

# ESTATE PLANNING



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## SPECIAL FARMING ISSUE

### Keeping the Family Farm

Excerpted from materials provided by John W. Hynds

The family farm can be one of the most troublesome assets during estate planning and administration. Although keeping the farm is often a goal of the older generation, younger generations are increasingly mobile and unattached to the idea of farming or even holding farmland as an investment. The inability to access the investment capital represented by the farm, and the lack of control can become a canker sore, particularly if one sibling continues to farm. In many cases, the farm and equipment makes up the vast majority of assets, and parents struggle to balance being fair to the farming child and their other children.

Giving the farm in equal shares to the next generation will result in a tenancy in common. It can work for some, but requires unanimity of decisions and any co-owner can force a partition and sale of the land.

Using alternative strategies, such as creating an LLC to hold the land and conveying an interest in the LLC rather than the property itself can avoid some of the issues of tenancy in common, but there may still be tension between the farming and

non-farming siblings. If your children plan to keep the farm, they should also be educated in the business, or risk being taken advantage of.

One of the most important steps in estate planning for family farms is determining children's objectives as well as parents. Some may agree they want to sell the farm, others may want their parents to take steps to prevent an unwanted partition by a long-distance sibling. Others may want a buyout provision, perhaps at a discounted price. Although ultimately the decision may rest in your hands, keeping communication open and knowing what the next generation plans may help to prevent an unpleasant legal fight between your children after your death.■

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## Farm Information and Resources

Compiled by Jeffrey A. Mollet for the Illinois State Bar Association Agricultural Law Newsletter

There is a wealth of information available to farmers online nowadays. Below is a short list of potential resources:

- **Farmdoc & Farmdocdaily (University of Illinois):** [farmdoc.illinois.edu](http://farmdoc.illinois.edu); [farmdocdaily.illinois.edu](http://farmdocdaily.illinois.edu); and [farmpolicynews.illinois.edu](http://farmpolicynews.illinois.edu)

Information about finance, marketing, management and news. Also has updates on farm economy and U.S. farm policy.

- **Illinois Department of Agriculture:** [www2.illinois.gov/sites/agr/Pages/default.aspx](http://www2.illinois.gov/sites/agr/Pages/default.aspx)

News, and information on animal health, environment, and marketing, and forms, rules, data and regulations.

- **IRS Agriculture Tax Center:** [www.irs.gov/businesses/small-businesses-self-employed/agriculture-tax-center](http://www.irs.gov/businesses/small-businesses-self-employed/agriculture-tax-center)

General information, forms and tax resources.

- **USDA:** [www.usda.gov](http://www.usda.gov)  
Statistics, press releases, and news on U.S. agriculture.

- **University of Illinois Extension:** [web.extension.illinois.edu/state/index.php](http://web.extension.illinois.edu/state/index.php)

Educational programs and training for Illinois residents.

- **Illinois Farm Bureau:** [www.ilfb.org](http://www.ilfb.org)  
Illinois farm facts, statistics and news. Also has further resources and links.

- **American Agricultural Law Association:** [www.aglaw-assn.org](http://www.aglaw-assn.org)  
Research and publications on agriculture and food law issues.

- **Center for Agricultural Law and Taxation – Iowa State University:** [www.calt.iastate.edu](http://www.calt.iastate.edu)

Information on developments in agricultural law and taxation.

- **Farmers' Legal Action Group:** [www.flaginc.org](http://www.flaginc.org)  
Manuals, reports, handbooks and newsletters on farm issues.

- **Drake Journal of Agricultural Law:** [www.drake.edu/law/clinics-centers/aglaw/resources](http://www.drake.edu/law/clinics-centers/aglaw/resources)

Articles and resources on agricultural law.

- **National Agricultural Law Center:** [www.nationalaglawcenter.org/research/](http://www.nationalaglawcenter.org/research/)  
Articles focused on agricultural law and associated issues, such as bankruptcy.

- **AcreValue:** [www.acrevalue.com](http://www.acrevalue.com)  
Free mapping and valuation tool for U.S. farms.

## Tax Code Sections for Farmers

The Index of Illinois Farmland Value indicates that farmland value has increased 400% since 1979, much of that occurring in the last twelve years. Because farmland has appreciated so much so quickly, there are two provisions of tax law that every farmer should know: Sections 1031 and 2032A.

**Section 1031** is the Like-Kind Exchange section, which allows a seller of investment property to “trade” for new investment property and avoid paying capital gains tax on the sold property. It’s not limited to farmers, but can be incredibly helpful for farming families who want to keep farming but have a great offer on the table. There are a lot of factors to consider, but it can save thousand in taxes for those whose farms have been in the family for more than ten or fifteen years and have a much lower basis than current market value.

**Section 2032A** is the Special Use Valuation section, which allows an estate, at the landowner’s death, to use a lower than fair market value for farmland and keep the estate below Illinois’ \$4,000,000 estate tax exemption. There are very specific and rigid requirements to qualify for this tax relief, and pre-planning and using knowledgeable planners are both crucial, but it has the ability to reduce an estate by up to \$1.16 million in 2019 and is indexed for inflation – unlike the Illinois estate tax exemption! ■

## Accrual Accounting for Crop Share Leases

The two most common types of farm leases in Illinois are cash rent and crop share, accounting for more than 90% of leases in Illinois according to the last Ag Census. When families have a cash rent lease, it’s typically very simple for them to measure their profits from year to year: take the cash rent, subtract taxes and other expenses they pay, and voila!

But when a family is on a crop share lease, it can be much harder to compare year-to-year, as farmers make timing decisions on

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### Farm Lease Termination Tips

Although most farmers assume that the lease year is March 1 through February 28, Illinois law does not set out a statutory farm lease year, and you may have a calendar year lease.

To avoid problems at the end of a lease, we recommend that you provide an earlier termination date than March 31 – perhaps December 31 – so a current tenant cannot prevent entry to the new tenant after harvest, and that you have a written lease which automatically terminates at the end of the lease year.

Notice is still required four months before the lease termination date and we still prefer a cooperative termination, but preventing future problems is just good planning. The safest approach is to give notice to quit prior to August 31<sup>st</sup>.■

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## Accrual Farm Accounting

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when to sell grain and pay expenses that may spread the accounting over several calendar years.

Using an accrual method of accounting for crop share leases can allow farming families to get a sense of annual profits similar to the accounting for cash rent leases. This can be invaluable for those switching from cash rent leases and wanting to be able to compare their profits under the old and new leases, or for families with members who may not be familiar with farm accounting practices.

An accrual report does not require you to make any changes to your income taxes, it is merely for your own internal use. It will require some additional information for your accountant, such as year-end grain sales and inventory figures, but is relatively easy to compute. ■

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