

HIGH LAND PRICES AND THE DESTRUCTION OF FAMILY FARMS

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I. INTRODUCTION

Over the last several years, farmland prices have increased dramatically. The increase in land prices has potential to create difficulties in passing farmland to the next generation, because families are unable to afford the taxes associated with the high land prices as they inherit farms. High land prices also put new farmers at a disadvantage compared to corporate farm operations in buying land. The inability of families to inherit land and increasing corporate ownership could lead to the extinction of the family farm. This Note will explore some of the difficulties created by high land prices in small family farming operations and inheritance.

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Part I of this Note will focus on the current changes in land prices, and factors driving those prices. Part II will focus on problems created by high land prices. Specifically, it will highlight the potential impact of taxes on the inheritance process, and the changing farm culture stemming from corporate influences on the market. Lastly, Part III of this Note will focus on continuing individual and legislative efforts to preserve the family farm. For the purposes of this Note, a “family farm” is a farm which is either farmed, owned, or leased by individuals on a local level, rather than large investors or corporations.

II. THE HIGH LAND PRICES

A. *National and Local Attention*

Most people living in farm communities are aware of the climbing land prices in recent years.¹ Iowa land prices have also been a matter of national attention.² More localized land price attention reflects similar astonishment as that on the national level. Over the last two years, record farm sales of more than \$20,000 per acre occurred in Iowa.³ “Prices for quality land are at levels that are high or higher than they have ever been in most of the North Central Region” of the United States, which includes Iowa.⁴ Iowa State University found that 2012

1. Ed Cox, *Farmland Values Continue to Rise*, SUSTAINABLE FARM LEASE, DRAKE UNIV. AGRIC. L. CTR. (Apr. 1, 2011), <http://sustainablefarmlease.org/2011/04/farmland-values-continue-to-rise/>.

2. See, e.g., Tim Jones & Elizabeth Campbell, *Iowa Farmland Sales Fetch Top Dollar, and Income Gap in Rural Areas Widens*, CHI. TRIB., Nov. 2, 2012, http://articles.chicagotribune.com/2012-11-02/business/ct-biz-1102-bf-iowa-inequality-20121102_1_income-gap-income-inequality-rural-areas; Ron Nixon & John Eligon, *Across Corn Belt, Farmland Prices Keep Soaring*, N.Y. TIMES, Oct. 22, 2012, <http://www.nytimes.com/2012/10/23/us/across-corn-belt-farmland-prices-keep-soaring.html?pagewanted=all>.

3. See P.J. Huffstutter, *Iowa Farmland Sale Hits New Record High at \$21,900 an Acre*, REUTERS (Oct. 26, 2012), <http://www.reuters.com/article/2012/10/26/us-usa-farmland-iowa-record-high-idUSBRE89P0XD20121026>; Dan Piller, *New Record Farm Sale: \$21,900 per acre*, DES MOINES REG. (Oct. 25, 2012, 3:36 PM), <http://blogs.desmoinesregister.com/dmr/index.php/2012/10/25/new-record-farm-sale-21900-per-acre/article>; *Iowa Farmland Sale Record \$20,000/Acre*, IOWA FARMER TODAY (Dec. 16, 2011), http://www.iowafarmertoday.com/news/regional/iowa-farmland-sale-record-acre/article_60b298cc-27ff-11e1-b997-0019bb2963f4.html.

4. FARMERS NAT'L CO., DEMAND FOR U.S. FARMLAND HITS RECORD HIGHS AS SUPPLY SINKS TO HISTORIC LOWS (Jan. 2010), <http://alberscommunications.com/wp-content/uploads/2011/01/Jan-2011-Land-Value-Release.pdf>.

reflected one of the most remarkable years in Iowa land value history.⁵ The University's Iowa Land Value Survey indicated that the average price of land in Iowa rose 23.7% from 2011, bringing the price to approximately \$8,300 per acre in 2012.⁶ This increase marked the third year in a row that values increased more than 15%.⁷ Compare these prices to 2001, when the average price per acre was slightly over \$1,900.⁸ Average costs of high-grade land across the state rose from approximately \$8,200 in 2011, to almost \$10,200 in 2012.⁹

B. *Contributing Factors*

Farmers and economists have identified several factors that contribute to increasing land prices. Favorable yields, good agricultural economy, low interest rates, poor world and U.S. economy, poor weather, and limited amounts of land can be credited with attributing to growing land values.¹⁰ As commodity prices have increased, so have land prices. By the end of 2012, the average price of land was approximately \$8,300 per acre, the average price of corn was approximately \$6.80 per bushel, and the average price of soybeans was approximately \$13.70 per bushel.¹¹ Compare this to 2005, when the price of land was \$2,900, and corn and soybeans averaged \$1.94 and \$5.54 per bushel, respectively.¹²

The potential for increased profits combined with low interest rates make land attractive to prospective buyers, whether they are current farmers or corporate investors.¹³ Interest rates for farm real estate are the lowest levels in memory.¹⁴ "Low interest rates reduce the discount on expected income from the land . . . [and] lower the value of the dollar which in return increases exports,

5. MICHAEL DUFFY & ANN JOHANNIS, 2013 IOWA LAND VALUE SURVEY, IOWA STATE UNIV. EXTENSION AND OUTREACH (Jan. 2014), available at <http://www.extension.iastate.edu/Publications/FM1825.pdf>.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *See id.*

11. Michael Duffy, et al., *Farmland Value Reaches Historic \$8,296 Statewide Average*, IOWA STATE UNIV. EXTENSION AND OUTREACH (Dec. 11, 2012), <http://www.extension.iastate.edu/article/farmland-value-reaches-historic-8296-statewide-average>.

12. *Id.*

13. FARMERS NAT'L CO., *supra* note 4.

14. *See* DUFFY & JOHANNIS, *supra* note 5 (comparing interest rates from 1974 through 2013).

commodity prices, and farm revenue.¹⁵ The increasing demand in a limited supply of farmland also attributes to rising prices.¹⁶

C. *Similarities to the 1980s*

Although not the main focus of this paper, comparisons between the current land prices and those of the 1980s—prior to the farm crash—are worth mentioning, and have some implications for inheritance and corporate expansion. At first glance, it seems like high land prices are more advantageous to farmers than detrimental. High land prices are motivated by high commodity prices, and land can be rented out for high dollar amounts, both of which infer high income; however, the ever growing prices have been viewed cautiously.¹⁷ Some apprehension stems from parallels in current land trends with those prior to the 1980s farm crash.¹⁸ Collateral consequences of the ever-rising farmland prices could include an increase in corporate ownership and complications in inheritance.

Some equivalents have been drawn between current land prices and the 1980s farm crash, or the more recent housing bubble.¹⁹ When adjusting average crop prices for inflation, they are similar to the “levels they reached in the late 1970s, the peak of the last disastrous boom-and-bust cycle for agricultural land.”²⁰ Comparisons have also been drawn to the real estate bubble in which the housing market experienced significant increases and then fell.²¹ It is possible that if increasing interest rates are combined with falling crop prices, land values could be severely undercut.²²

15. Jeffrey Hignight, *What is Driving Land Prices and Who is Buying?*, GLAUB FARM MGMT. BLOG (Jan. 3, 2012), <http://www.glaubfm.com/posts/what-driving-land-prices-and-who-buying>.

16. FARMERS NAT'L CO., *supra* note 4.

17. See William Neuman, *In Price of Farmland, Echoes of Another Boom*, N.Y. TIMES, Mar. 3, 2011, <http://www.nytimes.com/2011/03/04/business/04farms.html?pagewanted=all>.

18. MICHAEL DUFFY, 2013 FARMLAND VALUE SURVEY 3, IOWA STATE UNIV. EXTENSION AND OUTREACH (Jan. 2013), available at <http://www.extension.iastate.edu/agdm/wholefarm/pdf/c2-70.pdf>; Neuman, *supra* note 17.

19. Elizabeth Campbell & Jeff Wilson, *Iowa Farmland Climbs to Record as Income Gains, Survey Says*, BLOOMBERG (Dec. 14, 2011), <http://www.bloomberg.com/news/2011-12-14/iowa-farmland-value-climb-to-record-university-survey-shows.html>; see also Neuman, *supra* note 17; DUFFY, *supra* note 18, at 3.

20. Neuman, *supra* note 17.

21. *Id.*

22. *Id.*

At least one significant distinction can be made between the current trends and those in the 1980s: farmer debt. Thus far, farmer debt has not reached the levels that triggered the instability of the 1980s or the housing bubble.²³ “In the 1970s . . . farmers loaded up on debt, using their farms as collateral. In the housing bubble . . . buyers were seduced . . . by subprime mortgages with floating rates.”²⁴ According to the USDA, current farmer debt is one-third less than that noted in the 1980s.²⁵ Of course, this lack-of-debt insulation could quickly disappear if farmers begin taking out loans to buy new property—using their currently high-priced land as collateral.²⁶

If farmland prices are artificially inflated, it can affect family farms in terms of estate planning and buying abilities. Small family farming operations are not situated to compete with corporate organizations buying high-priced farmland, because they may not have the necessary collateral readily available.²⁷ In terms of estate planning, inflated land prices unnecessarily complicate the transfer process, forcing beneficiaries to pay high taxes based on current market rates.²⁸ Landowners may also delay or neglect estate planning because they are under the impression that the current land prices are temporary, and will have little effect on their heirs.²⁹ Regardless of whether the current price-hikes are temporary, or are a more permanent condition, estate planning and anti-corporate legislation should be utilized immediately to preserve family farming.

III. INCREASING FARM LAND PRICES ARE PROBLEMATIC

Increasing land prices may lead to the extinction of the family farm. High land prices interfere with the inheritance process because tax rates can be crippling for beneficiaries. Family farming operations also have difficulty competing with corporate farmland investors, because they are better situated in

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. See Les Christie, *Bet the Farm: Cropland Prices Soar 20%*, CNN MONEY (Jan. 19, 2011), http://money.cnn.com/2011/01/19/real_estate/farm_prices_rise/index.htm.

28. IOWA CODE § 450.37 (2013); Iowa Dep’t of Revenue, *An Introduction to Iowa Inheritance Tax*, IOWA.GOV (last updated Mar. 13, 2007), <http://www.iowa.gov/tax/educate/78517.html>.

29. See generally, *Land Price Rise Affects Estate Plans*, WALLACES FARMER (Oct. 14, 2011) <http://farmprogress.com/story-land-price-rise-affects-estate-plans-37-53951>.

terms of collateral, capital, and farming technology in buying high-priced farmland.

A. *Effect of Taxes on Inheriting High-priced Farmland*³⁰

Increasing prices of land may lead to the extinction of the family farm because taxes imposed on high-priced land can create difficulties in the inheritance process. Taxes on high-value land make transferring land to the next generation unaffordable in some instances. There are several taxes that could affect the inheritance of high-priced farmland. These include gift taxes, estate taxes, inheritance taxes, and generation-skipping transfer taxes.³¹ Inheritance and estate taxes are taxes that can be assessed against an estate after death.³² Estate taxes are imposed by the state or federal government on the right to transfer property after death, and are charged against the entire estate, regardless of who the beneficiaries may be.³³ Inheritance taxes are imposed by a state government on the right of a beneficiary to receive property, and are charged against the shares of the estate.³⁴ A generation-skipping transfer tax is applicable when the transfer of property is made which skips a generation.³⁵ Gift taxes are relevant when transfers are made during a person's lifetime, and may be subject to inheritance taxes if made within three years of death.³⁶

Currently, tax rates are especially relevant to estate planning because taxes are based on the market value of the decedent's property.³⁷ Current high land prices reflect current market value, which is “. . . the price at which property would change hands between a willing buyer and willing seller”³⁸ Market

30. Note that the tax information included in this paper is intended to serve as an overview of possible tax implications as applied to the estate planning process, and is not an all-inclusive list of potential variables that may arise in any individual situation.

31. See *Introduction to Iowa Inheritance Tax*, *supra* note 28 (discussing various estate property taxes).

32. IOWA CODE § 450.2 (2013); IOWA CODE § 633.449; *Introduction to Iowa Inheritance Tax*, *supra* note 28; MELISSA O'ROURKE, EVALUATING YOUR ESTATE PLAN: IOWA INHERITANCE TAX 1, IOWA STATE UNIV. EXTENSION AND OUTREACH (Jan. 2012), available at <http://www.extension.iastate.edu/agdm/wholefarm/pdf/c4-25.pdf> [hereinafter O'Rourke Inheritance Tax].

33. IOWA CODE § 633.449; O'Rourke Inheritance Tax, *supra* note 32, at 1.

34. IOWA CODE § 450.2; O'Rourke Inheritance Tax, *supra* note 32, at 1–2.

35. IOWA CODE § 450A.2; *Introduction to Iowa Inheritance Tax*, *supra* note 28.

36. See generally IOWA CODE § 450.3; *Introduction to Iowa Inheritance Tax*, *supra* note 28.

37. IOWA CODE § 450.37; *Introduction to Iowa Inheritance Tax*, *supra* note 28.

38. IOWA CODE § 450.37; *Introduction to Iowa Inheritance Tax*, *supra* note 28.

value is determined at the time of the decedent's death, six months after their death (alternative valuation), or through a special valuation if the property is eligible to use the value for federal estate tax purposes.³⁹ Special valuation is a mathematical computation allowed on certain qualified farmland.⁴⁰ Tax rates and exemptions vary based on the type of tax as well as whether the federal or state government governs the tax.⁴¹

Federal estate taxes were one of the first issues addressed by Congress in 2013.⁴² The end of 2012 marked the expiration of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).⁴³ The American Taxpayer Relief Act (ATRA) replaced EGTRRA, setting forth permanent exemptions and tax rates.⁴⁴ The ATRA solidified a federal estate tax and generation-skipping transfer tax exemption in 2012 of \$5.12 million and tax rate of 40% for amounts greater than the exemption.⁴⁵ The changes between the ATRA and EGTRRA were relatively small. The exemption of \$5.12 million is the same (indexed with inflation), and the tax on amounts over the exemption increased from 35% to 40%.⁴⁶ Even though these changes were small, prompt action by Congress was a necessity. Absent congressional intervention, the current tax scheme would have reverted back to pre-2001 rates, with a \$1 million exemption, and a tax rate of 41%

39. IOWA CODE § 450.37.

40. *Id.*

41. *See generally* O'Rourke Inheritance Tax, *supra* note 32, at 3–4.

42. Hani Sarji, *More Estate Tax Changes Could Follow Fiscal Cliff Deal*, FORBES (Jan. 6, 2013), <http://www.forbes.com/sites/hanisarji/2013/01/06/more-estate-tax-changes-could-follow-fiscal-cliff-deal/>.

43. *See* American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013); Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001) (codified as amended at 26 U.S.C. § 1 (2001)); WILLIAM P. LAPIANA, *INSIDE WILLS AND TRUSTS: WHAT MATTERS AND WHY* 376–77 (Vicki Been et al. eds., 2012).

44. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Sarji, *supra* note 42 (permanent in the sense that there is no marked expiration date, but could always face changes).

45. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Sarji, *supra* note 42 (the law was set to increase the exemption rate, and is discussed *infra*).

46. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (codified as amended at 26 U.S.C. § 1 (2001)); Sarji, *supra* note 42; Steve Bohr, *Estate Planning Requires Art and Science*, IOWA FARMER TODAY (June 26, 2012), http://www.iowafarmertoday.com/feature/columnists/farm_transition/estate-planning-requires-art-and-science/article_bd47185a-bf95-11e1-8f9d-0019bb2963f4.html.

to 55% for estates exceeding that value.⁴⁷ Considering the increasing land prices, this reversion would have had a crippling effect on estate transfers of farmland. Even small farm estates can easily exceed \$1 million at current land market prices.⁴⁸

Lifetime gift tax exemptions and tax rates are the same as the federal estate taxes.⁴⁹ It is important to remember, however, that the gift and estate tax exemptions are unified, meaning that the “\$5 million threshold [is] applied to total transfers, whether by gift during lifetime or inheritance on death.”⁵⁰ Annual gift tax exemptions are applicable to transfers of \$14,000 or less.⁵¹ “\$14,000 is the maximum that a donor can transfer every year before reducing the lifetime exemption.”⁵² With farms increasing in value, these annual gift tax exemptions do little for the estate planning process. Even if a farmer intended on gradually gifting farmland to heirs to avoid taxes, \$14,000 each year would not account for more than two acres, and the total transfer could take several decades.

Iowa inheritance taxes are not due if the “net estate of the decedent is less than \$25,000 . . . [or] for larger estates, on any estate shares left to . . . lineal ascendants or descendants.”⁵³ Exemptions beyond lineal ascendants or descendants are based upon the relationship of the beneficiary to the decedent, and the value of their share.⁵⁴ Tax amounts range from 5% to 15%.⁵⁵ Like the federal government, Iowa also has a generation-skipping transfer tax.⁵⁶ “The Iowa gen-

47. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (codified as amended at 26 U.S.C. § 1 (2001)); Sarji, *supra* note 42; Bohr, *supra* note 46.

48. Christie, *supra* note 27 (providing an example of a typical farm of 350 acres having a land value of \$1.75 million).

49. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Sarji, *supra* note 42.

50. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Sarji, *supra* note 42 (quoting Smith Bovill, an estate planning attorney at Michigan).

51. American Taxpayer Relief Act of 2012, 126 Stat. 2313; Sarji, *supra* note 42.

52. Sarji, *supra* note 42.

53. O’Rourke Inheritance Tax, *supra* note 32, at 1 (lineal ascendants and descendants include a surviving spouse, grandparents, great-grandparents, children, stepchildren, grandchildren, and great-grandchildren).

54. IOWA CODE § 450.10 (2013); IOWA DEP’T OF REVENUE, IOWA INHERITANCE TAX RATE SCHEDULE (Sept. 26, 2012), available at <http://www.iowa.gov/tax/forms/60061.pdf> (for exact exemptions and tax amounts of such beneficiaries); O’Rourke Inheritance Tax, *supra* note 32, at 3–4.

55. IOWA CODE § 450.10; IOWA INHERITANCE TAX RATE SCHEDULE, *supra* note 54 (for exact exemptions and tax amounts of such beneficiaries).

56. IOWA CODE § 450A.2.

eration[-]skipping transfer tax is only owed when a federal generation skipping transfer tax is owed.”⁵⁷ “Iowa does not have a gift [tax].”⁵⁸

Considering this brief overview of potentially applicable taxes to farm estates, one might think that very few Iowa farmers would be impacted by catastrophic tax rates. The average size of an Iowa farm is around 340 acres.⁵⁹ Absent an extremely high-priced appraisal, a farm that size would fall well below the \$5.12 million federal estate tax exemption established in 2012.⁶⁰ Additionally, as long as the farm is transferred to lineal descendants, shares will also be exempt from Iowa inheritance taxes.⁶¹ Assuming these exemptions could insulate a family farm through the estate, the transfer process ten years ago may have been proper, but the same does not hold true today.

For example, land prices in 2001 were about \$1,900 per acre, so a 340-acre plot of land would have been valued at approximately \$650,000.⁶² This number falls a great distance below the federal tax exemption limit, and would be exempt from Iowa inheritance taxes if passed to lineal descendants.⁶³ Today that same plot of high-grade land could sell for \$10,800 per acre, with a total value of almost \$3.5 million (which may be a low estimate in some instances).⁶⁴ Although this number is still below the federal estate tax exemption, the \$3.5 million land value does not include a home, buildings, equipment, retirement funds, previous gifts, etc., which would be included in the federal estate tax calculation, based on the net value of the total estate.⁶⁵ So if an Iowa farm is worth \$3.5 million, at minimum, the average Iowa farm could easily exceed the 2014, \$5.34 million exemption after the entire estate has been calculated, and those amounts greater than the exemption would be subject to staggering tax rates.

Additionally, should a farmer transfer a share to someone outside his lineal descendants, such as a brother, that share would not fall under the Iowa inher-

57. *Introduction to Iowa Inheritance Tax*, *supra* note 28; accord IOWA CODE § 450A.2.

58. *Introduction to Iowa Inheritance Tax*, *supra* note 28.

59. *Iowa Agriculture Quick Facts 2012*, IOWA DEP’T OF AGRIC. AND LAND STEWARDSHIP (2012), <http://www.iowaagriculture.gov/quickfacts.asp>; *Estate Tax*, INTERNAL REVENUE SERV., <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Estate-Tax> (last updated May 16, 2014).

60. The federal estate tax exemption increased to \$5.34 million in 2014.

61. IOWA CODE § 450.10(6).

62. DUFFY & JOHANNIS, *supra* note 5.

63. 26 U.S.C. § 2001c (2013).

64. DUFFY & JOHANNIS, *supra* note 5.

65. O’Rourke Inheritance Tax, *supra* note 32, at 2. This is not intended to be an all-inclusive list, and one should refer to specific tax forms to determine all property included in the estate, as well as liabilities, debts, and deductions.

itance exemptions.⁶⁶ The current land values will be problematic, even if the share is small. For example, to transfer 100 acres valued at \$10,200 per acre (over \$1 million total), such a beneficiary would be taxed \$11,375 plus 10% on their share, bringing the value of taxes alone well over \$100,000.⁶⁷ In fact, the lowest potential tax rate for beneficiaries outside of lineal descendants is 5%, and is applicable to shares not greater than \$12,500. This would not cover any farmland at today's prices in Iowa, because it equates to less than two acres.⁶⁸

Although the newest tax provisions may put many family farms out of harm's reach in terms of taxes through the inheritance process, estate planning is incredibly important for larger family farms in Iowa. Proper estate planning assures that beneficiaries are insulated from overwhelming tax rates that might lead them to sell family farmland.

B. *The Changing Culture of Farming*

American farming has been the product of industrialization for several decades.⁶⁹ The consistent trend toward big-business farming will continue with the excessive land prices, because corporate investors are in a better financial position to buy high-priced land than family farms.⁷⁰ Commonly, it is wealthy investors or corporations that take advantage of farm sales, instead of younger family members or new farmers.⁷¹ There are indications that much of new land ownership is gained through purchase instead of through inheritance.⁷² Additionally, the age of farmers is consistently increasing, with fewer new farmers entering the business.⁷³ The increasing age of farmers and increasing corporate ownership is concerning for the future of family farms.

66. IOWA CODE § 450.10.

67. See IOWA INHERITANCE TAX RATE SCHEDULE, *supra* note 54.

68. *Id.*

69. See FARMERS NAT'L CO., *supra* note 4.

70. See DUFFY, *supra* note 18, at 2–3.

71. *Id.*

72. MICHAEL DUFFY, FARMLAND OWNERSHIP AND TENURE IN IOWA, IOWA STATE UNIV. EXTENSION AND OUTREACH 15 (2008), <http://www.extension.iastate.edu/publications/pm1983.pdf> (In 2007, 73% of land acquisition was by purchase, compared to 23% by inheritance).

73. See 2007 CENSUS OF AGRIC., FARMERS BY AGE, USDA (2007), available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Demographics/farmer_age.pdf (showing farmers aged 45 and up as the most increasing age demographic); 2007 CENSUS OF AGRIC., SUMMARY BY AGE AND PRIMARY OCCUPATION OF PRINCIPAL OPERATOR, USDA (2007), available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_

One survey identified four categories of farmland buyers in 2011, only 3% of which were new farmers.⁷⁴ Other categories included existing farmers (78%), investors (18%), and “other” purchasers (1%).⁷⁵ High land prices offer little incentive for young farmers attempting to get started in the business.⁷⁶ As young farmers struggle with rising land prices—both in terms of property taxes and acquiring new land—investors are in a better position, having greater wealth and other sources of collateral.⁷⁷ Farmland is especially attractive to non-farmers by offering high profits and stability not currently available in other investments opportunities, such as the stock market.⁷⁸ Steep prices are partially inflated by these investors.⁷⁹ Their purchase power could impact the future of family farms. “While rising prices are good for older landowners, whose land may represent a life’s savings, they make breaking into the farming business tougher than ever,” and is one development putting the family farm at risk.⁸⁰ In the years since World War II, American agriculture has been the product of industrialization.⁸¹ “[Corporate or i]ndustrial agriculture has been defined . . . as a system where the farm owner, the farm manager and the farm worker are different people.”⁸² Historically, the structure of agriculture had been one where those who physically engage in farming also reap the profits, but in the past several decades, farming has evolved in such a way that “. . . land [which] previously support[ed] many small farms could . . . be consolidated into larger and larger farming operations” which are owned by fewer people.⁸³ As the benefits of larger farms move to corporate investors, social costs, such as the extinction of the family farm, become

Chapter_1_US/st99_1_063_063.pdf [hereinafter 2007 CENSUS OF AGRIC., SUMMARY BY AGE] (showing fewer numbers of farmers operating four years or less than any other group).

74. DUFFY & JOHANNIS, *supra* note 5, at 2.

75. *Id.*

76. JOHN BAKER, IOWA STATE UNIV. EXTENSION AND OUTREACH IOWA FARMERS BUSINESS AND TRANSFER PLANS 3 (2008), available at <http://www.extension.iastate.edu/bfc/sites/www.extension.iastate.edu/files/bfc/Farm%20Business%20Transfer%20Plan.pdf>.

77. See Christie, *supra* note 27.

78. FARMERS NAT’L CO., *supra* note 4.

79. See Richard Mertens, *Farmers-to-be Can’t Afford the Fields*, CHRISTIAN SCI. MONITOR, July 7, 2005, <http://www.csmonitor.com/2005/0707/p01s02-usec.html> (discussing the difficulty of new farmers of breaking into farming when investors easily outbid on expensive land).

80. *Id.*

81. John Ikerd, *Why Farming is Important in America* (paper presented at Fourth Annual Rural Development Conference, North Dakota, 2002), available at <http://web.missouri.edu/ikerdj/papers/WhyFarming.html>.

82. *Corporate Farming*, CTR. FOR RURAL AFFAIRS, <http://www.cfra.org/corporate-farming> (last visited Aug. 23, 2014).

83. Ikerd, *supra* note 81; see also *Corporate Farming*, *supra* note 82.

part of reality.⁸⁴ In many cases, individual and family farmers are unable to keep up with the technologies, capital, and marketing systems used in corporate agriculture operations.⁸⁵ “As farms have grown larger and more specialized, agriculturally dependent rural communities have withered and died.”⁸⁶ In the 1930s, the number of U.S. farms peaked at about seven million, and has declined steadily to about two million today.⁸⁷ Some attribute this steady consolidation to “. . . the increasing size of farms, the dominance of ‘corporate farms,’ and the general intrusion of corporate interests into farming.”⁸⁸

Concerns over the number of Iowa farms were identified in the 1990s; however, statistics indicate a consistent trend towards large farms over the past forty years.⁸⁹ Between the 1978 and 2007 Census of Agriculture, the number of farms in Iowa decreased from 121,300 to 92,800.⁹⁰ The number of farmers on those farms that consider farming as their primary occupation also fell from 92,300 in 1978 to only 48,600 in 2007.⁹¹ Near the end of the 1970s, nearly three-quarters of farmers were full-time farmers, compared to about half of farmers in 2007.⁹² The numbers of small farms and family or individual farm organizations has also decreased. In 2007, there were 22,300 farms with an average acreage between 180 and 499 acres, which was over a 50% decrease from 1978 when there were almost 52,000.⁹³ Family and individually owned farms were down to 77,400 in 2007 from 103,800 in 1978.⁹⁴

84. See Ikerd, *supra* note 81.

85. See *id.*

86. *Id.*

87. Ronald A. Wirtz, *Saving the Family Farm, but from What?*, FEDGAZETTE, Oct. 1, 1999, http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=2480; 2007 CENSUS OF AGRIC., FARM NUMBERS, USDA (2007), http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/farm_numbers.pdf (showing just over two million farms in the U.S. in 2007).

88. Wirtz, *supra* note 87.

89. See, e.g., Michael Duffy, *Changes in Iowa Farm Structure*, AG DECISION MAKER (Iowa St. U. Extension and Outreach, Ames, Iowa), Oct. 1997, available at <https://www.extension.iastate.edu/agdm/articles/duffy/DuffyOct97.htm>; 2007 CENSUS OF AGRIC., SUMMARY BY AGE, *supra* note 73.

90. HISTORICAL HIGHLIGHTS: 2007 AND EARLIER CENSUS YEARS, USDA (2007), available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Iowa/st19_1_001_001.pdf.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

As these numbers decline, the number of corporate farming operations has increased, along with the average size of farms. In 2007, 6,500 farms were considered a corporate organization, and 1,500 farms consisted of 2,000 or more acres.⁹⁵ These numbers are triple what they were in 1978, when only 2,600 farms were corporate organizations, and only 250 farms were larger than 2,000 acres.⁹⁶ Numbers on the national level are similar, and there is an ever-present concern about “. . . the long-term health of family farms as an American institution.”⁹⁷ A minority of farmers produce the majority of agricultural products. According to the 2007 Census of Agriculture, large and very large family farms made up only 9% of all farms, but they produced more than 63% of the value of all agricultural products sold.⁹⁸ The number of farms are decreasing, the sizes of farms are increasing, and corporate ownership is on the rise. “[Despite] the predominance of family farms, there is strong evidence of a trend toward concentration in agricultural production.”⁹⁹

Further supplementing the increase in corporate farm ownership is the increasing age of farmers and lack of estate planning. The average age of farmers is gradually increasing. In 2007, “[t]he majority of farm operators [were] between 45 and 64, but the fastest growing group of farm operators [was] those 65 and older,” a 22% increase from the census five years prior.¹⁰⁰ That same year, “there were 54,147 operators under the age of 25 and 289,999 operators 75 years and over.”¹⁰¹ Further problematic is that some studies indicate close to 50% of Iowa farmers have not identified their successors.¹⁰² This, in addition to increasing farm size and corporate ownership, is unfavorable to the future of family farms.

Corporatization of the farming industry threatens the future of family farms. Corporations are in a better position to buy expensive land. That, added with the decreasing number of farms and the increasing age of farmers, provide for a consistent trend towards big business farming. If this pattern and high land

95. *Id.*

96. *Id.*

97. *Ag 101: Demographics*, EPA, <http://www.epa.gov/agriculture/ag101/demographics.html> (last updated Apr. 14, 2013).

98. 2007 CENSUS OF AGRIC., FARM NUMBERS, *supra* note 87.

99. EPA, *supra* note 97.

100. 2007 CENSUS OF AGRIC., FARMERS BY AGE, *supra* note 73.

101. *Id.*

102. BAKER, *supra* note 76, at 9.

prices continue, this may be “. . . the end of the independent producer of agricultural commodities in America.”¹⁰³

Considering the high prices of land, the increasing age of farmers, the minimal entrance of young people into the farm business, and the influx of investors purchasing farmland, the future of the family farm seems grim. As such, it is important for current farmers to actively engage in estate planning. The high prices of land make it crucial that current landowners develop a transfer strategy that will reduce the tax burdens on the recipients of their property. Additionally, legislatures must continually engage in lawmaking that facilitates family farm existence and puts some limitations on corporations in the farm industry.

IV. SURVIVING HIGH LAND PRICES

In the midst of this era of high land prices, efforts to preserve the family farm can occur at the individual level and in legislation. Farmers can engage in thorough estate planning to ensure their farmland stays within their family, and Congress can continue efforts in restricting corporate farm ownership.

A. *Estate Planning*

Farmers can avoid some of the difficulties created by high land prices through estate planning. Proper estate planning assures a smooth land-ownership transition to beneficiaries, and avoids any potential tax complications from high land prices. There are several options in estate planning, such as probate, wills, or trusts, each of which has its own benefits and drawbacks. Of course, there is not a “one-size-fits-all” estate plan as the difficulties created by high land prices in estate planning are unlikely to end.¹⁰⁴

1. *Probate*

One option for transferring a family farm is through the probate process. The laws of probate govern an estate if the owner dies without a valid will.¹⁰⁵ Laws of individual states will govern the probate process—in terms of land, the

103. Ikerd, *supra* note 81.

104. See John Otte, *Estate Mistakes*, FARM FUTURES MAG. 16, May–June 2009, <http://magissues.farmprogress.com/FFU/FF05May09/ffu16.pdf> (discussing common mistakes made in estate planning).

105. IOWA CODE § 633.210 (2013); see LAPIANA, *supra* note 43, at 2.

state the land is located in.¹⁰⁶ Probate generally results in the land passing to the owner's spouse, and then the owner's children.¹⁰⁷ In Iowa, the land passes to the decedent's spouse, and then to each of his or her children in equal shares.¹⁰⁸

Probate may be one of the least desirable methods for the transfer of land, and is generally the result of a lack of planning on the part of the estate owner. Because land will often pass to family through the probate process, farm owners may not view estate planning as a necessity. The costs of transfer are the highest when completed through probate because of court involvement.¹⁰⁹ By managing the estate through the court process, some of the profits which the beneficiaries could have enjoyed using another transfer method go instead to the state.¹¹⁰ Federal estate taxes will apply unless the total value of the estate falls below the current exemption.¹¹¹ Iowa inheritance taxes will not come into play during the probate process, as the land passes to lineal descendants by statute.¹¹² Court costs and taxes owed on high value farmland may force the recipient of land to sell some of the estate or borrow money against it, just to conclude settlement.¹¹³

Aside from additional costs and potential taxes, the probate system leaves the family farm in a vulnerable position in additional ways. Since the probate process is the result of little to no planning on the part of the estate owner, there may be little discussion between the decedent and the heirs prior to death. Absent discussion, disinterested heirs who receive property may be more inclined to sell it. Heirs could be disinterested for a variety of reasons, such as a lack of interest in agriculture or tax impositions.¹¹⁴ Court involvement with the estate through the probate process also may lead to decisions inconsistent with the deceased farmer's actual wishes. Additional factors making the family farm susceptible to elimination through the probate process include potential of minor or incapacitated heirs, as well as ever changing definitions of families (e.g., di-

106. LAPIANA, *supra* note 43, at 19.

107. *Id.*

108. IOWA CODE §§ 633.211, 633.219.

109. *See* LAPIANA, *supra* note 43, at 13.

110. *See* PLANNING AN ESTATE: A GUIDEBOOK OF PRIN. & TECH. § 6:7 (4 ed. Sept. 2012).

111. *See* American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 101-02, 126 Stat. 2313 (2013); *see also* Sarji, *supra* note 42.

112. *See* IOWA CODE § 450.10; O'Rourke Inheritance Tax, *supra* note 32.

113. *See* Michael Duffy, GETTING STARTED IN FARMING: INHERITING A FARM 3, IOWA STATE UNIV. AND OUTREACH EXTENSION (May 2013), *available at* <http://www.extension.iastate.edu/agdm/wholefarm/pdf/C4-07.pdf> (discussing various tax-related expenses in settling an estate).

114. *See* LAPIANA, *supra* note 43, at 376-77.

voices, adoption, after-born children) leading to more confusion in the probate process.¹¹⁵

It is likely that one of the worst things a farmer can do in terms of estate planning is nothing at all.¹¹⁶ When families are unable to settle estates through the probate process, farm sales occur. At these farm sales investors' presence is strongly felt, and new farmers lack the funds to take on new land.¹¹⁷ Engaging in estate planning and transferring land through another alternative, such as a will or a trust, may help to mitigate some of the difficulties that often arise in the probate process, helping the family farm to survive into the future.

2. *Wills*

Another option for transferring a family farm is through the use of a will. "A will is a written document that directs the distribution of [a person's] property at death . . ." ¹¹⁸ Like the probate system, state laws govern legal requirements for wills.¹¹⁹ Farmers, especially those who are growing older, may avoid writing a will because it seems like an intimidating process.¹²⁰ Wills, however, have some advantages over the probate process, making them an attractive option in estate planning. The control a landowner gains in property distribution by having a will safeguards the family farm.

Transferring farmland through a will offers several advantages over the probate process which contribute to sustaining a family farm. Some of these advantages have to do with costs of estate management—having a will can save money in terms of federal estate taxes and administrative expenses, leaving more profits to beneficiaries.¹²¹ Furthermore, if a farmer takes steps to meet with an attorney and plan a valid will, the estate will be distributed according to the farmer's wishes instead of directed by statute as it would through probate.¹²² Creating a will can spark discussions within families about inheritance, which facilitates transfer to interested beneficiaries, ensuring the family farm continues

115. See generally IOWA CODE §§ 633.210-226; LAPIANA, *supra* note 43, at 23-40.

116. Otte, *supra* note 104, at 16.

117. DUFFY, *supra* note 18, at 3.

118. *Do You Need a Will?*, IOWA STATE BAR ASS'N, <http://www.iowabar.org/?page=Wills> (last visited Aug. 23, 2014) [hereinafter ISBA].

119. See generally IOWA CODE §§ 633.290-307; ISBA, *supra* note 118.

120. See ISBA, *supra* note 118.

121. *Id.*

122. See generally IOWA CODE §§ 633.210-226.

in the future.¹²³ Attention to the next generation's interest can prevent transfers and sales aiding corporate investment.¹²⁴ For example, lack of interest in farming within the family may prompt a small farmer to create a transfer through a will to a non-lineal beneficiary who is willing to take on the land. Efforts can be made through will planning to alleviate tax burdens on a non-lineal beneficiary, and the farmer can ensure that related beneficiaries disinterested in land might be compensated in more desirable ways, such as life insurance policies.¹²⁵

There are some expenses associated with writing a will; however, those expenses are “. . . normally minimal compared to the benefits [the decedent] and . . . beneficiaries receive from having a will-devised estate plan.”¹²⁶ A farmer must take appropriate measures to ensure the benefits of having a will are maximized, and the family farm is insulated from potential disappearance. Frequent updating of a will can prevent confusion caused by divorces or minor beneficiaries.¹²⁷ Continued discussion about the estate can prevent suits arising from displeased beneficiaries or spouses when the will is executed.¹²⁸

Although not perfect, the process of creating a will alleviates many of the disadvantages of probate in inheriting land, and ensures existence of the family farm in the future. Wills ensure that farmland is distributed according to the farmer's wishes and to interested beneficiaries, as well as insulating beneficiaries from some tax burdens.

3. *Trusts*

Trusts are another option for the transfer of farmland. A trust, in terms of land, is a fiduciary relationship created by the owner of land (the settlor), whereby property is held by one person (the trustee) for the benefit of another (the beneficiary).¹²⁹ Generally, the trustee is responsible for passing the benefits of the land (rent or profit) to the beneficiaries.¹³⁰ The settlor arranges the terms of

123. LAPIANA, *supra* note 43, at 50.

124. *See id.* at 2.

125. *Id.* at 117; *see also* Bob Dunaway, *When Life Insurance Pays for Estate Planning*, NAT'L HOG FARMER (Nov. 30, 1998), http://nationalhogfarmer.com/mag/farming_life_insurance_pays.

126. ISBA, *supra* note 118.

127. *See id.*

128. *See generally* IOWA CODE §§ 633.236-246 (2013); LAPIANA, *supra* note 43, at 49–70.

129. *See generally* IOWA CODE §§ 633A.1102, 633A.2101; *see also* LAPIANA, *supra* note 43, at 162–84.

130. *See generally* IOWA CODE § 633A.4201; LAPIANA, *supra* note 43, at 162–84.

the trust in regards to distributions, such as receiving income monthly or quarterly.¹³¹ Creating a trust is slightly less formal than creating a will, and is a viable option for ensuring that a farm estate stays within the family.¹³²

Creating a trust for farmland can insulate beneficiaries from some administrative costs and taxes.¹³³ Property that is a part of a trust is not included in the estate for probate administration purposes, but is subject to some taxes.¹³⁴ Even though tax burdens on beneficiaries are not obsolete in trusts, the distribution of property or income available through trusts has some benefits that are not available when receiving a lump sum of property through probate or a will.¹³⁵ For example, the settlor has great discretion in establishing the terms of the trust, such as when it begins or ends or profit distribution schedules and beneficiaries can experience trusts profits in different ways, such as one beneficiary farming the land at low costs, while another only sees profit).¹³⁶

In addition to minimizing costs in inheritance and providing flexibility in income for beneficiaries, trusts have additional advantages over probate or wills. Trusts can protect the family farm long-term by allowing second or third generation family members to eventually become beneficiaries of the trust property.¹³⁷ Appropriate selection of a trustee can ensure suitable management of the trust property as the economy changes, as well as consistency with the family wishes.¹³⁸ Long-standing management techniques protect the future of the family farm from market fluctuations and corporate interference.¹³⁹

Another benefit of a trust is that a farmer is in complete control of the trust as long as they are alive and competent, and it can be revoked at any time (as long as the trust was not a type of irrevocable trust when created), which may be advantageous for farmers who have done little in the realm of estate planning.¹⁴⁰ Revocable or living trusts have similar tax benefits as irrevocable

131. See generally IOWA CODE §§ 633A.1105 & 633A.3103; LAPIANA, *supra* note 43, at 166.

132. See generally IOWA CODE §§ 633A.2101-2102; LAPIANA, *supra* note 43, at 244-45.

133. LAPIANA, *supra* note 43, at 244-45.

134. *Introduction to Iowa Inheritance Tax*, *supra* note 28.

135. Melissa O'Rourke, *Trusts as an Estate Planning Tool*, IOWA STATE UNIV.

EXTENSION AND OUTREACH, <http://www.extension.iastate.edu/agdm/wholefarm/html/c4-59.html> (last updated Mar. 2014) [hereinafter O'Rourke Trusts].

136. *Id.*

137. See LAPIANA, *supra* note 43, at 172-76.

138. See *id.*

139. See *id.*

140. ISBA, *supra* note 118; see also *What is a Living Trust?*, IOWA STATE BAR ASS'N, <http://www.iowabar.org/?page=LivingTrust> (last visited Aug. 23, 2014).

trusts.¹⁴¹ A revocable trust can be thought of as a will-substitute, because if the terms of the trusts indicate successor beneficiaries, the trust becomes irrevocable upon the settlor's death, and the property or profits from the property pass to the beneficiaries in the same way they would in a will.¹⁴² Revocable trusts are different from wills, in that they do not transfer a future property interest to beneficiaries upon creation.¹⁴³ Revocable trusts may be an interim solution to avoid the probate process for families who have not engaged in estate planning, until more careful and detailed planning can occur.

Trusts may be used alternatively or in conjunction with wills in the estate planning process.¹⁴⁴ The tools most useful in the transfer of farm property are dependent on the circumstances of each estate. Like wills, trusts can relieve some of the tax burdens present in the inheritance process, and help to preserve family farms. No matter what type of estate planning is utilized by farmers, being attentive to the current high land prices, and taking the process seriously is essential to the survival of the family farm.

B. *Restrictions on Corporate Ownership*

In addition to estate planning on the part of farmers, legislatures can also help to preserve the future of the family farm. Some states, including Iowa, have attempted to limit the power of corporations to engage in farming or obtaining land.¹⁴⁵ These statutory restrictions are generally "referred to as corporate farming laws, or anti-corporate farming laws."¹⁴⁶ Iowa is one of nine states which have laws prohibiting or limiting corporate farming.¹⁴⁷ "The primary goal of corporate farming laws is to protect the economic viability of family farms in light of the threats from competition with corporate-owned or corporate-managed farms."¹⁴⁸ Such laws might limit corporate farming by requiring that one family

141. O'Rourke Trusts, *supra* note 135.

142. LAPIANA, *supra* note 43, at 376–77.

143. *Id.*

144. *See id.* at 168–69.

145. *Corporate Farming Laws – An Overview*, THE NAT'L AGRIC. LAW. CTR., <http://nationalaglawcenter.org/overview/corporatefarminglaws/> (last visited Aug. 23, 2014).

146. *Id.*

147. *See* IOWA CODE §§ 9H.1, 9H.3A, 9H.4, 9H.5 (2013); THE NAT'L AGRIC. LAW CTR., *supra* note 145.

148. THE NAT'L AGRIC. LAW. CTR., *supra* note 145.

member lives on the farm to prevent absentee ownership.¹⁴⁹ Oftentimes, “family farm corporations” are exempt from corporate farming laws.¹⁵⁰

Iowa’s anti-corporate farming statutes “prohibit[] corporations, limited liability companies, and trusts—other than family farm corporations, authorized farm corporations, family farm limited liability companies, authorized limited liability companies, family trusts, authorized trusts, revocable trusts, or testamentary trusts—from acquiring an interest in any agricultural land in the state.”¹⁵¹ The exemptions require that shareholders be related, stockholders are natural persons, and that 60% of gross revenue over a three-year period have been derived from farming.¹⁵² Additionally, land may not be owned by non-profit corporations, by municipal corporations, or held for research or experimental purposes.¹⁵³ The laws are enforced through the county attorney or Attorney General, and violations can include fines and being forced to divest the land.¹⁵⁴ Regulation is maintained through annual reporting procedures to the Secretary of State.¹⁵⁵

It is important that such statutory restrictions continue during this period of high land prices because “[a]n aging population of farmers in Iowa, in particular, points to a watershed period in the next 10 to 15 years, when agricultural economists say half the state’s farmland will have to be passed down to heirs or sold to the highest bidders.”¹⁵⁶ State and federal policies such as these could influence who owns Iowa farmland, and determine whether trends that lead to large family farms will continue.¹⁵⁷

149. *Id.*

150. *See generally* IOWA CODE §§ 9H.1, 9H.3A, 9H.4, 9H.5; THE NAT’L AGRIC. LAW CTR., *supra* note 145.

151. Memorandum from The Cmty. Envtl. Legal Def. Fund on Anti-Corporate Farming Laws in the Heartland, <http://www.celdf.org/anti-corporate-farming-laws-in-the-heartland> (last visited Aug. 23, 2014) [hereinafter Memorandum].

152. *Id.*

153. *See* IOWA CODE §§ 9H.1, 9H.3A, 9H.4, 9H.5 (2013); *see also* Memorandum, *supra* note 151.

154. *See* IOWA CODE §§ 9H.1, 9H.3A, 9H.4, 9H.5 (2013); *see also* Memorandum, *supra* note 151.

155. Memorandum, *supra* note 151.

156. Lee Rood, *Consolidation is Closing Gates on a Generation of Farmers*, DES MOINES REG., July 24, 2005, <http://www.desmoinesregister.com/article/20050724/BUSINESS01/507240348/Consolidation-closing-gates-generation-farmers>.

157. *See id.* (describing effects federal and state policies have on encouraging corporate ownership over family farms).

V. CONCLUSION

To conclude, the current high land prices are problematic for the future of family farms. Ever increasing land prices in Iowa have been the focus of national attention. Factors such as high commodity prices have driven land prices to their current levels. Elevated land prices pose a threat to the family farm both in inheritance and corporate advantages. Because land prices are so high, and tax calculations for inheritance are based on current market values, there is potential that tax rates could be crippling for beneficiaries. Corporate investors are in a better financial position than small-time farmers to buy the high-priced land. There has been a consistent trend towards larger and larger farms. In order for the family farm to survive through the current land prices, attention must be given to estate planning from an individual standpoint, and legislatures must continue to create laws that will limit the abilities of corporate operations to take over Iowa farm land.