

SPECIAL ISSUES
For Persons Who Own Agricultural Land or Conduct Farming Operations






Robert Serio

- Has practiced law in Clarendon, Arkansas, since 1972
- Practice since 1986 has centered around agricultural law, estate planning, and farm real estate.
- Represents over 600 farm families in more than 25 states, who farm from 2,000 to 70,000 acres.
- Has been featured in Washington Post, Arkansas Democrat-Gazette, and MSNBC as architect of farm organizations receiving the largest amounts of farm subsidies in US.



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Stan Miller

- Partner, ILP McChain Miller Nissman, an estate planning law firm with offices in Little Rock, Arkansas
- Founder and principal of WealthCounsel, LLC and ElderCounsel, LLC
- Counsels clients with respect to wills and trusts, estate planning, trust administration, corporate and partnership matters, charitable giving, private foundations, supporting organizations, life insurance and taxation



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I.

**Planning to Protect
a Way of Life**

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II.

**Introduction to FSA
and NRCS Programs**

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Two Key Programs:

- Farm Service Agency (FSA) Subsidy Programs
- Natural Resource Conservation Service (NRCS) Programs

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Lands Enrolled in FSA Subsidy Program will be Recognized as Cropland acres, and Most will be “Base” acres

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Base Acres are Those Acres with a History of Growing Crops—such as:

- Corn
- Soybeans
- Cotton
- Rice

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Base Acres have a Production Yield Assigned to Them, and are Eligible for Farm Program Payments Based on Commodity Value

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In Order to Receive the Payment, the Owner or Tenant Must:

- Be Actively Engaged in Farming; and
- Have a Risk in the Crop

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So, if a Landowner Leases Land to the Farmer for **Cash Rent**, the Landowner Is Not Eligible for Farm Program Payments.

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A Landowner that Leases Land for a Share of the Crop (“Crop Rent”) can Share in the Portion of the Program Payment Equal to the Landowner’s Percentage Share of the Rent

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III. Payment Limits

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There are Limits on FSA Program

Payments:

- Individual or entity subsidy of \$125,000 yr
- AGI is \$900,000

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There are Limits on FSA Program

Payments:

- Husband and Wife Eligible for \$250,000
Provided they are Not Considered One Entity

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Lands Belonging to a Husband and Wife

Transferred to:

- A Joint Trust (Including a Joint Revocable Living Trust)
- A Corporation
- An LLC

Are Treated as One Entity

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Generally, Estate Planners Will Want to Use:

- Separate Living Trusts
- Separate LLCs

Then, These Entities form a Separate General Partnership (Which is Not Considered an Entity)

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The Capital Infusion Rule

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The Capital Infusion Rule is Important if the Farmer is Leasing Land from Himself to a Separate Farming Entity

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Typical Example:

- Farmer Owns Land in Individual Name
- Leases Land to Farmer A Partnership, composed of Farmer, his Wife and Two Corporations (in which Farmer A owns 1% Interest in Each)—This Adds to Number of Entities Eligible for Program Payments

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The Capital Infusion Rule Does Not Allow a Landlord to Co-Sign or Guarantee a Note Unless the Landlord is a Partner in the Farming Operation

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So...if the Land is Owned by a Trust, LLC or Corporation that is Not a Partner in the Farming Operation, the Leased Land Cannot be Used as Collateral for the Crop Loan

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The Conservation Reserve Program (CRP)

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The CRP Program Essentially Allows the Farmer to Lease Land to the Government to Keep it Out of Production

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There are Limits on CRP Payments:

- \$50,000 Per Person or Entity
- \$100,000 for Husband and Wife who Own Lands Jointly
- AGI Limit is \$1M for Eligibility Purposes

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Once Again....Lands Belonging to a Husband and Wife Transferred to:

- A Joint Trust (Including a Joint Revocable Living Trust)
- A Corporation
- An LLC

Are Treated as One Entity

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To Avoid Losing \$50,000 in CRP Payments:

- Use Separate Living Trusts
- Use Separate LLCs

Then, These Entities form a Separate General Partnership (Which is Not Considered an Entity)

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Payment Limitation Rules are Found in 7 CFR 1400, and are Quite Nuanced.

Consider Working with Someone Who is Familiar With Those Rules

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IV. Estate Planning Without Interfering with Payment Limitations

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V. Fair is Not Necessarily Equal— Strategies to Transition the Farm Land and Farming Operation Equitably to the Younger Generation

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Two Unique Challenges

- Love of the Land—Never Sell it
- Equal is not Fair

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Solutions

Separate Farm Operations and Farm Land into Two Separate Entities

- Operating Entity
- Land-Owning Entity

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Solutions

Operating Entity:

- Leave to Farmer Child (at sweetheart value)
- Other Children Receive Equivalent in Life Insurance

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VI. Foundation Planning

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for farm Land owners

The Farm Family Wish List:

- Don't Disqualify for USDA Subsidy Payments and Other Gov't benefits
- Keep the Court System out of Family Business
- Keep Farm In the Family Forever
- Treat Non-Farming Family Members Fairly
- Avoid Need to Liquidate Farm to Pay for the Cost of Long Term Care
- Avoid Estate Tax

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Foundation Planning:
Get the Court System
out of the Family Business

- Avoid Guardianship upon Incapacity
- Avoid Probate at Death
- Give Clear Authority to People You Trust to Make Health Care Decisions

Solution: A Living Trust Plan

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Foundation Planning:

- Protect from Second Marriage
- Protect Children from Divorce, Lawsuits, Immaturity and Special Needs
- Protect IRA & Allow "Stretch-Out"
- Provide for Heirloom Property to Avoid Unnecessary Arguments

Solution: Easily Incorporated into Your Living Trust Plan

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VII.
Planning to Protect
Basis Step-Up

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The Capital Gains Tax in 2015:

- 20% Federal
- 4.9% (Arkansas)
- 3.8% NIT

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Protect Basis Step-Up: Solutions

- Eliminate A/B Estate Plan (replace with QTIP or Powers of App't)
- Avoid Outright Gifts to Children of Appreciated Assets
- Tennessee Community Property Trust

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VIII.
Planning to Reduce or Avoid
the Estate Tax

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Protect From the Estate Tax

- \$5.0 Million (Inflation Adjusted—\$5.43 in 2015)
- Exemption is Now Portable
- 40% Tax on Excess
- Annual Gift Tax Exclusion Remains at \$14,000

**Note: Life Insurance Death Benefit is Included*

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Protect from the Estate Tax

For Estates Under \$5/\$10 Million:

- Simplify Current A/B Planning
- Simplify First Death Administration
- Protect "Double Step-Up" in Basis

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Protect from the Estate Tax

For Estates Over \$5/\$10 Million:

- Remove Life Insurance
- Transfer Farm Land to LLC's
- Part Gift/Part Sale to Grantor Trust
 - Note
 - Self-Cancelling Note
 - Private Annuity

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IX.

**Protecting the Farm From the
Cost of Nursing Home Care**

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**Protect the Farm from the Cost of
Nursing Home Care**

- \$5000/\$6000 per month (x 2 for couple)
- 70% Chance of Going In
- Medicaid Pays when your Net Worth is reduced to \$2000

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Cost of Long Term Care

- Greatest Risk to Losing the Farm
- Good Solutions, But Must Plan Early

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**Do Not Give Assets to Children (No
Matter How Much you Trust Them):**

- Children Pay Capital Gains Tax that Could Have Been Avoided
- They May Lose it
 - Divorce/Lawsuit/Immaturity

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Cost of Long Term Care: Solutions

- Long Term Care Insurance
- Life Insurance with LTC Rider
- Medicaid Asset Protection Trust

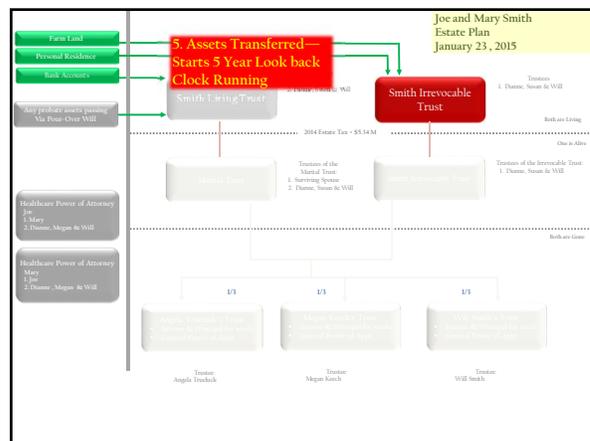
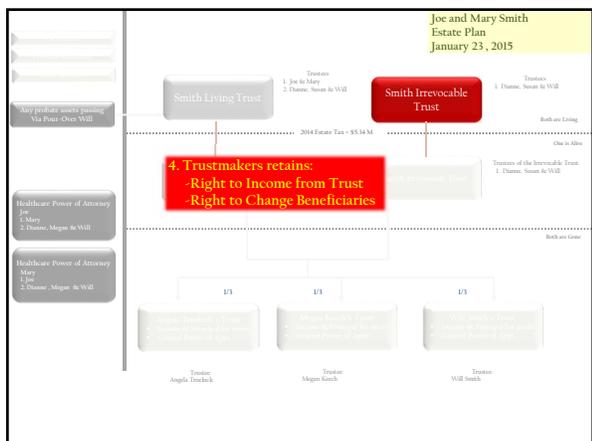
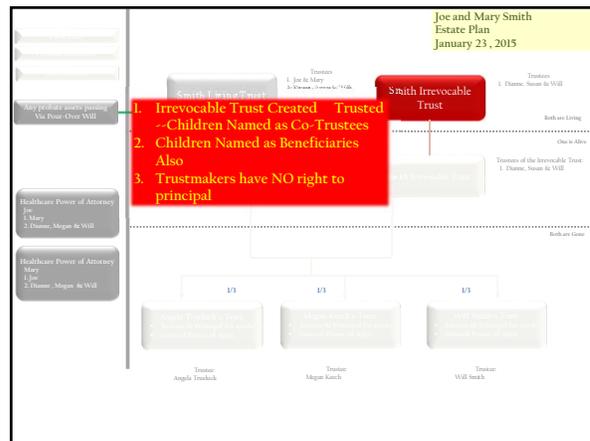
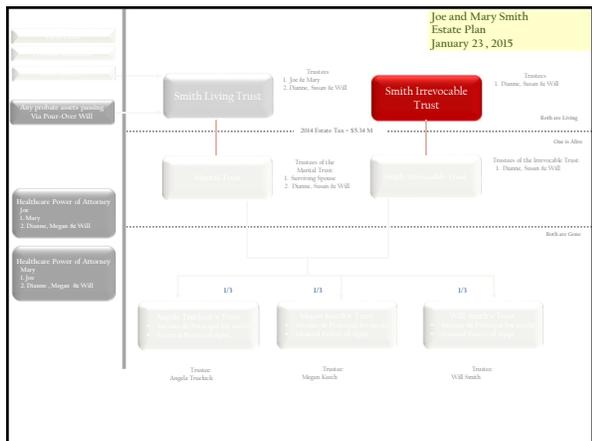
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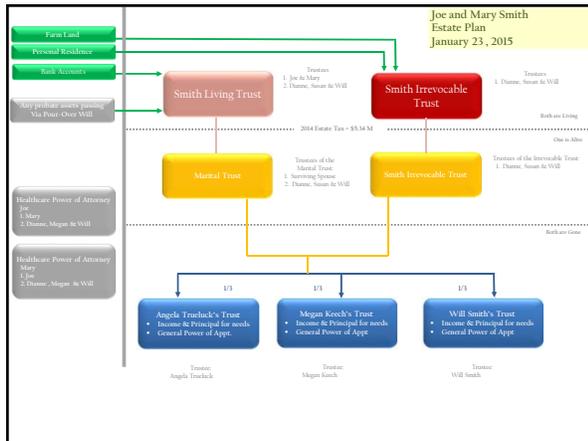
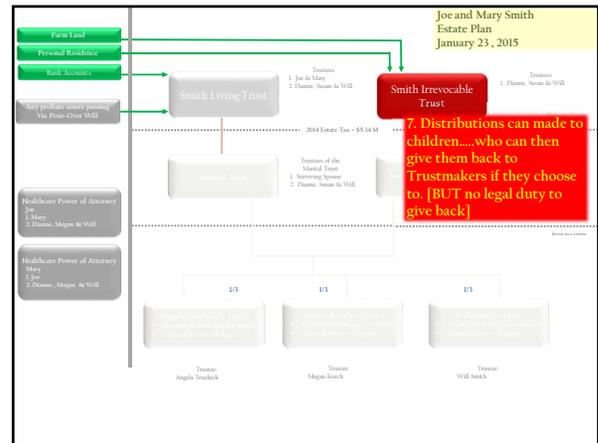
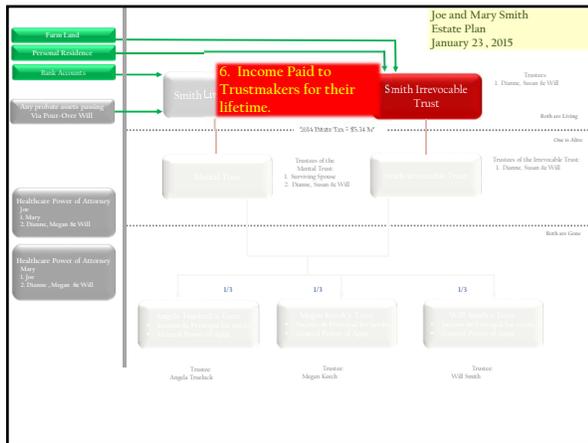
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MAPT:

- Medicaid Asset Protection Trust (5 Year Look-back Trust)
 - Not Typical Living Trust Plan
 - Assets Receive Cost Basis Step-up
 - Retain Power to Pass at Death
- Long Term Care Insurance (or Life Insurance with LTC Rider) to fund first 5 years of care

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Special Issues in Estate Planning

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PROFESSIONAL CORPORATION

Serio & Bishop, PLLC