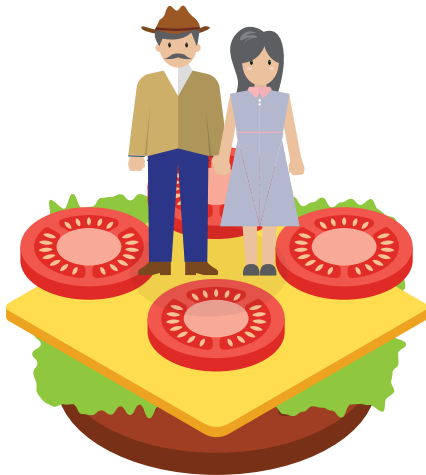




What Can a ‘Sandwicher’ Do?

Many options exist to aid in transitioning ownership of a farm or ranch from one generation to the next.

Story & photo by **Troy Smith**, field editor



Appplied to a multi-generational farm or ranch operation, the term “Sandwich Generation” has been used to describe people — usually in their 50s or 60s — who are sandwiched between aging parents and adult children also involved in the operation. Being caught in the middle can be particularly challenging when the oldest generation holds ownership of land and other assets, and has not initiated a farm/ranch succession plan. Perhaps they have no estate plan, either.

As a consequence, sandwichers often face uncertainties about what might happen if their parents become incapacitated or die. What if parents require long-term, specialized care? What happens to the farm or ranch real estate and other assets upon their parents’ death? Sandwichers may wonder what the future holds for themselves and their own children now involved in the operation.

So what can a sandwicher do? According to Omaha, Neb., attorney Joe Hawbaker, they must start the conversation.

“They must start a dialogue with the senior generation and urge them to think about the risks associated with failure to plan — possible long-term care costs, estate-tax consequences and potential forced sale of farm assets. It is negative motivation, but it is real,” says Hawbaker. “Discuss whether survival of the farm business, under family ownership and management, is a shared goal. If so, you start talking about ways that it could be done.”

Know your toolbox

Hawbaker says there are many tools for aiding the ownership transition of a farm or ranch operation from one generation to the next. Transfer of property can be accomplished while the senior generation still lives, by gift or sale. It can be accomplished at the time of death through a will, titling or trust.

When gifting property to their children, parents immediately lose control and income generated by that property. However, making an “incomplete gift” of property allows parents to keep it in life estate. The recipient generation’s interest is



► Sandwiched between aging parents and adult children also involved in the operation, the Sandwich Generation faces unique challenges in farm/ranch transfer, says Omaha, Neb., attorney Joe Hawbaker.

vested; they are certain to be owners of the property. However, parents maintain control and receive income from the property during their lifetime. The parents cannot sell or mortgage the property without consent of the gift recipient(s).

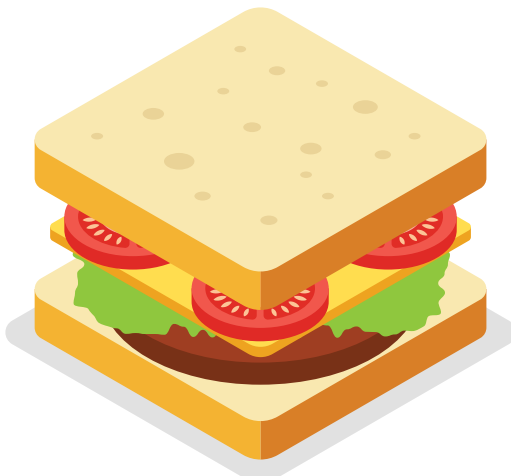
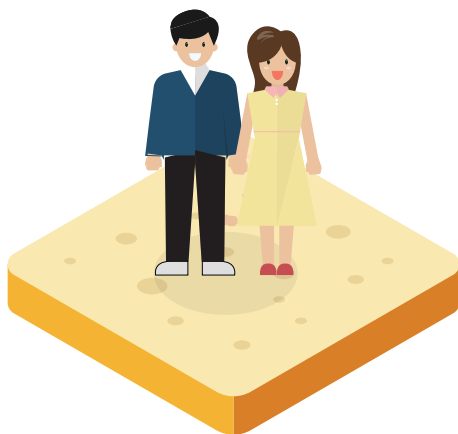
Parents also may transition ownership through the installment sale of property. The price and terms of sale are fixed and the title is transferred or held in escrow. Installment sale provides an income stream for parents and removes some uncertainty for the purchasing next generation.

Hawbaker says a variety of tools are available through which parents can help a successor-heir maintain access to sufficient property for carrying on the family farm/ranch business. These tools may be applied even though an estate divides real estate property among multiple heirs.

One way is for the estate to award a long-term Lease Right to the successor-operator. This can be used, for example, to prevent farm/ranch heirs from selling the land out from under a Lease Right holder. Additionally, an Option to Lease can be recorded against the title to the land.

“In other words, a lease right may go on, even after the death of the property owner,”

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explains Hawbaker, “but it’s wise to include a mechanism for setting the lease rate.”

Landowner parents also can award the next generation an Option to Own, either while the parents live or at time of death. Hawbaker says an Option to Own is often awarded to a farming heir, giving that person the right to buy out other heirs. Parents awarding the Option to Own can set terms, including the length of time the option is applicable, the purchase price, and terms of payment (lump sum or by installments). Typically, the holder of an Option to Own choosing to exercise the option cannot be refused. The option holder has the right to force the sale of the property.

By contrast, Hawbaker says a Preemptive Right gives the holder the first opportunity

to purchase property, but only if the owner wants to sell. Sale cannot be forced. A Preemptive Right of First Refusal (ROFR) affords the holder the right to match any other offer received by the owner. Preemptive Right of First Offer (ROFO) allows the holder first opportunity to make an offer to buy the property. The owner may refuse and sell to someone else. However, the ROFO may be written to prohibit the owner from selling the property to someone else for less than the ROFO holder’s offer.

“A preemptive right can be written to combine ROFR and ROFO,” adds Hawbaker, noting that it can be advantageous for a farm successor trying to buy out other heirs. “I like that because it gives the successor a second bite at the apple.”

Still another property transition tool is the Hybrid Right, which Hawbaker describes as a preemptive right that works like an option. It does not force the sale of the property. If the owner wants to sell, he/she must first offer the property to the Hybrid Right holder, at a price determined at the time that the right was awarded.

These are just a few mechanisms that may be applied to the transition of farm/ranch ownership, and as an aid to continuing a family operation. Hawbaker recommends that families consult with an attorney to gain a full understanding of the options available and their advantages and disadvantages.



Editor’s Note: *Troy Smith is a freelance writer and cattleman from Sargent, Neb.*