase on specified terms
- Allow Trustee to operate a farm or manage land or be a member of LLC
  - Express intent to relieve Trustee of burden to maximize asset value
  - Authority superseded by LLC Operating Agreement
- Protect “against” spouses for grandchildren
- Protect assets from “troubled” beneficiaries

# Life Insurance

- Estate Equalization vs. cost to retirement equity (income and savings)
- Payout part of gross estate if you own policy
  - Irrevocable Life Insurance Trust
  - Business transfer funding
- Understand your policy

Have your lawyer review  
insurance proposals



# If you *don't* die

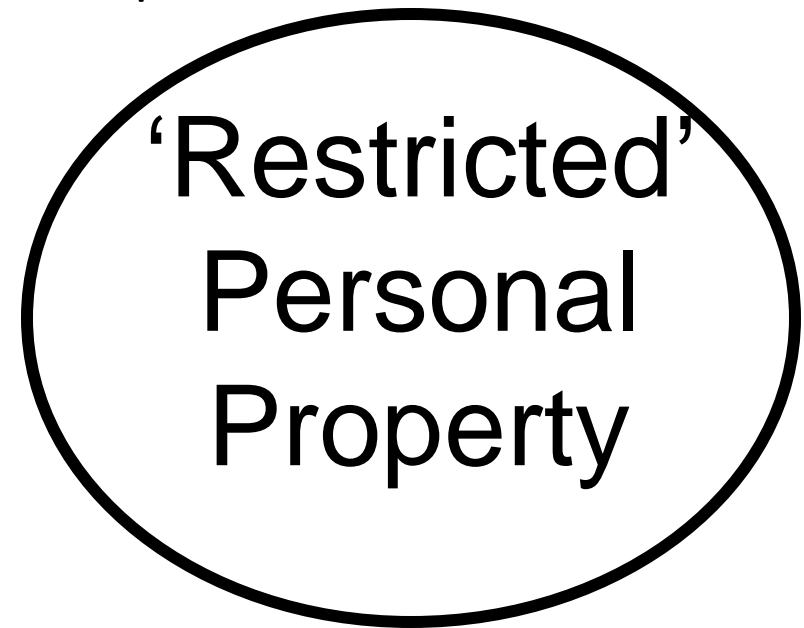
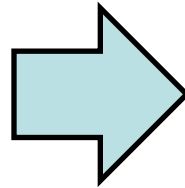
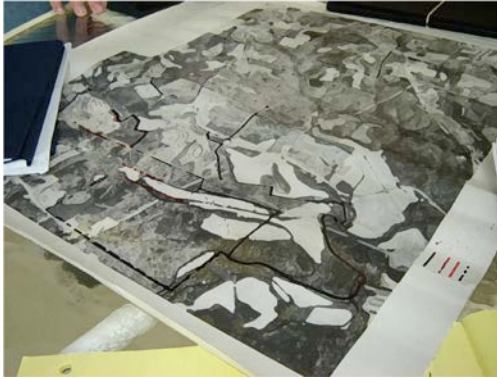
- **Power of Attorney**
  - Authorizes third parties to transact
- **Health Care Power of Attorney**
  - Eliminates confusion with care providers
- **Living Will (Advance Medical Directives)**
  - Takes the burden from your kids

# Use of Business Entities

- Liability protection
- Business Purpose (must follow the *rules*)
- Contract between owners
  - Income
  - Management
  - Equity
- Buy-Sell (Control)
- Vehicle for reducing parents' estate value
  - Valuation discounts



Place land into LLC  
and heirs % ownership in LLC

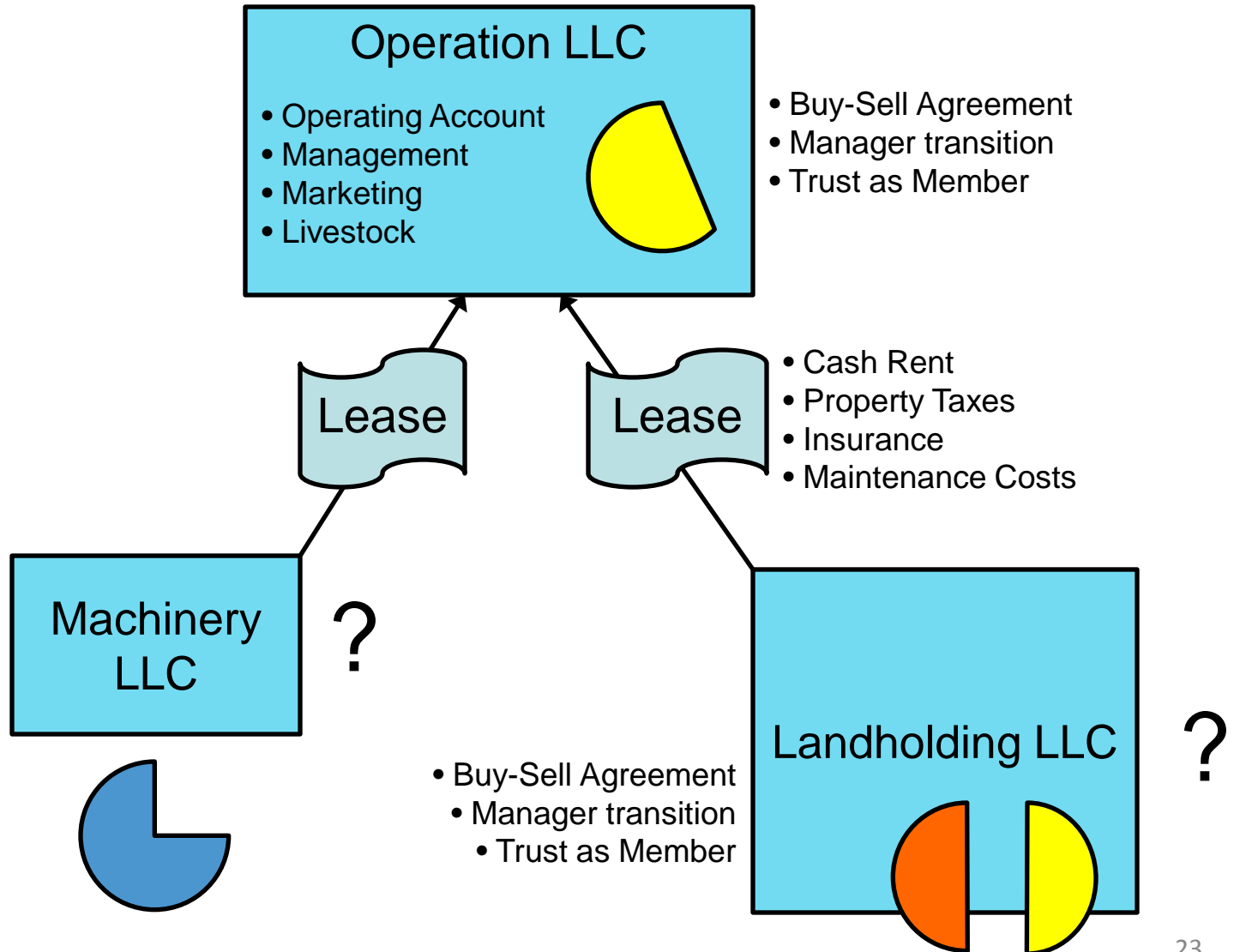


A contract between the owners regarding what happens when an owner wants or is forced to transfer interest

Owners and ownership • Management • Transfer restrictions



# Business Entity Arrangement



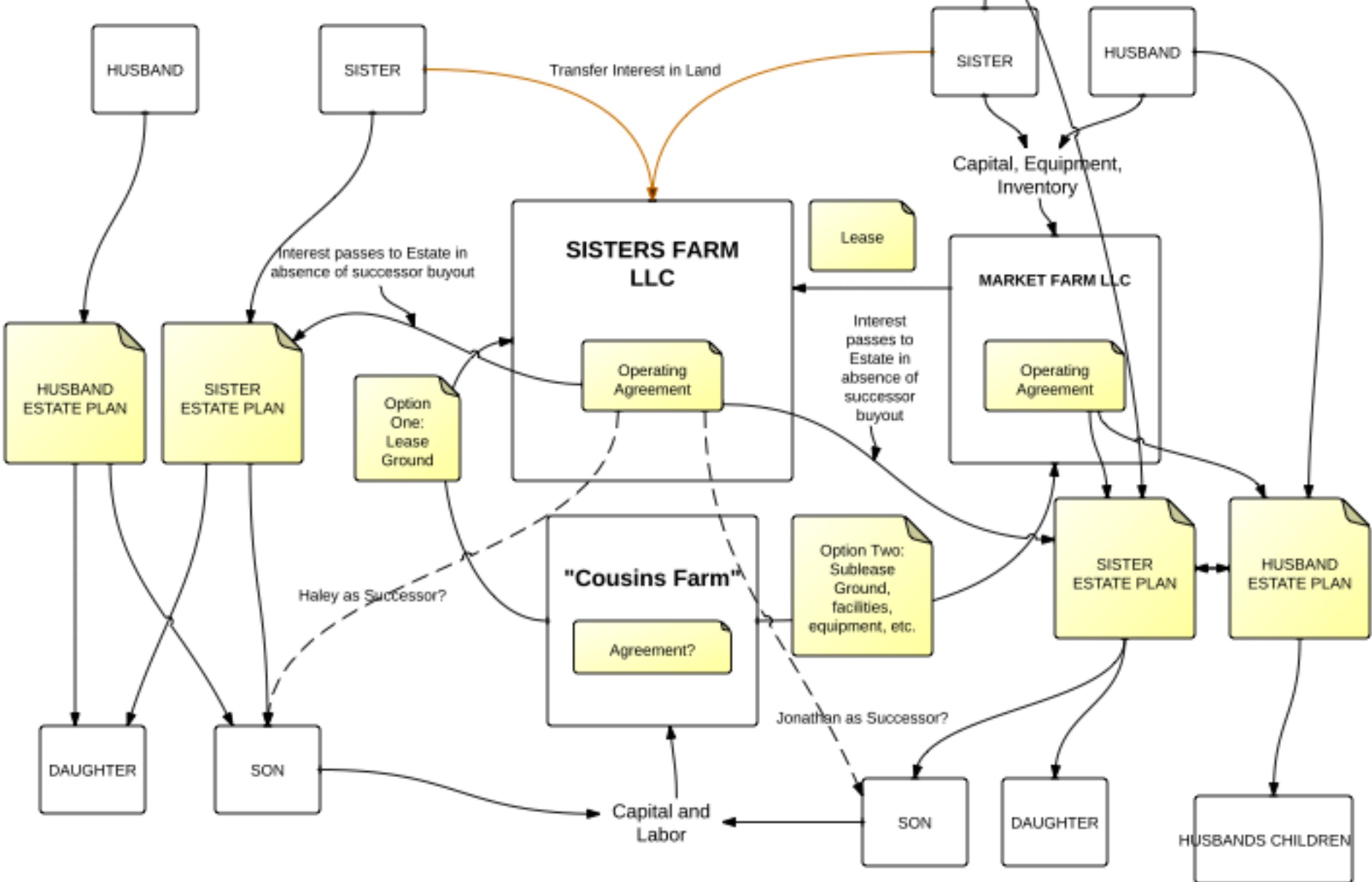
# The Organization Book: Demonstration of Business Purpose

- Articles
- Operating Agreement
- Resolutions/Gifts
- Ownership ledger
- Ownership Certificates (not registered as securities)
- EIN, Deeds, Leases

Know the plan, withstand outsider  
scrutiny



# GENERAL ASSET DISTRIBUTION PLAN



What is the compelling reason



to *NOT* divide this up equally?

# Andrew Branan

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