

# Planning the Future of Your Farm and Forest

One Lawyer's Take on Farm Succession and Transfer

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“I can’t make it perfect.  
So I make it flexible.”

# Three Main Messages

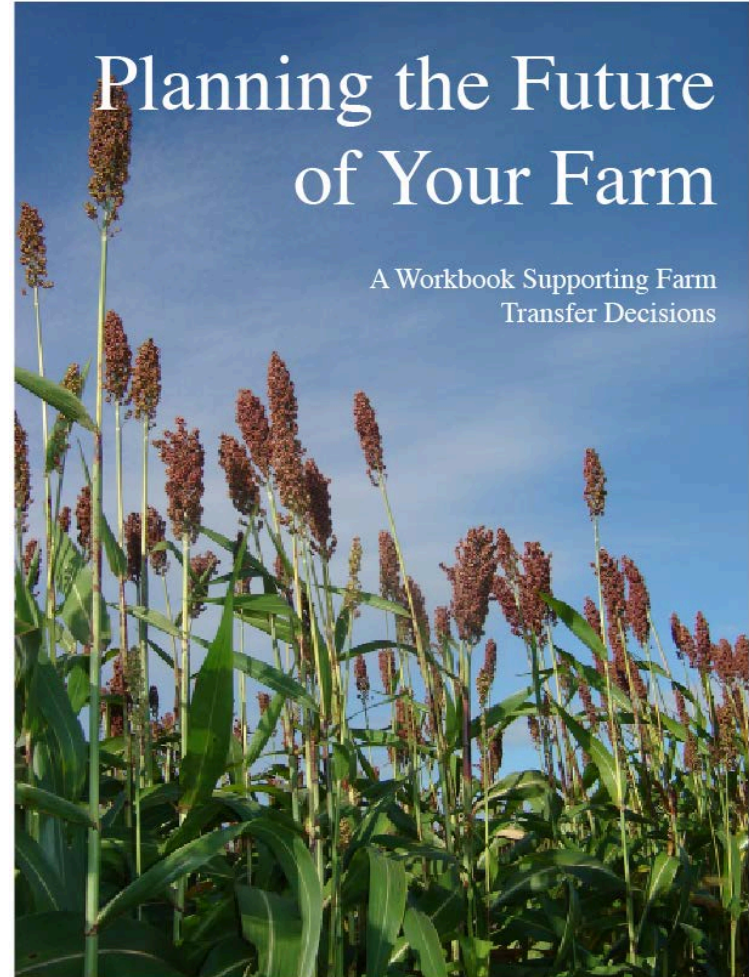
- Plan against inflexibility of common law: avoid or diminish heir co-tenancy
- Engage counsel to establish or re-affirm a clean foundation estate plan (don't wait until perfect solution emerges)
- Revisit trust-based estate tax plan: re-focus on distribution and efficient settlement

What is the compelling reason

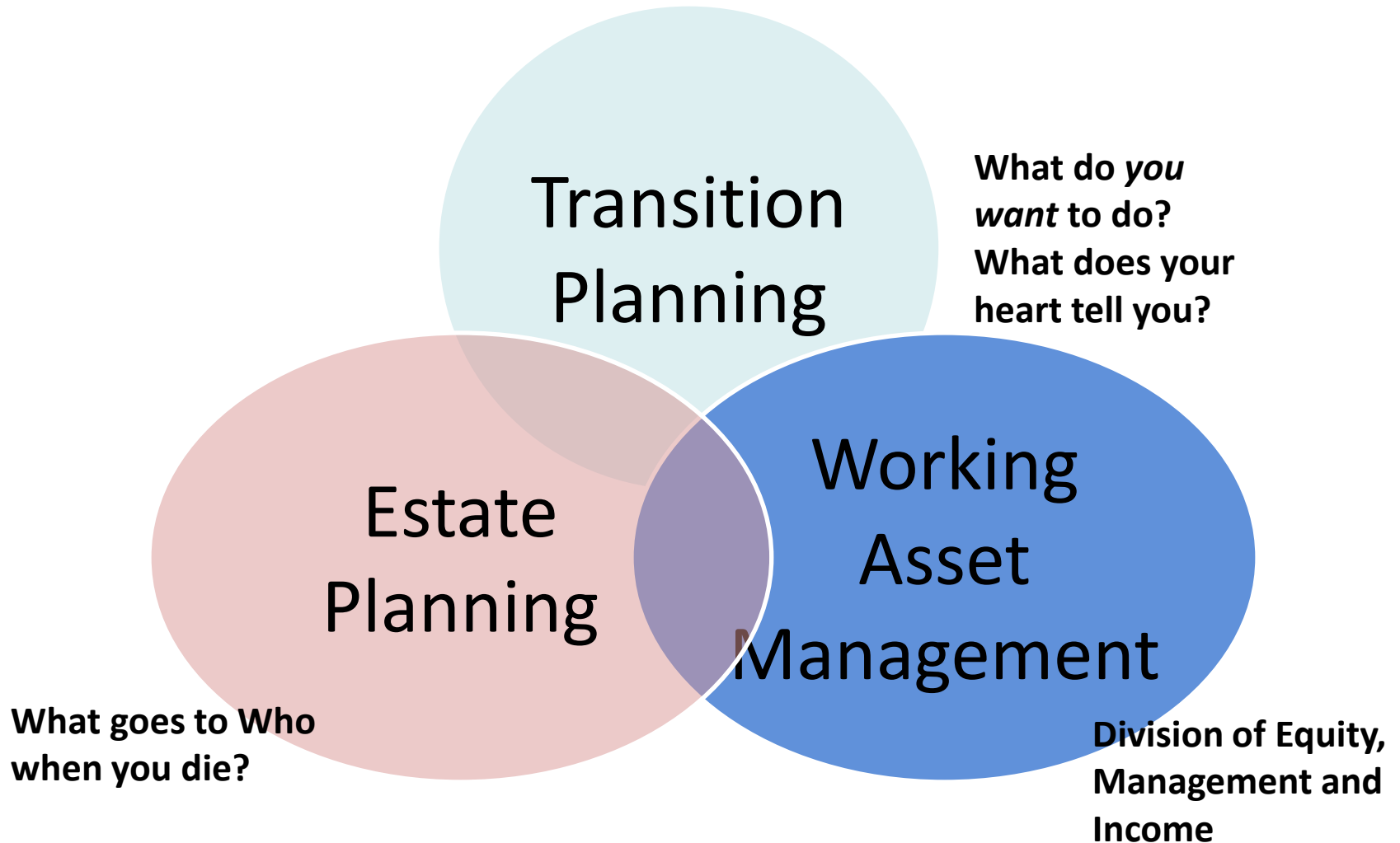


to *NOT* divide this up equally?

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



# Transfer Planning and Execution



# What do you want?

## 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

Estate Plan  
should be  
framework for  
client's ideas  
about  
distribution

# Getting the Conversation Started

1. Option A: Tell your children you are going to do an estate plan and request their input
2. Option B: You and your spouse get an estate plan done, *then* call a meeting to discuss with your children and modify plan accordingly

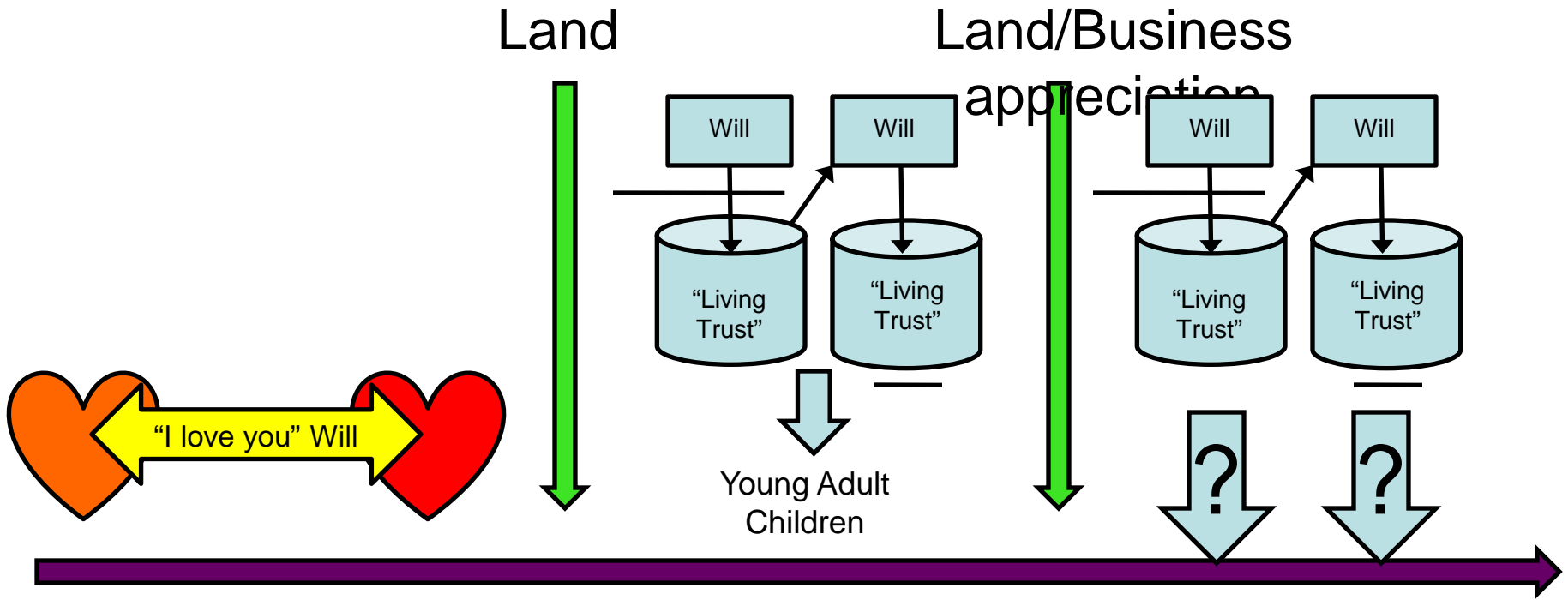


# Rules of Thumb

(There are no rules of thumb)

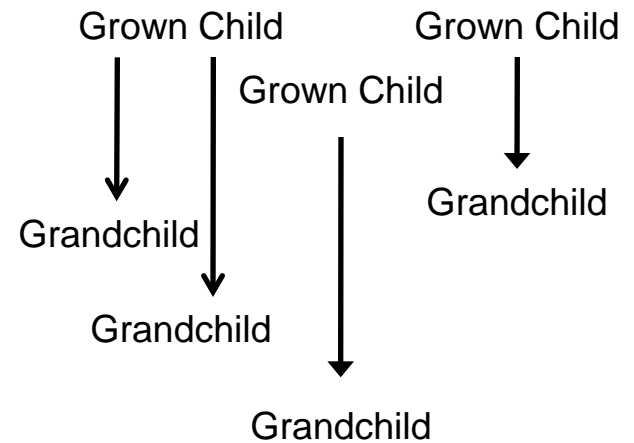
Odds are one of you tell me...

“I’ve got a  
handwritten will,  
is that going to be  
OK?”



- Have not yet bought or inherited land
- Children are young
- Everything goes to spouse, children “share and share” alike

- Have acquired land and equipment
- no commitment yet from heirs on farming
- Estate tax exemption at \$1,000,000



# Case Study Basic Facts

Sister 1 and 2 co-own old family land

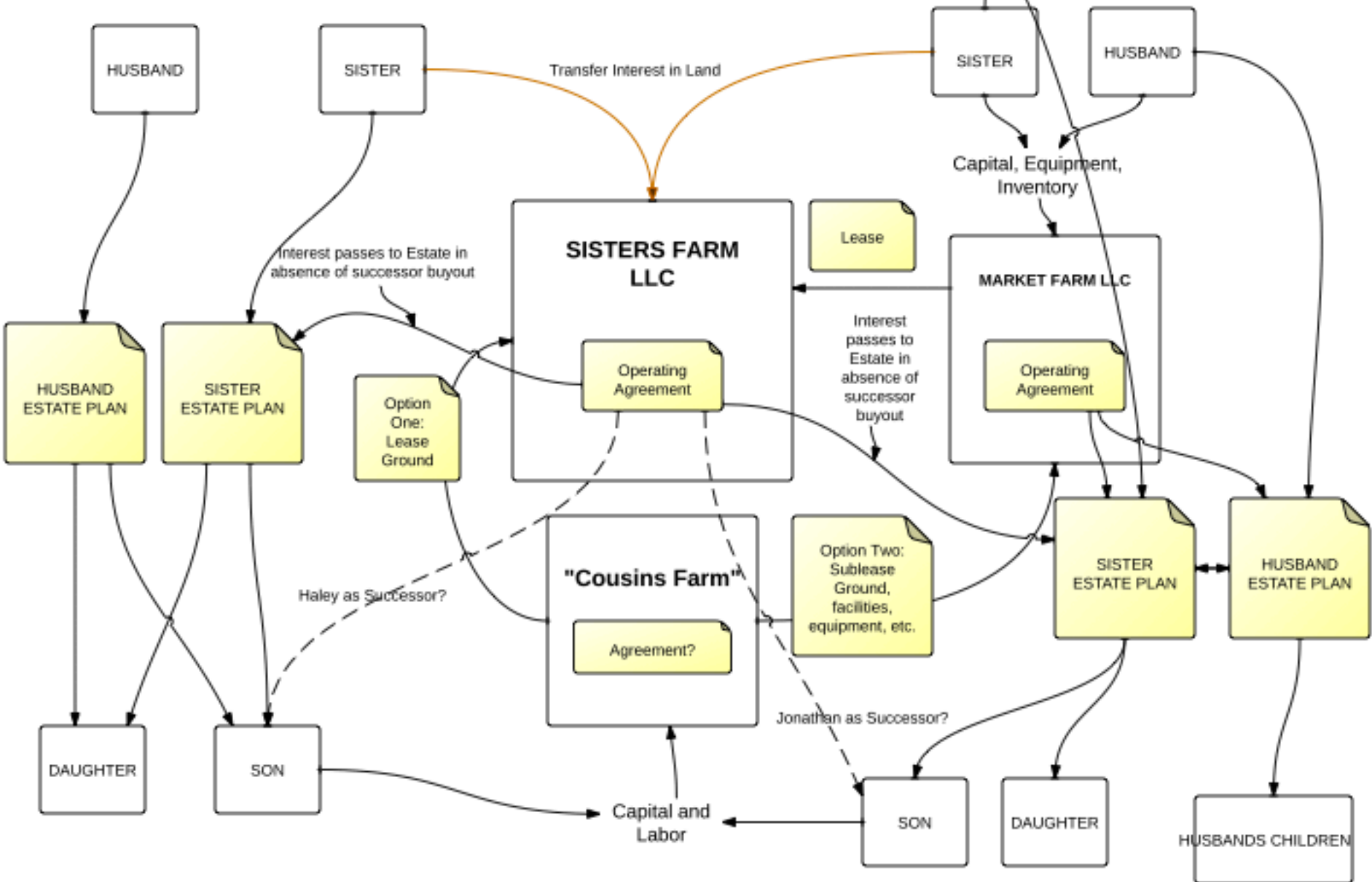
Sister 1 co-owns farm business with 2d husband

Sister 1 has 2 children; 2d husband has 2 children

Sister 2 is married and two children

Son of Sister 1 and Daughter of Sister 2 are starting to farm together, want use land and assets of Sister 1

# GENERAL ASSET DISTRIBUTION PLAN



# 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

If you *don't* die

- Power of Attorney
- Healthcare Power of Attorney
- Living Will



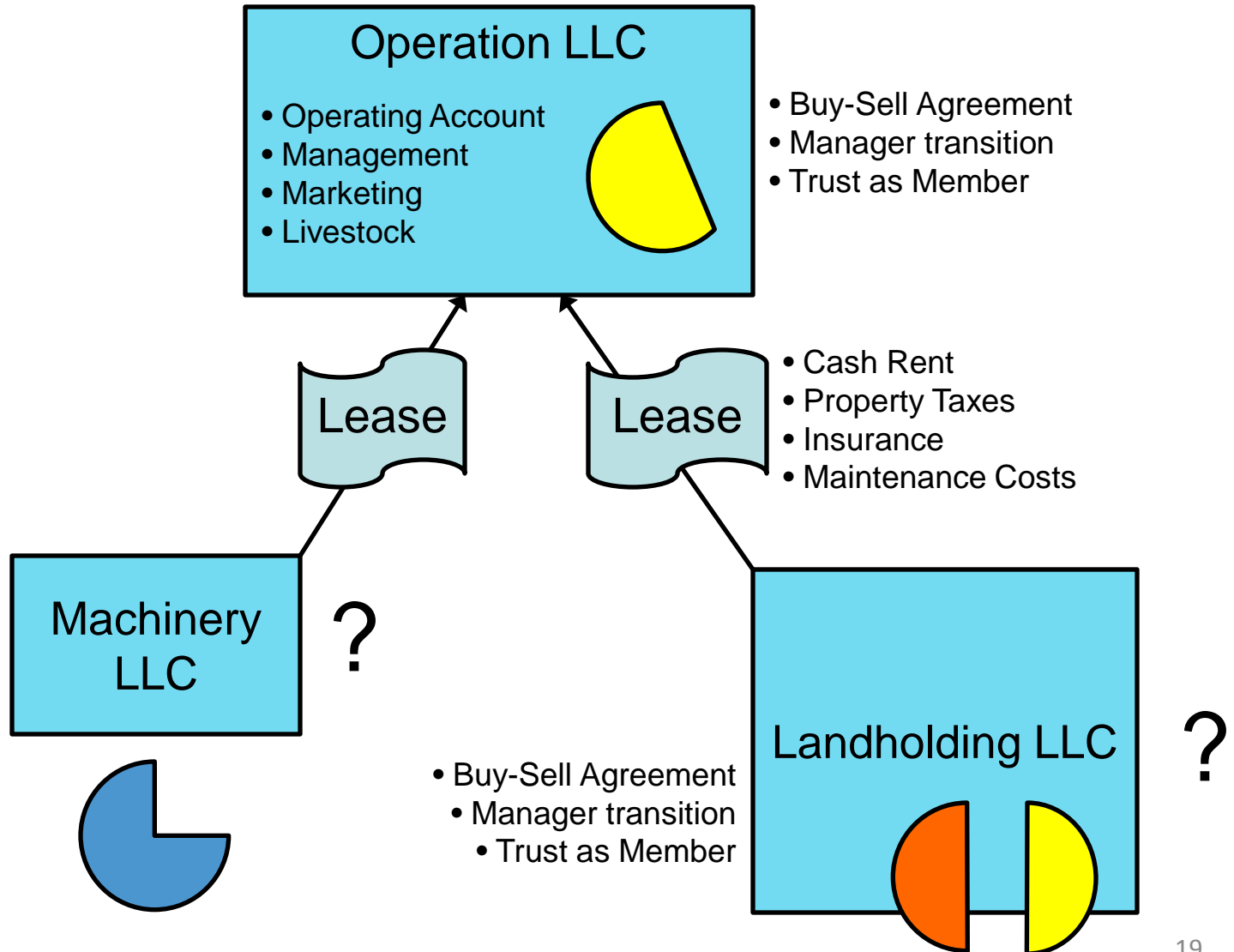
# PSA re Conservation Easements

- Hire your own attorney to draft and review the easement deed (closing attorney has no idea what's in the language)
- Avoid the fiction of creating house sites as a way to be fair to your heirs
- The parcel must be partitioned, or it will leave your family (?)

# 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

# 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

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