

Farm Management

Long-term lease may benefit heirs



Country Counsel

By ROBERT MOORE

Key Points

- Long-term leases are an effective tool for securing land for future generations.
- Note that land in a long-term lease may not be as attractive to a buyer.
- A flexible-rent arrangement can be helpful in setting long-term rates.

WHEN farm succession planning is discussed, wills, trusts and business entities are typically the focal point. However, long-term leases can be a very effective tool for farm succession planning. Long-term leases are also a valuable farm management tool. The following discussion highlights several opportunities for using long-term leases.

Long-term leases are perhaps most effective in securing land for the next generation in the farming operation. The older generation, which typically owns most of the land, can lease the land to the next-generation farmer for a period long enough to ensure a secure land base.

For example, Mom and Dad own farmland and have turned the farming operation over to Son, who is 45 years old. A long-term lease is executed, giving Son the opportunity to rent Mom and Dad's land for the next 30 years. Son is assured of having the land to farm for the remainder of his farming career. Even if Mom and Dad

pass away, the lease remains in effect.

Another situation suitable for long-term leases is land inherited by siblings, with one sibling wanting to continue the family farming operation. Often the parents will require the non-farming heirs to lease the land back to the farming heir as a condition of their inheritance.

For example, Mom and Dad have three children who will inherit their land jointly. Son is the only child who will continue farming. Mom and Dad's trust gives the land to all the children equally, provided they agree to rent the land to Son for 25 years. Mom and Dad would not want the two non-farming heirs use their majority control to rent the land to someone else.

Sales deterrent

Long-term leases are also a deterrent to the land being sold outside the family. Land subject to a long-term lease is not attrac-



tive to an outside buyer. Using the previous example, the two off-farm heirs will likely not be able to sell the land even if they have majority control. The land would have to be sold subject to the lease. That is, the buyer would have to honor the lease and rent the land to Son at the same rental rate established by the lease.

A challenge with long-term leases is the rental rate. Setting the rate for the first few years is relatively simple. However, knowing what a reasonable rental rate will be in 10 or 20 years is impossible.

Several different options are available. A flex-type arrangement can be used, with the rent based on yield and/or price and/or profitability. Another option is to use the state cash-rent average, and adjust the rent

up for better ground or down for poorer ground.

It is critical that leases be executed properly. Leases for four years or more must be notarized. If a lease is not notarized, it is considered to be a year-to-year lease regardless of the length of term stated in the lease. The lease should also be recorded. The process of recording ensures the lease will be enforced even if the land is transferred to new owners.

Moore is an attorney with
Wright Law Co. LPA
614-791-9112
rmoore@wright-law.net

BEST OF FARM PROGRESS 2012 SHOW



See Max Armstrong hosting the annual TV program, *Best of 2012 Farm Progress Show* on RFD-TV starting in October!

Max Armstrong

Program Schedule:



Best of the 2012 Farm Progress Show full program
Program air times —

Monday, October 1, 7 p.m. (Central) and
Tuesday, October 2, 9 a.m. (Central)



Watch for *Best of 2012 Farm Progress Show* segments on *This Week in Agribusiness*
Saturdays at 7 a.m., Sundays at 5 a.m., 8 p.m.
and Mondays at 8 a.m. (all Central times)

RFD-TV channel is available on DIRECTV channel 345, DISH Network channel 231, Mediacom, NCTC and many additional satellite and cable systems.

After October 2 — View *Best of 2012 Farm Progress Show* online at
www.FarmProgressAmerica.com