

Planning the Future of Your Farm and Forest

A 2013 Update on Farm Transfer and Estate Planning



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Orientation



MOUNT OLIVE
COLLEGE

LOIS G. BRITT
AGRIBUSINESS CENTER



The Branan Law Firm, PLLC



Upcoming Workshops

January 16 – Lee County

February 20 – Robeson County

March 7 – Mt. Olive College

Mt. Olive College Lois G. Britt

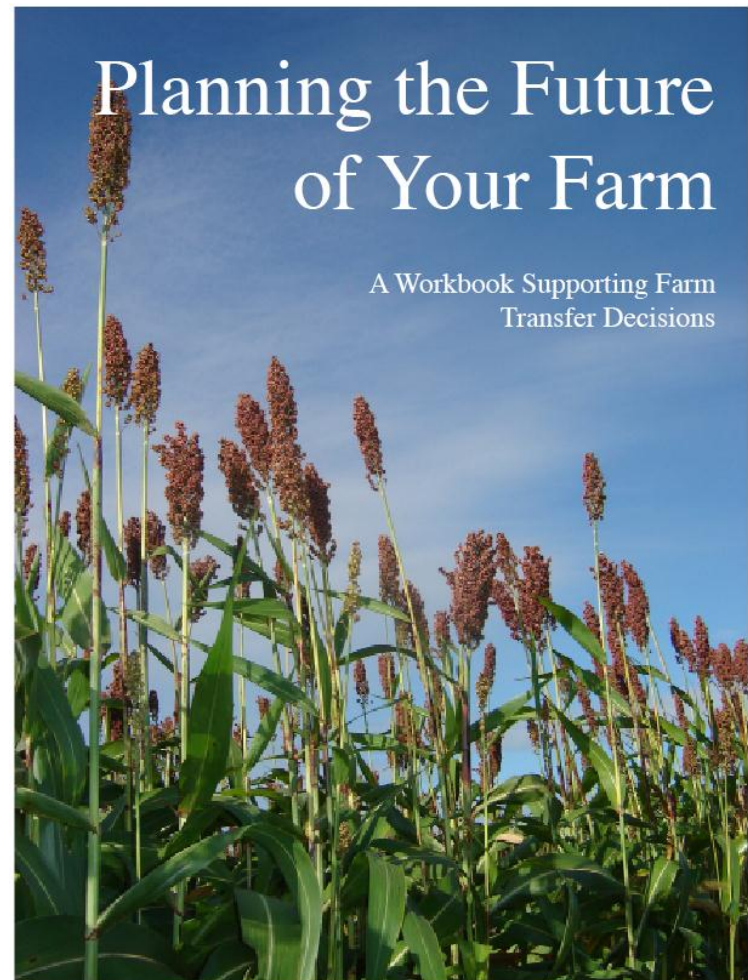
Agribusiness Center

www.mocagbiz.com/farmtransition



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

-Guido van der Hoeven, NCSU



What is the compelling reason



to *NOT* divide this up equally?

Fiscal Cliff: What did we get?

- Permanent Estate and Gift tax law
- One-year Farm Bill extension
 - Direct payments and milk protected
 - lots of discretionary authorizations
 - energy credits renewed
 - livestock disaster monies authorized but discretionary

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

Planning Process: Three questions

- What do you *want*?
- What do you *have*?
- What do you *need*?



Risk Management

Death ? Disaster ? Disability
Divorce ? Disagreement

Disengagement



Fair allocation of Income • Management • Equity

Forget Equal?

Distribution of Assets

- By Sale
 - Full or partial allocation of income, management, equity
- By Gift
 - Full allocation of income, management, equity
- By Inheritance
 - Modified allocation of income, management, equity
- By Term Use (lease)
 - Income and management only

By Sale...

- Capital gains tax
 - Maximum 18.32% CHECK
- Reservation of rights
 - Timber
 - Minerals
 - Conservation Easement
- PUV roll-back allocation in purchase contract
- “Buy your neighbor’s land”
- Liquidity at death of owner

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”

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
 - Life estate

Estate Orientation

- Taxable Estate
- Probate Estate
- Augmented Estate (Elective Share)



About the estate tax...

- Exemption = \$5,000,000 per individual
 - \$10,000,000 per couple
 - Unused portion goes to surviving spouse
 - Must file form 706? (awaiting IRS regulations)
- Gifting Annual Exclusion = \$14,000 per year
- Gifting Lifetime *Exemption* = \$5,000,000
- Top rate = 40%

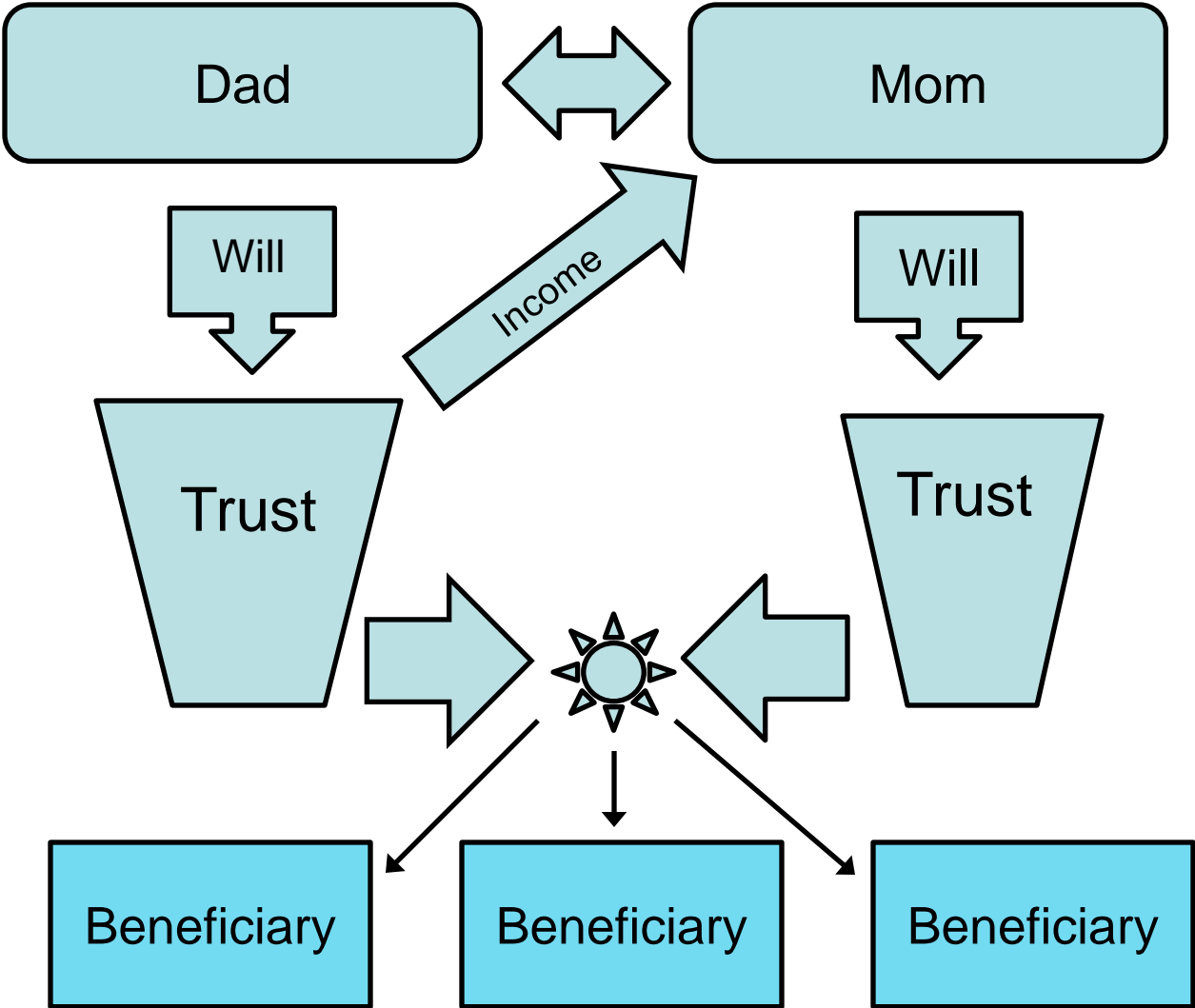
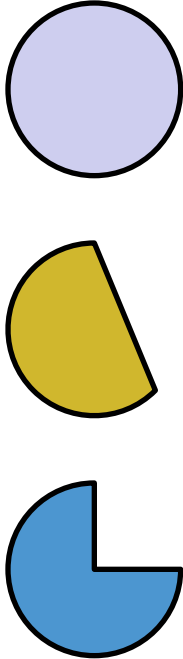
Other Tax Federal Tax Items

- IRC § 2032A increased to \$1,070,000 off appraised value
 - Must be kept in farming 10 years by eligible heirs
- Conservation Easement Donations
 - 50% AGI deduction
 - Farmers and ranchers, 100% AGI deduction
 - Carry-over from 5 to 15 years

Tax Planning Strategy

- Maximize individual exemption and marital deduction to extent possible
 - Use trusts (maximize non-portable exemption)
 - Divide land interest placement in Limited Liability Company (LLC)
- Seek discounts on value of assets
 - 2032A
 - Conservation Easement
 - LLC valuation discounts (transfer restrictions)
 - Conservation Easements (FMV and 2031 reduction)

Estate Plan



POA

HCPOA

AMD

Trusts

- Trustee hold legal title
- Beneficiary holds beneficial interest
- Intervivos or testamentary
- Trustee to 'wait and see'
- Trustee: You, then spouse, then designate



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
 - Does it earn cash value?

Have your lawyer review
insurance proposals!



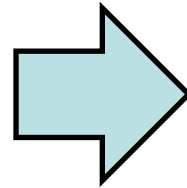
If you *don't* die

- **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
- Complexity
- 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



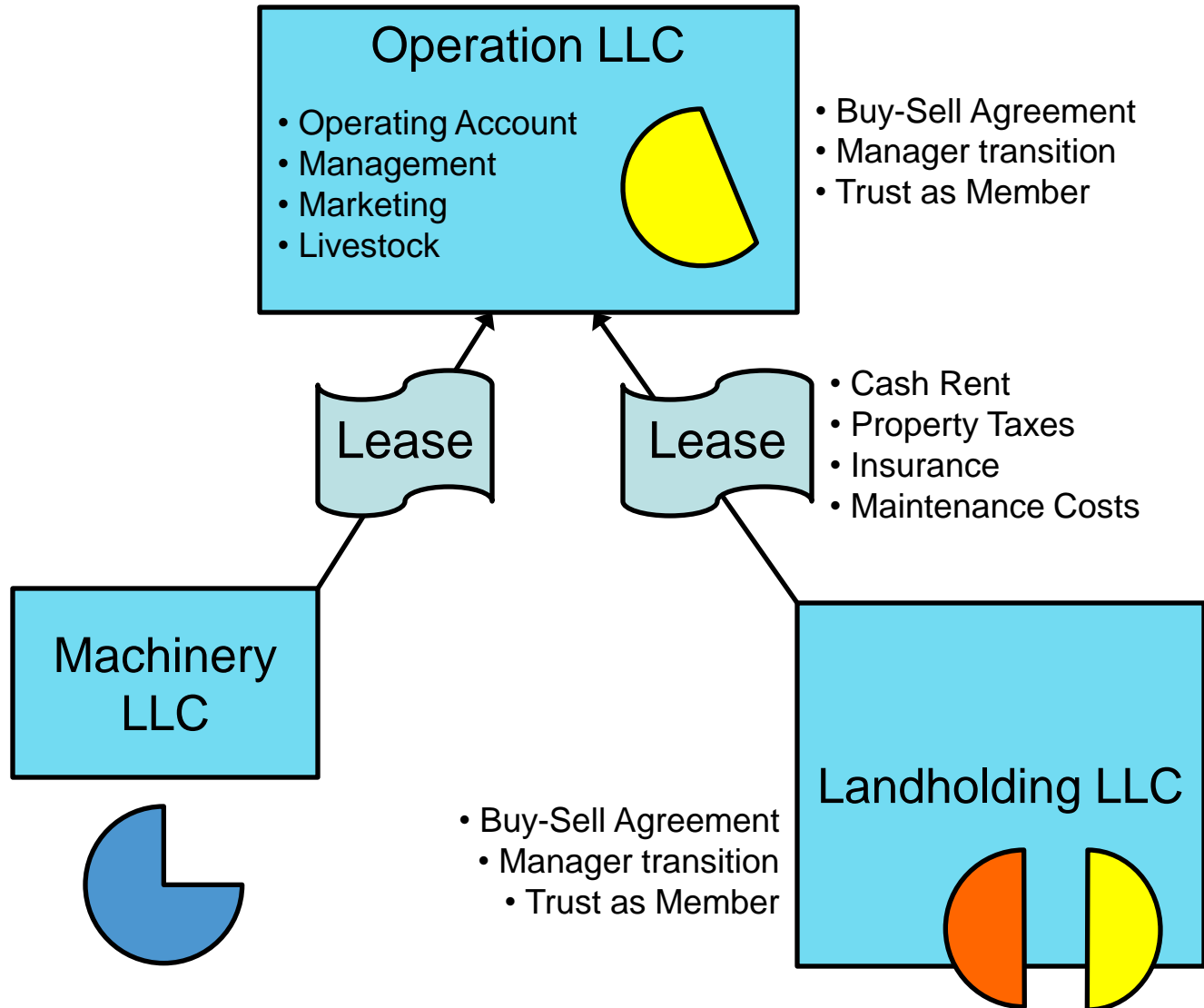
Restricted
Personal
Property

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



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