

# We All Need This Stuff

## Estate planning expert leads session at 2024 Angus Convention.

by Lynsey McAnally, associate editor

**S**hannon Ferrell opened his Angus University session at the 2024 Angus Convention in November by stressing four simple words to attendees: You. Need. This. Stuff.

While estate planning is likely to rank low on activities that bring most of humanity joy, agriculturalists need to devote time to getting their transition plan right, the professor of ag economics specializing in ag law at Oklahoma State University (OSU) stressed in front of a packed conference room in Fort Worth, Texas.

But how do we go from broaching the topic of estate planning with our loved ones to setting in motion an ironclad transition when the time comes? Ferrell has more than a few ideas.

### The current situation

During the next 20 years, more than a trillion dollars of wealth — in the form of land and other assets — will transition from one generation to the next, says Ferrell.



How farmers and ranchers handle that succession is going to shape what rural communities look like, as well as the structure of our industry, into the future.

“If I were to ask 100 farmers and



Shannon Ferrell

ranchers, ‘What do you want to have happen to your farm after you die?’ I bet a hundred of them would say, ‘Well, I want to keep the farm together and keep my family farming,’” Ferrell said. “Cool. We’re doing terrible at that.”

According to Ferrell, roughly 30% of small family-owned businesses survive intact from one generation to the next because the right infrastructure of documentation isn’t in place to accomplish the two-part goal of keeping families together and the family farm in operation.

While there’s no argument that estate planning can be quite the conversation killer, that doesn’t negate its importance when it comes to planning for the longevity of family farms and ranches.

“You [have] got to be proactive about this stuff because if you just stick your hands in

your pockets and go, ‘I’ll let them fight about it when I’m gone,’ well, I will say congratulations,” Ferrell deadpanned. “That plan does have a 100% chance of success.”

### The building blocks

In his experience, two things motivate people to get their estate planning in order: a death in their immediate circle, and plans for international travel.

“We’re going on a cruise, which means we’re leaving the country. We’ve got to have an estate plan in place, OK? Whatever works, man,” Ferrell acknowledged while also driving home the need for planning further by reminding audience members most accidents occur within 5 miles of home.

“I don’t want to be harsh, but — this is 20 years of experience talking here — if you don’t have everything I’m about [to mention], you are looking your family in the eye and saying, ‘You’re just not worth the effort. I just didn’t have the time. It wasn’t urgent. It was wildly important, but not urgent.’”



The numbers of possessions and the size of the family in question don't matter when deciding whether or not a transition plan is needed. The fact of the matter, Ferrell stressed to those sitting in the room, is that everyone needs a transition plan, no matter what their operation looks like.

Here are a few nonnegotiable pieces of any successful transition plan to keep in mind.

## Guardian nominations

The first question that needs to be answered is whether there are any children under the age of 18, Ferrell noted. If there are, a guardian nomination for that child is the first order of business. The guardian nomination simply says who gets legal custody of a child if something should happen to both of their parents.



"We have unprecedented numbers of kids living with their grandparents as a result of the pandemic, because they lost both parents. I don't know if you have paid attention to the statistics on average date of first birth in the United States, but it's up to 26 now," said Ferrell. "We need to think about who we are nominating. Is it a grandparent? There are all sorts of reasons that might be the right answer, but if Junior is 1, what age will [your] parents be when Junior is 18?"

One more crucial conversation to have regarding guardian nomination relates straight back to transparency: Talk to the person you're nominating to confirm their agreement, and make sure they know assets have been allocated to care for any child coming into their home as a result.

## Beneficiary designations

Maybe it's an investment or bank account, a 401(k) through a workplace, a retirement account, or a general stock portfolio. Regardless of the asset, a beneficiary designation stating who funds should be distributed to in the event of a death is vital.



"It's an independent contractual arrangement to transfer title to an asset. It doesn't have to go through the probate process," Ferrell explains, noting that this document is especially important when

dividing assets between children working on-farm and off. "I want to give farm assets to farm kid. I want to give nonfarm assets to city kid. Make sure you're taking advantage of your beneficiary designations."

While beneficiary designations usually allow for several beneficiaries to be listed, Ferrell noted the wisdom of checking designations — as well as what institutions have on file for your accounts — any time something major happens in life (from births to job changes to divorces, and everything in between).

## Durable and springing power

Maybe you're seemingly ahead of the game and have your power of attorney in place. What many people don't realize is that an ordinary power of attorney goes dormant if the person in question is incapacitated. That's not the case with durable power.



"Most people don't know that. If [the power of attorney] wasn't durable and you're incapacitated, it is dormant. It is not effective anymore," Ferrell emphasized. "So when we say durable, you need to make sure that the language used in your power of attorney means even if [you're] incapacitated, this power of attorney is still effective."

Another option that he thinks most people are really looking for is springing power of attorney, meaning it only activates when the subject is incapacitated.

"I'm fine to take care of my own stuff. I don't want anybody acting on my behalf if I'm with it," Ferrell explained. "But if I'm ever not with it? Then at that point, I need this power of attorney to spring up and for the person I've designated to have the capability — in the case of the business power — to write checks, pay bills, engage in transactions, negotiate on my behalf, etc."

While having a business and healthcare power of attorney is responsible, those two roles may not be the best fit for one individual, Ferrell noted. Finding someone capable of making life-altering medical decisions under pressure with limited information might be a tall order. Speak to

the individuals who are potential candidates for each role and name several options should the first be unable or unwilling to act.

One final thought: Know the laws in your state. A separate health care power may not be needed if [medical decision-making] is addressed in an advanced directive. Advanced directives also line out what you want to happen in terms of end-of-life care, which can make painful decision-making less difficult for loved ones. Similarly, make sure any paperwork, including do-not-resuscitate orders (also known as a DNR) are on file with a primary physician.

## Long-term care

Long-term care insurance is an insurance policy that can help cover costs associated with long-term care services and support for people with chronic conditions or disabilities.



"Here's the thing: We keep living longer, and that's arguably a good thing, but that increases the probability that we're going to need long-term care," Ferrell explained, noting that in Oklahoma the average cost is \$4,500 per month for an assisted living facility up to \$25,000 per month for memory care specialty centers. "That'll eat through a farm and ranch balance sheet real fast. So don't act like it's not going to happen to you. That's foolhardy."

Long-term care insurance could be an affordable option and is worth investigating, according to Ferrell. The younger the individual seeking coverage is, the lower the premium in most cases.

## Wills

"Everybody, everybody, everybody needs to have a will. I don't care how much stuff you have, I don't care how little stuff you have. I don't care if you're unmarried or married with 10 kids. I don't care, you need a will," Ferrell stresses. "But I've got this fancy trust! Fantastic. You still need a will."

Trusts — when done correctly and kept updated — will likely do most, if not all, of the heavy lifting in an estate plan. But if



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something was forgotten and not added into a trust, that is where a will comes into play. While a will can be pretty straightforward, it essentially outlines a set of instructions for how to transfer title for assets upon the death of the subject.

While not everyone needs a trust, every single person needs a will, Ferrell emphasized; noting that the more complicated and asset-dense an estate is, the more likely pursuing a trust would be beneficial.

### The result of poor planning

Several years ago, OSU conducted an extensive study that took real farm and ranch data from the Kansas Farm

Management Association and built what looked like a prototypical Oklahoma winter wheat and cow-calf operation. Researchers made it realistic and scaled the operation to be large enough to support one full-time employee plus family labor. In essence, researchers made the subject operation as realistic as possible.

Actual farm income data going back 20 years was sourced and a computer simulation was run to determine whether following a split-down-the-middle-transition strategy for transferring ownership of the operation would generate enough income to support the entity. It didn't work.

Estate planning and transition resources



Not once in 10,000 trial runs did the strategy result in success. With just two children, the split-down-the-middle-transition strategy failed 10,000 times. Yet it's the strategy producers choose time after time.

How does Ferrell know 64% of farmers and ranchers choose the split-down-the-middle-transition strategy?

"That's the number of U.S. farms and ranches with no estate plan. If you don't have an estate plan, what will happen under your state's inheritance rules? It'll get split down the middle in undivided interests," Ferrell stated. "If you're feeling guilty and kind of shifting in your seat? Good. I want you to be a little bit uncomfortable." **ABB**

### Don't take on mental health alone

Looking at the states with the highest suicide rates, one thing quickly becomes apparent: predominantly rural communities are in danger.

Wyoming, Alaska, Montana, New Mexico, Idaho, Oklahoma, Colorado, South Dakota, Utah and West Virginia. Why are rural communities, and these states in particular, facing an epidemic of mental health concerns?

Residing in a county that does not have a mental health professional in it, where residents must drive more than an hour to get to a mental-health-care professional or where there are not enough mental-health-care professionals for the entire population has a name. These areas are known as mental health deserts.

"I would show you a map of the mental-health-care deserts in Oklahoma, but it would just [be] a map of Oklahoma," Ferrell said, before he asked the audience what the logical next step would be after identifying the lack of mental-health-care resources. "We'll develop [those resources] ourselves."

The Oklahoma State Farm Stress website was created to provide farmers and ranchers with the resources they need to improve their mental well-being. With modules ranging from communicating during stressful times to helping others through natural disasters and informational videos available on demand, the website offers options to make mental health resources available in a way that makes sense for producers.

A lot of people deal with stress by cramming their stressors into a metaphorical glass jar. When will the drought end? Where is the money to purchase replacement heifers coming from? Am I going to be the generation to lose the farm? All are perfectly normal concerns that might go into your jar. However, if you keep cramming stressors into that glass jar, it's going to shatter and throw sharp pieces outward.

Along with introductions to what exactly depression, anxiety and substance abuse disorders are, the website explores concerns like the opioid crisis.

"Why are opioids such a problem in rural America? Hint, we hurt

ourselves a lot physically in rural America, which means we get prescribed painkillers," Ferrell said. "Do you know what the other effect of opioids is? They're antidepressants. You accidentally find out that you needed an antidepressant all along, but you're now taking unprescribed ones."

Many of our mental health disorders are the result of not processing stress, he noted. While the tendency of the average farmer and rancher is to bury stress and persevere, no one should carry stressors around forever. Stress will continue getting heavier and heavier until it succeeds in crushing a person. Stress needs to be processed, and then left behind.

The Farm Stress website has the resources to help make that happen.

When it comes to suicide, men have a much higher rate of suicide completion, while women have a higher rate of suicide attempt, Ferrell said. Not only do we need to recognize mental-health concerns in ourselves, but we need to be prepared to notice those same signs in our loved ones, friends and neighbors. Equipping ourselves to notice when friends are in trouble and with the knowledge of how to reach out is important.

"Have you ever been to the co-op on your feed run, gathered around that coffee pot — where the coffee has been distilling for four hours and now smells like industrial acid — and heard anybody around there say, 'Bill, when I forgot to grease the bearings on the combine and caught the field on fire, I questioned my own competency and sure felt vulnerable,'" Ferrell asked. "Yeah, me neither. When someone says, 'I don't see a way out; I'm going to lose the farm that we've been on for five generations. It's going to be me, and I can't handle it anymore,' very quietly, they're screaming for you to help them out. Be equipped."

The Farm Stress website



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