

Chapter 3.

Establishing an Estate Plan for Your Family's Farm or Ranch Business—Initiating the Dialogue





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In Chapter 1 we saw data suggesting that very few individuals have initiated discussions with family members regarding either the establishment or contents of an estate plan for their family farm or ranch.¹ In this chapter we will outline how family members might initiate such conversations. We will focus on several specific tactics outlined by Douglas Stone, Bruce Patton and Sheila Heen in their 2000 book, *Difficult Conversations*.² Several other publications are used—full references are found at the end. In Chapter 8 we revisit this same topic to discuss how to negotiate a final agreement regarding an estate plan for a family farm or ranch.

Handling Difficult Conversations

What makes these conversations so difficult?

Trime Persinger tells us that people often avoid difficult conversations because they “are expecting a negative reaction from the other person.”³ This is particularly true with respect to conversations regarding estate planning. Children may be afraid that in raising this topic their parents and siblings will perceive them as ungrateful, impatient, or greedy.

Aside from the negative expectations Persinger identifies, Stone, Patton, and Heen argue that mistaken assumptions make many conversations difficult. These assumptions regard the nature of the:⁴

- Substantive truth of the story being discussed (what happened; its impact, parties’ intent; and parties’ contribution or blame)
- Emotions that this story triggers amongst the affected persons
- Impacts of the underlying conflict on the participants’ self-esteem.

With potentially difficult conversations, Patton writes: “There is inevitably more ways to understand the situation—more stories of what’s happening—than any one participant is aware of or agrees with; the situation is emotionally charged with strong feelings; and the situation is in some way psychologically threatening to one or [more] parties—it has the potential to impact their self-esteem or rock the pillars of their identity.”⁵

How do these challenges come into play in conversations regarding an estate plan for a family farm or ranch?

Consider first how many different “truths” exist with a family. Each family member has his or her own concept of what has happened in the past, what is going on now, what each wants in the future, and what constitutes a fair or equitable solution in an estate plan. In the absence of dialogue, family members will often create stories, disregard the impact of a decision on others, and attribute negative intentions for other family members, while describing their own motives and actions in more sympathetic terms. Negative consequences may be characterized as intentional if caused by other family members, inadvertent if caused by us.

Similarly, family members may dismiss, disregard or criticize the emotional impacts of any estate plan raised by other family members. It is, they might say, only a business. The difficulty with framing the dialogue impersonally, however, is that it denies the unique nature of most family businesses. The farm or ranch for many families is both a heritage and an asset. The senior generation has spent their lives building this operation. Additionally, as part of this heritage, farm or ranch families have a history of interactions, dating back to childhood. Advisors working with family business conflicts are sometimes surprised to discover that the incident being used to justify not doing something may well have occurred more than forty years earlier. The emotional hurt an incident creates may continue to affect family interactions years later.



Transition plans can also challenge the identities of both the older and younger generations. Proposed changes in a business can be seen as attacks on how the senior generation has conducted themselves. Similarly, failure to adopt proposed changes may be seen as challenges to the competency of the younger generation.

But isn't there only one "truth"?

Stone, Patton, and Heen are not claiming that all facts are relative. Certainly in the context of an estate plan someone either owns or doesn't own specific property, someone has been promised the ag operation or they have not, and the tax consequences of a potential gift or transfer at death can be calculated.

But the truth of such transfers is that the parties may disagree on some facts. For example, a parent may claim the promise to transfer the ranch was conditional, depending upon the parent's financial condition, interests of other family members, and their ability to work together. The potential recipient quite often will disagree. Similarly, in some controversies we may disagree as who is the cause of the problem (they think we are; we think they are). In fact it is often true that all of us have contributed to the problem. Moreover, we may disagree regarding the implications of specific facts—parties have and use different information, rules, and experiences in interpreting and evaluating how these transfers will affect them.

Initiating a Conversation on the Family's Estate Plan

What does work?

Marsha Goetting, Sharon Danes, Virginia Kneer, Chuck Leifeld, and Garry Bradshaw note that transfer "processes are most effective when all parties who could be involved in the transfer have an opportunity to identify and express their needs."⁶ Fetsch suggests:⁷

- Plan early.

- Write a shared family vision.
- Write shared goals.
- Seek the assistance of competent transition planners—rural estate planners, attorneys, accountants, financial planners, insurance agents, Cooperative Extension state specialists, family mediators, and other people-skill professionals.
- Maintain open communication and effective problem solving.
- Listen so well you can repeat back to the speaker's satisfaction what they say and feel rather than lose your temper, yell, scream, or get violent.
- Allow and acknowledge feelings about the transfer process.
- Make no assumptions about the feelings or plans of others.
- Build self-esteem. Respect each other.
- Reduce the older generation's involvement in heavy labor, management, and land. Increase the younger generation's involvement in all three.

These emphasize the importance of dialogue, participation, respect, clarification, shared goals, creativity, and active involvement of both the younger and senior generation in developing any estate plan. We will explore in greater detail how families might prepare shared goals in Chapter 4 using specific tools outlined in this chapter and Chapter 8.

Starting the dialogue: the initiator

How should a dialogue on an estate plan begin? Someone in the family (the initiator) must start this conversation. Usually it begins on a one-on-one basis with family members to discover their willingness to participate, what their stories are, and what their interests and concerns might be. The initiator must identify which family members will participate. Some might decline, some might accept, and some might want more information before they will participate. The initiator must define the purpose of subsequent meetings. This is essential so that participants have a clear sense of the expected outcome of the conversation(s). During these first conversations with individual



family members, the initiator may slowly introduce information that family members can read regarding estate plans, including articles outlining various options others have adopted

to implement their plans. Family members may also take on the responsibility of collecting this information or may choose to rely on an estate planning profession to gather and provide this information.

Starting the dialogue: who should be the initiator?

Who in the family initiates this conversation is often a crucial component in the success of the overall process. Initiators must be perceived by family members as honest brokers (i.e., the proposed process will not be biased in the initiators' or some other person's favor). Initiators must be able to assure participants that:

- the process itself will not be onerous or overly time consuming
- their concerns will be addressed (and not belittled) in the dialogue
- the outcome will be better than where the family currently is (i.e., it will be an improvement over the current (no plan) option)

Initiators must be knowledgeable (but not necessarily experts) about the estate planning process. They should be able to answer basic questions about the process that they are proposing and the purpose of the conversations.

Starting the dialogue requires an attitude adjustment: an initiator must be curious

Bruce Patton argues that the most important element to ensure success in conversations dealing with difficult matters, like developing an estate plan for a farm or ranch, is an attitude adjustment. There are no "right words," precise formulas, or key questions to use in carrying out difficult conversations. What is crucial in engaging in such conversations is authentic curiosity.

"If we really think that we're right and they're wrong, whatever words we use will sound patronizing; rather than genuine interest, the message heard is more likely to be, 'So if I understand how you see it, in your narrow uneducated, ridiculous way, you think...'"

Persons initiating or participating in difficult conversations must be willing to recognize that the different stories of family members are true from their vantage point, that their and the others' emotions are justified, that their self-esteem may be at issue, and must be genuinely curious to learn more about the controversy from their points-of-view.

Starting a dialogue: The initiator must take responsibility for framing the issue(s) that will be discussed, extending invitations, and selecting the timing for the request

Initiating and preparing for a dialogue on difficult topics involves five (5) specific steps:

1. identifying who will be part of the conversation
2. framing the issue(s)
3. extending an invitation to participate in a conversation
4. timing the request
5. gathering necessary information for the conversation.

Difficult conversations begin by asking others to participate. Initiators must identify why these persons will benefit from this conversation (i.e., what interest or concern of theirs will be served by participating). Additionally initiators must anticipate and address concerns that participants might have if they were to participate (i.e., will their concerns be taken seriously, will they be given an opportunity to participate, what will they be required to do, and will the conversation really lead to action). Let's address each of these elements in turn.

Step One: Identifying who will be involved in the conversation

Who should be involved in this conversation? Generally all family members should be invited



to participate, particularly those who can “affect” or whose involvement is necessary to implement any estate plan.

Those who choose not to participate must agree not to second guess what is decided, to provide necessary information when requested, and to help in implementing any decision that is reached.

It is the initiator’s responsibility to decide who is involved. The initiator should involve those he or she contacts in selecting the participants. If a family member objects to another’s participation, the initiator should ask open-ended questions to find out the basis of the objection. (The nature and potential types of open-ended questions are described in detail in Chapter 8).⁸ Once the concerns are identified, the initiator must give serious consideration to these concerns. The initiator should explain why this person is important and how the process selected will address the concerns. Consider, for example, a potential participant’s challenging the involvement of an in-law in the conversation.

The potential participant’s objection may be based upon previous negative interactions with the in-law or a sense of who should make the decision, among other reasons. The initiator can acknowledge without necessarily agreeing with potential participant’s concerns (story). The initiator then can point out why involving the in-law is important because of his or her ability to “affect” the decision and its implementation and how the decision making process (described in Chapter 8) will ensure the decision reached will reflect all participants’ concerns.

Stop now for a moment and complete Figure 1. It asks you to identify who in your family might be involved in this discussion. It also asks why their participation is important, what concerns other family members might have regarding their participation and how the process you are considering will address the objecting family member’s concerns. A second, reproducible copy of this form is found in Appendix A to be used if more than four participants are expected. How you might complete the last column will be discussed in Step 3 below.

Figure 1: Checksheet 1. Potential Participants in the Estate Planning Conversation.

Potential Participant	Why their participation is important	Concerns raised regarding their participation	How the process adopted addresses these concerns	What is this potential participant’s interest in engaging in this conversation?



Step Two: Defining the issue(s): Three Approaches

Approach One: Framing the issues for potential discussion solely from the initiator's perspective. In asking others to participate

in the development of an estate plan, initiators often focus solely on their needs and concerns. For example, a wife might tell her husband that she "cannot sleep knowing they do not have an estate plan for their farm or ranch." She might continue "it's just not fair to our children."

All of these facts are true from her and perhaps even the children's perspectives. What might her husband hear? He may well hear her statement as a personal attack—a challenge to his competency, his fairness, and his ability to care for his family. If you were him, would this be an environment in which you would like to have a conversation? Not surprisingly, he often will become angry and argumentative or simply leave without agreeing to participate.

Approach Two: Defining the issue(s) for potential discussion using the parents' story. A second approach would be to frame the issues drawing on the parents' story to highlight why this conversation would be beneficial. For example, the initiator can draw on the parents' concerns created by another family's struggle—a death without an estate plan, an injury, or illness—to ask how their family (their parents) would want these matters handled if the same thing happened to them. After receiving an answer, the initiator might ask, "what can we do as a family to make sure your concerns are addressed?" Notice the focus here is on the parents' interests and concerns, not the initiator's.

Alternatively, initiators may ask their parents what they see happening to the farm or ranch over the next ten/thirty/fifty/hundred years and what they see their role (interest) in carrying out this vision for the farm or ranch will be? The approach again takes the parents' story as the truth. After listening to the answers, the initiator

can again ask "what can we do as a family to make sure your interests in the continuation of our farm or ranch is accomplished?" Note that initiators will be less effective if they attempt to challenge the senior generation to explain why they do not have an estate plan in place. It still may be useful for an initiator to think why this is so, even though they should not ask. Randall W. McKee, an estate planner from Rapid City, SD, points out several unstated reasons why the senior generation (typically dad) may not engage in this dialogue:

- He is in denial.
- He is fearful that engaging in such a dialogue will result in a loss of control.
- He hasn't made up his mind.
- He doesn't know what to do.

Both alternatives in Approach 2 can be used to develop a common purpose for the farm or ranch (see Chapter 4). At this stage, they are designed to get family members to agree to participate in the conversation. The approach is likely to encourage the parents to participate in subsequent dialogue too. As framed, the dialogue specifically addresses their interest and concerns. They sense that they will be better off in engaging in this conversation than by avoiding it.

The approach has two problems. First, it may disregard the initiator's issues and interests, particularly if they differ from the parents. If the first approach is flawed because it fails to take the listener's story into account this approach is equally flawed because it eliminates the initiator from his/her own conversation. Second, it does not recognize that other family members/participants may have their own stories and visions for the future. To encourage these family members to participate the initiator must treat each family member's story as legitimate. Failing to do this can lead to nonparticipation or defensive behavior on their part. Thus when we talk about developing shared goals in Chapter 4 we will consider how we might interweave all participants' visions for the estate plan.



Approach Three: Developing a Third Story or Acting like a Mediator. Stone, Patton, and Heen (page 150-52) argue that those who plan to initiate difficult conversations might begin them by utilizing a technique that mediators apply:

“Mediators are third parties who help people solve their problems. Unlike judges or arbitrators, though, mediators have no power to impose a solution; they are there to help the two sides communicate more effectively and to explore possible ways of moving forward.

One of the most helpful tools a mediator has is the ability to identify [the] invisible Third Story. This means describing the problem between the parties in a way that rings true for both sides simultaneously.

The Third Story would remove the judgment from the description, and instead describe the problem as a difference between [each party’s interests, concerns, and preferences]...

Clearly there is a difference, and in the Third Story there is no judgment about who is right or even whose view is more common. The Third Story simply captures the difference. That’s what allows both sides to buy into the same description of the problem: each feels that their story is acknowledged as a legitimate part of the discussion.”

To utilize the Third Story Approach, initiators must complete two steps. First, they must identify specific elements of each participant’s story. These include:

- Each participant’s perception of the event
- What the impact of these events have been for all participants on their resources, financial wellbeing, person, emotions, and reputation
- Who is responsible (causation) for these

impacts

- What each participant’s intent was regarding these impacts

Checksheet 2 in Figure 2 on page 19 and in Appendix B, illustrates how this information can be collected and organized.

Let’s look at how one family may complete the checksheets. We assume a family of three: father, mother, and a son who is working on the ranch. Mother (initiator) is seeking to start a conversation regarding the development of an estate plan for their family’s ranch. Figure 2 summarizes her understanding regarding the status quo and any attempt to have a family meeting to work out a new estate plan for the ranch. She has obtained this understanding by having one-on-one conversations with her husband and son, using one of the techniques described in the first approach.

Second, the initiator must reframe (reframing is described in detail in Chapter 8) this information into a neutral recitation of the participants’ different perceptions, interests, and concerns. This should be done in such a way that the listener(s) can agree that this Third Story accurately describes the underlying differences. The authors give the following description of opening lines that might be given by a family member/initiator who is concerned that his brother plans to challenge their father’s will. The description first outlines the initiators’ story and then describes the more neutral Third story he will use to initiate the conversation with the brother:⁹

From Inside [the Initiator’s] Story. If you contest Dad’s will, it’s going to tear our family apart.

From the Third Story. I wanted to talk about Dad’s will. You and I obviously have different understandings of what Dad intended and of what’s fair to each of us. I wanted to understand why you see things the way you do, and to share with you my perspective and feelings. In addition, I have strong feelings and



fears about what a court fight would mean for the family; I suspect you do too.

Notice that the initiator's opening statement summarizes both points of view. It also acknowledges that differences exist. In doing so it does not challenge the other's story, does not attribute any negative intent to the other's previous or future actions, demonstrates curiosity to understand the other's reasoning, and suggests a reason for why having this conversation might be beneficial to all parties. Moreover, it does not require the initiator to give up his/her point of view. The initiator's view may change as more information is collected and so may the brother's.

Now look at the information gathered in Figure 2. How might you reframe these three perceptions in such a way so that the husband/father, wife/mother, and son will agree that it reflects where they currently are?

Step Three: Extending the invitation

Stone, Patton, and Heen argue "[i]f the other person is going accept your invitation, they need to know what it is they are agreeing to." This means identifying your goal(s) in carrying out this conversation, describing the process that will be used, outlining various responsibilities, and establishing a timeline for completion.

Among these potential elements, the first is the most important. The parties may actually negotiate the remaining elements. In describing your purpose, Stone, Patton, and Heen suggest three objectives: "to understand their perspective better, share your own, and talk about how to go forward together."¹⁰ Describe your goals specifically enough so they have a sense of the potential outcomes but not so specifically as to foreclose possible outcomes. For example, in conflict between the two brothers, the final goal is not necessarily "to head off a lawsuit" but rather to determine the best way to address your and my concerns (a lawsuit may turn out

to be the best way). Similarly, in a negotiation within the family regarding a potential estate plan, the goal is not to "draft a will"—that is only one potential way that any estate plan might be implemented. The goals might range from (include):

- Clarifying each family member's interest(s) in an estate plan
- Developing an estate plan that meets all of our needs
- Understanding how the current estate plan operates
- Reviewing our current shared vision for a good estate plan
- Developing a (modifying the existing) estate plan that meets our shared vision
- Ensuring the estate plan is being implemented in accordance with the existing or new estate plan's terms.

Figure 2: Initiator’s Preparatory Notes—Identifying Some Basic Elements in Each Participant’s Story.

	Story	Impacts				Intent
		Factually (impact on assets, finances, persons, health,	Emotionally	Reputation		
Husband/ Father	<p>“I have been thinking about a plan but I don’t like being pushed to do anything. I don’t have any retirement plan; the ranch is our major asset. I don’t know what would happen if one of us got sick. I don’t know why they want to stir things up. I feel like they think I can’t take care of the family. I want my son to inherit this ranch. It has been in the family for five generations. I had to wait until my dad died before I took over. I didn’t like it. I wish my son would take more initiative. Either he’s silent or he roles his eyes when I tell him to do something. I’d like</p>	<p>Need for retirement funds.</p> <p>Desire to pass the ranch on.</p> <p>Need for health coverage</p> <p>Desire to be fair; family tradition of autocratic rule; wants son to take more initiative.</p>	<p>Concerned; feeling of being out of control</p> <p>Feeling that he is not being respected by his son.</p>	<p>Sense that his</p>	<p>External events have prevented him from being able to sit down and prepare an estate plan...</p> <p>My son hasn’t really told me what he wants.</p>	<p>I intend to prepare an estate plan sometime in the future.</p>
Wife/ Mother/ Initiator	<p>“I don’t have any idea what will take place if something happens to my husband. I am frightened. I feel out of control.”</p>	<p>???</p>	<p>Fear</p> <p>Sense of being out of control</p>	<p>I feel like I am being treated like a child.</p>	<p>External events (and my husband) are completely in charge of this decision.</p>	<p>I don’t know what my husband intends to do.</p>
Son	<p>“I don’t have any idea what will take place if something happens to Dad. I don’t know what to tell my wife and the kids about the future—I am telling them that it will all work out, but I don’t know. We don’t have much money set aside. I feel out of control. I need some ownership or management responsibilities in our ranch if I am to be able to show the banker I am worthy to borrow money and if I am to feel respected ...”</p>	<p>Disposition of the ranch.</p> <p>Lack of savings.</p> <p>Negative impact on son’s marriage.</p> <p>Wants to be involved more in ranch decisions.</p>	<p>Fear</p> <p>Sense of being out of control</p>	<p>I feel like I am being treated like a child.</p>	<p>External events (and my father) are completely in charge of this decision</p>	<p>My dad intends to keep me guessing, just like he had to do with granddad. (And I resent it).</p>



Which of these objectives best describes your purposes (interest) in participating in such a conversation? Which of these objectives best describes other potential participants' purposes

(interests) in participating in such a conversation? Figure 1, outlined above and Appendix A, asks you to summarize these purposes for you and other potential participants.

In getting an agreement with potential participants to carry out this conversation, it is important to set the right tone. Stone, Patton, and Heen indicate:¹¹

- Invite, don't impose. This means that your offer (i.e., process, responsibilities, and timing) should be subject to negotiation.
- Make them your partner in figuring it out. If your invitation requires them to acknowledge errors, mistakes, and the like they are less likely to participate. In contrast, if they are given an information and decisionmaking role in a matter that they have a clear interest, they are more likely to participate.
- Be persistent. Persistence in this context does not mean demanding. It requires the initiator to continue to gather information in reformulating the Third Story, not judge, and to re-define the conversation's goals so that all parties (including the initiator) feel confident that the resulting dialogue will be much better than where they are right now.

Step Four: Timing the request

As previously noted, certain external events—illnesses, divorces, or other changes in the initiator's family or in the family of friends—provide natural transitions to initiate this conversation. The initiator's family is already thinking about the need to address a particular problem. The initiator can take advantage of this energy to trigger a serious dialogue.

Choosing an appropriate time to make the request to participate is also important. Persinger writes: "First, ask the person if this is a good time to talk. When she gives you permission to speak, she is preparing to listen."¹² This conversation should not be initiated in the midst of other events. The other party must be able to listen. The request should stand alone to emphasize its importance to the listener; otherwise it may be swallowed up by other conversations and issues discussed at the same time.

Step Five: Gathering and Providing Necessary Information for the Upcoming Meeting

Once there is agreement to have this conversation certain information may have to be collected to make the conversation meaningful. The information required will depend upon the purpose of the meeting. If the goal of the meeting is to clarify each party's interests then it is important that each party spend some time identifying what their interests and concerns might be. If the purpose of the meeting is to brainstorm various solutions, then some time needs to be spent detailing what the alternative might be. If the purpose of the meeting is to make a choice amongst potential alternatives then time must be spent gathering the above information as well as information on fair criteria that participants can accept in making the decision. If the purpose of the meeting is to outline how an agreed upon plan will be implemented, then information must be collected and agreed upon regarding what steps must be completed, when they will be completed, what will happen if they are not (safety-value provisions for covering such instances), and who will take responsibility for their completion.

Data collection should be a shared activity. As Stone, Patton, and Heen point out, a key to a successful conversation is involving all the participants in the process. In doing so the conversation becomes theirs and not simply the initiator's. Participants may be asked what information they think is important (given the goals), whether they would be willing to collect



it, what timeframe will be required to ensure the information is available, and what assistance, if any, they would like.

Chapter 1 provides initiators with a general description of the estate planning process. This will help initiators and their families come to an agreement regarding the purpose of the subsequent conversation. The remaining chapters provide readers with checksheets, questionnaires, and informational pamphlets to help family members to answer selected questions from their point of view. We will draw on these documents in the final chapter when we discuss how to negotiate over the final estate plan for your family's farm or ranch.

Appendix A: Checksheet 1—Potential Participants in the Estate Planning Conversation.

Potential Participant	Why their participation is important	Concerns raised regarding their participation	How the process adopted addresses these concerns	What is this potential participant's interest in engaging in this conversation?

Appendix B: Checklist 2, Preparatory Notes—Participants' Stories.

Instructions: Write down your impressions regarding the following elements of each participant's story (copy as many sheets as necessary to capture your predictions regarding each potential participant's story)

	Story	Impacts				Intent
Name		Factually (impact on assets, finances, persons, health, etc.)		Reputation		

Notes



¹For simplicity we will refer to the estate or succession plan hereafter as simply the estate plan. It is important to remember that any estate plan addresses three issues: the accumulation, preservation, and transfer of estate assets over a lifetime. Our focus here is on the transfer aspects related to a family farm or ranch.

²Douglas Stone, Bruce Patton & Sheila Heen, *Difficult Conversations: How to Discuss what Matters Most* (2000) [hereinafter *Difficult Conversations*].

³Trime Persinger, *Difficult Conversations* (March 2005) available at www.mediate.com/articles/persinger-erT7.cfm. [hereinafter *Persinger*].

⁴*Difficult Conversations*, op cit.

⁵Bruce M. Patton, "Difficult Conversations", *Dispute Resolution Magazine*, 5(4):25 Summer 1999.

⁶Marsha Goetting, Sharon Danes, Virginia Kneer, Chuck Leifeld, and Garry Bradshaw. *Transferring Your Farm or Ranch to the Next Generation*, (2000) Montana State Extension Service EB 149.

⁷Robert J. Fetsch "Some Do's and Don'ts for Successful Farm and Ranch Family Estate Transfers" (June 1999) *Journal of Extension* Volume 37, Number 3. www.joe.org/joe/1999june/iw2.html.

⁸The nature and potential types of open-ended questions are described in detail in Chapter 8.

⁹*Id.*, at 152.

¹⁰*Id.*, at 155.

¹¹*Id.*, at 155-58.

¹²*Persinger*, op cit.