LP8 Glossary of Land Transfer Terms

Assets: All types of property that can be sold, gifted or made available for the payment of debts.

Buy/Sell agreements: Formal agreements that spell out terms of ownership transfers in case of death, divorce, disability, dissolution. They often include provisions on valuation, discounts and possible restrictions on asset transfers.

Capital gains income: The net of all capital gains and losses during the year resulting from the sale of a capital asset, such as land, equipment or livestock. Capital gains are taxed at a different rate than other income.

Corporation: An organization that is recognized as a separate legal entity and distinct from its owners. Corporations are owned by stockholders (shareholders) who share in profits and losses generated through the firm's business operations. Corporations have three distinct characteristics: legal existence, limited liability and continuity of existence.

> **C-corporation:** A corporation that is a legal entity and is taxed separately from its owners (shareholders). It has corporation tax schedules and rates.
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> **S-corporation:** A corporation that passes through profit (or net losses) to shareholders. The business profits– are taxed at individual tax rates on each shareholder's Form 1040.

Deed: A legal document that conveys title (ownership) to real property.

Deed restrictions: Provisions placed in deeds to control how future owners may or may not use the property.

Estate: Everything of value (all property) that a person owns while living or at the time of death.

Estate plan: A plan to transfer an individual's assets upon his or her death.

Estate settlement: Also referred to as the probate process. This is the process of settling the affairs of a deceased person. Some terminology related to estate settlement or probate may include the following:

> **Administrator:** A person appointed by a court to carry out the instructions found in a will. Depending on the state, this may be referred to as the executor or personal representative.
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> > **Bequest:** Personal property received under a will.
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> > **Curtesy:** The legal right of a widower to a portion of his deceased wife's real property.
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> > **Devise:** A transfer of real property by means of a will.
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> **Dower:** The legal right of a widow to a portion of her deceased husband's real property for support of herself and children. This may be referred to as the elective share of a surviving spouse.
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> **Estate tax:** Taxes assessed by the state and/or federal government upon a decedent's right to transfer property at death.
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> **Executor:** A person named in a will to carry out its instructions; if male, the person is called an executor, and if female, the person is called an executrix. Depending on the state, this may be referred to as the administrator or personal representative.

Heirs: Those designated by law to receive the property of the deceased either by the terms of a will or state law.

Personal representative: A person appointed by a court to carry out the instructions found in a will. Depending on the state, this may be referred to as the executor or administrator.

Probate court: A court of law with the authority to verify the legality of a will and carry out its instructions.

Equal vs. equitable or "fair" distribution: In farm transition or estate planning, an "equal" distribution means that property is divided in equal percentages among heirs. In an equitable or fair distribution, property may be divided based upon the contributions and needs of the heirs; the monetary values of the shares may be different.

Farm succession: The process of transitioning ownership from one generation to the next. The elements of a comprehensive plan for succession include: financial security, management continuity, ownership transition, leadership development and estate planning.

Farmland transfer: Indicates the passing of farmland and/or a farm business from one generation or owner to another. Often interchangeable with "farm succession" and "farm transition." Specific mechanisms of farmland transfer may include the following:

Bequest: This is a transfer at death by the terms of a will or trust and once the estate is settled. A bequest may be made to more than one person and those may result in fractionated ownership. Here as well, some bequests may contain conditions or restrictions (for agricultural use), but most generally do not.

Combination: In many instances (especially with family transfers), there is often a combination of sale, lifetime gift and bequest to effectuate the transfer of assets, including land. This scenario is less likely in nonfamily transfers.

Gift: Transfer without any payment. Some gifts may have conditions (such as requiring active farming or ranching), but in most cases, an outright gift transfers all ownership rights unless the donor (making the gift) retains some or all the rights to use the property for their lifetime, which is known as a life estate or life's use. Gifts are either present/immediate, gift with retained life use or bargain or discounted price.

Sale: Purchase for value, usually a negotiated price and terms that are "agreed to" by the parties to the transaction. More likely in nonfamily transactions. Critical issues will be the price (amount and how it's determined) and the terms – either all at the closing or payments over a period of time. Sales are either immediate (during lifetime), installments (payments over time) or phased (sale of portions of the real estate assets).

Transfer upon death: Upon death the decedent's property will transfer according to the terms of the deed, will or trust documents left by the decedent, or "intestate" for someone who dies without a will. When someone dies intestate their property passes according to applicable state law, or for some Indian Land according to tribal or federal law. It is common for property that passes intestate to pass to multiple heirs and thus the title becomes fractionated.

Heir property: Indicates a landowner who died without a will. Consequently, the land is owned "in common" by all the heirs and state law determines who will inherit the land. The state laws that decide how an estate is distributed among surviving heirs are called "intestacy laws" which means the laws of descent and distribution. Over time, when land is passed down through the generations without a will and each of these co-owners own a fractional (or partial) interest in the land. These interests are undivided because the land has not yet been subdivided, so no co-owner can claim ownership of a specific portion of the land.

Inheritance tax: A state or county tax levied on a person who inherits. The rate of taxation depends on the size of the inheritance and the relationship between the person who inherits and the deceased. Inheritance tax laws vary state by state. Some states have no inheritance tax and some states have county inheritance taxes. In contrast to inheritance tax, an estate tax is levied on the estate before passing to heirs or beneficiaries.

Limited Liability Company (LLC): A business structure that combines the limited liability feature of a corporation with the pass-through feature of a partnership or sole proprietorship.

Tax basis: The amount of the landowner's capital investment in property for tax purposes and is used to figure depreciation, amortization, depletion, casualty losses and any gain or loss on the sale, exchange or other disposition of the property.

Title: The right to or ownership of something. Terminology related to title may include:

> **Deed:** A written document that, when properly executed and delivered, conveys title to real property
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> **Marketable title:** Title that is free from encumbrances and any reasonable doubt as to the owner. Property with marketable title can be sold or mortgaged readily

Title by descent: Laws that direct how a deceased's assets shall be divided to heirs when no will exists.

Transfer on death (TOD): Designation on securities or life insurance that allows the naming of a beneficiary to receive them upon the death of a party.

Transfer through will or trust

> **Outright bequest of property:** Through sole or joint ownership (usually with siblings, or siblings and the surviving spouse)
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> **Property conveyed to a trust:** Through terms of the trust will determine use and future ownership
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> **Right to purchase at a specified price:** Either pursuant to the will or a buy/sell provision

Trust: Ownership and control of property by a third party (trustee) who manages the property and pays the income to a named beneficiary according to the instructions given by the person setting up the trust and who transfers property into it. Terminology related to trusts may include the following:

> **Fiduciary:** A person in a position of trust, responsibility and confidence for another. This is the standard of care or obligation for the trustee.
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> **Trust corpus:** The subject matter of the trust. Definite and ascertainable property that is transferred to the trustee.
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> **Trustee:** A person or institution who holds property in trust for another.

Trustor: Maker of a trust.

Different types of trusts include:

Generation-skipping trusts: Trusts that are used to provide income to a generation or two of heirs, with the property eventually passing to individuals two or three generations down the line.

Inter vivos trust (living trust: A trust that takes effect during the life of its creator. However, the trust may continue after death.

Living trust: A trust established during the lifetime of the grantor.

Testamentary trust: A trust that is intended to come into existence at death. Its purpose is to provide for the management of property after death. They often are contained in an individual's will.

Revocable trust: A trust that is included as part of the taxable estate, can be revoked any time, is flexible and the most common form of advanced estate planning. The revocable trust can take on many different versions and may require special language to work through tax planning with a large taxable estate.

Irrevocable trust: A trust that is irrevocable and is not counted as part of the taxable estate. This trust should be used sparingly and only if the estate has significant tax problems. Once assets are put into the irrevocable trust, they cannot be removed, and the owner forever loses control, access and the benefit of the items placed in an irrevocable trust.

Life insurance trust: This is a special irrevocable trust that holds life insurance policies to exclude them from the gross estate. When a policy is not in the irrevocable trust and the decedent-maintained control, it is counted as part of the gross estate.

Special-needs trust: This can be a revocable or irrevocable trust that is formed for a special-needs child, pet, business, real estate or other property that requires specific and special attention post death.

Charitable remainder trust: A tax-exempt irrevocable trust designed to reduce the taxable income of individuals by first dispersing income to the beneficiaries of the trust for a specified period of time and then donating the remainder of the trust to the designated charity.

Will: A legal document directing the disposal of one's property after death

This *Glossary of Farm Transfer Terms* has been informed in part by Land For Good http://landforgood.org, Farm Journal Legacy Project http://www.farmjournallegacyproject.com/glossary/, North Dakota State University Agriculture and Extension https://www.ag.ndsu.edu/succession/glossary-of-terms/Glossaryofterms.pdf and *Merriam-Webster's Law Dictionary* https://www.merriam-webster.com/legal.