

**Top 10 Estate and Transition Planning Mistakes**

11<sup>th</sup> Annual Conference  
IOWA WOMEN IN AGRICULTURE  
August 1, 2017 – Ankeny, Iowa



**1:00-2:00pm  
-and-  
2:15-3:15pm**

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### ISU Extension Farm Management Team



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Homepage  
Crops  
Livestock  
**Whole Farm**  
Business Development  
Cooperatives  
Renewable Energy

October 2016 Updates  
AgDM News and Updated Files  
Crops - Cattle & Horses  
Farm 360 Decision Tools  
2016 Financial ABC-CD Planning  
- AT 32 (Decision Tool)  
2015 Financial ABC-CD Planning  
- AT 32 (Decision Tool)  
Corn and Soybean Loan Rates  
- AT 34

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Recent Updates | Information Files | Decision Tools | Teaching Activities | Virtual Media | Outlook & Profile

Homepage  
Crops  
Livestock  
**Whole Farm**  
Cost & Return  
Leasing  
Land Values  
Financial  
Human Resources  
Legal & Taxes  
Transition & Estate Planning  
Weight & Measurements

**Whole Farm**  
Overview  
Choose from navigation on left  
Whole Farm Decision encompasses a farm and building leasing, land value, and legal and tax issues, and more.  
Popular Files  
Farm Codes and Reports -- C4-10  
Standard Cash Rental Rate Survey  
Standard Value Survey -- Iowa State  
Estate Planning Terms -- C4-50  
Using Financial and Production Reports  
Stay up-to-date with AgDM

**Transition & Estate Planning**

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Recent Updates | Information Files | Decision Tools | Teaching Activities | Virtual Media

Homepage  
Crops  
Livestock  
**Whole Farm**  
Cost & Return  
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Land Values  
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Human Resources  
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**Transition & Estate Planning**  
Getting Started  
Business Arrangements  
Evaluating Your Estate Plan  
Transferring Assets & Management  
Making It Work  
Weight & Measurements  
Other  
Business Development

**Transition & Estate Planning**  
Getting Started  
Business Arrangements  
**Evaluating Your Estate Plan**  
Transferring Assets & Management  
Making It Work

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**Evaluating Your Estate Plan**

Information Files

Federal Gift Taxes -- C4-23	
Federal Estate Taxes -- C4-24	
Iowa Inheritance Tax -- C4-25	
Estate Planning Terms -- C4-50	
Forms of Property Ownership -- C4-51	
Business Entities -- C4-52	
The Estate Settlement Process -- C4-53	
Powers of Attorney and Other Forms of Substitute Decision Making -- C4-54	
Farm Transfer Strategies -- C4-55	
Retirement Planning for Farm Families -- C4-56	
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Trusts as an Estate Planning Tool -- C4-59	
Estate Planning Alternatives: Finding One Who Can Work For You -- C4-61	

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## Whole Farm &gt; Transition and Estate Planning &gt; Evaluating Your Estate Plan

Homepage  
Crops  
Livestock  
Whole Farm  
Business Development  
Cooperatives  
Renewable Energy

**Meet the author**

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**Estate Planning Attorneys: Finding One Who Can Work For You**

Law is a multifaceted and complicated field that is in a constant state of change. New regulations and stipulations are constantly enacted by state and federal authorities. Every decision made by a court or administrative body represents a new interpretation of legal precedents. It is not possible for any one attorney to be an expert in every field of law.

Attorneys in private practice may choose to limit their practice to certain areas of the law. Some specialize in many different fields of law, but it is necessary to engage a "general practice" attorney at some stage of estate transition. An attorney may also have a particular interest in specific fields of law, such as estate planning, probate, and trust administration. Finding an attorney to handle estate planning needs may have a little more effort. This publication is intended to provide you with some guidelines.

You may already have a relationship with an attorney for other positions in business matters. Start by talking with that attorney about estate planning. Ask the attorney some of the questions found in this publication. If that attorney is not comfortable handling your estate planning needs, ask for recommendations.

1. **Seek Recommendations.** Think about how you would like any other professional you might need, such as a plumber or electrician, a medical professional or a tax advisor. While it is possible to look on the internet or in the yellow pages, we often seek the recommendations of others. In particular, we ask people we respect, which might include family members, friends or other professionals with whom we are acquainted. Ask others, "have you had a professional who did that work for you?" (Should we, we recommend that person to others?) Start to assemble a list of the names that you receive and prepare to make some initial contacts.

2. **Contact and Schedule Initial Meetings.** Select two or three of the attorney names that you obtain and telephone those two offices. Explain that you are interested in having some estate planning done and that you would like to schedule an initial meeting with "Lawyer Jones," who has been recommended to you. Ask what the fee will be for such an initial meeting.

3. **Come to the Meeting Prepared.** Come to the meeting prepared to explain your circumstances and what kind of work you may need done. Bring along your most recent net worth statement and a completed Estate Planning Questionnaire (See Ag234 File C-5). Discussing Your Estate Plan – Estate Planning Questionnaire. It is also possible that the law firm may have an estate planning questionnaire. You should also have a prepared list of questions to ask the attorney.

4. **Questions for the Attorney.** During this initial meeting, you should have some questions prepared to ask the attorney. These questions are intended to assist you in getting to know the attorney and that individual's background in estate planning. Possible questions to include are based on the following page.

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**Evaluating Your Estate Plan: Estate Planning Attorneys: Finding One Who Can Work For You**

File C-5-01

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**PDF format  
of articles  
on  
Ag Decision  
Maker**

**Farmland LEASING Meetings**

13 Meetings in Northeast Iowa\* In August

**CONTACT**

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- ▶ Current cash rental rate and land value survey results
- ▶ Methods for determining fair cash and flexible rent for 2018
- ▶ Tenant-Landlord communications
- ▶ Legal aspects of farmland leases, including strategies for writing and terminating a farm lease
- ▶ ISU Extension web-based and other resources

**ISU Extension Office –or– [www.extension.iastate.edu/agdm](http://www.extension.iastate.edu/agdm)**

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## (1) Procrastination

pro  
cras  
tination

**Don't  
put it  
off!**

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**Do you keep your farm and updated?—or do you  
let things get run-down and beyond repair?**

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**Do you let the  
weeds take over?**

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## When was the last time you updated your estate plan?

- University studies –
- 60% do **not** have an updated estate plan
- 89% of farmers do **not** have a farm transfer plan
- Many keep waiting for the “perfect” plan.

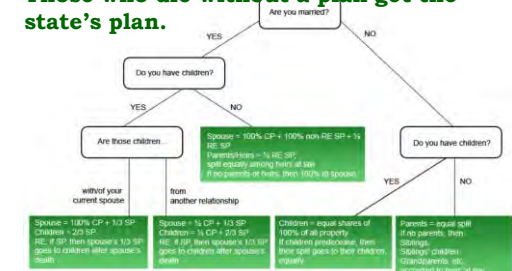


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## Intestate succession:

Those who die without a plan get the state's plan.



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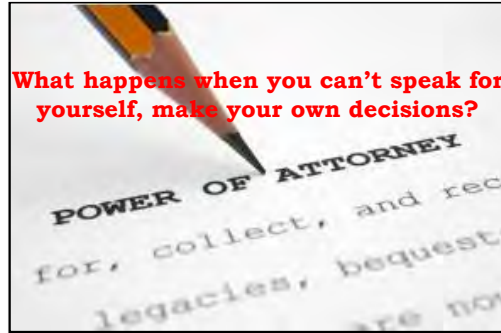
**(2) Failure to plan for if you don't die -- (well, at least not right away . . . .)**



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**What happens when you can't speak for yourself, make your own decisions?**



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## **Substitute Decision-Making: Powers of Attorney (POA) –and– Health Care Planning & Directives**



- **Incapacity** = lack of physical or mental abilities that results in a person's inability to manage personal care, property or finances.

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***“But I’m healthy and active, and besides – isn’t 80 the new 40?”***

- After age 65, chances of becoming incapacitated rise to 50%+.
- At age 80, chance of becoming incapacitated rises to 75%.
- In any year, your chance of becoming incapacitated is greater than your chance of dying.



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## Power of Attorney for Business/Financial Purposes

- **NEW** Uniform Power of Attorney Act, effective July 1, 2014 – Chapter 633B of the Iowa Code
- Allows your “agent” to act in your place if you’re unable to handle your own business/financial matters.
- Health care decisions? **NO!**
- Spells out agent’s **powers** such as:
  - Pay bills, file income taxes
  - Sell, lease assets
  - Collect money due



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## Power of Attorney for Medical/Healthcare Purposes

- Allows “agent” to make health care decisions if you’re not able to express those decisions.
- Covered by Chapter 144B of the Iowa Code
- Spells out powers such as:
  - Hospitalization
  - Consent/reject treatment
  - Organ donation



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## Powers of Attorney guidelines:



- Name **at least** one **alternate** agent – and avoid “co-POAs”.
- Consider people **younger** than you!
- Healthcare/Medical and Business/Financial may be **different** agents.
- You must be “competent” (have legal capacity) when you sign.
- Power of Attorney only good during **lifetime**.

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## Living Will

- “Declaration Relating to Use of Life-Sustaining Procedures”
- Purpose: Express what “life-sustaining” procedures are desired.
- Can **guide** a Healthcare POA.
- See [www.iowabar.org](http://www.iowabar.org) for forms, FAQs. **Please, consult with an attorney!**

This form is used to declare your wishes regarding life-sustaining procedures. It includes sections for the declarant's information, the physician's information, and the declarant's signature. The form is titled "DECLARATION RELATING TO LIFE-SUSTAINING PROCEDURES (Living Will)".

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This form is used to declare your wishes regarding life-sustaining procedures and to appoint an agent for health care decisions. It includes sections for the declarant's information, the agent's information, and the declarant's signature. The form is titled "DECLARATION RELATING TO LIFE-SUSTAINING PROCEDURES (Living Will) AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS (Medical Power of Attorney)".

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## Do Not Resuscitate (DNR) Orders – 2 Types



► **Physician-issued:** Allows emergency care providers and others outside a hospital to rely upon a physician-issued DNR order for an adult in a terminal condition.

► **Patient-issued:** Directs medical providers to not attempt resuscitation (CPR) if the patient's heart stops.

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### Evaluating Your Estate Plan: Powers of Attorney and Other Forms of Substitute Decision Making

File: C-5-54

**A**s we think about lifetime trusts and estate planning, one aspect to consider is the ability to act on our behalf in the future. It may be necessary to name someone to act on our behalf in the future – at any age – if we are unable to make our own decisions. With proper planning, there are a variety of ways that can be used for when a person is referred to as a "substitute decision maker."

In Iowa, the concept of substitute decision making is addressed in various sections of the Iowa code. For example, in DNR the Iowa regulations govern Chapter 224, the "Substitute Decision Maker Act." Following the Iowa Code of the Substitute Decision Maker has been defined in the regulations. In this setting, the law will provide some guidelines and definitions. The concept of substitute decision making generally refers to the provision of decision making services to the person, conservator, estate, or estate of an incompetent person or an incompetent person or a person with a power of attorney or person with a power of attorney.

**Power of Attorney (POA) and Related**

The concept of a power of attorney is a legal document that allows one person to act on behalf of another person. It can be used for a variety of purposes, including financial, legal, and medical decisions. It is important to understand the scope of the power of attorney and the limitations of the power of attorney. It is also important to understand the scope of the power of attorney and the limitations of the power of attorney.

Read more about it! – on Ag Decision Maker:

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[www.extension.iastate.edu/agdm](http://www.extension.iastate.edu/agdm)

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## (3) Keeping Secrets: Failure to Communicate



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## No “family secrets” in estate or succession planning!

Everyone should know what’s going on!



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## “Reading of the Will?”

**This is an outdated concept!**



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## Communicate, Communicate, Communicate

- **Head off conflict, hard feelings among family members.**
- **Technical details? Involve lawyer, other professionals.**
- **Include details regarding distribution of personal property.**



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## Communication Advantages

- All may not agree – but it's better to share, explain your rationale.
- Provides opportunity to understand and respect your decisions.
- Communication allows hurt feelings to heal, jealousy to diminish
- Avoid estrangement or court battles among heirs.



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Families should discuss the future **early** and **often** – figure out what works for all!



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(4) Trying to treat all your heirs **equally** – while failing to consider what's **fair**.



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Make decisions about what is **fair** or equitable to all . . .

. . . even though it may not be **equal**.



How many of you had kids that needed braces?



What did you do for the kids that didn't need braces?



► How to pass the farm business to the next generation—but not create animosity among heirs?

► If we divide it equally among all heirs, will it create such small pieces that successor child(ren) can't make a living operating the family farm?




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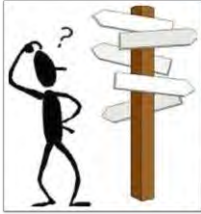
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**(5) Failure to coordinate  
estate plans and property  
ownership strategies**



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**PROPERTY  
OWNERSHIP IN  
IOWA**

**HOW Property is  
owned may be  
part of an estate  
plan or farm  
succession  
strategy**



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**Real Property**



- **Land + anything attached to it**
- **Buildings, fencing, subsurface tiling**

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## Personal Property:

### Tangible and Intangible

- **Tangible** = anything you can touch
- **Intangible** = usable value but you can't touch it



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Raise your hand if . . .  
You have **TOO MUCH STUFF?**



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One of the most common,  
growing business opportunities?



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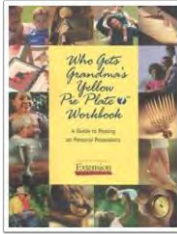
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## Have a **plan** to dispose of or pass on personal property:

- Pass on or dispose of some items **during lifetime**.
- “De-Clutter” your life!
- Example workbook →→
- Possessions you want to pass on after death?
  - List
  - Mark
  - Round-robin
  - Auction



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## Real Property or Intangible Personal Property may be owned individually or jointly



➤ Most common for real estate = **fee simple ownership** → Unconditional power to use or transfer the property.

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## Property Co-Ownership

- Joint tenants with right of survivorship (JTWROS)
- Tenancy in Common (TIC)



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## Joint Tenancy with Right of Survivorship (JTWROS)



- Two or more people
- Equal shares
- Can't sell, transfer, mortgage without consent of others
- Right of survivorship = like a "built-in" will
- When an owner dies, ownership interest ceases.

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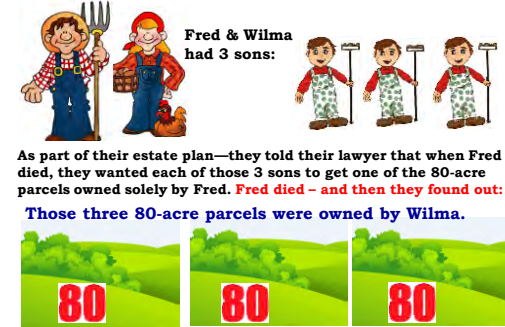
## Tenancy in Common

- Two or more owners
- **Separate but undivided interest**
- Shares may be equal, or unequal
- **No right of survivorship – shares pass to heirs.**



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Fred & Wilma  
had 3 sons:

As part of their estate plan—they told their lawyer that when Fred died, they wanted each of those 3 sons to get one of the 80-acre parcels owned solely by Fred. **Fred died – and then they found out:**  
**Those three 80-acre parcels were owned by Wilma.**

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**Iowa Farmland: Keeping it “in the family”?****What are the consequences?**

**Grandma & Grandpa: Own a section—640 acres**  
**4 Kids – Allan Bill Cathy Donna**  
**Equal Shares—25% each**



**Allan:** To 4 kids equally, each own 6.25% of 640 acres

**Bill:** To 5 kids equally, each own 5% of 640 acres

**Cathy:** To 3 kids equally, each own 8.333% of 640 acres

**Donna:** 0 kids, leaves to the church (25% share) (and church wants to sell)

- ▶ None of the grandkids live in Iowa
- ▶ Land is rented, farm manager takes 10%
- ▶ Checks (income) to grandkids leaves the state

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**Life Estates →**

**a form of possession, not ownership . . . many different forms!**

**What are the implications?**

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**Can you answer these questions:****Do you know . . .**

- How all your real estate is owned?
- How all your bank accounts, CDs, investments, other intangible assets are owned?
- How all life insurance policies are owned, and who the named beneficiaries are?
- How all pensions are owned, elections, and who are the named beneficiaries?
- How you will distribute or dispose of your tangible personal property?

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**(6) Doing nothing (because I'm worth less than \$5 million (or "we're" worth less than \$10 million))**



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**Quick review of the rules:**



- **Federal Estate Tax:** Based on date-of-death estate value.
- **Unified Credit** = Amount of property that can be transferred at death without FET obligation.
- **Unlimited** transfers to surviving spouse & charities.
- What did ATRA – American Taxpayer Relief Act of 2012 – signed January 3, 2013 – do?
- Makes \$5 million (indexed for inflation) **permanent** – \$5.43 million in 2015; \$5.45 in 2016; \$5.49 in 2017; estimated \$7.5 million in 2020.

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**ATRA – FET Impact on Farms and Small Businesses:**

- USDA estimates that with the exemptions, only 0.6% of farms would have to pay an estate tax. (Another 2.1% would file returns but owe no taxes.)
- Tax Policy Center estimates: For 2013 deaths, only 120 farms & small business (at least 1/2 assets are in farm or business assets) would pay FET.



• Source: Washington Post, "Is the Estate Tax Killing Small Farms and Businesses?" – April 14, 2015.

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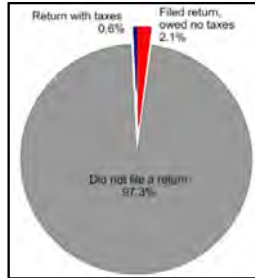
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### 2013 Deaths: Share of Farm Operator Estates with Returns and Taxes

**0.6% of all farm operator deaths in 2013 would have federal estate tax liability.**



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### Here's the point:



- 950 acres of land at an average value of \$11,000 per acre approaches **\$10.5 million** – hovering close to a level that could trigger federal estate tax.
- Farmland owners may have a false sense of federal estate tax security because they think their share of the farm is worth less than \$5.25 million.
- But adding up all the assets on the balance sheet and estimating increasing farmland values may paint a different picture at the time of death.
- When was the last time you put together an accurate balance sheet that reflects the **fair market value** of your assets?

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### (7) Lack of Liquidity: Death is not cheap.



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## Consider the costs that arise at death.

- **Farmers – and others – accumulate assets:** land, equipment, farm buildings, livestock.
- **Costs of illness, medical care, funeral expenses add up.**
- **Settlement (probate or trust administration) has a cost.**
- **Cash may be needed to continue farm operations at the time of death prior to final estate settlement.**
- **Maintain assets with sufficient liquidity to convert to cash and cover these costs; or consider life insurance.**
- **Related: If an heir(s) will want to buy out other heirs' land interests at the time of death, provisions need to be made for sufficient cash or credit to achieve those purposes.**

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## Have you made final disposition plans?

### Funeral Planning Checklist

*A list of all of the issues to consider when planning a funeral.*

Planning a funeral is a complicated process, which is made even more difficult by the emotional stress that accompanies the death of a loved one. Fortunately, many of the arrangements can be made ahead of time, which will decrease the burden on those left behind. Use the checklist below when discussing funeral plans with your loved one, to make sure that his or her final wishes are carried out.

#### Pre-Planning

All of these items can be arranged in advance of a person's death.

#### General Preparations

- Assemble personal information for obituary
- Choose a charity to direct donations to
- Decide if jewelry is to remain or be returned
- Choose a funeral home

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In Iowa – there is a specific form to designate a person to have authority to make your funeral (“final disposition” plans. → Talk to your attorney about this—if it’s important to you.

### Iowa Designation of Agent for Body Disposition

(Repealed by Iowa Code Section 140C.1, Effective July 1, 2005)

I hereby designate \_\_\_\_\_ as my agent for body disposition. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the cremation to be performed after my death. This designation hereby revokes all prior designations. This designation becomes effective upon my death. My designee shall act in a manner that is reasonable under the circumstances.

I may revoke or amend this designation at any time. I agree that a third party (such as a financial or cremation establishment, funeral director, or crematory) who receives a copy of this designation may act in reliance on it. Revocation of this designation is not effective as to a third party until the third party receives notice of the revocation.

My estate shall reimburse my designee and any third party for costs incurred by items or claims arising against them as a result of their good faith reliance on this designation. I execute this designation as my free and voluntary act.

**IMPORTANT —** You MUST attach this form to a Durable Health Care Power of Attorney for it to be effective. Also, Iowa law does not allow you to use this document to give your designee specific instructions on what type of funeral, cremation, burial, or cremation you may want. Therefore it is important that you voice these wishes out separately and be sure to share them with your designee.

**NOTE —** You must have either two witnesses (not including your designee) sign this statement as each other's and your presence OR you must have it notarized.

(your signature)

Date

(witness name)

Date

(witness name)

Date

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**Final Trail Caskets**  
ORIGINAL HAND CRAFTED WOOD CASKETS

100% MADE IN THE U.S.A.

Welcome to First Trail Caskets. We are a family-run company based in central Minnesota. Our mission is to create the finest, most unique hand-crafted caskets on the market for a reasonable price. An artisan who uses age-old techniques, we often source our materials from local, responsibly-harvested trees or reclaimed barn wood. Our designs are original and crafted to show the beautiful, rustic characteristics that make each and every one of our caskets one-of-a-kind. We invite you to look around our store and give us a call when you are ready to offer you and your loved ones. If you don't see what you are looking for here, please feel free to contact us directly with any questions or ideas you may have. We gladly participate in our craftsmanship. Personal customer service and commitment to your satisfaction. You can be assured that you make the right choice with First Trail Caskets.

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**TRAPPIST CASKETS** *Handmade caskets from the monks of New Melling Abbey, est. 1846*

Home Our Caskets & Urns Ordering & Shipping Future Vault Planning About Trappist Caskets

**Reverence for Nature**

As Trappists, we are committed to responsible stewardship. Preserving the natural world is important to us. Some of the wood we use comes from our own forest. To continue the cycle, we plant a tree as a living memorial to each person who is buried in a Trappist Casket.

**Caskets**  
Starting at \$1000  
[See All Trappist Caskets](#)

**Child Casket Fund**  
The Child Casket Fund eliminates the financial burden for families who are in need of a child's casket.  
[Join A Family in Need](#)

**Urns**  
Starting at \$225  
[See All Trappist Urns](#)

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Planning ahead – a bookcase with a dual purpose.




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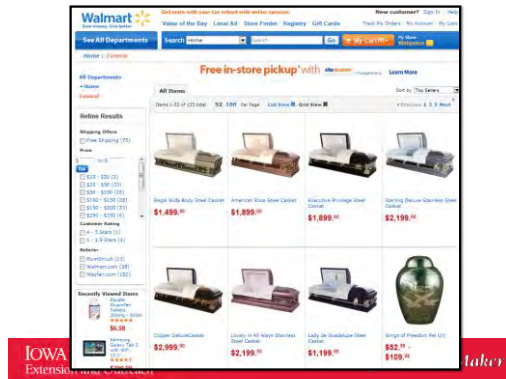
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## (8) Failure to be organized and maintain good records



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Records that can be found and used by others at incapacity or death.



- Safe place, yet still **accessible** to others
- Safe deposit box, fireproof filing system?
- Inform executor or trustee, have show-and-tell session
- Hard (paper) copies are most accessible.
- Well-organized records, documents? → Procedures following death are less time-consuming, expensive and frustrating for others.

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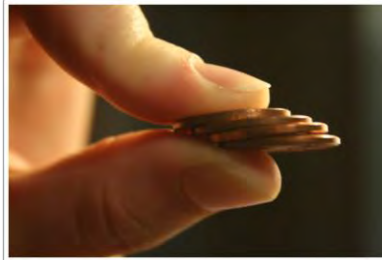
## Consider organizing documents in files or 3-ring binders



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## (9) Estate planning on-the-cheap without a team approach.



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## Don't try a **do-it-yourself** approach for estate & farm succession planning.



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**Build a team of  
professionals to support  
your planning process.**



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**Who should be on your team?**

<b>Legal Professional</b>	<b>Tax and/or Accounting Professional</b>
<b>Financial Planning or Banking Professional</b>	<b>Other professionals?</b> -Insurance -Real Estate -Spiritual

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**Read more  
about it:  
Ideas on how  
to find an  
attorney or  
other  
professional.**



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**(10) Not maintaining your estate plan documents.**



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**Estate Planning is never "done."**



- Have **regular**, annual reviews with professionals – legal, tax, financial, insurance.
- Review **beneficiary designations** on intangible assets – retirement accounts, CDs, bank accounts, life insurance.
- **Life event triggers:** Births/adoptions, incapacitation or deaths, marriages, divorces/separations of anyone who may be impacted in your estate plan. Moving, changes in income or wealth.
- Don't expect professionals to call you to come in for a review.
- **Schedule annual check-ups** – just like you would with your physical health – to review plans and circumstances.

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**What are your next steps?**



- Set Goals
- **Seek Resources**
- **Communicate**
- **Get Organized**
- . . . Take advantage of ISU Extension programs and resources!
- **Program options:**

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## Evaluating Your Estate Plan

**Topics Covered...**

- Language of Estate Planning
- Property Ownership, Business Entities
- Powers of Attorney, Directives
- Transferring Decision Making Control
- Estate, Inheritance & Gift Taxes
- Work with Estate Planning Attorneys
- Goal-setting, Family Communication

**A full-day program using a case-study, hands-on approach.**



*"Families and individuals must plan adequately to protect assets that they have built over a lifetime of hard work."*

—Melissa O'Rourke



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## Estate Planning 101—The Nuts & Bolts to Get You Started

- Shorter program – about 2½ - 3 hours
- May be offered morning, afternoon or evening
- Covers basics of property ownership, wills & trusts, estate, inheritance & gift taxes, POAs & Health Care directives, goal-setting and communication



Contact your ISU County Extension office to ask about any of these farm estate planning programs.

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A show of hands please . . .

... Did you hear any ideas or information today that will cause you to **take action?**

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Keep in touch!—and don't make any of these Estate Planning mistakes!



**Melissa O'Rourke**  
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Attorney and  
Farm & Agribusiness Business Management Specialist  
morourke@iastate.edu  @MelissaISU

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