PROTECTING THE FARM LEGACY

by **KAITLYNN ANDERSON**

By having wills in place as part of estate plans, farmers can ensure their assets stay within their families.

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"Farmers spend most of their lives working to make their operation a success," Allison Dale said. "So, to ensure the farm continues in the path they want, a comprehensive estate plan – including a will – is essential."

Ontario producers may cringe at the idea of preparing wills. After all, the topic requires farmers to discuss death and typically involves in-depth conversations about the future of their operations.

However, this aspect of estate planning can play a vital role in helping families preserve their farms for the next generation.

Allison Dale

So, to help farmers tackle the process of writing wills, we spoke with three experts across Ontario.

Allison Dale, an associate lawyer at Lerners LLP in Lucan, discusses wills and their unique role in the agricultural community.

We also spoke with Michelle Hol, an associate lawyer at the Ross Firm in Goderich, who often helps farming clients with estate planning.

Catherine McCorquodale, a lawyer at Monteith Ritsma Phillips Professional Corporation in Stratford, shares some of her knowledge, too.

These experts provide readers with insights into the importance of these documents. The lawyers also answer some common questions to ease any concerns producers may have before beginning the will-writing process.

Planning ahead

"In Ontario, if you don't have a will, your estate – so, all of your assets that you own upon your death – are transferred according to the intestate rules," McCorquodale said.

Ontario's Succession Law Reform Act governs how the government will distribute the estate.

Surviving spouses will receive either the first $200,000 or half of the net family property if they claim their entitlement, "unless someone who is financially dependent on the deceased person makes a claim," the Ministry of the Attorney General website states. Then, "anything over $200,000 is shared between the spouse and the descendants (like children and grandchildren), according to specific rules."

The government website lists further rules for estate distribution.

These scenarios may not align with farmers' plans, Hol said.

"Without a will, the farm could be transferred to family members you do not wish to have involved, for example, and could lead to tensions between your surviving family members," Dale said.

Catherine McCorquodale

In these documents, producers can allocate their assets specifically to intended parties, which "will ensure that the operation will continue to prosper," she said.

By preparing wills, Ontario producers can also ensure the farm stays within the family.

Children who wish to continue farming may have to purchase the assets from their non-farming siblings if their parents did not have wills in place.

"With the values of assets today, that task could be tricky," Mc-Corquodale said.

And if these children cannot afford to pay out their siblings, "the family farms may end up being sold to cover debt … to the other children," Hol added.

Thankfully, producers can prevent these unintended consequences by writing wills.

Farmers can also use wills to put tax plans in place.

"Farmers are dealing with millions of dollars worth of assets," Mc-Corquodale said. "They have to consider how much money is actually going to be left after they've paid taxes."

To minimize the amount of taxes – such as those on income and capital gains – farmers and their families face, lawyers often work closely with accountants.

Getting into the habit

Once people are over the age of 18, they should have a plan in place for their estates – even if they do not own any assets, Hol said.

"People may not own any assets right now but that can change in a hurry," McCorquodale added. "You're never too young to write a will."

And individuals should review their plans on a regular basis, since many situations can change their existing documents.

"Outdated wills can be just as problematic as not having a will at all," Dale said.

For example, since marriages will automatically revoke existing wills "unless the documents are made in contemplation of marriage," people should update their plans after going through this life event, Hol said.

Producers may also want to revisit these documents after they have children or grandchildren.

If farmers do not have wills in place to designate how their assets

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More than 50 per cent of Ontarians do not have a written will, Allison Dale said.

will be divided, the Office of the Children's Lawyer may hold the money in trust until the children turn 18 years old, Hol said.

Producers should also update these legal documents as their children become older to reflect their interests in the farming operation.

"As a farmer's children get older, some may want to be involved in the operation and others may choose different occupations," Dale said. "If your will doesn't reflect this change, then your farm may be transferred to someone with no interest in continuing the farm business."

Michelle Hol

In addition, people may want to review their wills after making major purchases or moving to new locations, as well as if they wish to change their executors, she said.

Farmers often feel relieved when they finally put this protective measure into place, Hol said.

"People walk away without this burden they didn't even know was there," she said.

"They feel lighter knowing that this document is in place in case something happens."

Preparing for difficulties

When writing their wills, farmers may face a few challenges.

Due to the nature of these documents, they may be reluctant to begin the process.

"The biggest challenge is getting people to come in and write a will," McCorquodale said. "It's a very morbid subject – you're talking about what happens when you die."

"People don't like to think about death and being unable to farm," Hol said. "But, if you don't put a will in place, there can be many unintended consequences. For example, the farm could end up being sold to a third party."

Producers may also struggle to determine how to fairly allocate their assets among their children.

"If your assets are just liquid cash, you could divide them relatively easily among your spouse and children," Hol said. "However, when one of your significant assets is the family farm, you may not necessarily want to split it equally."

For example, producers may want to leave the farm and its assets to children who are involved in the operation, Dale said.

However, "people also want to make sure that their non-farming children receive inheritances," McCorquodale said.

Producers could compensate these children by providing them with such non-farm assets as RRSPs and life insurance, Dale said. (Farmers may consult professional advisers for insight on how to distribute their assets.)

If producers take this route to allocate inheritances, they should provide descriptions of these transactions within the legal documents.

Otherwise, "it may look like a child is left out and not receiving an inheritance," McCorquodale said.

Farmers may also find it difficult to select executors for their wills.

Since these parties will hold many responsibilities – such as making funeral arrangements, paying final bills and ensuring taxes are done properly – producers should ensure they name people they trust.

They should also talk with their potential executors to see if these individuals would be comfortable in that role.

"For some people, it may be too stressful," McCorquodale said.

Highlighting communication

Once farmers have a potential plan in place, they may want to consider a few points to help ensure smooth implementation.

For example, producers may want to talk with their children who are interested in farming to see if they are prepared to manage the operations.

If these sons and daughters "are both willing and able to take over the farm, then this transition and the plan for the farm should be discussed in detail," Dale said.

Producers should also have conversations with other family members who are not involved in the farm operation.

"Open communication goes a long way to ensure family harmony both now and after death," Dale said.

When working with their lawyers, producers should compare their wills with other relevant documents.

"You'll want to make sure that your will matches your succession plan, especially if you'll be transferring assets to your children" at a reduced value, McCorquodale said.

And if farmers have incorporated their businesses, they may want to consider writing secondary wills, she said to *Better Farming*.

"These wills protect your corporate shares, whereas primary wills protect any of your personal assets," she said. By holding secondary wills, people can prevent their shares from being probated.

In addition, people should ensure they work with appropriate teams of professionals – including lawyers and accountants – to compile these documents. BF