



Estate Planning and the Sustainable or Organic Farm

Note: *The following is intended as an overview of some options that may help when creating an estate plan. This is not legal advice. Every situation is unique. These options may not be available in your state or for your farm. You should consult an attorney in your state for legal advice to verify if any of these options may be appropriate or legal in your unique situation.*

What obstacles do organic and sustainable farmers face if they want to preserve their farm for the next generation?

What methods are available for an organic and sustainable farmer to transfer the farm at the farmer's death in a manner that continues his or her farming practices?

What are the benefits and drawbacks of these various methods?

This fact sheet answers these questions and gives an overview of the best ways to preserve an organic or sustainable farm for future generations of farmers.

Farmers may choose organic and other sustainable farming methods for a variety of reasons, including environmental benefits, personal motives (such as a healthier lifestyle and diet), religion or a sense of land stewardship. Because the benefits gained from sustainable farming, especially organic farming, can be lost if the land is used for another purpose, farmers may wish to take steps to maintain the farm's organic status.

Problems Caused by Incomplete Estate Planning

Farmers wishing to pass their organic or sustainable farms to future generations should plan ahead. A well-designed and implemented estate plan can ensure that the farmer's wishes are carried out upon his or her death. Failure to make a solid estate plan can lead to property division, sale of the farm, and family strife, all of which will pose a serious threat to the organic or sustainable survival of the land.

While the law provides methods for an estate to transfer

to surviving family members if a farmer dies without an estate plan, this may not happen as the farmer expected. In some circumstances, leaving everything to state law may result in a distribution unpleasing to all, and to property going where the farmer never intended. This can often be a problem if the farm is divided between multiple children. One child may want to farm the property but be unable to buy the other children's interest in it, potentially resulting in the sale of the farm.

This is especially true for organic farmers, who must renew organic certification each year. There may not be a lot of time to transition the farm and maintain its organic status. A farm left in limbo while a family feud or complicated financial situation is untangled risks losing its organic certification simply through neglect. It is clear that farmers seeking to transfer their farm to the next generation in one piece must engage in estate planning.

Organic Farmer's Estate Planning Toolkit

So what can a sustainable farmer do to avoid the pitfalls listed above? First of all, it is vital to work with an estate planner to tailor a plan to a farmer's needs. The following are a few tools a farmer might use to transfer not only the farm, but also the farm's organic or sustainable nature.

Tool #1: Agriculture Conservation Land Easements. Farmers uncertain about who will receive the land after their death, or who know that the next generation does not cherish sustainable farming practices, may be able to secure the farm's status through the sale of an agriculture conservation land easement. This can be tailored to fit the farm, and to include organic or sustainable practices. Including these practices ensures the land's future use as an organic or sustainable farm.

Tool #2: Agricultural Preservation Programs. The Wisconsin Working Lands Initiatives offer a variety of programs to preserve agriculture. They offer various levels of tax breaks for program participation. Farmers can participate in Farmland Preservation Agreements, Farmland Preservation Zoning, and Purchase of Agricultural Conservation Easement Programs, as described

above. Preservation Agreements and Preservation Zoning are briefly discussed below. While these programs are not particularly tailored to protect the organic status of a farm, they can help to ensure that a farm remains a farm. If you are not a Wisconsin farmer, you may wish to ask your county agent or state's Department of Agriculture about similar programs.

Tool #3: Trusts. Trusts can be used for any lawful purpose and are useful in a variety of ways to promote sustainable and organic farming practices on a parcel of land. A farmer who wishes to encourage future generations to farm sustainably, but who is shy of land conservation easements, may consider placing the farm or farming equipment in a trust. Trusts can be very flexible. It may be possible to place the entire farm in a trust and direct the trustee to only allow organic farming practices.

Tool #4: Wills and Marital Agreements. Wills can control the disposition of the probate estate, such as property that is not in a trust. A will may be a viable option if the farmer does not anticipate any problems with the next generation maintaining the farm. In addition, a farmer could add a component to the will which requires a deed restriction to be put on any land transfer (see *Tool #7*). However, it is important to remember that marital property, which may very well include the farm, is owned equally by the spouses, so both spouses should be on board with the estate plan. In general, a will is not the best way to dictate a property's usage into the future. But, a farmer can memorialize his or her wish that the farm continue its sustainable practices. While communicating one's wishes with the family before death is the best option, this gentle reminder may help prevent family members from opposing the deceased farmer's wishes. Additionally, marital agreements can be used to ensure that both spouses transfer a farm to the same person.

Tool #5: Long-Term Rental Contracts and Options to Purchase. In the right circumstance, a farmer who knows that his or her family does not intend to farm the land after his or her death could consider a long-term rental contract. Including longer terms and organic or sustainable techniques in the lease agreement could help ensure those land uses. A farmer who is aware that his or her family is not interested in farming sustainably or organically, but who knows someone who is, could prepare a lease agreement with an option to purchase as part of the estate planning process.

Tool #6: Conservation Reserve Program's Transition Incentives Program. A retiring farmer with expiring CRP land may use the Transitions Incentives Program to allow a beginning or socially disadvantaged farmer (who cannot be a family member) to begin a Conservation Reserve

Program—or the new farmer may begin transitioning to organic farming. The retiring farmer must then sell the land to the new farmer or enter into a long-term lease of at least five years with the new farmer. The program gives the retiring farmer two additional years of CRP payments, while helping the next generation of farmers. While not specific to organic farming, the CRP program does tend to ease the transition of land from conventional to organic farming if the land has been fallow.

Tool #7: Deed Restrictions. In theory, when a farmer sells or otherwise transfers land, the farmer can put any restrictions he or she wants right on the deed. This can be useful if the owner wants to guarantee the farm's sustainable use after his or her death. However, it considerably ties the hands of the recipient. It may take court intervention (or a release procedure in the language of the deed) to get the restriction released. And, it would almost certainly impact the sale price of the land if the children or other recipient had legitimate reasons for selling.

Tool #8 (and perhaps the most important of all): Communication. Talking about estate planning and one's last wishes is vitally important. The best estate plans can go awry if the farmer fails to communicate his or her wishes with the family. This is especially important if the estate plan contains provisions that may upset or surprise members of the family.

Estate planning can be a difficult topic, even for what seems like a simple estate. For organic and other sustainable farmers hoping to preserve their land's sustainable farming practices for future generations, this problem can become even more difficult. However, with a proper estate plan in place, farmers can help ensure their wishes will be carried out and their way of farming will continue.

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For information on how to leave a legacy through MOSES, please see our website, and search "Leaving a Legacy."



The Midwest Organic and Sustainable Education Service (MOSES) provides education and resources to farmers to encourage organic and sustainable farming practices. To learn more, please see:

www.mosesorganic.org