

# THY WILL BE DONE: ISSUES IN FAMILY FARM TRANSITIONS BETWEEN THE FARMERS, THEIR FAMILY, AND NEW AGRARIANS

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## I. INTRODUCTION

Today, the American farming industry remains a family-dominated enterprise.<sup>1</sup> Of the 2,204,792 farms in the country approximately 96% are family operated,<sup>2</sup> and account for 89% of all domestic food production.<sup>3</sup> Given the United States' reliance on family farms for its food security, the importance of the family farm cannot be understated.

Unlike their corporate counterparts, family farm operators cannot extend their natural lives solely based on their operation's commercial success.<sup>4</sup> To ensure the stability of the industry—and to continue their family legacy—farmers have historically relied on intergenerational succession for sustainable transitions of their operations.<sup>5</sup> Traditionally, this has been predicated upon the voluntary conveyance of the parent's assets—both the land and the business—to their surviving family, either in their lifetime or through inheritance.<sup>6</sup> Through this method, the continuation of the family operations is secured and, if the business had been conveyed during the lifetime of the parent, the income of two or more generations is ensured.<sup>7</sup> The issue is that intergenerational succession of the family farming operation through *inter vivos* transfers or inheritance is largely idyllic for it does not account for the domestic relationships within the familial unit or operational transfers outside of the family.<sup>8</sup> Several persistent issues have also complicated the efficacy of traditional succession.

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1. See No, Really, Iowa's Farms are Almost Entirely Family Owned, IOWA CORN (Mar. 9, 2017), <https://www.iowacorn.org/about/news/no-really-iowas-farms-are-almost-entirely-family-owned/> [<https://perma.cc/W3GD-HE66>].

2. See *id.*; *Family Farms*, NAT'L INST. OF FOOD & AGRIC. (Jan. 18, 2022, 7:38 PM), <https://nifa.usda.gov/family-farms> [<https://perma.cc/C35T-QNBX>].

3. James M. MacDonald and Robert A. Hoppe, *Large Family Farms Continue To Dominate U.S. Agricultural Production*, U.S. DEP'T OF AGRIC. (Mar. 6, 2017), <https://www.ers.usda.gov/amber-waves/2017/march/large-family-farms-continue-to-dominate-us-agricultural-production/> [<https://perma.cc/6MKB-Z623>].

4. See generally, Arie de Geus, *The Living Company*, HARV. BUS. REV., Mar.-Apr. 1997, <https://hbr.org/1997/03/the-living-company> [<https://perma.cc/L2GR-5HWV>] (discussing that the lifespan of a corporation is measured by its entrepreneurial success).

5. See Derrell Peel et al., *Drivers of Agricultural Transition*, 28 CHOICES, no. 2, 2013, at 1, 2; Elizabeth Garner & Ana Paula de la O Campos, *Identifying the "family farm": An informal discussion of the concepts and definitions* 12-13 (Food & Agric. Org. of the U.N., Working Paper No. 14-10, 2014), <http://www.fao.org/3/a-i4306e.pdf> [<https://perma.cc/VWS5-QSPU>].

6. See Garner & Paula de la O Campos, *supra* note 5.

7. See *id.*

8. See generally *id.*

The most obvious is the increasing average age of the farmers.. According to the 2017 Agricultural Census, the average age of the American farmer is 57.5 years.<sup>9</sup> While an aging demographic generally does not pose an issue, their share of land ownership is disproportionately large.<sup>10</sup> In a 2017 survey conducted by professors at Iowa State University, approximately 60% of all farmland in the state of Iowa was owned by persons 65 years or older.<sup>11</sup> This older average age of farmland owners has created large land blocks which serve as the primary barrier preventing young farmers from entering into the agricultural industry and accessing land ownership.<sup>12</sup>

Another trend that illustrates the dominance of traditional succession methods is the decline in the use of wills as an estate planning tool.<sup>13</sup> Of the entire United States population, only 44% of all citizens, and 56% of individuals between the ages of 50 and 64, have a will.<sup>14</sup> Though the study relies on sampling of the general population, it is nonetheless indicative of an increasing portion of the population are relying less on wills as an estate planning instrument.<sup>15</sup> Intestacy may provide a default regime to distribute the assets of a farm estate in the absence of a will, but the business practices of the farm will evade its grasp.<sup>16</sup> Likely as a result in the decline of wills, the same 2017 survey discussed above also found an increasing number of farms are being held in trust.<sup>17</sup>

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9. Elizabeth Creech, *1 Tool and 10 Takeaways: The 2017 Census of Agriculture*, U.S. DEP'T OF AGRIC. (Apr. 18, 2019), <https://www.farmers.gov/connect/blog/science-and-technology/1-tool-and-10-takeaways-2017-census-agriculture> [<https://perma.cc/YSU4-8B7D>] (noting this was 1.2 years older than 2012's average).

10. *See generally id.*

11. WENDONG ZHANG ET AL., IOWA FARMLAND OWNERSHIP AND TENURE SURVEY, 1982-2017: A THIRTY-FIVE YEAR PERSPECTIVE 3 (2018), <https://store.extension.iastate.edu/product/Iowa-Farmland-Ownership-and-Tenure-Survey-1982-2017-A-Thirty-five-Year-Perspective> [<https://perma.cc/KSS3-TBTA>] (discussing further that 35% of farmland is owned just by people 75 years or older).

12. *See id.*; SOPHIE ACKOFF ET AL., BUILDING A FUTURE WITH FARMERS II: RESULTS AND RECOMMENDATIONS FROM THE NATIONAL YOUNG FARMER SURVEY 10 (2017), [https://www.youngfarmers.org/wp-content/uploads/2019/03/NYFC-Report-2017\\_LoRes\\_Revised.pdf](https://www.youngfarmers.org/wp-content/uploads/2019/03/NYFC-Report-2017_LoRes_Revised.pdf) [<https://perma.cc/EEF3-LNEQ>].

13. *See generally* Jeffery M. Jones, *Majority in U.S. Do Not Have a Will*, GALLUP (May 18, 2016), <https://news.gallup.com/poll/191651/majority-not.aspx> [<https://perma.cc/7YQK-KV22>].

14. *Id.* (noting approximately 51% of all citizens had a will in 2005).

15. *See id.*

16. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 2.1 (AM. L. INST. 1999); Garner & Campos, *supra* note 5 (discussing the reliance of training by family to prepare successor to operate the family farm).

17. *See* ZHANG ET AL., *supra* note 11, at 11.

Generally, the disposal of a farm—both the land and the business—is dependent on the intent of its owner.<sup>18</sup> As the United States continues to emphasize and safeguard the freedom of disposition,<sup>19</sup> it is important to recognize the lingering problems with traditional estate disposition methods and the adverse effects of over reliance on existing legal structures. The purpose of this Note is to discuss the issues with the traditional instruments used in the succession of family farms. For this analysis, this Note will rely upon Iowa and federal legal authority, and the common law.

The importance of a farmer's intent as it relates to operational succession cannot be understated.<sup>20</sup> With the increasing age of the farming population in America and the stagnation in family farm successions, the states and their legal professionals must seek to adapt to the new realities facing the sustainability of family farms and the success of their transitions. In order to do so, they must seek to educate farmers about their options and promote communication between farmers and their potential successors to ensure successful transitions.

## II. PROBATE

Normally the disposition of an individual's estate is carried out through the probate courts, absent the use of a will substitute.<sup>21</sup> Central to probate proceedings is the determination and assessment of the actual or presumed testamentary intent of the decedent. A court's analysis is framed by either a statutory intestacy succession regime or a will instrument.<sup>22</sup> For the family farmer, each can be a valuable tool. If the farmer wishes to provide specific dispositions of the estate—either of specific property or to specific individuals—they are free to execute a will.<sup>23</sup> If the farmer does not execute a will, they can rely on the security of a default regime to descend their estate to their relatives.<sup>24</sup> However, this default regime is not without its issues.

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18. See J.E. Penner, *The "Bundle of Rights" Picture of Property*, 43 UCLA L. REV. 711, 742 (1996) (defining the right of use and disposition of property).

19. Adam J. Hirsch & William K.S. Wang, *Qualitative Theory of the Dead Hand*, 68 IND. L.J. 1, 6 (1992).

20. See generally Garner & Campos, *supra* note 5; ZHANG ET AL., *supra* note 11, at 23.

21. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 7.1 (AM. L. INST. 1999).

22. IOWA CODE § 633.10(1)-(2) (2022).

23. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 5.1 (AM. L. INST. 1999).

24. See generally RESTATEMENT THIRD OF PROP.: WILLS AND OTHER DONATIVE TRANSFERS § 2.1 cmt. b-c (Am. L. Inst. 2003).

### A. Intestacy and Family Farms

One might expect a farmer to establish an estate plan for their farming operation given the value of their land<sup>25</sup> and with a presumption that farmers intent for their family to continue the operation long after they are gone.<sup>26</sup> At the same time, some may avoid the estate planning process in an effort to circumvent conversations about their own mortality or stirring up discord in the family.<sup>27</sup> This avoidance is where intestacy provides a solution.<sup>28</sup> Generally speaking, the purpose of providing a default regime of rules for disposing of a decedent's estate when they die without an estate plan is to "give effect, . . . to the wishes of the decedent while providing for the well-being of [their] family."<sup>29</sup> While there may be some comfort in the knowledge that even absent an estate plan, the family farm will likely continue on to the surviving spouse and/or surviving children,<sup>30</sup> this does not mean that intestacy is without its own substantial flaws.

#### 1. Common Issues in the Administration of Estates of Family Farms in Intestacy

Though intestate succession addresses the transition of farm property, it does not address the transition of management of a farming business.<sup>31</sup> In order for succession of a family farming operation to be successful, it is an imperative that there is leadership present to prevent and mitigate conflict throughout the process.<sup>32</sup> This process can become more complicated with the absence of a chosen successor to take the leadership role. As the probate court has the power to appoint

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25. See *Farmland Value*, U.S. DEPT. OF AGRIC. (Nov. 2, 2020), <https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value/> [<https://perma.cc/5MAB-WQ4X>] ("U.S. farmland values remained high in 2020, averaging \$3,160 per acre, a small decrease of 0.8 percent compared with 2019.").

26. See Anieta McCracken, *What to Do With the Family Farm*, CORNELL SMALL FARMS PROGRAM (Jan. 9, 2011), <https://smallfarms.cornell.edu/2011/01/what-to-do-with-the-family-farm/> [<https://perma.cc/8T7W-EGAZ>].

27. See *id.*

28. See RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 2.1(b) (AM. L. INST. 1999).

29. John T. Gaubatz, *Notes Toward a Truly Modern Wills Act*, 31 U. MIAMI L. REV. 497, 501 (1977); see IOWA CODE §§ 633.211-.212 (2022).

30. See *id.*

31. KELVIN LEIBOLD, *EVALUATING YOUR ESTATE PLAN: FARM TRANSFER STRATEGIES 1-2* (2014), <https://www.extension.iastate.edu/agdm/wholefarm/pdf/c4-55.pdf> [<https://perma.cc/A9VV-2MTY>].

32. Matthew Kaplan, *Intergenerational Communication as a Tool for Sustaining Small Family Farms*, PENN STATE COLL. OF AGRIC. SCIS. (Jan. 18, 2022, 7:49 PM), <https://aese.psu.edu/outreach/intergenerational/articles/article-13> [<https://perma.cc/SJ2L-V9V7>].

an administrator absent a will, it is possible the appointed administrator is an individual the decedent never wished to decide the fate of the family farm.<sup>33</sup> This is especially the case if there is not a surviving family member who has the experience or “know-how” to operate the family farm.<sup>34</sup>

Another common issue family farms face in the event the operator dies intestate is the potential for the estate to be saddled with substantial tax burdens.<sup>35</sup> Given the concurrent tax obligations owed to federal and state governments,<sup>36</sup> heirs fear the highest federal marginal estate tax rate—40%—will be applied to their inheritance.<sup>37</sup> This fear is further exacerbated in light of potential tax obligations owed on the state level.

This is not to say there are no existing methods by which heirs may receive some tax protection. Since the passage of the Tax Cuts and Jobs Act in 2017, the estate tax exemption amount temporarily increased to \$11.18 million dollars until January 1, 2026.<sup>38</sup> At that time, it will return to \$5 million.<sup>39</sup> Though this gives heirs a large breadth for avoiding the tax, only 20 estates within the United States qualified for the maximum marginal rate in 2017.<sup>40</sup> Under the Act, these the estates would only owe an average rate of 16.5% of the estate’s value.<sup>41</sup> A state’s estate tax exemptions may provide similar mechanisms to avoid taxation of an estate as

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33. SHANNON L. FERRELL & RODNEY JONES, LEGAL ISSUES AFFECTING FARM TRANSITIONS, OKLA. STATE UNIV. DEP’T OF AGRIC. ECON. 3 (Mar. 21, 2013), <https://extension.okstate.edu/programs/farm-transitions/site-files/legal-issues-affecting-farm-transition.pdf> [<https://perma.cc/BRV8-DZAN>].

34. *See id.*; LEIBOLD, *supra* note 31, at 1-2.

35. Melissa O’Rourke, *Good Farm Policy: Avoid These Top 10 Estate Planning Mistakes*, AG DECISION MAKER NEWSLETTER (Iowa State Univ., Ames, Iowa) Oct. 2013, at 4; *see Estate Planning and Taxation – An Overview*, NAT’L AGRIC. L. CTR. (Mar. 4, 2021), <https://nationalaglawcenter.org/overview/estate-planning-taxation/> [<https://perma.cc/TV7N-L6SR>].

36. *Estate Planning and Taxation – An Overview*, *supra* note 35.

37. *Federal Estate Taxes*, U.S. DEP’T OF AGRIC. (Aug. 14, 2020), <https://www.ers.usda.gov/topics/farm-economy/federal-tax-issues/federal-estate-taxes/> [<https://perma.cc/E363-HVWT>].

38. *See id.*

39. *Id.*

40. *See Policy Basics: The Federal Estate Tax*, CTR. ON BUDGET & POL’Y PRIORITIES (Nov. 7, 2018), <https://www.cbpp.org/research/federal-tax/policy-basics-the-federal-estate-tax> [<https://perma.cc/4ZC3-WN26>].

41. *Id.*

the succession is likely to be familial.<sup>42</sup> It must be noted, though, that the amount exempted may vary from state to state.<sup>43</sup> Because the purpose of providing a default inheritance system is to provide the closest approximated intent for the average decedent and not to maximize tax benefits, survivors may miss additional benefits they might have received if the decedent had established an estate plan.<sup>44</sup>

## 2. The “Brain Drain” and Intestacy

One trend which strains the administration of intestate farm estates has been the migration of the younger generation from the Midwest. Over the past few years there has been a cultural shift amongst midwestern families to provide opportunities for their children to migrate from their communities to pursue professional careers in urban communities.<sup>45</sup> The pressure is as familial as it is social, with educators being driven to reinforce and prepare the children to meet such migratory expectations.<sup>46</sup> While this drive to rigorously educate rural youth is no different from general educational policy directives, the subsequent migration leaves the Midwest without the support of a new generation and with a loss of a highly educated workforce. It has produced a “brain drain.”<sup>47</sup>

In regard to the succession of the family farm, the result is two-fold. First, the emigration of potential successors creates a vacuum of leadership and experience on the farm.<sup>48</sup> Second—and perhaps the most important consequence—is the conflict between the underlying presumptions in intestacy law and the realities of the midwestern brain drain. When formulating their intestacy regimes, states have relied upon empirical studies to determine the average desired outcome of their estates.<sup>49</sup> This was often done by analyzing the wills of citizens,

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42. See IOWA CODE §§ 633.211-.212 (2022); *Introduction to Iowa Inheritance Tax*, IOWA DEP’T OF REVENUE (Oct. 10, 2020), <https://tax.iowa.gov/inheritance> [<https://perma.cc/BFM8-GWM8>].

43. See generally *Introduction to Iowa Inheritance Tax*, *supra* note 42.

44. See generally RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 2.1 (AM. L. INST. 1999); *Estate Planning and Taxation – An Overview*, *supra* note 35.

45. PATRICK J. CARR & MARIA J. KEFALAS, HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA 30-31 (2011).

46. *Id.* at 30.

47. See *Middle America’s Brain Drain*, THE ECONOMIST (May 8 2019), <https://www.economist.com/graphic-detail/2019/05/08/middle-americas-brain-drain> [<https://perma.cc/27PP-MFQV>].

48. See CARR & KEFALAS, *supra* note 45, at 55-56.

49. Rebecca Friedman, *Intestate Intent: Presumed Will Theory, Duty Theory, and the Flaw of Relying on Average Decedent Intent*, 49 REAL PROP. TR. & EST. L.J. 565, 577-78 (2015).

recognizing the most frequently devised relationships within those wills, and translating those common bequeathments into intestate succession statutes.<sup>50</sup>

In the case of family farms, it is presumed the parent operating the farm would, if they had an estate plan, intend to devise the family farm to their children, absent a surviving spouse. This does not necessarily reflect the reality in the Midwest today.<sup>51</sup> It is possible new state policies could incentivize migrated youth to return home and assume the operation of the family farm in an effort to mitigate the negative impacts of brain drain.<sup>52</sup> However, if rural farming families continue to push their children to establish professional careers in urbanized areas, this would make a return unlikely as they have set down new roots elsewhere.<sup>53</sup>

This inherently comes into conflict with the tradition of direct succession of the family farm between parent and child.<sup>54</sup> The divide between common intent and realities of intergenerational succession is further blurred when considering the method in which intestate succession laws were created. As many of these intestate succession statutes were the product of analysis of aggregate wills, the analysis only accounts for the disposition, not the individualistic factors which went into each will's creation.<sup>55</sup> Given the dissonance between average testamentary intent and the realities of social driving factors, intestate succession statutes may not accurately reflect a decedent's probable testamentary intent.<sup>56</sup>

#### *B. Where There Is a Will, There Is a Way*

Despite their general decline in use, wills continue to be the most common instrument used by family farmers to transfer their operation to the next generation.<sup>57</sup> This is the case for three reasons. First, the execution of the will requires several formalities to be met.<sup>58</sup> In doing so, the “testator ensures that [their] probate property will be distributed in accordance with [their] actual

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50. Danaya C. Wright & Beth Sterner, *Honoring Probable Intent in Intestacy: An Empirical Assessment of the Default Rules and the Modern Family*, 42 ACTEC L.J. 341, 345 (2017).

51. See *Middle America's Brain Drain*, *supra* note 47.

52. See CARR & KEFALAS, *supra* note 45, at 111-12.

53. See *id.* at 51-52.

54. See Garner & Campos, *supra* note 5.

55. Friedman, *supra* note 49, at 578.

56. See *id.*

57. See ZHANG ET AL., *supra* note 11, at 23.

58. See IOWA CODE § 633.264 (2022); see generally John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489 (1975).



intent.”<sup>59</sup> Second, a will permits an individual to create a personalized plan for the disposition of their estate.<sup>60</sup> For a farmer, this is particularly important. With a will, a farmer can specifically devise their estate to particular family members while providing alternatives dispositions in the event of unexpected circumstances.<sup>61</sup> And third, unlike intestacy proceedings, a farmer can identify a trusted individual in their will to carry out the disposition of an estate. Generally, this guarantees the farmer’s testamentary intentions are carried out.<sup>62</sup>

The flexibility of a will may even provide survivors alternatives to their inheritance. When incorporated into a will, a buy-sell agreement would permit successors to buyout other family beneficiaries in order to hold the farm in its entirety.<sup>63</sup> If a family member opts to buyout the others, then these transactions will take priority over the specific division within the will.<sup>64</sup> When integrating a buy-sell agreement provision within a will, a farmer is able to pass their farming operation to interested beneficiaries while not depriving the others of the fair market value of their shares.<sup>65</sup> It bears to mention, however, these agreements might preference sons to buyout their sisters, thereby reinforcing traditional gender expectations in the farming industry.<sup>66</sup>

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59. ROBERT H. SITKOFF & JESSE DUKEMINIER, *WILLS, TRUSTS, AND ESTATES* 141 (10th ed. 2017).

60. BRIDGET FINKE, *ESTATE PLANNING FOR FARM FAMILIES*, UNIV. OF WIS.-MADISON DIV. OF EXTENSION 5 (Jan. 18, 2022, 8:01 PM), [https://fyi.extension.wisc.edu/farmsuccession/files/2016/11/Estate-Planning-for-farm-families\\_handout\\_Jan\\_2017.pdf](https://fyi.extension.wisc.edu/farmsuccession/files/2016/11/Estate-Planning-for-farm-families_handout_Jan_2017.pdf) [<https://perma.cc/AR43-5C8B>].

61. Kelly Nuckolls, *Where There’s a Will There’s a Way. Or Is There?: Transition Tools Farm Operations Should Consider First Before Opting to Write a Will*, 54 *IDAHO L. REV.* 671, 679 (2018).

62. *See* Finke, *supra* note 60.

63. DARRELL DUNTEMAN & DANNY KLINEFELTER, *BUY-SELL AGREEMENTS ARE AS IMPORTANT AS WILLS FOR FAMILY FARMS*, (Jan. 18, 2022, 8:02 PM), <https://agecon2.tamu.edu/people/faculty/klinefelter-danny/Selected%20Articles/BuySell%20Agreements.pdf> [<https://perma.cc/Z9Z4-D8WZ>].

64. *See id.*

65. *See id.*

66. *See* Hannah Alsgaard, *Rural Inheritance: Gender Disparities in Farm Transmission*, 88 *N.D. L. REV.* 347, 347 (2012).

### 1. Specter of Undue Influence

A recurring and persistent problem with wills are claims of undue influence.<sup>67</sup> A will is generally invalid when it is “procured by undue influence[, meaning] the wrongdoer exerted such influence over the donor that it overcame the donor’s free will and caused the donor to make a donative transfer that the donor would not otherwise have made.”<sup>68</sup> For the transition of a family farm to be successful, it is crucial that the integrity of the farmer’s testamentary intent is maintained to provide clarity, predictability, and direction for the farming operation once the farmer is gone. But when a farmer is beset by the influence of cunning and underhanded individuals, the integrity of the farmer’s will may be compromised.<sup>69</sup>

This problem is further exacerbated by an aging farming population.<sup>70</sup> This is especially so for elderly farm owner who become more susceptible to undue influence when a farming operation is managed by multiple generations.<sup>71</sup> In the case of *In re Estate Erickson*, a son sought to undermine his elderly mother’s will by removing his siblings as beneficiaries and becoming the sole beneficiary of the estate.<sup>72</sup> The court invalidated the changes on the basis of the mother’s diminished mental capacity, finding her dependence on her son for her basic necessities and medical care placed her in a vulnerable position.<sup>73</sup>

Substantial changes to an estate plan or a significant change in circumstances may be evidence of abuse and undue influence.<sup>74</sup> Though the presence of such abuse may be present, it may still not be determinative. For example, in the case of *Struve v. Struve*, the petitioners argued their deceased eighty-five year old father—who had been diagnosed with progressive dementia—was a vulnerable elder who could not withstand the undue influence of their brother and nephew.<sup>75</sup>

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67. See Ronald J. Scalise, Jr., *Undue Influence and the Law of Wills: A Comparative Analysis*, 19 DUKE J. COMPAR. & INT’L L. 41, 42 (2008).

68. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.3(b) (AM. L. INST. 1999).

69. SITKOFF & DUKEMINIER, *supra* note 59, at 282.

70. See Kenneth I. Shulman et al., *Assessment of Testamentary Capacity and Vulnerability to Undue Influence*, AM. J. PSYCHIATRY 722, 722 (2007).

71. See, e.g., *In re Estate of Otteros*, No. 8-241, 2008 Iowa App. LEXIS 428, at \*1, \*15 (Iowa Ct. App. June 25, 2008) (noting that the decedent handled the operations finances while her grandson operated farm itself).

72. *In re Estate Erickson*, No. 17-0430, 2018 Iowa App. LEXIS 626, at \*1, \*15-16 (July 4, 2018).

73. *Id.* at \*15.

74. See *id.* at \*16.

75. *Struve v. Struve*, 930 N.W.2d 368, 371 (Iowa 2019).

In its review, the Iowa Supreme Court rejected their claim that their father lacked capacity solely based on his age.<sup>76</sup> The court noted their father had sufficient mental capacity as he had protected his own interests by voluntarily establishing a conservatorship and creating an estate plan which communicated his intentions for the family farm to remain within the family.<sup>77</sup> *In re Estate of Erickson* and *Struve v. Struve* illustrate the difficulties many courts face when determining whether a testator had a sufficient mental capacity to create a will and was the product of undue influence.<sup>78</sup>

Although the undue influence doctrine allows for concerned beneficiaries to preserve their loved one's testamentary intent, there is still a great potential for the doctrine to be weaponized.<sup>79</sup> Whether the undue influence doctrine is primed for abuse is debatable, it is not surprising for emotions to run high among family members who may feel cheated out of inheritance.<sup>80</sup> There are some inherent restrictions on bringing a claim of undue influence, including a high burden of proof the claimant will have to overcome.<sup>81</sup> Despite this burden, family members may still be undeterred.<sup>82</sup> Though the undue influence doctrine provides family members a means to contest a corrupted will, these claims prolong discord and inflict high costs upon the family farming operation.<sup>83</sup>

### III. NON-PROBATE TRANSITIONS

While most family estates are transferred through the probate system, there are other methods available to dispose of one's estate. Since the twentieth century, legal scholars have noticed the utility of the non-probate system and its streamlined approach to succession over the probate system's cumbersome proceedings.<sup>84</sup> These alternative instruments allow a family farmer to convey the real property of

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76. *Id.* at 372.

77. *Id.* at 373. (noting further that the brother and nephew were the only ones in the family pursuing an agricultural profession).

78. See *In re Estate of Erickson*, 2018 Iowa App. at \*16; *Struve*, 930 N.W.2d at 371; Carla Spivak, *Why the Testamentary Doctrine of Undue Influence Should be Abolished*, 58 U. KAN. L. REV. 245, 291 (2010).

79. Spivak, *supra* note 78, at 287.

80. See generally O'Rourke, *supra* note 35, at 4-5.

81. See Spivak, *supra* note 78, at 263-64.

82. *Id.* at 265 (describing a case in which a family contests the will despite having to meet a high burden of proof to show undue influence).

83. See generally *id.* at 286-87.

84. See John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108, 1140 (1984).

the farm upon death, potentially avoiding the probate process entirely.<sup>85</sup> These instruments are called “will substitutes.” A will substitute is an instrument created during the donor’s lifetime, reserving the “rights of dominion, control, possession, or enjoyment” to the donor, and, upon death of the donor, transferring the right to possession or enjoyment of the property to the beneficiary outside of probate.<sup>86</sup> This discussion will relate to the use of trusts as will substitutes.

The use of trusts as an estate planning tool has become increasingly popular. As of 2017, trusts accounted for 20% of all land possession in Iowa, and as of 2016, 51 million acres nationally.<sup>87</sup> While there are various forms and functions of trusts, there are two types of trusts this discussion will focus on: “revocable *inter vivos* trusts” and dynasty trusts. A revocable *inter vivos* trust (hereinafter “living trust”), once funded, reserves within the settlor (the equivalent to a testator) the benefit, dominion, and control over the trust’s property, thereby subjecting the duties of the trustee (often the settlor) and interests of the future beneficiaries to change by the settlor-trustee.<sup>88</sup> In contrast, Dynasty trusts are trusts that capitalize on the administrative function of trusts and rely on trustee management of the farm for the family’s benefit.<sup>89</sup>

#### A. Living Trusts

When a farmer wishes to utilize a non-probate instrument rather than a will, it is general practice to use a living trust.<sup>90</sup> Though the administration of living trusts are excluded from probate proceedings, it has not stopped the efforts of scholars and practitioners alike to apply substantive wills.<sup>91</sup>

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85. *Id.* at 1114.

86. RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 7.1 (AM. L. INST. 1999).

87. ZHANG ET AL., *supra* note 11, at 11; DANIEL BIGELOW ET AL., U.S. DEP’T OF AGRIC., U.S. FARMLAND OWNERSHIP, TENURE, AND TRANSFER 17 (Aug. 2016), <https://www.ers.usda.gov/webdocs/publications/74672/eib-161.pdf?v=8673.6> [<https://perma.cc/2HXR-XPUK>].

88. See David J. Feder & Robert H. Sitkoff, *Revocable Trusts and Incapacity Planning: More than Just a Will Substitute*, 24 ELDER L.J. 1, 10-11 (2016); see generally IOWA CODE §§ 633A.3101, .3106-07 (2022).

89. See generally *id.* § 2; Todd A. Flubacher & Diana S.C. Zeydel, *Dynasty Trusts*, in 52 UNIV. OF MIAMI L. CTR. ON EST. PLAN. ¶ 401.1 (2018).

90. RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 7.1 cmt. a, b (AM. L. INST. 1999) (an irrevocable trust does not have the same function as a will, nor does it have similar legal mechanisms).

91. See RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 7.1(b) (AM. L. INST. 1999); Frances H. Foster, *Trust Privacy*, 93 CORNELL L. REV. 555, 556 (2008).

### 1. “I Can’t Believe It’s Not A Will”

As mentioned before, the main appeal of a living trust is its avoidance of probate proceedings.<sup>92</sup> The probate proceedings are generally viewed as a cumbersome process which delays the distribution of an estate.<sup>93</sup> This is often attributed to the procedures, oversight, and prolonged challenges to the probate proceedings.<sup>94</sup> Another advantage a living trust has over a will is its flexibility as the settlor is required to fully anticipate future issues with trust administration and proactively find solutions.

Unlike a will, a living trust has the ability to provide instruction throughout the entirety of its administration. In practice, use of a living trust as an estate planning tool allows for the coordination of both farm property and the family business.<sup>95</sup> Should the farmer desire for the family farm to continue after their passing, they may orchestrate the transition by providing detailed and precise instructions for distribution of the farm assets and appointment of subsequent leadership.<sup>96</sup> If the farmer desires the farming operation to be sold for want of interest within the family to continue business, they may direct the sale of the farm through a living trust. As a living trust is not subject to probate proceedings, the subsequent trustee may promptly sell the farm to avoid any substantial diminution in the farm’s value.<sup>97</sup>

Another key advantage a living trust has over a will is its capacity to account for incapacity. Normally an individual who wishes to plan for their future incapacity it is common for them to enlist the use of a durable power of attorney instrument to provide instructions for the management of their affairs and property.<sup>98</sup> Although a durable power of attorney may be created in conjunction with a will, it is not afforded the same level of oversight as wills in the probate system, given their private in nature.<sup>99</sup> Living trusts, on the other hand, are able to

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92. See Bob Carlson, *Wills vs. Trusts: Which Is Best For You?*, FORBES (Aug. 28, 2019), <https://www.forbes.com/sites/bobcarlson/2019/08/28/wills-vs-trusts-which-is-best-for-you/?sh=22e008ed7abd> [<https://perma.cc/6A8E-6ZPT>].

93. See *id.*; JOSEPH HAWLEY MURPHY, 2 MURPHY’S WILL CLAUSES § 3D.10 (2022).

94. See generally HOWARD M. ZARTISKY, THE USE AND ABUSE OF REVOCABLE TRUSTS 26-28 (1987), <https://scholarship.law.wm.edu/tax/575/> [<https://perma.cc/2SUF-P2KG>].

95. Shayna W. Borakove, *Estate Planning, Business Continuation, Transition and Succession for Farmers*, 26 SAN JOAQUIN AGRIC. L. REV. 1, 3 (2016-2017) (discussing experience in practice).

96. See *id.* at 3, 14; LEIBOLD, *supra* note 31, at 1-2 (discussing benefits of selecting new farming operation leadership during a transition).

97. ZARTISKY, *supra* note 4, at 27-28.

98. SITKOFF & DUKEMINIER, *supra* note 59, at 502.

99. Feder & Sitkoff, *supra* note 90, at 29.

do both: plan for the settlor's incapacity and the disposition of their estate.<sup>100</sup> As the property of the settlor's estate is placed into the living trust to be managed by the settlor, and as the settlor, trustee, and beneficiary in one, the incapacity of the settlor would trigger the search for a new trustee to manage the property. Essentially, the arrangement allows both the property and business affairs at the same time, it allows the settlor to plan for incapacity while maintaining a dispositional plan for their estate.<sup>101</sup> Furthermore, the settlor is able to expand the powers of the trustee while keeping them restricted by fiduciary duties beyond that of a durable power of attorney.<sup>102</sup> By establishing the procedure for administrating and enforcing the terms of the trust, the settlor can expedite and improve the efficiency of their incapacitated care.<sup>103</sup>

One last advantage living trusts have over wills is privacy. As part of the probate process, wills are submitted to the court to become public record.<sup>104</sup> Given the number of assets a family farm possesses, it is not be hard to imagine why farmers would be hesitant to use a testamentary instrument that broadcasts the extent of their farm property to their neighbors.<sup>105</sup> Because a living trust does not go through the probate process, the property held within the trust avoids prying eyes, and keeping the business of the settlor, the trustee, and the beneficiaries private.<sup>106</sup> Even in the event in which a will transfers the residue of a testator's estate into a revocable trust, it does not force the publication of the trust's holding. It will only implicate the existence of a living trust in its terms.<sup>107</sup> Thus, through a living trust what is private stays private.

## 2. Common Issues with Living Trusts

While a living trust may seem to exceed its reputation as a will substitute by doing all a traditional will does and more, it is not without its own complications. By itself, a living trust does not provide any additional tax benefits over a will.<sup>108</sup>

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100. *Id.*; see Borakove, *supra* note 95, at 17.

101. Feder & Sitkoff, *supra* note 90, at 30-31.

102. *Id.* at 32.

103. ZARTISKY, *supra* note 94, at 9-10; see generally RESTATEMENT (THIRD) OF TRS. §§ 93-94 (AM. L. INST. 2003).

104. Foster, *supra* note 91, at 557.

105. Nuckolls, *supra* note 61, at 681 (discussing findings on family farm operator's attitudes on publicness of the probate process).

106. *Id.* at 691.

107. Foster, *supra* note 91, at 564-65.

108. See MELISSA O'ROURKE, IOWA STATE UNIV. EXTENSION & OUTREACH, EVALUATING YOUR ESTATE PLAN: TRUSTS AS AN ESTATE PLANNING TOOL 2-3 (Dec. 2020),

While there are several types of trusts a settlor may use to reduce their tax burden (e.g., credit shelter and qualified personal residence trusts), the functions of these trusts go beyond what a living trust is capable of achieving.<sup>109</sup>

Another considerable drawback in using a living trust as an estate planning tool is the complexity of its establishment.<sup>110</sup> For a trust to exist, it must be funded. This means the trust must possess either property and/or money.<sup>111</sup> For a living trust to be funded, a settlor must transfer title of each item of property they possess into the trust individually.<sup>112</sup> Thus, trusts bifurcate ownership of the property such that the property within the trust and the property of the settlor remain separate and distinct from each other.<sup>113</sup> Funding a living trust with farm assets often proves to be difficult. Due to the amount of assets a farm has, farmers may not be able to fully transfer the farm property before their death thereby causing the residue of their estate to fall into intestate.<sup>114</sup>

Enter the pour-over will. A pour-over will is “a will [that] contains a testamentary disposition for the purpose of adding property to a [living trust].”<sup>115</sup> Through a pour-over will, a settlor can transfer the residue of their estate into an existing or newly created trust, regardless of whether the settlor forgot to include certain property in the living trust or they have acquired property after the living trust was created.<sup>116</sup> However, having to rely upon a will to ensure a living trust is funded defeats the purpose of using a will substitute. Even when the property goes into a living trust, it must go through the probate process.<sup>117</sup> While the property already in the living trust is private, the property “poured into” it will be subject to public display.<sup>118</sup>

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<https://www.extension.iastate.edu/agdm/wholefarm/pdf/c4-59.pdf> [<https://perma.cc/6Y2N-6WB9>].

109. *See id.*

110. *See* KYNDA CURTIS, ESTATE AND FARM TRANSITION PLANNING FOR AGRICULTURAL PRODUCERS 6 (Mar. 7, 2022, 12:05 PM), <https://alfalfa.ucdavis.edu/+symposium/proceedings/2006/06-285.pdf> [<https://perma.cc/57DS-QPGM>].

111. RESTATEMENT (THIRD) OF TRS. § 2 cmt. c (AM. L. INST. 2003).

112. *See* Carlson, *supra* note 92.

113. *See* RESTATEMENT (THIRD) OF TRS. § 10(b) (AM. L. INST. 2003).

114. Nuckolls, *supra* note 61, at 693.

115. RESTATEMENT (THIRD) OF TRS. § 19 (AM. L. INST. 2003) (providing pour-over wills); RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 3.8 cmt. e (AM. L. INST. 1999).

116. CURTIS, *supra* note 110, at 6.

117. MURPHY, *supra* note 93, § 3D.10; Carlson, *supra* note 92.

118. *See* Nuckolls, *supra* note 61, at 681.

### B. Dynasty Trusts

What sets dynasty trusts apart from living trusts is their objective. A dynasty trust—also called a generation skipping trust—allows the settlor to structure a trust such that several generations are allowed to benefit from the settlor’s property rather than a single transfer between one generation to another.<sup>119</sup> A standard dynasty trust arrangement might entail a settlor placing property into a trust and providing the income of the trust be distributed to the settlor’s children with the principal later being distributed to the settlor’s grandchildren.<sup>120</sup>

#### 1. The Allure of a Farming Dynasty

Because the principal of the trust property in a dynasty trust will be later distributed to a future generation, the settlor can reduce the tax burden on their future beneficiaries through the federal generation-skipping transfer (GST) tax exemption.<sup>121</sup> Generally, the qualified exempted amount is \$5 million with Congress having increased the exempted amount to \$10 million until 2025.<sup>122</sup> It is also possible, depending in which state the trust resides, that a state jurisdiction will provide similar tax exemptions.<sup>123</sup> This is important because the dynasty trust is structured to capitalize on these exemptions and avoid repeated taxation.<sup>124</sup> Because the property is placed into a trust rather than simply facilitating a direct transfer to the settlor’s children, there is no property transfer which is taxable.<sup>125</sup> The tax savings do not end there. In some jurisdictions, if the settlor of a dynasty trust is willing to accept a higher tax burden, they may “pre-pay” the income tax on the interest distributions the skipped beneficiaries would be liable for.<sup>126</sup> By

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119. See O’Rourke, *supra* note 108.

120. See Randall W. McKee, *What Everyone Should Know about Trusts*, in *PASSING IT: ON: AN ESTATE PLANNING RESOURCE GUIDE FOR WYOMING’S FARMERS AND RANCHERS* 62, 71 (Feb. 11, 2011), <https://www.uwyo.edu/uwe/passiton/passingitonchapter7d-trusts.pdf> [<https://perma.cc/58M6-SMWQ>].

121. See 26 U.S.C. §§ 2601, 2611-13; *Estate, Gift, and GST Taxes*, AM. BAR ASS’N (Jan. 3, 2021), [https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate\\_planning/estate\\_gift\\_and\\_gst\\_taxes/](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/estate_gift_and_gst_taxes/) [<https://perma.cc/BEJ2-LBYW>].

122. 26 U.S.C. § 2631(c) (referencing 26 U.S.C. § 2010(c)); *Estate, Gift, and GST Taxes*, *supra* note 121.

123. Flubacher & Zeydel, *supra* note 88, ¶ 401.2.

124. See Andrew Bullard, *Understanding Potential Pros and Cons of Using Dynasty Trusts*, JDSUPRA (July 15, 2019), <https://www.jdsupra.com/legalnews/understanding-potential-pros-and-cons-86808/> [<https://perma.cc/BZU6-DDCJ>].

125. *Id.*

126. Robert I. Ury & Thomas F. McGuire, *Dynasty Trusts and Related Estate Planning for the Millennium*, 3 J. TAX PRAC. & PROC. 33, 37 (2001).



taking advantage of GST tax structures, a settlor is able to use a dynasty trust to allow multiple generations the enjoyment of the trust property without an excessive tax burden.<sup>127</sup>

Others may be enticed to use a dynasty trust in their estate planning for fiduciary oversight over the trust property. One of the most important considerations is how the trust property is managed.<sup>128</sup> With the creation of a trust comes a fiduciary relationship between the trustee and the beneficiary, as well as a host of general duties and responsibilities to which the trustees are held accountable to.<sup>129</sup> When selecting the trustee, the farmer may either select from family or professional fiduciaries to manage the farm. While the family can administer the trust—thereby operating the farming operation as both trustees and beneficiaries—they may not have the same knowledge or expertise a corporate fiduciary would.<sup>130</sup>

A settlor may be content with only concerning themselves with creating the dynasty trust for reducing their inheritors' tax burden, thus relying on fiduciary duties to keep family trustees accountable, it is advisable to consider the specifics of administering the trust.<sup>131</sup> Trustees are ordinarily bound by the duty to diversify, requiring the use of reasonable care, skill, and caution to prudently invest in the trust property.<sup>132</sup> Under normal circumstances, this would prohibit trustees from maintaining a disproportionately high amount of the trust's holdings in one asset. However, a settlor may specify special assets in the trust document for which the trustee must manage.<sup>133</sup> In the case of family farms, it is commonly accepted that such a closely held business interest is different enough to warrant diverging treatment, allowing the settlor to establish special objectives in their trust to preserve the farming business.<sup>134</sup> A settlor, for this very reason, will often provide a "spendthrift" provision as well as direction for distribution from the trust so as to prevent the trust's property from being susceptible to a beneficiary's creditors

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127. See 26 U.S.C. §§ 2601, 2611-13; Flubacher & Zeydel, *supra* note 88, ¶ 401.2.

128. See RESTATEMENT (THIRD) OF TRS. § 92 cmt. a (AM. L. INST. 2003); IOWA CODE § 633A.4302(3)(h) (2022).

129. RESTATEMENT (THIRD) OF TRS. § 70 (AM. L. INST. 2003); see IOWA CODE §§ 633A.4201-.4309 (2022).

130. Ury & McGuire, *supra* note 126, at 36-37.

131. See Flubacher & Zeydel, *supra* note 88, ¶ 401.3.

132. See RESTATEMENT (THIRD) OF TRS. § 90 (AM. L. INST. 2003).

133. *Id.* § 92 cmt. a.

134. See *Id.*; IOWA CODE § 633A.4302(3)(h) (2022).

or having a spendthrift beneficiary quickly depleting the trust's *corpus* within a single generation.<sup>135</sup>

When considering the oversight of a professional fiduciary and the special objectives set forth by the settlor, it is possible dynasty trusts could solve the "brain drain dilemma."<sup>136</sup> As previously discussed, one of the primary issues of keeping the family farm within the same familial unit is the push toward urbanized living amongst rural youth.<sup>137</sup> In this event, it is possible no living descendant of the farmer would have any interest in farming the land.<sup>138</sup> With a dynasty trust and a professional/corporate trustee, the issues of managing a farming operation without any family involvement may not be an issue. This solution is dependent on whether the settlor has provided instructions for such circumstances and whether the farmer specifically set forth the objective of the trust as the maintenance of the farming operation for the benefit of the family.<sup>139</sup> For this type of management, a corporate trustee may be the best option because the perpetual nature of the corporate organization will not require the for a successor trustee as you would with a person.<sup>140</sup> By relying on trained fiduciaries, farmers may feel their legacy in the family farm is preserved, even if no one in the family is living on the land.<sup>141</sup>

Finally, a dynasty trust is defined by its longevity. Because the distribution of a dynasty trust's principal is reserved for later generations', it is possible for the administration of the trust to last for generations.<sup>142</sup> Nevertheless, while the administration of a trust can last for a substantial duration, a settlor cannot necessarily structure the trust to continue *ad infinitum*. State legislatures have traditionally limited the ability for individuals to vest contingent interests to remote persons through the historically notorious Rule Against Perpetuities.<sup>143</sup> Articulated, the Rule Against Perpetuities provides an interest "is not valid unless it must vest, if at all, within twenty-one years after one or more lives in being at

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135. Flubacher & Zeydel, *supra* note 88, ¶ 401.2; Ury & McGuire, *supra* note 126, at 34, 36-37.

136. See RESTATEMENT (THIRD) OF TRS. § 92 cmt. a (AM. L. INST. 2003).

137. See CARR & KEFALAS, *supra* note 45, at 30-31.

138. Neil E. Harl, *Dynasty Trusts: Another View*, AG DECISION MAKER NEWSLETTER (Iowa State Univ., Ames, Iowa) Jan. 2012, at 4, 5.

139. See RESTATEMENT (THIRD) OF TRS. § 92 cmt. a (AM. L. INST. 2003); IOWA CODE § 633A.4302(3)(h) (2022); Flubacher & Zeydel, *supra* note 88, ¶ 401.2 (2020) (discussing future proofing dynasty trusts).

140. See generally Angela M. Vallario, *Death by a Thousand Cuts: The Rule against Perpetuities*, 25 J. LEGIS. 141, 154 n.154 (1999).

141. See Harl, *supra* note 138, at 5.

142. McKee, *supra* note 120, at 71.

143. Vallario, *supra* note 140, at 142.

the creation of the interest.”<sup>144</sup> The rationale for this limitation is that the grantor only knows of the lives in being at the time the interest was created, and will not know of a remote life that has yet to be (or be at all).<sup>145</sup>

Recent developments amongst state legislatures have begun to erode the monolith that is the Rule Against Perpetuities. From reforming the historical rule with the “ninety-year wait-and-see” method to abolishing the rule in whole or in part, the traditional restrictions on remote interests have been eased.<sup>146</sup> Unlike the “twenty-one years after some life in being” test, the “wait-and-see” analysis has a more practical application by “waiting and seeing” if the contingent interest does in fact vest.<sup>147</sup> In practice, if a farmer designed a dynasty trust to extend far beyond any life in being at the time a remote contingent interest was created and the interest had not yet vested, then the farm would continue to be managed for ninety years.<sup>148</sup> If there is an ascertainable beneficiary, the trust continues to be administered; if not, the trust will automatically convert to equitable interests.<sup>149</sup> Jurisdictions that completely or partially abolish the Rule Against Perpetuities leave it entirely possible for a trust to be governed by the dead hand that created it.<sup>150</sup>

## 2. *The Costs and Consequences of Dynasty Trusts*

Farmers have several considerations to ponder before they place their operation in a dynasty trust. The greatest obstacle to establishing a dynasty trust is the steep cost to the settlor.<sup>151</sup> As the creator of the transfer, the farmer is liable with the tax burden.<sup>152</sup> Regardless of whether the trust is created through life or testamentary transfers, the settlor will be liable for a gift or testamentary transfer tax exceeding or not covered by the GST exemption.<sup>153</sup> This is, however,

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144. See IOWA CODE § 558.68(1) (2022).

145. See Jesse Dukeminier & James E. Krier, *The Rise of the Perpetual Trust*, 50 UCLA L. REV. 1303, 1309 (2003).

146. Scott Andrews Shepard, *A Uniform Perpetuities Reform Act*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 89, 91 (2013).

147. Vallario, *supra* note 140, at 146.

148. Shepard, *supra* note 146, at 117 (using the Uniform Statutory Rule Against Perpetuities analysis).

149. *Id.* at 117.

150. Dukeminier & Krier, *supra* note 145, at 1313-14 (providing list of state jurisdictions which permit perpetual trusts and differentiating whole or in part abolition of the rule against perpetuities).

151. See 26 U.S.C. § 2603(a)(3).

152. *Id.*

153. Ury & McGuire, *supra* note 126, at 36.

dependent upon the value of the farming operation. If the value of the farming operation were to fall under the exempted amount, there would be no issue. In contrast, if the value exceeded the exempted amount, then the owner-operator must weigh their options as to whether they can afford the front-end payment of their tax liability.<sup>154</sup>

The next matter of concern is the prolonged administration of a dynasty trust. While the use of a corporate trustee to manage the family farm solves the issue of finding an experienced and long “living” fiduciary, there is still the issue of the inflexibility of the trust document.<sup>155</sup> This requires extensive foresight on part of the drafter, such as including contingencies for future economic, tax, and life circumstances of future beneficiaries.<sup>156</sup> Absent such foresight, rigidly designed dynasty trusts become more burdensome to terminate or modify, often requiring a unanimous consent of the beneficiaries to do so, which is no small task.<sup>157</sup> Furthermore, this becomes more irksome with small farming operations. If a dynasty trust faces more costs to administer than it receives in income, then it may be inevitable that the farm be sold to recoup losses.<sup>158</sup> Thus, unless the dynasty trust is constructed to afford the trustee and the remote future beneficiaries a great deal of flexibility, the trust structure may set the established trust on a crash course.<sup>159</sup>

Finally, there is a societal cost if farm land is permitted to be put into perpetual dynasty trusts. The increasing abrogation of the Rule Against Perpetuities is rooted in the rationale that the shift from land to more liquid financial assets removes the policy concerns that the rule intended to prevent.<sup>160</sup> In terms of farming, this reasoning is fundamentally flawed—the primary asset necessary for the agricultural industry is land.<sup>161</sup> By allowing the creation of

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154. See 26 U.S.C. § 2631(c) (referencing 26 U.S.C. § 2010(c)); *Estate, Gift, and GST Taxes*, *supra* note 121; *id.* (providing an illustration of such a transfer).

155. See Bullard, *supra* note 124.

156. Flubacher & Zeydel, *supra* note 88, ¶ 401.3.

157. Vallario, *supra* note 140, at 158; see generally Dukeminier & Krier, *supra* note 145, at 1328.

158. See Vallario, *supra* note 140, at 153 n.142 (providing illustration how such a scenario would operate in Idaho).

159. See *id.* at 159; Dukeminier & Krier, *supra* note 145, at 1327.

160. See Note, *Understanding the Measuring Life in the Rule Against Perpetuities*, 1974 WASH. U. L. Q. 265, 294 (1974), [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2673&context=law\\_lawreview](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2673&context=law_lawreview) [<https://perma.cc/9HK2-CM3T>] (explaining that the historical rationale for the rule against perpetuities was to break up static market conditions of land); see also Shepard, *supra* note 146, at 93-94.

161. SOPHIE ACKOFF ET AL., *supra* note 12, at 34.

perpetual dynasty trusts, the historical concern of preventing the marketability and alienation of title to more productive hands becomes very real.<sup>162</sup> This leaves the potential for absurd results to arise, leaving tens—potentially even hundreds—of beneficiaries' interest in the farm over the continuing growth of future generations.<sup>163</sup> Since the adoption of the GST tax, it is far more likely the drive towards abolishing the Rule Against Perpetuities is predominantly towards the interest of attracting large trust management businesses.<sup>164</sup> With the growing number of jurisdictions abolishing their respective Rule Against Perpetuities, it is clear there is potential for more farms placed into dynasty trusts to become solidified and inalienable, thus recreating the problems the rule was created to prevent.<sup>165</sup>

#### IV. A NOTE ON SELLING THE FARM

One final way a family farm may be transferred from one generation to the next is through its sale. By deciding to sell the family farm to the next generation—either to one's own descendants or to unrelated parties—there are several objectives the farmer works to reach: acquiring enough money to live a comfortable retirement; passing on a sustainable farming operation; and minimizing the possible tax liability of each of the parties.<sup>166</sup> Central to this transaction, however, is ensuring the farmer receives a good price, even if the transfer is to family.

While the value of farmland has steadily increased since the early 1990s, with farmers receiving a good price on the sale of the family farm, new farmer are not always able to afford the purchase price.<sup>167</sup> One explanation for these high prices has been the rate of return on investment for crop share agreements. A typical crop-share agreement is a lease contract between a farmer and a landlord

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162. Harl, *supra* note 138, at 5.

163. *Id.* at 4 (providing an illustration of a growing family and ever-growing number of beneficiaries).

164. Dukeminier & Krier, *supra* note 145, at 1317.

165. *See id.*

166. *See* WIS. DEP'T. OF AGRIC. TRADE AND CONSUMER PROT., FARM TRANSFERS IN WISCONSIN: A GUIDE FOR FARMERS 23 (2020), <https://datcp.wi.gov/Documents/DAD/Farm%20Transfers%20In%20Wisconsin.pdf> [<https://perma.cc/DHZ4-LND4>].

167. *Farmland Value*, *supra* note 25; *see* Steve Bruere, *Midwest Land Values Poised to Move Higher*, SUCCESSFUL FARMING (Oct. 14, 2020), <https://www.agriculture.com/farm-management/farm-land/midwest-land-values-poised-to-move-higher> [<https://perma.cc/WJ2G-VJVS>].

in which the farmer will pay rent using a percentage of the total crop.<sup>168</sup> Because the landlord has minimal capital input into the farming venture, the potential financial gain from such an arrangement is much greater and more stable than other possible investments.<sup>169</sup> This is especially true for cropland as it has a “higher per-acre return” than pastureland.<sup>170</sup> Given the competitive tendencies of most farmers in the land market, this explains why farmers capitalize on the profitability of these crop-share agreements.<sup>171</sup> Though farmland may be expensive, farmers see it for what it really is—an investment.<sup>172</sup> Lacking the same capital available to existing farmers, young farmers looking at a cost of \$3,140 an acre—the national average—have a steep financial barrier to entering the agriculture industry.<sup>173</sup>

Although beginning farmers have significant obstacles when entering the industry, both federal and state governments have established programs which encourage new farmers to start their own farming operations.<sup>174</sup> For example, prospective farmers have the opportunity to apply for farm financing programs to assist them in buying farmland.<sup>175</sup> Such federal financing programs include direct financing through a Farm Service Agency (FSA) loan, which is an FSA-guaranteed loan program that protects a commercial “lender’s loan against loss, up to 95[%],”

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168. See Jessica Groskopf, *Understanding Crop Share Leases*, UNIV. NEB.-LINCOLN (Apr. 23, 2020), <https://agecon.unl.edu/understanding-crop-share-leases> [<https://perma.cc/BCN5-HGHL>].

169. See Bruere, *supra* note 167.

170. See *Farmland Value*, *supra* note 25.

171. Bruere, *supra* note 167; see Wendong Zhang, *2020 Iowa State University Farmland Value Survey: Overview 4* (Iowa State Univ., Working Paper No.20-WP 613, 2020), <https://www.card.iastate.edu/products/publications/pdf/20wp613.pdf> [<https://perma.cc/3FBJ-7SL3>] (finding 72% of all farmland sales in Iowa were done by existing farmers while only 4% were to new farmers).

172. David Whitaker, *How Are Farmers Affording High Land Prices?*, SUCCESSFUL FARMING (Mar. 22, 2018), <https://www.agriculture.com/farm-management/farm-land/how-are-farmers-affording-high-land-prices> [<https://perma.cc/7YB2-5KB7>] (“Owning land is a multigenerational investment.”).

173. April Simpson, *Young Farmers Can’t Farm Without Land*, THE PEW CHARITABLE TRUSTS (Dec. 13, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/12/13/young-farmers-cant-farm-without-land> [<https://perma.cc/D5UA-77QN>].

174. See, e.g., *Planning What’s Next: Building the Next Generation on the Land*, U.S. DEP’T OF AGRIC. (Jan. 27, 2022, 9:31 AM), <https://newfarmers.usda.gov/planning-whats-next> [<https://perma.cc/KQL2-BKY8>].

175. *Id.*

or FSA guaranteed land contracts.<sup>176</sup> It is also possible for individual states to provide similar financing programs through their respective state agencies.<sup>177</sup> Depending on the jurisdiction, new farmers may also benefit from tax credits designed to reduce the overall cost to purchasing the land.<sup>178</sup> Through more accessible financing options and the reduction of tax obligations, the financial barrier faced by prospective farmers seeking to purchase farm land may be lessened.

Retiring farmers may also benefit from these incentivized programs.<sup>179</sup> By selling their farms to beginning farmers, retiring farmers may take advantage of federal guarantees.<sup>180</sup> Through these guarantees, a retiring farmer is able to ensure the success of the farm's sale, either by receiving direct payments or compensation for a breach in the sale's contract.<sup>181</sup> A retiring farmer can further capitalize on these guarantees when selling to a non-family member, which tends to result in higher valued sales.<sup>182</sup> The tax credits afforded to retiring farmers selling their farms incentivize selling to a younger farmer by enabling the farmer to preserve more of the sale's proceeds from taxation.<sup>183</sup> This is especially beneficial when the sale of the farm land is through contract, enabling the retiring farmer to rely on a stable stream of income with a reduced tax burden.<sup>184</sup> Thus, for as many opportunities as are provided for beginning farmers to enter into the industry, there are just as many for retiring farmers to make the most out of exiting.

Despite this, selling the family farm is a difficult process often fraught with intense emotions.<sup>185</sup> For many retiring farmers, their identity exists within the

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176. FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., YOUR GUIDE TO FSA FARM LOANS 8 (2012), [https://www.fsa.usda.gov/Internet/FSA\\_File/fsa\\_br\\_01\\_web\\_booklet.pdf](https://www.fsa.usda.gov/Internet/FSA_File/fsa_br_01_web_booklet.pdf) [<https://perma.cc/35M9-RQWN>].

177. *See, e.g.*, IOWA CODE § 16.75 (2022).

178. *See, e.g., id.* § 16.78.

179. *See Planning What's Next: Building the Next Generation on the Land*, *supra* note 174.

180. *See id.*

181. *Id.*

182. ASHOK K. MISHRA ET AL., SUCCESSION IN FAMILY FARM BUSINESS: EMPIRICAL EVIDENCE FROM THE U.S. FARM SECTOR 14 (2004).

183. Neil D. Hamilton, *America's New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers*, 22 FORDHAM ENVTL. L. REV. 523, 542-43 (2011).

184. *See* LEIBOLD, *supra* note 31, at 4-5.

185. *See* Damona Doye, *Coping with Restructuring or Sale of the Family Farm*, OKLA. STATE UNIV. EXTENSION 1 (Feb. 2017), <https://extension.okstate.edu/fact-sheets/print-publications/agec/coping-with-restructuring-or-sale-of-the-family-farm-agec-197.pdf> [<https://perma.cc/5U4P-7WNX>]; Carol Hunter, *Sale of Family Farm Spawns Tug of Emotions*, DES MOINES REG. (Dec. 21, 2014), <https://www.desmoinesregister.com/story/opinion/>

personal improvements on the property. They often have a near spiritual connection to the land through experiencing everyday moments of life on the farm, from the mundane to the extraordinary.<sup>186</sup> This emotional connection to the farm becomes more entrenched when farmer's family connections to the land spans multiple generations.<sup>187</sup> Given the emotional bond between the farmer and their land, it is unsurprising that the sale of the farm is just as traumatic as losing a member of the family.<sup>188</sup>

## V. FACILITATING SUCCESSFUL AND SUSTAINABLE FARMING OPERATIONS

So, what is to be done? Attorneys work zealously to serve their clients' legitimate interests, working toward the optimal result.<sup>189</sup> However, this work is functionally limited by the client's knowledge and experience.<sup>190</sup> Lawmakers draft laws which regularly affect their constituent's interests in numerous of ways.<sup>191</sup> Drafting and enacting laws requires reflection to consider both the individual and societal outcomes of these decisions.<sup>192</sup> It is in this difficult position both attorneys and legislators find themselves when ensuring sustainable agriculturalists are able to establish successful transition plans for their farming operation.

### A. Knowing Your Options

Perhaps the greatest hurdle to estate planning for family farmers is knowing what their options are.<sup>193</sup> If the owner of a family farm has no experience with estate planning or preparing for operational transitions, it is much more difficult to coordinate a plan to maximize the estate planning goals.<sup>194</sup> This is where extension comes into place. Extension is a cooperative federal program between the National Institute of Food and Agriculture and the Land-Grant Universities of the United States to improve agricultural production and rural lives through education and

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columnists/iowa-view/2014/12/21/sale-family-farm-spurs-emotions/20722877/  
[<https://perma.cc/8T7W-JW28>].

186. WIS. DEP'T. OF AGRIC. TRADE & CONSUMER PROT., *supra* note 166, at 23; Courtney E. Quinn & Angela C. Halfacre, *Place Matters: An Investigation of Farmers' Attachment to Their Land*, 20 HUM. ECOLOGY REV. 117, 126-27 (2014).

187. Doye, *supra* note 185, at 2.

188. *See id.*

189. *See* MODEL RULES OF PRO. CONDUCT, pmbl. § 8 (AM. BAR ASS'N 2000).

190. Borakove, *supra* note 95, at 3.

191. Jeremy Waldron, *Representative Lawmaking*, 89 B.U. L. REV. 335, 343 (2009).

192. *See generally* Harl, *supra* note 138, at 6.

193. *See* Borakove, *supra* note 95, at 3.

194. *See id.* at 1-2.



outreach.<sup>195</sup> In regard to farming, extension both educates farmers on operational transitions<sup>196</sup> and connects them with beginning farmers.<sup>197</sup>

While online resources and classes on estate planning are invaluable to farmers contemplating the future of their farming operation, not all are comfortable starting the process.<sup>198</sup> As the bond between the farmer and their land is deeply personal, extension must approach the topic of transition planning on a personal level. For example, farmers in Michigan have the option to engage with extension specialists to discuss their transition plans and ask for information on different tools to best meet their transition objectives.<sup>199</sup> In this intimate setting, farmers are open to discuss these topics, allowing the extension specialist to provide specific information suited for a farmer's needs.<sup>200</sup> In circumstances as these, specialists must be prepared to confront difficult conversations considering the close connection between family and the family farm.<sup>201</sup> If other states provide similar extension services as those in Michigan, farmers will be better equipped to articulate their needs to legal professionals.

#### B. Communication within the Familial Unit

Nevertheless, even if farmers are informed of their options and establish an effective transition plan, execution of the plan may still be ineffective if there is any misunderstanding or miscommunication, or a total lack of communication,

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195. *Cooperative Extension History*, U.S. DEP'T OF AGRIC. (Jan. 12, 2022, 8:32 PM), <https://nifa.usda.gov/cooperative-extension-history> [<https://perma.cc/62ZX-MU7Y>].

196. *See id.*; *Farm Transition and Estate Planning: Create Your Farm Legacy*, UNIV. OF MINN. EXTENSION (Jan. 18, 2022, 8:33 PM), <https://extension.umn.edu/courses-and-events/farm-transition-and-estate-planning> [<https://perma.cc/F8DF-EFNW>]; *Farm Transition*, PENN STATE EXTENSION (Oct. 19, 2016), <https://extension.psu.edu/farm-transition> [<https://perma.cc/C53N-UD4K>].

197. *See* William Edwards, *Iowa State University Beginning Farmer Center is Expanding Programs*, AG DECISION MAKER NEWSLETTER (Iowa State Univ., Ames, Iowa) July 2016, at 1, 4.

198. *See* McCracken, *supra* note 26.

199. *See* Beth Hoffman, *Why Transitioning a Farm from One Generation to the Next is Trickier Than Ever*, THE COUNTER (Mar. 25, 2019), <https://thecounter.org/family-farm-transitions-land-transfer-extension-agents/> [<https://perma.cc/2QA2-N7KR>] (“Unfortunately, not all states are willing or able to provide extension specialists who can spend hours with families drumming up the perfect farm transition plan, as Michigan does.”); *Succession & Estate Planning*, MICH. STATE UNIV. FARM MGMT. (Jan. 18, 2022, 8:43 PM), [https://www.canr.msu.edu/farm\\_management/succession-estate-planning](https://www.canr.msu.edu/farm_management/succession-estate-planning) [<https://perma.cc/N63C-LCVK>].

200. *See* Hoffman, *supra* note 200.

201. *See id.*

within the familial unit.<sup>202</sup> As such, legal professionals and lawmakers must address these issues with in a two-pronged approach: improving communication within the family to prevent conflicts and supporting the use of mediation to address conflicts.

### 1. *Communicating within the Family Unit*

Communication is central to preserving the trust that is at the center of a family farming operation. It can be the thing that either strengthens the business or tears it down.<sup>203</sup> Keeping the family in the dark about the transitional plan often sparks resentment and confusion as to the direction of the business.<sup>204</sup> This is counter intuitive as the very objective behind establishing a transition plan is undermined.<sup>205</sup>

When drafting a will, trust, or sales contract, legal professionals should encourage the client to consider discussing their plan with their family, or, at the very least, inform the family of their intentions to prevent confusion in the future.<sup>206</sup> It is possible the client had overlooked family interest in the farm.<sup>207</sup> It also possible—namely with wills and trusts—that the family never finds the client’s intended transition plan, causing the client’s estate to be disposed of in a manner not originally desired.<sup>208</sup> By encouraging clients to communicate their intentions to their family, legal professionals will be promoting healthier familial relationships and more successful operations.<sup>209</sup>

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202. See Emma Henning, *Do You Hear Me? An Important Family Farm Question*, SUCCESSFUL FARMING (Jan. 22, 2018), <https://www.agriculture.com/family/do-you-hear-me-an-important-family-farm-question> [<https://perma.cc/C9SF-64NS>] (“The majority of conflicts stem from misunderstandings, miscommunication, and lack of listening”).

203. See *id.*; see generally George Twohig, *Sibling Partners can Make or Break a Farm*, FARM PROGRESS (Jan. 10, 2019), <https://www.farmprogress.com/farm-succession/sibling-partners-can-make-or-break-farm> [<https://perma.cc/6LNH-3MXL>].

204. See Sophie Quinton, *As Farmers Retire, Their Families Face Difficult Choices*, THE PEW CHARITABLE TRS. (Mar. 27, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/27/as-farmers-retire-their-families-face-difficult-choices> [<https://perma.cc/SG6S-JEWF>].

205. See LEIBOLD, *supra* note 31, at 1.

206. Quinton, *supra* note 205.

207. See *id.*; Alsgaard, *supra* note 66, at 357.

208. See generally RESTATEMENT (THIRD) OF TRS. § 82 cmt. a (AM. L. INST. 2003); RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 2.1(b) (AM. L. INST. 1999).

209. See Henning, *supra* note 203.

## 2. Supporting Mediation for Inheritance Challenges

Unfortunately, open communication will not always prevent conflicts from arising within the family. Litigation accompanying these conflicts is often followed by exceedingly high legal fees, public exploration into the family's private affairs, and increased hostility.<sup>210</sup> This is not to say litigation is inherently wrong. Rather, it is problematic when one or more family members utilize testamentary litigation to intentionally inflict harm on other family members.<sup>211</sup> Farmers could deter malicious litigation by stipulating failed challenges will automatically disinherit a beneficiary status but doing so may inadvertently deter legitimate challenges to the disposition. To voice their concerns about the validity of an instrument or the capacity of a family member, while also avoiding the cost of litigation, challengers should first utilize mediation.<sup>212</sup>

Mediation enables families to address any controversy arising from an estate or a trust without bringing their private disputes into the public light and promotes conflict resolution through a mutual agreement. Over the past few decades, this method of dispute resolution has been supported by federal law makers. Initiated in 1987, federal law makers created the USDA's State Certified Mediation Program to provide funding for state run mediation services for disputes arising between farmers and creditors.<sup>213</sup> This has since expanded to inheritance mediation with the passage of the Agriculture Improvement Act of 2018.<sup>214</sup> In Michigan alone, 85% of cases which have used the state mediation services have reached an agreement.<sup>215</sup> By providing services that reduce the cost of dispute resolution, lawmakers have provided an invaluable service which farming families may use to resolve controversies in operational transitions both efficiently and effectively.

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210. Johnathan G. Blattmachr, *Reducing Estate and Trust Litigation through Disclosure, in Terrorem Clauses, Mediation and Arbitration*, 36 ACTECT L.J. 547, 557 (2010).

211. See Spivak, *supra* note 78, at 287.

212. See Blattmachr, *supra* note 211, at 573 (discussing grantors who stipulate mediation as an alternative forum in their transition plan).

213. See Agriculture Improvement Act of 2018, Pub. L. No. 115-33, 132 Stat. 4490; Successful Farming Staff, *Mediation Can Help Resolve Lease, Farm Transition, Neighbor Disputes*, SUCCESSFUL FARMING (Aug. 16, 2019), <https://www.agriculture.com/farm-management/business-planning/mediation-to-help-resolve-lease-farm-transition-neighbor-disputes> [<https://perma.cc/7FEN-MBSV>].

214. Agriculture Improvement Act of 2018, Pub. L. No. 115-33, 132 Stat. 4490; Successful Farming Staff, *supra* note 215.

215. Successful Farming Staff, *supra* note 215.

*C. A Note on the Rule Against Perpetuities*

Lastly, lawmakers should consider the effect of perpetual dynasty trusts on the farming industry. As discussed earlier, proponents for the abrogation of the Rule Against Perpetuities contend the rule no longer serves its original purpose as more liquid, non-real estate assets have become the main source of wealth.<sup>216</sup> While there is evidence that tends to suggest some jurisdictions have different motivations for abrogating the Rule,<sup>217</sup> one thing is still certain: farming requires land.

The fact remains, the Rule Against Perpetuities is meant to allow for a certain degree of control over one's property after they have died while also ensuring the title becomes marketable once again at a later date.<sup>218</sup> In the abrogated jurisdictions there have been no efforts to provide a meaningful method to terminate to a dynasty trust if the settlor has prevented alienation of the trust's interests.<sup>219</sup> Pursuant to this arrangement, land access is so restricted to those who are already in possession, creating to modern day fiefdoms.<sup>220</sup>

To preserve its mission—but to redeem its flaws—the “wait-and-see” approach removes the guess work from the traditional rule.<sup>221</sup> As previously mentioned, the “wait-and-see” rule leaves a contingent future interest intact for ninety years, only terminating the interest if the contingent interest never vests in that time.<sup>222</sup> This tends to provide a more realistic and reflective take on a farmer's dispositional intent, for they could speculate as to their possible descendants, but can only reasonably speculate so far.<sup>223</sup> By including a ninety year “wait-and-see” period to test whether or not an interest vests, it allows the farmer to provide a gift for a distant generation, but not so remote as to prevent the marketability of title indefinitely.<sup>224</sup> As the accessibility of land is crucial to the agricultural industry,

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216. See Shepard, *supra* note 146, at 93.

217. See, e.g., Dukeminier & Krier, *supra* note 145, at 1316 (finding states which abolished the rule against perpetuities quickly marketed its abolition to professional fiduciary services).

218. See, e.g., IOWA CODE § 558.68(1) (2022).

219. See Vallario, *supra* note 140, at 158.

220. See Harl, *supra* note 138, at 5.

221. See Ronald C. Link & Kimberly A. Licata, *Perpetuities Reform in North Carolina: The Uniform Statutory Rule Against Perpetuities, Nondonative Transfers, and Honorary Trusts*, 74 N.C. L. REV. 1783, 1790 (1996).

222. *Id.*; see UNIF. STATUTORY RULE AGAINST PERPETUITIES § 1 (1990).

223. See Dukeminier & Krier, *supra* note 145, at 1309.

224. Compare UNIF. STATUTORY RULE AGAINST PERPETUITIES § 1 (1990), with Vallario, *supra* note 140, at 158.

providing some limitations to the disposition of an estate to a remote beneficiary is crucial to avoid the buildup and solidification of land holdings.<sup>225</sup>

## VI. CONCLUSION

Unlike other businesses, the continuity of the agricultural industry is fundamentally dependent upon the men and women who tend to their crops and livestock *and* their successors. With an aging population of agrarians, the importance of these farmer's plans for operational transitions is magnified. As a result, a thorough understanding of the available estate planning options is incredibly important. Given the wide range of different estate planning options—from the default regime of intestacy to sale of the farm—farmers have a multitude of ways to pass their operations to the next generation. Nevertheless, not all farmers will know the extent of the options available to them or what the respective options are capable of. Nor will they entirely know the short comings of each option. As such, legal professionals and law makers must ensure farmers understand the breadth of their options, as well as promote successful operational transitions from one generation to the next.

By providing more personal educational opportunities to farmers, promoting communication and mediation within the family operation, and preventing the buildup of dynastic land holdings, advocates and lawmakers will be supporting successful transitions and ensuring farmers' dispositional intentions are carried out.

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225. See SOPHIE ACKOFF ET AL., BUILDING A FUTURE WITH FARMERS: RESULTS AND RECOMMENDATIONS FROM THE NATIONAL YOUNG FARMER SURVEY (2017), [https://www.youngfarmers.org/wp-content/uploads/2019/03/NYFC-Report-2017\\_LoRes\\_Revised.pdf](https://www.youngfarmers.org/wp-content/uploads/2019/03/NYFC-Report-2017_LoRes_Revised.pdf) [<https://perma.cc/EEF3-LNEQ>].