

## DIVORCE & FARMLAND: WHAT IS THE BEST SOLUTION?

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*“The fight to save family farms isn’t just about farmers. It’s about making sure that there is a safe and healthy food supply for all of us. It’s about jobs, from Main Street to Wall Street. It’s about a better America.” -Willie Nelson*

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### I. INTRODUCTION

A definitive grasp on the true divorce rate in America has been elusive to most researchers. Those who claim divorce rates are dropping attribute this decline to things such as couples marrying later in life, the rise of “love-marriages,” or a more careful and selective

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demeanor towards marriage.<sup>1</sup> However, those that argue divorce rates are still climbing say the risk for divorce has actually “gone up 40% since 1980;” the confusion in numbers is due, in part, to unreported divorces in current census info and prolonged or permanent separations that never actually end in divorce.<sup>2</sup>

Any way you look at it, the general consensus is that the current divorce rate, and future predicted divorce rate, is still hovering around 42 to 45 percent.<sup>3</sup> Additionally, one scholar hypothesizes, “if you throw in permanent separations that don’t end in divorce . . . then the overall likelihood of marital disruption is pushing 50 percent.”<sup>4</sup>

With a divorce percentage that is holding steady at such a high rate, the division of assets is an even more critical issue in pending separations. In 2010, the average married couple had \$257,100 in assets and around \$61,000 in debts.<sup>5</sup> This poses important questions about fairness and equity. Many states, including Iowa, have and continue to struggle with equitable division. A liberal view on the equitable division of assets, the increasing inability to save, and no set standard for the valuation of high value property such as land or farm equipment has caused some less than equitable asset divisions in many farmland divorces. An emerging theory is that a better place for these high priced (and often difficult) divorces is most likely outside of the courtroom.

## II. WHY IS FARMLAND IMPORTANT?

As of 2015, around 21 million full and part-time jobs “were related to the agricultural and food sectors . . . [with d]irect on-farm employment account[ing] for about 2.6 million of these jobs.”<sup>6</sup> In addition, U.S. agriculture and American farms “contributed \$136.7 billion” of the “\$992 billion [of] U.S. gross domestic product (GDP)” that came from agriculture, food, and other related industries.<sup>7</sup> Not only is farming and ranching important in

1. Claire Cain Miller, *The Divorce Surge is Over, but the Myth Lives on*, N.Y. TIMES (Dec. 2, 2014), [http://www.nytimes.com/2014/12/02/upshot/the-divorce-surge-is-over-but-the-myth-lives-on.html?abt=0002&abg=1&\\_r=2#permid=13480209](http://www.nytimes.com/2014/12/02/upshot/the-divorce-surge-is-over-but-the-myth-lives-on.html?abt=0002&abg=1&_r=2#permid=13480209).

2. See Steven Ruggles, Comment to *How We Know the Divorce Rate is Falling*, N.Y. TIMES (Dec. 4, 2014), <http://www.nytimes.com/2014/12/04/upshot/how-we-know-the-divorce-rate-is-falling.html?abt=0002&abg=1#permid=13498651>.

3. Scott Stanley, *What is the Divorce Rate, Anyway? Around 42 Percent, One Scholar Believes*, INST. FOR FAMILY STUD. BLOG (Jan. 22, 2015), <http://family-studies.org/what-is-the-divorce-rate-anyway-around-42-percent-one-scholar-believes/>.

4. *Id.* (quoting sociologist Paul Amato, Arnold and Bette Hoffman Emeritus Professor of Family Sociology and Demography at Pennsylvania State University).

5. JOHN J. TOPOLESKI, CONG. RESEARCH SERV., R43057, U.S. HOUSEHOLD SAVINGS FOR RETIREMENT IN 2010, at 9 (2013).

6. *Ag and Food Sectors and the Economy*, USDA, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy.aspx> (last updated Feb. 15, 2017).

7. *Id.*

sustaining food supplies in the U.S., but it is also an incredibly important part of our economic growth and development by providing jobs and stimulating exports.<sup>8</sup> Even Congress found that farming is “essential to . . . the competitive production of adequate supplies of food and fiber” in the United States.<sup>9</sup>

Farming is not just important to our economy as a whole, but it is also incredibly important to the families and individuals who run these farms. Of the 2.1 million farms in the United States, “97 percent [are] family-owned operations,” ranging in size from small to large.<sup>10</sup> A majority of current farmers say that they will continue farming for the rest of their lives and someday “would like their children to follow in their footsteps.”<sup>11</sup> This means that “[n]ot only is the land and its resources a farmer’s lifeblood today, [but] it represents the future for his family and its business.”<sup>12</sup> Many even argue that, because most farmers pass their land down to subsequent generations, “preserving the family farm is necessary to preserve rural America.”<sup>13</sup>

The costs and difficulties of running small family-owned farms are becoming an unbearable burden. Indeed, the number of new farmers has decreased 19.6 percent from 2007-2012.<sup>14</sup> Many attribute the difficulties of small farms to “market driven trend[s] toward[s] efficiency.”<sup>15</sup> Costs of production are much lower on larger farms, and technological advances in equipment and seed products require higher investment in capital—instead

8. *See id.*

9. Steven C. Bahls, *Agri-Business: The Way Ahead: Preservation of Family Farms*, 45 DRAKE L. REV. 311, 324 (1997); 7 U.S.C. § 2266(a) (1994).

10. Press Release, USDA, Family Farms are the Focus of New Agriculture Census Data (March 17, 2015), <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2015/03/0066.xml&printable=true>.

11. Mike Rosmann, *Facts About Global Farming, Food Reveal Diverse Picture*, IOWA FARMER TODAY (July 7, 2015), [http://www.iowafarmertoday.com/feature/columnists/farm\\_and\\_ranch\\_life/facts-about-global-farming-food-reveal-diverse-picture/article\\_a7bbfa9e-24c5-11e5-8026-b75027d95792.html](http://www.iowafarmertoday.com/feature/columnists/farm_and_ranch_life/facts-about-global-farming-food-reveal-diverse-picture/article_a7bbfa9e-24c5-11e5-8026-b75027d95792.html); Yemisi Akibu, *General Facts About Agriculture Today*, BELVYNA GLOBAL NIGERIA LTD. (June 3, 2015), <http://www.belvynaglobal.com/general-facts-about-agriculture-today>.

12. Akibu, *supra* note 11.

13. Bahls, *supra* note 9, at 325.

14. NAT’L AGRIC. STATISTICS SERV., USDA, ACH 12-3, 2012 CENSUS OF AGRICULTURE HIGHLIGHTS: FARM DEMOGRAPHICS 4 (2014), [http://www.agcensus.usda.gov/Publications/2012/Online\\_Resources/Highlights/Farm\\_Demographics/Highlights\\_Farm\\_Demographics.pdf](http://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/Highlights_Farm_Demographics.pdf) [hereinafter 2012 CENSUS OF AGRICULTURE HIGHLIGHTS]; *see also* Press Release, USDA, Census of Agriculture Countdown Begins for America’s Farmers and Ranchers (Mar. 15, 2017) (stating, the National Agricultural Statistics Service (NASS) conducts their Census of Agriculture every five years, with the next survey beginning in 2017. NASS Administrator Hubert Hammer also strongly urges that, “For farmers and ranchers, participation in the 2017 Census of Agriculture is their voice, their future, and their opportunity to shape American agriculture – its policies, services, and assistance programs – for years to come.”).

15. Bahls, *supra* note 9, at 325; *see also* MICHAEL BOEHLJE, UNIV. OF MINN. DEP’T OF AGRIC. & APPLIED ECON., ALTERNATIVE MODELS OF STRUCTURAL CHANGE IN AGRICULTURE

of labor—meaning the market is beginning to favor larger farms.<sup>16</sup> Additionally, because the cost of running a small farm is large, “employment opportunities that have higher incomes including benefits such as retirement programs, medical insurance, and other health programs compared to farm or household production activities,” are increasingly attractive.<sup>17</sup>

All of this considered, farming remains a crucial part of our economic development and an essential way of life for many Americans.<sup>18</sup> However, the arguably more common occurrence of divorce now threatens the way of life farmers and their families have come to know.

### III. HOW DIVORCE IS CAUSING FARMLAND TO DISAPPEAR

#### A. *Ownership, Value, and Transfer of Iowa Farmland*

“[F]arming is one of the most complicated business models in America. . . . Virtually all classes of assets and . . . debt forms can be found in a farming operation.”<sup>19</sup> This is perceived in the manner in which a farm is organized as a business. Most farm operations, 57 percent, are simply run under sole ownership or in joint tenancy between a husband and wife with no real business association.<sup>20</sup> Next, 3 percent of farms are run as partnerships, 7 percent as corporations, and 5 percent as limited liability companies.<sup>21</sup> Farm land and additional asset value also depends on a myriad of factors and can even be affected by the seasons.<sup>22</sup>

To help combat issues with farmland valuation, the Iowa Land Value Survey was initiated in 1941.<sup>23</sup> This survey specifically looks to “income and the interest (discount) rate used” to determine land values.<sup>24</sup> “Net farm income has been at record high levels the past

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AND RELATED INDUSTRIES 11 (1990) (“In essence, the competitive market is assumed to be both efficient and equitable and other market structures are evaluated against this norm.”).

16. Bahls, *supra* note 9, at 325; Michael Boehlje, *Cost Benefits of Family Farming*, in IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM? 361, 366-70 (Gary Comstock ed., 1987).

17. BOEHLJE, *supra* note 15, at 7.

18. See 2012 CENSUS OF AGRICULTURE HIGHLIGHTS, *supra* note 14, at 1 (stating that in 2012, “3.2 million farmers operated 2.1 million farms.”).

19. John S. Slowiaczek & David A. Domina, *The Equitable Distribution of Farms*, 18 J. AM. ACAD. OF MATRIM. L. 357, 368 (2003).

20. MICHAEL DUFFY & ANN JOHANNIS, IOWA STATE UNIV. EXTENSION & OUTREACH, FARMLAND OWNERSHIP AND TENURE IN IOWA 2012 11 (2014).

21. *Id.*

22. Slowiaczek & Domina, *supra* note 19, at 369.

23. MICHAEL D. DUFFY, IOWA STATE UNIV. EXTENSION & OUTREACH, C2-70, 2014 FARMLAND VALUE SURVEY 1 (2015) (“The survey is based on reports by licensed real estate brokers and selected individuals considered to be knowledgeable of land market conditions.”).

24. *Id.* at 3.

few years and interest rates have been at record low levels. This combination produced record high farmland values.”<sup>25</sup> According to this survey, the average dollar value per acre for farmland in 2014 was about \$7,943.<sup>26</sup>

The 2015 Land Values Summary conducted by the National Agricultural Statistics Service (NASS), a division of the USDA, found the average price per acre in Iowa at around \$8,000.<sup>27</sup> NASS and the USDA went even further by not only valuing the land itself, but also valuing the buildings on the land. The 2014 total value of farmland (meaning all crop land) and buildings (which includes barns as well as the marital home) in Iowa is \$259 billion.<sup>28</sup>

All of these numbers add up to record setting incomes earned by Iowa farmers.<sup>29</sup> However, although farm land is of increasingly high value in Iowa, “[p]rofits are [generally] plowed back into the farming operation rather than being invested or accumulated in the marital estate.”<sup>30</sup> This may give the appearance of a high accumulation of marital assets that are subject to division upon dissolution, but very little of the assets are actually liquid.<sup>31</sup> The question is what those farmers actually did with the increased income.

Some farmers appear to have saved it or paid down existing debt, but other farmers appear to have parlayed the income into more debt with additional land, new machinery, buildings and so forth. Many people are concerned there has been a significant amount of debt incurred over the past several years. This debt is not so much the traditional bank debt but borrowing from other sources.<sup>32</sup>

This debt problem is a severe issue for farmers on the verge or in the middle of a divorce.

### *B. Iowa is an Equitable Division State*

The problem created by farmers failing to save additional income is further complicated by the fact that farmland is generally gifted or inherited. Most farmland is acquired in one of four ways: (1) land was purchased; (2) land was received as a gift from a person living at the time of the transfer; (3) land was inherited; or (4) land was obtained in some other

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25. *Id.*

26. *Id.*

27. NAT’L AGRIC. STATS. SERV., USDA, LAND VALUES 2015 SUMMARY 8 (2015), <http://www.usda.gov/nass/PUBS/TODAYRPT/land0815.pdf>.

28. *Id.* at 16.

29. DUFFY, *supra* note 23, at 3.

30. Slowiaczek & Domina, *supra* note 19, at 360-61.

31. See DUFFY, *supra* note 23, at 4 (indicating that additional income from the family farm is being reinvested in farmland, machinery, or buildings and only a sale of these assets would allow for cash or liquid assets to be brought back into the marital home).

32. *Id.*

manner.<sup>33</sup> In 2012, only 27 percent of land was gifted or inherited, while 74 percent was purchased.<sup>34</sup> However, the report also indicates that anticipated transfer methods of farmland ownership will swing over the next five years. Over these subsequent five years, the primary method of transfer is anticipated to be via “will to family,” at 63 percent.<sup>35</sup> The next highest anticipated methods of transfer include 10 percent of transfers to occur via trust, and 9 percent of transfers to occur via gifts to family.<sup>36</sup>

These anticipated methods of transfer can create a difficult situation in equitable division states such as Iowa.<sup>37</sup> Although gifted or inherited property is not traditionally subject to division, each case must be decided upon its own facts,<sup>38</sup> and gifted or inherited property may be divided “upon a finding that refusal to divide the property is inequitable to the other party . . . .”<sup>39</sup> Equitable division, as mandated in Iowa, does not necessarily mean *equal* division, either.<sup>40</sup> In each case, the court considers what items are divisible, the value of those divisible assets, and how they should be divided between the parties.<sup>41</sup> “The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts.”<sup>42</sup>

This varies slightly from what are called “community property states.” Community property states, such as California, divide assets based on a determination of whether the property is either community or separate property.<sup>43</sup> Property acquired before the marriage is separate property and is retained by the spouse who owns it.<sup>44</sup> Property that is acquired during the marriage, however, is classified as community property and subject to division unless that property remains “traceable to a separate property source,” is acquired by gift

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33. *Id.* at 13 (according to the survey, land acquired “in some other manner” includes land “purchase[d] at less than fair market value” or land that was acquired “in a like-kind exchange”).

34. *Id.*

35. *Id.* at 26.

36. *Id.*

37. *See In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007) (“[M]arital property is to be divided equitably, considering the factors outlined in Iowa Code Section 598.21.”).

38. *Bowman v. Bowman*, 146 N.W.2d 333, 334 (Iowa 1996) (“[I]n determining what is ‘right’ in property division . . . no two cases are exactly alike . . . . A just determination of such issues is peculiarly dependent upon the facts of the case.”).

39. IOWA CODE § 598.21(6) (2017).

40. *In re Marriage of Hansen*, 733 N.W.2d at 702.

41. *In re Marriage of Driscoll*, 563 N.W.2d 640, 641-42 (Iowa Ct. App. 1997); *see also In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005) (stating the Iowa statutory scheme requires the court to first determine the property subject to division, then to divide the property in an equitable manner).

42. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996).

43. *See In re Marriage of Valli*, 324 P.3d 274, 276 (Cal. 2014).

44. *Id.*

or inheritance, or is earned or accumulated while the spouses were living separate or apart.<sup>45</sup> All property which is determined to be community or divisible is then split equally, or 50/50, between the parties.<sup>46</sup> This allows for much less property to be divided upon dissolution than under the equitable division theory used in Iowa.

Some courts also use a community property/equitable distribution hybrid. Courts in a hybrid jurisdiction, like Wisconsin, divide property under a “presumption in favor of equal division of marital property.”<sup>47</sup> However, “[t]he legislatively prescribed 50 percent presumption in awarding property division is a rebuttable one.”<sup>48</sup> A circuit court may only deviate from the presumption of equal division “after considering a lengthy and detailed list of statutory factors.”<sup>49</sup> Again, this offers more property to be subject to division, but with more hurdles than Iowa Courts require.

### *C. How Assets are Divided in an Equitable Division State*

The court must first look at what items are divisible.<sup>50</sup> In order to do this, both parties are required to disclose all property that is owned, as well as all debt.<sup>51</sup> In determining what is “marital” property, the “court looks for all marital assets that exist at the time of the divorce . . . .”<sup>52</sup> According to Iowa Code Section 598.21(5), “[t]he court shall divide *all* property, except inherited property or gifts received . . . by one party . . . .”<sup>53</sup> “This broad declaration means the property included in the divisible estate includes not only property acquired during the marriage . . . but property owned prior to the marriage . . . .”<sup>54</sup> Therefore, even separate property and property owned prior to marriage may be considered as a factor by the court “in exercising its role as an architect of an equitable distribution of property . . . .”<sup>55</sup> Factors considered by the court in their equitable distribution of the parties assets and debts include: (1) length of the marriage; (2) property brought to the marriage by each party; (3) contributions by both parties to the marriage; (4) age and physical and emotional health of the parties; (5) contribution by one party to the education, training, or increased earning power of the other; (6) the potential earning capacity of each party or

45. *Id.*

46. *Property and Debt in a Divorce or Legal Separation*, CAL. CT.: THE JUD. BRANCH OF CAL., <http://www.courts.ca.gov/1039.htm> (last visited Apr. 25, 2017).

47. *LeMere v. LeMere*, 663 N.W.2d 789, 793 (Wis. 2003).

48. *Id.*

49. *Id.*; *Jasper v. Jasper*, 318 N.W.2d 792, 795 (Wis. 1982).

50. *In re Marriage of Schultz*, No. 3-868, 2013 Iowa App. LEXIS 1195, at \*13 (Iowa Ct. App. Nov. 6, 2013).

51. *See id.*

52. *In re McDermott*, 827 N.W.2d 671, 678 (Iowa 2013).

53. IOWA CODE § 598.21(5) (2017) (emphasis added).

54. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005); *see also In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007) (reaffirming the broad inclusion of all property, except gifted or inherited property, in the *Schriener* analysis).

55. *In re Marriage of Schriener*, 695 N.W.2d at 496.

ability to become self-supporting; (7) desirability of awarding the family home to the party who retains primary physical custody of the children; (8) duration and amount of support awarded; (9) other economic circumstances relevant to the parties; (10) tax consequences to the parties; (11) written agreements between the parties; (12) provisions of any antenuptial agreement; and (13) any other factors the court may determine to be relevant in an individual case.<sup>56</sup>

If, considering all of the factors, there would still be inequity between the parties, the court may consider the statutorily exempt gifted or inherited property.<sup>57</sup> In its unrelenting search for equity, Iowa developed “a unique hybrid system that permits the court to divide inherited and gifted property if equity demands in light of the circumstances of a spouse or the children.”<sup>58</sup>

The court will consider five factors when deciding “whether it would be inequitable to exempt a spouse’s gift or inheritance from division.”<sup>59</sup> These factors include: (1) contributions of the parties toward the property; (2) the existence of any independent close relationship between the donor and the spouse of to whom the property was given; (3) separate contributions by the parties to their economic welfare which contribute to the preservation of the property; (4) the special needs of either party; and (5) any other matter which would render it plainly unfair to have the property set aside for the exclusive enjoyment of the receiving party.<sup>60</sup>

This exception in the statutory rules is seen in Iowa cases like *In re Boyd*, where the husband inherited a farm from his grandfather.<sup>61</sup> The husband and wife moved into the home for the last third of their marriage.<sup>62</sup> While there, the wife contributed to the improvements of the home, increasing its value.<sup>63</sup> The court stated an equitable distribution of the appreciated value of the inherited property “should be a function of tangible contributions and not the mere existence of the marital relationship.”<sup>64</sup> Because the wife contributed to the improvement of the property and maintained additional special needs due to illnesses,

56. See IOWA CODE § 598.21(5)(a)–(m).

57. *Id.* § 598.21(6) (stating, gifted or inherited property is not subject to division “except upon a finding that refusal to divide the property is inequitable to the other party . . .”).

58. *In re Marriage of Schriener*, 695 N.W.2d at 496.

59. *In re McDermott*, 827 N.W.2d 671, 679 (Iowa 2013); *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000).

60. *In re McDermott*, 827 N.W.2d at 679.

61. *In re Boyd*, No. 2-1023, 2013 Iowa App. LEXIS 147, at \*4 (Iowa Ct. App. Feb. 13, 2013).

62. *Id.* at \*9.

63. *Id.*

64. *Id.* at \*11; see also *In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa 1991) (indicating that the appreciated value of property may be divided when the appreciation is due to “the talent, time, and effort of the marital partners”); *In re Marriage of Richards*, 439 N.W.2d 876, 882 (Iowa Ct. App. 1989) (also indicating, “[a]n equitable distribution of the appreciated value should be a function of tangible contributions and not the mere existence of the marital relationship.”).



the court held “that equity requires that the \$25,000 lump sum property settlement award to [the wife] should be increased by \$175,000. The additional \$175,000 represents about 11% of the farm’s appreciation . . . .”<sup>65</sup> This ruling reversed the decision of the lower court that set aside the inherited property to the husband because doing otherwise would cause, “[the husband] to incur further debt on the farm or sell a portion of the farm in order to pay [his wife] . . . .”<sup>66</sup> The court’s discretion in the consideration of inherited or gifted property is also seen in *In re Marriage of Miller*, where the court allowed the wife to share in the value of the “livestock, crops, machinery, rent reduction, use of certain equipment, and wages” which the court found to have been given to both parties during the marriage.<sup>67</sup>

The second duty of the court is to set a value and divide the property that is subject to division, according to the enumerated factors in Iowa Code Section 598.21.<sup>68</sup> “In ascertaining the value of property, its owner is a competent witness to testify to its market value.”<sup>69</sup> Lower courts are also given great discretion in either “reject[ing] or accept[ing] evidence relating to value.”<sup>70</sup> There are no mechanical set rules for valuation of assets or debts in a divorce, which can cause additional issues with equitable distribution of farmland and assets associated with the farm. The court is allowed to consider expert testimony from both parties<sup>71</sup> who may determine value based on one of three valuation categories, which include the cost approach, the income capitalization approach, and the sales comparison approach.<sup>72</sup> All of these categories will tend to result in similar amounts,<sup>73</sup> but the court is allowed to choose the result that would, in their eyes, be most equitable between the parties.<sup>74</sup> The struggle courts encounter when determining value is noted in cases like *In re Marriage of Hansen*, where the court accepted the valuation of \$130,000 of the marital home from the wife’s real estate agent over the \$112,000 valuation the husband presented from a certified appraiser.<sup>75</sup> In the case *In re Marriage of Simon*, the court struggled with the balance of ordering an equalization payment from the spouse, who sought to retain the

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65. *In re Boyd*, 2013 Iowa App. LEXIS 147, at \*11.

66. *Id.* at \*5.

67. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996).

68. *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007); *see also* IOWA CODE § 598.21(5)(a)–(m) (2017).

69. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007).

70. *In re Marriage of Schultz*, No. 3-868/13-0070, 2013 Iowa App. LEXIS 1195, at \*16 (Iowa Ct. App. Nov. 6, 2013); *In re Marriage of Richards*, 439 N.W.2d 876, 881 (Iowa Ct. App. 1989).

71. *In re Marriage of Hansen*, 733 N.W.2d at 703 (using a value of a marital home as suggested by an appraisal from a real estate agent).

72. *Approaches to Value*, AM. SOC’Y OF APPRAISERS, <http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value> (last visited Apr. 25, 2017).

73. *Id.*

74. Daniel L. Bray & Tony G. Rees, Presentation and Summary at the Annual Iowa Family Law CLE: The Farm Divorce 24 (2008).

75. *In re Marriage of Hansen*, 733 N.W.2d at 703.

farmland, with the fairness to the other spouse by stating, “when one of the parties expresses a strong interest in preserving the farm, the court should do everything possible to respect that desire. Yet, a party’s interest in preserving the farm should not work to the detriment of the other spouse in determining an equitable settlement.”<sup>76</sup>

In summary, problems for divorcing farmers in equitable distribution states include: (1) much more property that is subject to division; (2) a lack of proper savings and additional accrual of debt on farmland; and (3) difficulty in setting valuation standards for assets and liabilities. By trying to avoid forcing parties into continued business relationships,<sup>77</sup> and attempting to offset inequitable distribution of assets, courts are seeking to award non-owning spouses a larger percentage of assets not attributed to farming.<sup>78</sup> Courts also seek to award large equalization payments that a farmer with assets that are relatively not liquid cannot afford.<sup>79</sup> In some cases it may even force parties to liquidate their assets and sell their land despite a strong desire not to.<sup>80</sup> The complexities and “unique social and financial aspects of farming make it harder for families to separate” and more often result in rulings that one or both of the parties do not agree with.<sup>81</sup>

#### IV. ALTERNATIVE DISPUTE RESOLUTIONS ARE LIKELY A BETTER SOLUTION

“A farm that has passed from generation to generation is not just an asset to be divided but a way of life. Divorce directly challenges the ability . . . to preserve the farm for the next generation.”<sup>82</sup> Although farmland is traditionally gifted or inherited from one generation to the next, meaning it should be left untouched by courts,<sup>83</sup> courts will regularly consider gifted or inherited property divisible to avoid injustice.<sup>84</sup> However, “[t]he main family

76. *In re Marriage of Simon*, No. 14-0735, 2014 Iowa App. LEXIS 1256, at \*10 (Iowa Ct. App. Dec. 24, 2014) (internal citation omitted); see also *In re McDermott*, 827 N.W.2d 671, 683 (Iowa 2013).

77. See *In re Marriage of Lundtvedt*, 484 N.W.2d 613, 615 (Iowa Ct. App. 1992).

78. See *In re Marriage of Lacaeyse*, 461 N.W.2d 475, 478 (Iowa Ct. App. 1990).

79. See *In re Boyd*, No. 2-1023, 2013 Iowa App. LEXIS 147, at \*13 (Iowa Ct. App. Feb. 13, 2013).

80. *In re Marriage of Simon*, 2014 Iowa App. LEXIS 1256, at \*9 (“An equalization payment is preferable when the court cannot divide an asset easily and there are not enough liquid assets in the marital estate to achieve an equitable distribution. The easiest way for a court to divide property is to order the parties to sell the land and split the proceeds.”).

81. Mike Rosmann, *Reducing the Impact of Divorce*, IOWA FARMER TODAY (Sept. 28, 2012, 12:35 PM), [http://www.iowafarmertoday.com/feature/columnists/farm\\_and\\_ranch\\_life/reducing-the-impact-of-divorce/article\\_d02e0dec-0992-11e2-a297-001a4bcf887a.html](http://www.iowafarmertoday.com/feature/columnists/farm_and_ranch_life/reducing-the-impact-of-divorce/article_d02e0dec-0992-11e2-a297-001a4bcf887a.html).

82. Slowiaczek & Domina, *supra* note 19, at 357.

83. See IOWA CODE § 598.21(5) (2017) (“The court shall divide all property, except inherited property or gifts . . . equitably between the parties . . .”).

84. *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982).

farm asset, the land, is not easily divisible without threatening the viability of the farm.”<sup>85</sup> This does not only include the land. It may also include livestock, machinery, planted crops, stored crops, homestead buildings, improvements, and other farm implements.<sup>86</sup>

Growing trends to combat issues related to improper division of farms and farm assets include liquidation when the assets are not easily divisible, large equitable division payments which are paid out over a few years, and partnerships or ongoing agreements. Better solutions to this growing problem may come in the form of diligent research and negotiation—outside the courtroom—both before a marriage begins and after it starts to deteriorate.<sup>87</sup>

#### A. *Current Solutions to Farm Division in Divorce*

Current solutions to farm asset division in Iowa divorces include liquidation, equalization payments, and partnership or on-going agreement interests.<sup>88</sup> These solutions include both positive and negative aspects but generally leave the parties feeling cheated.<sup>89</sup>

A first option is liquidation. Liquidation appears to be the easiest solution, but it is viewed as a last resort for most courts.<sup>90</sup> Liquidation is generally the best option for a failing business. When a farm is not, “economically viable . . . it should be sold and the proceeds [should be] divided between the parties.”<sup>91</sup> When a failing farm owner also has the misfortune of enduring a split in their family, liquidation is easiest. This, however, is not the best option for those who enjoy a successful or profitable business, and most Midwest states—including Iowa—“place real emphasis on preservation of farming operations when doing so is realistically possible . . . .”<sup>92</sup> The Iowa Supreme Court in *In re McDermott* stated, “[t]he easiest way for a court to divide property is to order the parties to sell the land and

85. Jesse J. Richardson, Jr. & L. Leon Geyer, *Ten Limitations to Ponder on Farm Limited Liability Companies*, 4 DRAKE J. AGRIC. L. 197, 200 (1999).

86. See generally *In re Marriage of Schnur*, No. 8-118, 2008 Iowa App. LEXIS 314, at \*4 (Iowa Ct. App. May 14, 2008) (refusing to accept a farm corporation appraisal because it only considered tax returns and not additional farm assets like crops yet to be sold, grain bins, and other farm equipment); see also Slowiaczek & Domina, *supra* note 19, at 367 (“One should not overlook growing crops, machinery, livestock, homestead improvements, and other farm related assets.”).

87. *In re Marriage of Hanson*, 475 N.W.2d 660, 662 (Iowa Ct. App. 1991) (stating what constitutes a just and equitable award depends on the particular circumstances of each case after consideration of all the recognized criteria).

88. See Slowiaczek & Domina, *supra* note 19, at 372–73.

89. See Cindy Gleason, Fin. Advisor, Drake Law Sch., Family Law Class Discussion on Farmland Valuation (Nov. 3, 2015) (discussing how proper farm valuation can help parties understand why a division may take place and that they are the ones actually choosing it).

90. *In re McDermott*, 827 N.W.2d 671, 683 (Iowa 2013).

91. Slowiaczek & Domina, *supra* note 19, at 366; See also *Linrud v. Linrud*, 552 N.W.2d 342, 346 (N.D. 1996) (stating, preserving the family farm should not come at the windfall of the other spouse).

92. Slowiaczek & Domina, *supra* note 19, at 367.

split the proceeds. . . . However, a forced sale is not a preferable method to divide marital assets . . . [and] our precedent acknowledges the public policy in favor of preserving family farming operations[.]”<sup>93</sup> This clearly indicates that liquidation is a viable option but is generally viewed as a last resort in Iowa.

A second option courts look to are equalization payments. These payments are generally ordered when a farm appears to still have potential profitability. These payments can be ordered with or without interest paid out over time.<sup>94</sup> The payments are then structured in such a way to avoid detriment to the viability of the farm or liquidation.<sup>95</sup> “However, where the evidence suggests that the farmer has no reasonable likelihood of meeting his or her support obligations and making a profit from the farm, the avoidance of liquidation seems questionable.”<sup>96</sup> This is more definitively demonstrated in the Iowa Supreme Court case *In re McDermott*.<sup>97</sup>

In *In re McDermott* the divorcing husband wanted to keep the family farm and continue to work the land.<sup>98</sup> The husband’s wife agreed that he should be allowed to keep the farm “but want[ed] her fair share of the assets.”<sup>99</sup> However, there was little to no liquid assets or cash available to the husband; thus, the court ordered an equalization payment.<sup>100</sup> Despite the farmer’s contention that the equalization payment would force him “to take a mortgage on the property,” which was unrealistic because “the farming operation’s cash flow [could not] support [said] mortgage payments,” the court affirmed the order for the equalization payment to the wife.<sup>101</sup>

A third option courts will turn to is partnership or ongoing interest agreements. This, however, is also a very unfavorable option for the court and seldomly used.<sup>102</sup> Some courts have reasoned that “[t]o inject an outsider—especially an ex-spouse of one of the family members—would be unfair to other stockholder members,” as well as unfair to the ex-spouse.<sup>103</sup> This option is also very rarely used because a main objective of divorce is to end

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93. *In re McDermott*, 827 N.W.2d at 683; *see also* Bahls, *supra* note 9, at 325 (stating, advocates of the family farm “argue that preserving the family farm is necessary to preserve rural America.”).

94. Slowiaczek & Domina, *supra* note 19, at 373; *see also* *In re Marriage of Callenius*, 309 N.W.2d 510, 514–15 (Iowa 1981).

95. Slowiaczek & Domina, *supra* note 19, at 373.

96. *Id.*

97. *See In re McDermott*, 827 N.W.2d at 671.

98. *Id.* at 682.

99. *Id.*

100. *Id.* at 682–83.

101. *Id.* at 683.

102. Slowiaczek & Domina, *supra* note 19, at 372.

103. *Grace v. Grace*, 380 N.W.2d 280, 285 (Neb. 1986).

the continuing relationship between the parties.<sup>104</sup> Allowing an ex-spouse to continue to have a say in the business would defeat the purpose of severing the relationship.<sup>105</sup>

Liquidation fails to account for the spouse who wants to continue to farm the land.<sup>106</sup> Equalization payments may force the remaining spouse into debt and ultimate foreclosure.<sup>107</sup> An order for ongoing partnership interests or shares may make running the farm business awkward for both the remaining business owners and the ex-spouse.<sup>108</sup> Because of this, allowing (or forcing) parties to discuss alternatives outside of the courtroom may be a better solution.

*B. Should Those Who Own Farmland be Required to get a Prenuptial Agreement?*

Divorces are especially burdensome where one spouse owns a business, like a family farm. It has been argued that all persons who own a family-owned business, like a farm, should be required to sign a prenuptial agreement.<sup>109</sup> This would remove arguments about property ownership from the divorce settlement, making for a smoother dissolution.<sup>110</sup> Adequate consideration of the “what ifs” before a marriage would protect both parties from undue headache—and heartache—should marital problems arise.<sup>111</sup>

Some theorists also strongly believe that failure to consider a prenuptial agreement before marriage, for those who are farm or small business owners, is a negligent practice.<sup>112</sup> Failure to plan ahead can wreak havoc on a business,<sup>113</sup> while those who adequately discuss their financial situations prior to marriage have fewer problems and endure less disruption to the family farm business.<sup>114</sup>

This theory is hindered by the stigma that is placed on prenuptial agreements in today’s society.<sup>115</sup> “Most farm couples don’t want to devise a prenuptial agreement before they marry. At the time of marriage, they want and expect to make their relationship work and

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104. *In re Marriage of Lundtvedt*, 484 N.W.2d 613, 615 (Iowa Ct. App. 1992) (stating, to allow continued joint ownership of a business would “only aggravate an already bitter relationship.”).

105. *See id.*

106. *In re McDermott*, 827 N.W.2d at 683.

107. *Id.*

108. *Grace*, 380 N.W.2d at 285.

109. *See Rosmann*, *supra* note 81.

110. *Id.*

111. *Id.*

112. Richardson & Geyer, *supra* note 85, at 211–12.

113. *Id.* at 212.

114. *Id.* at 212 n.97.

115. Rosmann, *supra* note 81.

they usually don't want to consider sticky issues that imply their partnership might not succeed."<sup>116</sup>

Additionally, a restriction on the right to marry, like the requirement of signing a pre-nuptial agreement, is not likely to be a feasible restriction that can be placed on parties seeking to be married. A person's right to choose his or her relationships and whom he or she marries is a highly protected right and has only been made stronger through recent case law.<sup>117</sup> The United States Supreme Court in *Obergefell v. Hodges* held fundamental liberties that are protected by the Fourteenth Amendment's Due Process Clause "extend to certain personal choices central to individual dignity and autonomy . . ."<sup>118</sup> Due Process under the Fourteenth Amendment holds that marriage is a fundamental right.<sup>119</sup> Any law that hinders the fundamental right to marry is evaluated under strict scrutiny, which requires a compelling governmental interest that is narrowly tailored to fit the objective of the law.<sup>120</sup>

The most insightful United States Supreme Court case in this instance is *Zablocki v. Redhail*.<sup>121</sup> This case involved a man who was prohibited from remarrying until he made his unpaid child support payments.<sup>122</sup> The Court held the Wisconsin law banning marriage for those who had unpaid child support was not adequately serving the governmental purpose of making sure children did not become wards of the state and unduly hindered a person's fundamental right to marry.<sup>123</sup>

Although it seems most logical for those entering a marriage with considerable farm assets to be required to first obtain a prenuptial agreement (to better serve the compelling governmental interest of making sure that family farms are able to continue to be prosperous at all costs), a law enforcing prenuptials may not be narrowly tailored enough to serve this governmental purpose. Even if the requirement of entering into a prenuptial agreement stops some parties from getting married and better protects farmland in divorce scenarios, issues such as *quantum meruit*,<sup>124</sup> common law marriage, and promissory estoppel may render a non-land owning party eligible for rights in the property anyway. Although logically

116. *Id.*

117. *See* *Lawrence v. Texas*, 539 U.S. 558, 575, 578 (2003) (holding statutes that ban the private conduct of two people, even if they are of the same gender, cannot be justified); *Turner v. Safley*, 482 U.S. 78, 99–100 (1987) (holding prisoners could not be denied the right to marry); *Loving v. Virginia*, 388 U.S. 1, 2 (1967) (invalidating bans on interracial unions).

118. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2597 (U.S. 2015).

119. *See generally id.* at 2597-607 (stating that the right to marry is a fundamental one and the court must respect the basic reasons why the right to marry has long been protected). *See also* U.S. CONST. amend. XIV, § 1.

120. *See Loving*, 388 U.S. at 11 (requiring the most rigid scrutiny).

121. *See generally Zablocki v. Redhail*, 434 U.S. 374 (1978).

122. *Id.* at 376.

123. *Id.* at 390-91.

124. *Quantum Meruit*, BLACK'S LAW DICTIONARY (6th ed. 1990) (defining *quantum meruit* as a principle that "measures recovery under [an] implied contract to pay compensation as reasonable value of services rendered.").

sound, the requirement of a prenuptial agreement before marriage for those who own farm land is not legally feasible.

### *C. Are Better Options Available?*

Although prenuptial agreements would be the easiest requirement, as discussed above, it does not appear to be legally available. Still, other options outside of the courtroom may be useful. Agreements to only receive additional spousal support when a farm is profitable, mediation, or collaborative divorces offer better resolutions for divorcing parties who do not want to feel as though the decision making process has been taken from them. Proper valuation of assets before any of these decisions are made can also be a crucial step in getting a better result for all parties involved.

#### *i. Financial Valuers & Advisors*

Once a divorce is initiated, the court requires several prerequisites that must be completed by the parties prior to entering a final decree.<sup>125</sup> These requirements include conciliation or mediation efforts,<sup>126</sup> participation in the “children in the middle” program for those with children,<sup>127</sup> and the filing of financial affidavits.<sup>128</sup> In a farm divorce, like any divorce, filing financial affidavits is important because when all parties disclose their assets, a better evaluation of who gets what can occur.<sup>129</sup> However, making this an even more crucial step in the process for those who own a farm or small business would be a great method in getting better results in a farm divorce or where one spouse owns a small business.

Once the court has ordered each side to produce their financial affidavits, parties should be required to call in a “farm valuation specialist.”<sup>130</sup> This can actually help both parties and their attorneys get a better view of what they actually have to divide.<sup>131</sup> There are financial valuation specialists in Iowa who are specifically trained in collaborative divorce tactics, and who can make better identifications of assets and their value to help avoid heated disputes and days of litigation in the courtroom.<sup>132</sup> Brian Crotty, Ronald Nielsen, and Alan Ryerson, speakers at the October 2015 Family Law CLE in Des Moines, Iowa, stated that by properly evaluating what assets the couple actually has and what those assets are actually worth, parties more likely feel like they are in control of what they are agreeing

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125. See IOWA CODE §§ 598.15–.16 (2017).

126. *Id.* § 598.16(3).

127. *Id.* § 598.15(1).

128. *Id.* § 598.13.

129. See *Divorce or Dissolution of Marriage*, IOWA ST. B. ASS’N, <http://www.iowa-bar.org/?page=Divorce> (last visited Apr. 25, 2017).

130. See, e.g., Gleason, *supra* note 89.

131. *Id.*

132. Brian Crotty, Bus. Appraiser & Fin. Specialist, HDH Advisors, Expert Panel Discussion: What You Always Wanted to Ask a Financial Expert but Were Afraid to Ask (Oct. 30, 2015).

on.<sup>133</sup> The income for many small businesses will be what these business owners have to use for spousal support.<sup>134</sup> This financial burden is what can ruin a small business or even a family-owned farm.<sup>135</sup> These financial experts can also come in as an impartial third party.<sup>136</sup> They do not have to, and in-fact do not want to, take sides.<sup>137</sup> This again can give parties a better grasp on what the reality of their situation is.

Not only can financial experts come in to the divorce process to help evaluate proper value of the parties' property, but an impartial third-party, financial advisor can also be brought in to determine how much the parties actually need to live on.<sup>138</sup> Ms. Cindy Gleason, a financials coach with more than twenty years of experience, stated that her standard practice is to evaluate the lifestyles of the parties.<sup>139</sup> Ms. Gleason is also able to evaluate what income is visible and what is missing.<sup>140</sup>

Additionally, Gleason stated her analysis also factors in tax consequences that are not easily determined by the courts. "Judges don't have the ability to know the tax consequences of their rulings. A financial advisor can help tell what the parties will actually get, after taxes."<sup>141</sup> These third-party valuations will supplement the financial statements already required by the courts and give the divorcing parties a more comprehensive picture of what type of division is actually fair and equitable. Courts should begin to require not only financial statements but also certified financial valuations and budgets for those enduring a divorce with farm land.

#### *ii. Profit Payments*

As discussed, *supra*, in section A, "Current Solutions to Farm Division in Divorce," partnership or ongoing company interests may not be a desired option. However, agreeing to receive payments only when the farm has a profitable year may be a better option for some divorcing parties. Courts have often agreed to divorce settlements that allow for an ex-spouse to receive a bump in spousal support when the other spouse is primarily paid in

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133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. See BRIAN CROTTY, HDH ADVISORS, <http://www.hdhadvisorsllc.com/wp-content/uploads/2015/09/Brian-Crotty-Bio.pdf> (last visited Apr. 25, 2017) (listing a primary reason he helps with financial evaluations are for marriage dissolutions).

138. Gleason, *supra* note 89.

139. *Id.*

140. *Id.*

141. *Id.*



bonuses.<sup>142</sup> This would also allow for ex-spouses to “ride the wave” of uncertain profitability together.<sup>143</sup> This would allow the non-farm owning spouse to profit when the farm itself profits, and not unduly burden the land owning spouse when the farm is not profitable.

However, this solution may also create its own special problem. The farm-owning spouse may try to hide assets or make it appear that the farm was not as profitable as it actually was at a given time. One solution may be to have both parties agree to a single “appraiser” or “farm valuation specialist” who will thoroughly evaluate the actual value of the farm at the end of each fiscal year.<sup>144</sup> A proper evaluation of assets before and during a divorce would also make these annual appraisals easier and more helpful. A second solution to help avoid deception of one previous spouse to the other would be to base inflation payments on average crop yields each year. This could offer a more concrete and less ambiguous number that can be easily determined each year at a specific time previously agreed to by the parties. When crops yield a high return, a higher percentage can then be paid to the non-farm owning spouse.

### *iii. Mediation*

Mediation, or conciliation efforts, is already required by courts in Iowa.<sup>145</sup> However, it should be taken more seriously. Mediators are called in to be neutral third-parties in divorce disputes.<sup>146</sup> These mediators facilitate bargaining between the parties “to reach a mutually acceptable settlement agreement . . . .”<sup>147</sup> This process “is said to be empowering to the parties when properly done and to result in less post divorce litigation.”<sup>148</sup> Again, both financial statements and mediation are required by the courts, and notice of said requirements is automatically sent out upon the filing of a divorce petition.<sup>149</sup> By requiring better financial planning and valuation early in the process, it may be even more likely parties will be satisfied with any mediation settlement they discuss.<sup>150</sup> Additionally, “[r]ecent studies in Iowa show that mediation results in settlement of all or part of the issues in dispute in about 75% of cases.”<sup>151</sup> Even when settlement does not occur, mediation is shown to help

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142. Email from Amy Skogerson, Attorney & Adjunct Professor, Drake Univ. L. Sch., to author (Feb. 24, 2016, 01:36 CST).

143. *Id.*

144. *See Approaches to Value*, *supra* note 72.

145. IOWA CODE § 598.16(3) (2017).

146. JANET LEACH RICHARDS, *MASTERING FAMILY LAW: ALTERNATIVE DISPUTE RESOLUTION* 180 (2009).

147. *Id.* at 180-81.

148. *Id.* at 181.

149. *See* IOWA CODE § 598.16(2); *see also* IOWA CODE § 598.13(1)(a).

150. RICHARDS, *supra* note 146, at 181 (stating it is not uncommon to have a financial advisor, who is trained in mediation, help with mediation process).

151. *Mediation: Questions & Answers about Family Law Mediation*, SKOGERSON L., P.C., <http://www.raccoonriverlaw.com/law-services/mediation/> (last visited Apr. 25, 2017) [hereinafter *Mediation*].

narrow the issues that need to be litigated between the parties.<sup>152</sup> <sup>153</sup> Again, parties who participate in mediation “are generally more satisfied with agreements reached through their own mutual efforts than with court orders entered by a judge after an emotional, time consuming and expensive trial.”<sup>154</sup>

*iv. Collaborative Divorces*

A final solution that parties should consider in a high-asset-value divorce, such as a divorce involving farmland, is a collaborative divorce.<sup>155</sup> Collaborative divorce “is a creative, alternative process for divorce that utilizes specially trained attorneys and other professionals who work together as a team . . . .”<sup>156</sup> The emphasis this process places on the use of other professionals, such as financial advisors and valutors, would encourage divorcing parties to consider the entire pool of interconnected issues and assets they are dealing with. This, in turn, will allow all parties to make better and more informed decisions about how property should be divided among the divorcing couple.

A collaborative divorce allows parties and their attorneys to work outside of the courtroom and is commonly referred to as “no court divorce.”<sup>157</sup> It allows parties to also be more creative in their solutions to find a plan that is right for them.<sup>158</sup> The “ride the wave” solution mentioned above is a solution that may fall outside the scope of what a court is willing to consider, but it can be something that parties can agree on in a collaborative divorce setting.<sup>159</sup>

Professional collaborative law attorney, Amy Skogerson, argues that, although collaborative divorces may not be less expensive than traditional divorces, “most collaborative participants report being pleasantly surprised by how much they were able to accomplish in their collaborative divorce and how much healthier their divorce went as compared to

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152. *Id.*

153. A stronger push by the court system for parties to participate in mediation would also likely reduce the number of cases that are submitted to the court system each year, or at a minimum, would reduce the time and effort it would take for the court to hear and decide these issues.

154. *Mediation*, *supra* note 151.

155. *Collaborative Law: Questions & Answers About Collaborative Law*, SKOGERSON L., P.C., <http://www.raccoonriverlaw.com/law-services/collaborative-law/> (last visited Apr. 25, 2017) [hereinafter *Collaborative Law*].

156. *Id.*

157. *Id.*

158. AMY SKOGERSON, EXAMPLE REAL PROPERTY – FARM LAND COLLABORATIVE LAW SETTLEMENT 1; Email from Amy Skogerson, *supra* note 141 (Mrs. Skogerson was able to work with another collaborative law attorney to find common ground for settlement without setting a court date).

159. Email from Amy Skogerson, *supra* note 142 (this settlement allowed for the couple to decide upon a lien on the farmland property instead of a large equalization payment that was to be made all at one time).

friends and family who utilized the traditional litigation oriented divorce process.”<sup>160</sup> Also, similar to mediation, studies tend to show parties “are generally more satisfied with and committed to agreements reached through their own mutual efforts . . . .”<sup>161</sup>

#### V. CONCLUSION

Family farms and farmland are a vital part of our American society. They are not only important to sustaining our food sources, but they are also important to the thousands of families who make their living this way. Divorce and the harmful ways in which assets are currently divided in Iowa also threaten to diminish this important aspect of American life. A better solution is to keep these high-asset-value divorces out of the courtroom as often as possible. The use of financial valuations and financial advisors should be a required part of any high-value farmland divorce to help parties truly understand what they have and what it is worth. This should then be followed by mediation or collaborative divorce solutions, which will ensure parties are more satisfied with their decisions and help prevent any future litigation over disappointing settlements.

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160. *Collaborative Law*, *supra* note 155.

161. *Id.*