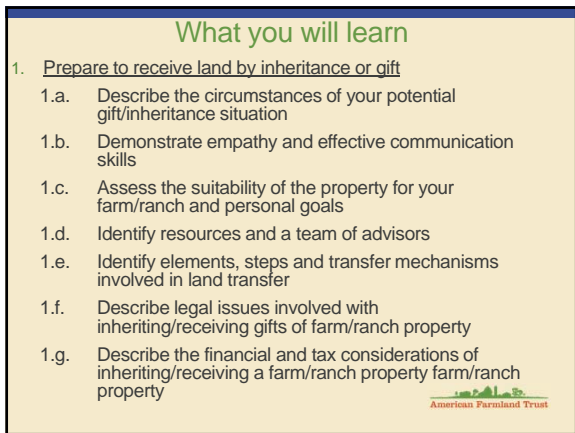


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3

Farm & Ranch Transfers Take Time


- Most farm/ranch transitions take place over a number of years
- Owners must be willing to turn over control of the business as well as land and other assets
- Beginners need to be prepared to take over multiple aspects of the farm
- Lots of people may be involved



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What Do You Know?

- Before we get into the ins and outs of transfer, it's important to know where you stand
- What do you know about the What, When and How?
 - Does the property meet your personal and business goals?
 - Do you understand the owner's needs and motivations?
 - Do you have a management role in the farm/ranch operation?
 - Do you see any signs that the landowner has – or is making plans to transfer land or other assets to you?



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Ways to Find Out What You Don't Know

- These are hard questions to ask and hard conversations to have
- Clear communication is key!
- To start, it's important to:
 - Understand the owner's needs and motivations
 - Have meaningful conversations
 - Strengthen relationships with everyone involved or potentially affected by the transfer



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Understand Owners' Needs

- Different owners have different motivations and needs that may change in different situations
- Examples include:
 - Ability to age in place
 - Keep their land in production
 - Continue a family farming tradition
 - Divide assets equally between heirs
 - Minimize taxes
 - Transfer management responsibilities
 - Retirement income or savings



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Improve your Communication Skills

- Listen to understand the goals and motivations of the owner
- Ask for regular meetings to create dialogue and hash out issues
- Be aware of how *you* communicate
 - Use "I" vs "you" statements
 - Questions can be powerful communication tools
- Respect the owner's knowledge and experience, but recognize it may be different from yours



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Strengthen Your Relationships


- Building relationships takes time
 - Even within a family changing roles and having hard conversations takes time
- Practice empathy and honor other people's needs and points of view
- Ask questions instead of making assumptions
- Express gratitude and appreciation
- Small agreements and follow through build trust



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Follow Your Plan (not your heart)


- It's possible that you will inherit a farm or ranch that isn't appropriate for your planned operation or it will take some work to get there
- Think about the context of the farm/ranch
 - What kinds of farms/ranches are nearby?
 - Is the community farm friendly?
 - Is there enough land and infrastructure to meet your needs?
 - How has the property been used?


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Assemble a Team


- Owning a farm or ranch is a big commitment
- Whether you will receive it through gift or inheritance, it helps have a team to help you navigate legal, financial and tax implications
- Key professionals to reach out to include:
 - A qualified accountant
 - An appraiser
 - A farm advisor
 - An attorney
 - A facilitator or mediator


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Part 2: Transfer and Legal Issues



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Asset Transfer – How and When


- There are only four ways to transfer assets:
 - Sale
 - Gift
 - Transfer upon death
 - Some kind of combination of the above



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Sale


- Immediate – during lifetime
- Installments – payments over time
- Phased – sale of portions of the real estate assets



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Lifetime Gift

- Present/immediate gift
- Gift with retained life use
- "Bargain" Sale – discounted price – gift component



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Transfer through Will or Trust

- Outright bequest of property
 - Sole ownership
 - Joint ownership (usually with siblings, or siblings and the surviving spouse)
- Property conveyed to a trust
 - Terms of the trust will determine use and future ownership
- Right to purchase at a specified price
 - Either pursuant to the will or a buy/sell provision



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Combination of Sale/Gift/Bequest

- Not necessarily all or none
- Often used in combination
- Frequently land assets are discounted or gifted



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Legal Tools to Address Transfer

- Legal entities as ownership options
- Operating agreement with a transfer trigger
- Buy-sell agreements
- Sales contracts / Options / Rights of First Refusal
- Integration with estate plan



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Entities as a Transfer Mechanism

- Entities like LLCs can provide for gradual transfer
 - Of operating assets
 - Of real estate
- Can separate management and ownership
- May be helpful if there are multiple owners



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Operating Agreement

- Can outline who makes decisions and how
- Can be changed to adapt to new circumstances
- Can provide direction/guidance for buy-sell
 - Of operating assets
 - Of real estate



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Buy-Sell Agreement

- Address the "Five Ds"
 - Death, disability, disaster, divorce, dissolution
- Should address valuation and terms of sale
- Can be in the operating agreement, will or trust



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Sales Contracts/Options/RFR

- Create two-way commitment
- Opportunity to negotiate fair valuation and terms
- Can be internally or externally financed
- Can be integrated with overall succession/estate



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Integration with Estate Plan

- Other issues relative to legal, financial and health
- Financial security important for both generations
- Issues are intertwined and inter-related



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Agricultural Conservation Easements

- Will protect land for future agricultural use
- Can help make land more affordable
- If conservation easement funding is available, can provide funds for retirement and/or capital improvements
- Can address nonfarm sibling buyouts



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Heirs' Property

- Heirs' property refers to land that has been passed down informally from generation-to-generation, usually without a will
- Heirs' property is owned "in common" by any and all heirs, regardless of whether they live – or have ever set foot on the land
- This results in a lack of clear title which historically made it difficult to get loans, grants, government assistance or to sell or lease the land



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How to Resolve Heirs' Property Issues

- Identify heirs and keep a list of their current addresses
- Gather key documents: deed, survey and tax maps
- Settle family disputes before they become legal battles
- Create a plan to take care of the property
- Get a will and encourage other heirs to make a will
- Purchase ownership interests from other co-owners

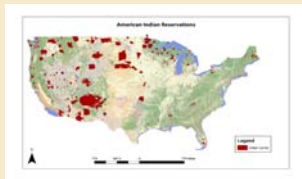


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Trust Property in Indian Country

Indian tribes and individual Indians have beneficial use of the land, but title to land remains in trust and in the name of the United States government

- Tribal
- Individual Allotment (reservation)
- Individual Allotment (public domain)
- Assignment (tribal)



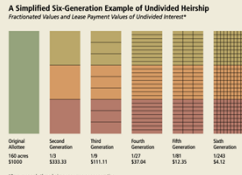
Source: Indian Land Tenure Foundation



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Allotted Indian Lands

- The General Allotment (Dawes) Act was passed in 1887 and divided treaty reservations into “allotments” of 80, 160, or 320 acres that were then given to individual tribal members
- Allotments are held as tenants in common; this term means ownership is fractional with other individuals possessing undivided interests in the whole



Source: Indian Land Tenure Foundation



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Common Causes of Indian Land Loss

- Fraud and theft
- State probate laws
- Partial Solution:
American Indian Probate Reform Act (AIPRA): Federal fractional ownership



Source: Indian Land Tenure Foundation



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Estate planning is critical to effective management

- Landowners should write a will to dispose of their trust assets; if there is no will then a federal judge will decide what to do with the assets according to federal law
- AIPRA sets out clear rules for distribution of assets (especially without a will)
 - ❖ Eligible Heirs
 - ❖ Single Heir Rule
 - ❖ Joint Tenancy with Right of Survivorship
 - ❖ Permanent Structures



Source: Indian Land Tenure Foundation



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Moving Forward

- Conversations about succession and transfer can be difficult
- Has the landowner taken any concrete steps to transfer land and/or other property to you?
- Does the landowner have a team of advisors?
 - Attorneys
 - Accountants
 - Lenders
- Who is advising *you*?



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Part 3: Financial and Tax Considerations



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Inheriting a Farm or Ranch Isn't Free


- It's important to understand both the costs of receiving a farm or ranch by gift or inheriting it and the carrying costs of maintaining it over time
- Carrying costs include:
 - Water and other utilities
 - Conservation practices
 - Needed improvements/restoration
 - Property taxes and special assessments



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Property Taxes are a Given


- Every state taxes real property and structures
- Every state provides tax relief for agricultural land
- Most states tax business property like farm equipment
 - Tax rates are set by elected officials and then applied to the assessed value of the property
 - Assessed values generally are set by the local assessor's office
 - If you inherit a property, state law determines if you will inherit the old property tax basis or if the property is re-appraised



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Where Do You Stand Financially?


- What do you own, how much do you owe?
- What financial resources do you have access to?
- How much income will your business support?
- Do you need off-farm income?
- Can the business pay back any borrowed funds?



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Transfers May Trigger Taxes


- Gifts and inheritances may be subject to taxes
 - Donors may be subject to gift and capital gains taxes
 - Estates may be subject to federal or state estate taxes
 - Six states tax heirs on their inheritance
 - Property taxes may change depending on who inherits and if there are sales between heirs
 - When income-generating assets pass to new owners, so do the taxes
- Find out what taxes may affect you



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What Are the Tax Issues to Consider?


- If you receive a farm or ranch through gift or inheritance, be prepared to deal with tax issues:
 - Estate and gift taxes, which are related
 - The "tax basis" of the property will affect income taxes
 - Local property taxes
 - Sales taxes if equipment is sold
 - Income taxes for the final return of the decedent, for income from the decedent's trust and for the new owners



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Federal Gift and Estate Tax


- The landowner may be concerned about tax consequences
- The Federal Gift and Estate Tax is tied together by the Unified Lifetime Exemption (ULE)
 - Each person has one ULE to be used first against amounts transferred by gifts over certain annual limits and then against the estate
 - Congress sets the ULE amount and adjusts annually for inflation
 - Congress also sets the base amount of the annual gift exclusion – the amount you can give away per person per year without using any of your ULE



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State Gift and State Inheritance Taxes

- A few states have gift taxes on assets like land
- Some states tax estates
 - In these states the decedent's estate pays the taxes
- Some states tax inheritances
 - In these states, the heirs pay the taxes
- Find out what kinds of taxes apply to you



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Tax Basis and Capital Gains

- Capital gains income is the income from the sale of capital assets such as land, livestock and equipment
- Capital Gains (or Losses) are calculated by subtracting the "basis" from the sales price
- Basis is:
 - The purchase price – i.e. of a piece of machinery
 - The cost to construct - i.e. of a barn you built
 - Gift basis – for an item given to you your basis is their basis
 - Stepped up basis - for an inheritance, the item's fair market value on the day the decedent dies, or six months later



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Other Taxes Make Sneak Up on You

- State and Local Sales Tax
 - In places that have sales tax, the sale of farm equipment is usually subject to it
- Income Taxes
 - Part of your overall tax planning strategy should include planning for the final tax return of the decedent, the estate and/or to the new owners



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Saving the Land that Sustains Us



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