

Guidelines for Transfer & Succession Plans



VHCB

Vermont Farm & Forest
Viability Program

A program of the Vermont Housing & Conservation Board

GUIDELINES FOR TRANSFER & SUCCESSION PLANS

VERMONT FARM & FOREST VIABILITY PROGRAM

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ADOPTED MAY 27, 2014

ACKNOWLEDGEMENTS:

The Vermont Farm & Forest Viability Program thanks Mark Cannella, University of Vermont Extension, and Mike Ghia, Land For Good, for their substantial contributions drafting this version of the program's Guidelines For Transfer & Succession Plans.

I. RATIONALE

Sooner or later, every farm will be transferred from the current owners to a new generation as a result of retirement, significant health issues, or death. But, whether the farm will stay in the family, stay in active production, or continue to operate as a stand-alone business are all open questions. At the point of farm transfer there is a risk that viable farm businesses can be lost or the farm can be converted to non-agricultural uses if careful planning decisions are not made well in advance. Actions must be taken to facilitate the continuation of the farm business or provide for the farmland to be kept in agricultural production.

There are many decisions that will influence the outcome of a farm transfer. For both the exiting farmer and any prospective successor to achieve their goals, important questions must be answered. Even farmers who are actively involved in planning for their farm business often fail to plan for the future of the farm after

they depart, or they wait until an acute crisis forces them to do so. By providing Farm Transfer Planning assistance, the Vermont Farm & Forest Viability Program (VFFVP) helps farmers actively prepare for the inevitable transfer of their farm in a way that helps them achieve their goals, and increases the likelihood that the farm business will continue, and the farmland will stay in production.

II. FARM TRANSFER PLANNING PROCESS

Compared to a standard business plan, the farm transfer planning process may involve more parties, be more complex, require specialized technical assistance, and take longer to complete. Farm transfers are about more than simply transferring the real estate and other physical assets of the farm. They also involve a mix of family/personal dynamics; management responsibilities;

and business, financial, and legal decision making (see Appendix A for resources).

Once the Transfer or Succession Plan is complete it usually takes longer to implement than a standard business plan, with some elements sometimes not being fully implemented until after the current owner's death. As a result, advisors may suggest revisiting the farm and offering follow-up services after the initial two years of the program, and may request funds from VHCB to do so. (See section IV. Implementation and Follow-up for details)

In some cases, a separate business plan may also be developed alongside a transfer plan for the future owner or operator. (See "Identifying Client and Coordinating Service Providers" for further guidance on this issue)

Identifying the Service Provider/Advisor:

Each farm transfer planning process conducted by the Vermont Farm & Forest Viability Program must have a planning Advisor assigned either by the VFFVP staff or by the Coordinator of one of the VFFVP partner/contractor organizations. The Advisor is responsible for maintaining communication between the interested parties, setting up and facilitating meetings, calling in technical assistance, and coordinating with and reporting to a Coordinator. The Advisor may also write the farm transfer plan in collaboration with the interested parties, and potentially an additional business planner. (See "Identifying Services to be Provided" for detail on when multiple service providers is applicable.)

Key questions that must be answered early in the process are: Who is the client? and What kind of transfer is this?

Transfer/Succession Types

There are many types of farm transfers which might be encountered. Not every transfer will fit neatly into one of the categories at right, but these can serve as guides:

Farm Transfer to Family Member Intending to Maintain Current Business: In some cases, the family member may already be working on the farm, and in other cases, the family member may be returning to the farm after departing for other careers.

Farm Transfer to Family Member with New Business Model: The successor seeks to diversify or change the existing farm business model significantly. They may or may not already be working on the farm.

Sale of Business to Nonfamily Successor (with or without the real estate): This includes farms where the successor is identified or where a successor needs to be recruited. A farmer will be transferring physical assets and/or knowledge of the existing business format/brand, which may involve established markets and/or intellectual property.

Gradual Sale/Transfer to an Identified Nonfamily Successor: This type includes situations where a partner/employee will work with the owner-operators as a part of a gradual transfer rather than buying them out immediately.

Transfer/Sale of Assets from Nonfarming Landlords to Farmers: These nonfarming landlords may include retired farmers who no longer have a business, or members of a family trust, or other such entity, whose family had historically farmed the property.

Exit Planning Amid Uncertainty: This type involves farmers who are getting out of the business, either voluntarily or for financial reasons, who wish to keep the land in farming but have not identified a successor. They will be exploring options such as selling the farmland, bringing on a partner, or selling the business to a successor.

Partial Farm Transfers: This type involves projects focused on one element of the transfer process (management transfer, real estate transfer, non-real estate asset transfer) but not all.

Communication:

Clear communication and respectful communication is critical to any transfer planning situation; this is especially true when family members are involved. Advisors play a unique role in facilitating communication between decision makers and also in deciding when referrals to a professional communication specialist, mediator, or family therapist might be appropriate. Communication is especially important when working with families in which more than one sibling wants to work on a farm that currently cannot support an additional family. Or, an advisor may need help to address the concerns of a successor's nonfarming siblings. Or, the advisor may have to deal with farm families that waited to work on the farm succession until a significant crisis occurred, such as the incapacitation or even death of an owner.

Identifying Services to be Provided:

In some cases the presence of multiple individuals with sufficient differences in interests will require separate business Advisors for each party. This is especially important if there are confidentiality issues. In close-knit families or where a retiring farmer wishes to pass the farm to a trusted employee, it may be possible to create one plan for the farm working with one Advisor. In other cases, a strategy for the retiring farmer may be worked out separately from a strategy for the prospective farmer. The Advisor may then serve as a facilitator between both clients with a goal of creating a shared document at the end even if some components are kept private. In some cases, however, it will be necessary to use a different Advisor for different parties in the transfer process. This assures confidentiality and facilitates equal attention to the needs of each party. The Advisor should be clear at all times whether his or her role is that of facilitator or that of advocate for one client or another.

At times, a full business plan may also be needed in addition to the transfer plan. If the farm enrolls for a business plan, the Coordinator and Advisor will need to determine if the transfer planning can proceed before a business plan is complete. It must also be decided if the same Advisor doing the farm transfer plan is also doing the business plan. In cases where a full business plan is not in order, a "business operations" section may be included in the transfer plan as a subsection to the acquisition planning part of the transfer plan. In cases where the successor is not the operator of a farm business, it

will be up to the VFFVP staff whether to waive the enrollment criteria in order to provide the client with the necessary assistance for a business plan, or a "feasibility study."

When the two parties of a transfer would be best served by separate Advisors, but there is not the need for a separate plan for the incoming party, assigning two Advisors is at the discretion of the Coordinator, and this does not require approval from VFFVP staff. It is understood that this may cost more than the average farm business plan or even a typical farm transfer plan. The Coordinator may wish to discuss individual situations such as this with the VFFVP staff, and can request additional funds, if needed.

In cases where the two parties of a transfer may be best served by separate Advisors and the incoming party needs to develop its own business plan, the Advisor or Coordinator assigned to that farm must discuss the case with VFFVP staff. If approved, an eligibility waiver will be provided to the incoming party if needed; each party must complete an application to the program; and each will be assigned an Advisor, thus taking two program slots. It is highly recommended that these Advisors work closely together, communicating on a regular basis, and bringing all parties together to discuss certain aspects of the business transfer.

Identifying Additional Stakeholders and Technical Assistance Providers:

As soon as possible, the Advisor should identify all the individuals who will need to participate in the process. The primary stakeholders, or clients, should include the current and successor farmers, if successors have been identified. Other potential stakeholders should at least be made aware of the process and invited to give input when appropriate. These include any family members, or other investors, who have an interest in the land and/or the business. The current operators looking to transfer the farm may not have full title to all the farm assets, particularly the real estate. For instance, there may have been an incomplete transfer from the previous generation, or the mechanism of transfer may have been through an estate plan that has not been acted upon because the oldest generation is still living, or the previous transfer may have involved leaving the farm to multiple heirs.

The stakeholders may also include nonfarming family

members, particularly those who may be expecting to inherit or purchase some portion of the land and/or the business. It is not uncommon for problems to arise later if these people are not included in at least part of the discussion. If agreeable to the current owner, involving these other stakeholders in the discussion early on will make for a smoother farm transition and often reduces the potential of future family conflict.

If a successor is not immediately identified, the potential for finding a successor among family members, employees, or elsewhere should be explored. If they can be identified, they may then join the planning process, or they may choose to work with someone on a feasibility plan or full business plan of their own.

Technical assistance providers: The list below indicates other parties who will likely be involved and who should be identified to support farm transfer decisions:

- Lenders and/or Investors (who may also be considered stake holders)
- Attorneys
- Tax Accountants
- Accounting/Records Specialists
- Retirement Advisors
- Business Planners and other financial advisors
- Land Trusts: If the farmland has been conserved already, or if the current or future farmers have an interest in selling development rights at some point, they should contact the appropriate land trust in order to fully understand any implications a conservation easement may have on the transfer.

If the parties do not already use these technical assistance providers, the Advisor will assist the clients to identify consultants who can help them meet their objectives.

Identify What Has Been or Will Be Transferred:

Early in the process, it should be determined what exactly is going to be addressed during the Farm Transfer Process. While there are many facets to Farm Transfers, these facets can be roughly grouped into three categories:

- Management transfer
- Business assets transfer
- Real estate transfer

It is possible that only one of these aspects may be addressed in the first year, or even the second year of the program. For instance, if the farmer requires assistance preparing a successor to take over management, the transfer of any assets may be delayed until this phase is complete. However, there will often still be a need to develop a framework for the process of the eventual transfer of the other assets. A default plan should always be put into place through the estate plan in case there is a death prior to full implementation of the transfer of management and/or farm assets.

Preparing for Uncertain Events:

There are several risk management tools to handle the uncertainty related to Farm Transfer and Succession Plans:

- Estate Plans (including for successor generations), Powers of Attorney, Medical Powers of Attorney, Medical Directives, and Trust formation
- Business Insurance and/or Life Insurance
- Legal Business Entities, Business Agreements, and Buy-Sell Agreements
- Tax Planning, including estate tax planning and addressing capital gains and stepped-up basis
- Business Plans and other financial planning
- Family Living Budgets and retirement budget planning
- Written Leases
- SWOT Analyses

Transfer the Farm Workshop, Videos, and Other Resources:

University of Vermont Extension, usually in coordination with other organizations, has offered “Transfer the Farm” workshops throughout the state. It can be highly useful to have farm family members attend one of these workshops prior to starting the process. However, this is not required. If the timing allows, it may also be helpful for family members to attend one of these workshops during their Viability Program enrollment. This can help reinforce concepts discussed during the planning process, give the farmer access to other service providers who can answer their questions, and also give them a chance to interact with other farmers who are trying to

address similar issues. Technical Assistance (TA) funds may be used to pay for course enrollment.

University of Vermont Extension has also created a “virtual” farm transfer workshop and has developed a series of highly useful videos: <http://www.uvm.edu/farmtransfer/>. The Advisor can share components of the workshop or certain videos with the family that address issues of specific concern. In addition, Land For Good, the University of Vermont Extension, and a number of other land grant universities offer a variety of resources and tools that may be useful to the farm families and the service provider to help inform the family during the process. Land For Good’s resources include a publication specifically for service providers (see Appendix A).

III. CREATING THE WRITTEN TRANSFER PLAN

Since farm transfer scenarios can vary so greatly and have varying degrees of complexity, these Guidelines offer a greater degree of flexibility as compared to standard Business Plan Guidelines. Certain elements are required of all plans, but the planner has a degree of professional discretion to determine which elements need to be addressed and included in the final Farm Transfer Plan and follow-up work. The most critical element is to assess the needs of the family early in the process to determine how to best serve their needs. The Advisor’s notes, included with each deliverable submitted to VFFVP staff, should include a brief explanation of which major elements are included or excluded from the plan.

Financial Statements:

The specific financial statements to be incorporated in the plan will be determined by the nature of the client and the transfer involved. Typically, these should include the farm balance sheet for the exiting farmer in order to determine the net value of assets being transferred. The balance sheet is also likely to be a factor in the retirement plan. If there is a current farm business and the business will be transferred to the successor, then the most recent income statement will also be required. The income statement can help determine if additional financial planning will be necessary for the farm business to be viable for the successor. Retirement plans typically include a household budget for the exiting owners as well.

The prospective owner should prepare a balance sheet if they already own farm assets or if financing will be used to acquire the farm. If the prospective owners are developing a formal Acquisition Plan or a formal business plan, refer to the appropriate VFFVP guidelines for a list of financial information needed. These documents may be kept confidential or shared among the parties, as mutually agreed. The Advisor and technical assistance providers shall respect the confidentiality wishes of the participants. For additional guidance see the Transfer Plan Check List that accompanies these guidelines.

Technical Assistance:

During the Farm Transfer planning process, the Advisor can determine if and when technical assistance, such as legal counsel, tax accounting advice, specialized farm financial advice, business planning assistance, family counseling, mediation, and retirement planning advice should be recommended. Some of this Technical Assistance may be completed during the planning process and some may be completed as a part of the implementation.

Any specialized technical assistance shall be approved by the Advisor in consultation with the farm participants and the Coordinator managing the project. The Farm Viability Program, or service provider organizations, will cover these and related technical assistance costs, up to pre-established limits, provided that these services are limited to consulting and do not include ongoing services that are not specific to the farm transfer, such as tax return preparation.

Written Transfer Plan:

The final stage of the transfer planning process is the preparation of the written document. See Appendix B: Transfer Plan Template for details. This document’s various components may be written by different parties, including the participating farmers, the Advisor, additional business planners, or a technical assistance provider. However, the Advisor is responsible for ensuring that the document is completed, and for reporting the circumstances should a delay or deadlock occur in the writing of the plan.

The template should be treated as a list of categories within which there is a menu of items to choose from as appropriate for the farm. Categories may be reordered or renamed as long as the same basic information is included.

IV. IMPLEMENTATION AND FOLLOW-UP

Year Two

As with Business Plans, the Vermont Farm & Forest Viability Program provides for follow-up with the stakeholders in the year following the completion of the initial Farm Transfer Plan. The program requires planners during year two to follow up with the stakeholders on elements identified and recommended in the plan that could be implemented in the first year. Depending on the situation, this may include submitting an updated written transfer plan, monitoring and recording the steps taken so far, or evaluating how the intermediary results influence other aspects of the plan and the full implementation of the transfer. In some cases, the Advisor may also be assisting the stakeholders in the implementation of these steps. New issues may arise that need to be addressed for the transfer to progress. See Vermont Farm & Forest Viability Program Year Two Guidelines for details.

Beyond Year Two

Since farm transfers may take several years to implement, there may be a need for continued assistance beyond the second year of the program. For instance, it is common for a farmer to transfer livestock and equipment to their successors in the early years, but to maintain ownership of the real estate until a much later date. So, until the first steps are completed, the transfer of the real estate may not be something that can be fully addressed in the initial plan. Or, the successor identified by a farmer may, for any number of reasons, pull out of the transfer. This would stall the process as the farmer identifies a new successor and works out a new plan with the new party.

In these extended scenarios, Coordinators may, in budget their annual application for funds, budget to cover the costs of further implementation. Advisors may also request, through their Coordinators, permission to re-enroll the farm. The Vermont Farm & Forest Viability staff may approve re-enrollment for an entirely new plan, particularly if there are substantial changes in the nature of the business and the potential transfer. However, in most cases, a limited amount of funding to address aspects of an ongoing transfer will be warranted.

CONFIDENTIALITY

Farm transfer plans contain confidential financial information, such as income statements and balance sheets. They may also describe legal documents and contracts of a sensitive nature. Viability planners and technical assistance providers must agree to keep farm transfer plans confidential to protect farmers' interests, but they must agree to furnish copies of completed farm transfer plans to Vermont Housing and Conservation Board staff.

VHCB staff will require copies of completed farm transfer plans for several reasons: (1) to monitor quality of work conducted by those receiving VHCB funds, and (2) to collect data on the economic viability of the farms being assisted, in anticipation of being able to measure the success of the Program over time.

VHCB, as a public instrumentality, is subject to the Vermont Open Records Law, 1 VSA § 317. The statute contains specific exemptions for tax-related information of persons, personal financial information of an individual, and trade secrets. Therefore the information submitted by service providers to VHCB will be held in confidential files at VHCB and will not be available for public inspection under the Open Records Law.

APPENDIX A: RESOURCE GUIDE

University of Vermont Resources, Videos, Virtual Workshop and Tools

<http://www.uvm.edu/farmtransfer/>

Land For Good:

LFG Schematic of Farm Transfer issues:

<http://landforgood.org/wp-content/uploads/LFG-The-Farm-Transfer-Process-Schematic.pdf>

Other LFG Farm Transfer Tools and Resources including resources for farmers without identified successors:

<http://landforgood.org/resources/toolbox/toolbox-farm-families/>

LFG Service Provider publication “A Team Approach to Farm Transfer Planning Assistance”:

<http://landforgood.org/wp-content/uploads/LFG-Team-Approach-To-Farm-Transfer-Planning.pdf>

Resources from Other Land Grants and Institutions

Iowa State

<http://www.extension.iastate.edu/agdm/wdbusiness.html>

Ohio State

<http://ohioagmanager.osu.edu/resources/>

University of Minnesota

<https://www.agtransitions.umn.edu/>

<http://www.extension.umn.edu/agriculture/business/farm-transfer-estate-planning/>

Minnesota Land Stewardship Project

<http://landstewardshipproject.org/morefarmers/farmtransitionstoolkit>

California FarmLink

<http://www.californiafarmlink.org/succession-planning/farm-succession-guidebook>

International Farm Transitions Network (IFTN)

Offers trainings and a listserv for service providers; contact:
John Baker, Iowa State University, jrbaker@iastate.edu

Vermont Employee Ownership Center

Provides information and resources to owners interested in selling their business to their employees, to employee groups interested in purchasing a business, and to entrepreneurs who wish to start up a company with broadly shared ownership.

<http://www.veoc.org/>

American Farmland Trust Webinar

<http://www.farmland.org/programs/protection/Farmland-Advisors-Farmland-Transfer.asp>

Mediation - VT Agricultural Mediation Program

<http://vtamp.emcenter.org/>

APPENDIX B: TRANSFER PLAN CHECKLIST

A. Planner Notes and Checklist

Check off the sections below that are included in the plan and attach this sheet to the final plan. Note: It is not required to have included all sections.

1. Provide a brief summary (planners notes) of how the needs for the farm dictated which elements were included and also explain the rationale for not including other sections on this checklist.

B. Transfer Plan Cover Sheet

- 2. Name of farm and farmers'/owners' names
- 3. Names of prospective successors if known
- 4. List of specialists who contributed writing or provided input
- 5. Date of plan
- 6. Statement: "Farm transfer plan produced with funding from the Vermont Farm & Forest Viability Program"

C. Table of contents

Helps readers quickly find sections and references

- 7. Table of Contents

D. Summary

This should be written at the conclusion of the planning process and should describe the purpose of the farm transfer plan, and any planned changes in ownership structure or management.

- 8. Summary Section

E. Snapshot of Current Situation

- 9. Names of all the stakeholders and a description of their relationship to the farm as it relates to the transfer
- 10. Farm location
- 11. When acquired or how long owned
- 12. Number of acres owned and/or rented and a brief description of relevant characteristics of the farm and the farm business (crops produced, size of output, product and market description, etc)
- 13. Present financial overview
- 14. Present legal structure (for example, "sole proprietor," "family corporation," etc.), and ownership structure of farm assets (for example, son/daughter owns the cows, but parents continue to own the equipment and real estate)
- 15. Present management/decision making structure. How decisions are made and how is responsibility housed among management/owners (Example: Parents continue to manage farm finances, but successor makes all of the day-to-day decisions on crops and cattle.)

F. Farm Transfer Goals

- 16. Farm transfer goal(s) for each of the stakeholders
- 17. Timeline for key steps of the transfer of management, farm assets, or real estate.
- 18. Description of challenges or issues affecting a successful farm transfer including incompatible goals, family conflict, or farm finances

G. Exiting Farmer Plan

- 19. Most recent balance sheet, including loan summary and estimate of deferred taxes—or at least an inventory

and valuation of assets to be transferred.

- 20. Fair Market Value for the assets that will be transferred. This may necessitate current appraisals in certain circumstances.
- 21. Assessment of retirement income needs.
- 22. Retirement Plan:
 - a) Family living budget for the early years of retirement, goals for retirement
 - b) Sources of retirement income (SS, pensions, IRA's, 401K's, sale of farm assets)
 - c) Identification of any cash deficits needing attention. Retirement planning professionals may be engaged, or recommended as a part of the business plan
- 23. Assessment of Estate Plan and Powers of Attorney
- 24. Mechanisms of asset transfer (financed sale, gifting, inheritance, owner-financed sale, land contract, leasing, change of ownership structure, etc.), the legal documentation needed for implementation, and financial implications
- 25. Proposed uses of farm equity as it relates to retirement planning
- 26. Assessment of tax considerations. A tax accountant may be engaged to research these issues.
- 27. Timeline for Asset Transfer

H. Farm Financials and Business Management

- 28. Summarize current financial situation of the business, and whether the business will continue in a similar manner or if it will be changed dramatically.
- 29. Assessment of need for a full business plan
- 30. SWOT Analysis for current or proposed business
- 31. Most recent farm income statement(s)
- 32. Cash Flow Projection (1-3 Years) for farm business
- 33. Management Analysis which identifies management responsibilities and decision making responsibilities to implement the transfer plan
- 34. Feasibility Analysis: (or Full Business Plan) Must be completed when the potential successor will dramatically change the business or establish a new business on the farm.

I. Acquisition plan

- 35. Identify the suitable successor. Describe their commitment to following through with the transfer.
- 36. Summary of education, experience and qualifications of the prospective owner(s)/manager(s)
- 37. Balance sheet of prospective owner(s)/manager(s)
- 38. Mechanisms of asset acquisition (buy, rent, debt) and assessment of the financial implications
- 39. Identification of capital source(s) (personal equity, debt, other sources)
- 40. Anticipated management changes to farm operations during or after transfer process
- 41. New owner professional development/training plan
- 42. Assessment if feasibility plan or a full business plan is needed for the continuation of the business. Specifically, demonstrate the feasibility of farm production/operations and feasibility of the marketing plan.
- 43. Timeline for acquiring a) management responsibilities, b) farm business assets, and c) farm real estate assets.

J. Appendices

- 44. Summary of technical assistance or technical assistance reports prepared for the farm transfer plan
- 45. Draft legal documents, farm maps, farm pictures, and other supplemental documents relevant to the farm transfer



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