

SELLING THE FAMILY FARM



Selling the Family Farm

Vern McClelland, Associate Broker, RE/MAX of Lloydminster

Phase #1: Emotion is real but so may be the need to move on

We are in a time when the non-farming adult children of second or third generation farmers are considering selling land they inherited from mom and dad.

They may have rented it out for years, but now health issues or the need to support their own family or retirement in a difficult economy, has brought them to the realization it is time to sell.

Or it may be necessary to settle an estate, leaving the executor with difficult, and sometimes unpopular, decisions to make.

However, what makes this particularly challenging for all involved is the dynamics with the family structure, not the property. It's a rare group of adult siblings who can sing in harmony on such an emotional subject.

Sometimes, it is the guilt of letting the land go when it was homesteaded by ancestors who overcame great challenges but somehow persevered. Those stories have been passed down from generation to generation, often at the dinner table or whenever family gathered.

I and my family still ranch on land homesteaded by my grandfather in 1905. He walked two miles into town year around to work as a print setter on the local newspaper so he could put his wages into developing the farm.

The quarter next to us was settled on by a teamster who freighted goods between North Battleford and Lloydminster to serve the new Barr colony on the Alberta / Saskatchewan boundary.

His fourteen-year-old son was pulled out of school to look after the livestock plus do much of the necessary fieldwork. Father would stay overnight when passing through. Sometimes it would be weeks between visits depending on weather conditions.

Heritage stories like these were once described to me as "mom and dad's push from past"; when no one wants to be the person in the family who gives the land up.

Often, it is the interpersonal relationships between brothers and sisters themselves which cause problems.

With one recent case, I was interviewed by four siblings about the tender process. All of them had been successful in their own endeavors, and frankly, weren't used to listening instead of speaking. Consequently, each felt the need to assert their own opinion, instead of looking for common ground.

In another, three couples were on title and when one of the six felt undervalued by the others, withdrew from the decision-making process forcing it to come to a halt, even though everyone knew selling the land was the right thing to do given the circumstances.

Sometimes, it is a spouse of one of owners who will negatively impact the decision-making process. Siblings can usually work out issues, although admittedly there may be some heated comments, so a meeting of just the owners may be the advisable course of action.

If there is reluctance by one family member to sell, I recommend they be given the opportunity to purchase the property at fair market value prior to any marketing taking place. The professional valuations should provide enough basis for an internal sale.

Phase Two: Get a professional valuation (or two!)

Obtain a professional opinion on the subject property's current value. Don't rely on the neighbour, municipal administrator, tenant, or local family member.

Please don't phone someone and casually ask, "what is farmland worth?".

Every parcel has different attributes and requires in-depth study as valuation is both an art and a science.

Hire an appraiser or Realtor with a proven track record in local farmland who can provide a written report to all stakeholders.

In fact, I would hire both if resources permit. While these professionals receive the same basic training, their perspective on value in the current market may differ substantially.

Appraisers examine historical data and draw their conclusions from it.

Realtors certainly acknowledge previous sale activity, but also closely monitor trends and ultimately will examine a property through the critical eye of the potential buyers.

There are many other considerations as well if we are to compare "apples to apples".

The specific attributes of the soil of a subject parcel is based on province wide categories including its utility for agricultural or other purposes.

- Productive capacity is very important to potential buyers (and their lenders). For grainland this is often expressed as cropable or cultivated acres, while pasture is measured by the number of livestock a parcel can support in a grazing season.
- Other factors which impact cost of production include:
 - Stones, trees, wetlands, and utility corridors.
 - The quality of road access and distance from the closest service center (implement dealerships, grain terminals, etc.)
 - Extreme topography (gullies, flood plains, drainage basins, etc.) which make any agricultural activity difficult. While satellite imagery is helpful, in-person observation of the lands is a must.
- Improvements such as buildings, fencing, power, natural gas service, and water supply.
- Contiguous boundaries or municipal zoning, etc. may serve to enhance or restrict the usefulness and subsequent worth to a potential buyer.
- Proven gravel or clay deposits. Standing timber suitable for harvesting.
- Revenue from petroleum and natural gas surface leases.
- If mineral rights are owned by the family, will these be retained or sold as well? If so, what worth, if any, do they have?

All professional valuations should include a current copy of the land title.

Examination of the title is critically important, as it contains information that may restrict the rights of a landowner, now or in the future. For example, easements for pipelines or utility corridors do not allow for construction of permanent buildings within.

Many a land deal has gone sideways or been delayed when the seller does not present a "clean" title to be transferred.

Phase Three - Other aspects that need to be considered:

Agricultural leases

If there is a lease in place, what impact will the terms within have on buyer interest?

For example, if the lease rate is below the current market for that type of land, an investor-buyer will discount the property in order to achieve their expected rate of return.

Should the lease have a term beyond the current year, neighbouring farmers will be reluctant to make an offer as they often want to immediately incorporate the land into their cropping rotations.

Does the tenant have “right of first refusal” (the right to match any offer acceptable to the seller)? Some buyers see this negatively. They may know the renter and not want to compete with them.

Others will suspect the marketing is just an exercise to find what the market will bear, and the tenant will buy it anyway, so why participate?

In one instance, the tenant told anyone who would listen they intended on matching the highest bid, consequently the neighbours did not want to drive up the price and he got the land well below market value.

So, the seller needs to first establish if the current tenant has rights, written or implied.

Personally, I believe if the tenant has been a good steward of the land and has always paid a fair rent on time, then they should be given a reasonable opportunity to purchase the property prior to it going to the open market.

However, if they have consciously taken advantage of the situation, or have not acted responsibly, I question if they deserve anything other than being advised of a pending tender or MLS and invited to participate like everyone else.

Agricultural rents from the current year is a negotiable item depending on when the sale completion date is in comparison to the lease period and terms.

Petroleum and natural gas surface leases

Unless otherwise agreed, revenue from oil activity will be reconciled to the day of possession, so the buyer will receive a credit for any payments received by the seller, if part of it was for a period following the sale date.

Questions often asked by buyers are:

- When was the last time the leases were renewed?
- Are the wells still active? Has there been any notice of abandonment?
- Who is the leaseholder - a major energy company or a junior?
- Have payments been made on time?

Assemble copies of all the surface leases. Buyers may ask to examine them as a condition to the sale. For sure, the lawyers will need to refer to them in order to convey title.

Landowners can request a copy from the energy company should they not have one on file along with a statement showing payments since entry to the land.

Granaries

Grain bins which are self-standing (metal floors or hopper bottoms on skids) could potentially be sold separately from the land. Older bins on wood floors, or those installed on a concrete base, are more difficult to move, therefore should probably remain. It is very important to state what is included, and what isn't in a sale.

Crop History

If the primary use of the land has been to grow grain, buyers will want to know what crops have been sown the past three years, and if available, the chemical inputs applied during that time.

This is important information for the incoming farmer as it will assist them in developing a seeding plan for the land. Good agronomic practice calls for rotation of crops to manage diseases.

In one instance, the outgoing tenant knew the land would be coming up for sale at the end of his lease and he planted canola for three years straight.

Prospective buyers were concerned about the potential for clubroot disease and bid lower than normal as they would have to plant alternative, lower return crops for several years.

Property Taxes

Each municipal government has a different mill rate. Buyers like to know what to expect for fixed expenses once the land is purchased.

Depending on what has been agreed to in sales agreement, taxes may be prorated to the date of sale, or if early in the new year, a buyer may be asked to pay for the entire year.

Potential for Subdivision

Quarters with an established, viable yardsite may be good candidates for subdivision, either for the lift in value the creation of two separate titles may provide, or to continue to allow the family to use the "home place" seasonally for a rural retreat while selling the land around it.

If the house and utilities provide a viable year around residence, there are many young families who would like to live in the country but aren't part of a local farm.

Alternately, a plan to simply keep the yardsite can go a long way to creating a healing pathway for family members who may be emotionally attached to the "homestead". It can quickly turn a negative into a positive.

In the rural district I live in there are three such acreages, all maintained as private campgrounds used for summer getaways and family reunions.

Every municipality has a zoning bylaw which outlines their parameters for subdivision, plus the province also has rules. Ask me for an information pamphlet which outlines the steps that need to be taken.

It's rather simple actually; hire a survey firm experienced in agricultural subdivision, work with them on establishing the proposed boundaries of the acreage, and let them guide the application through the various levels of governments.

Subdivision may take up to eight months and ownership of the resulting parcels cannot be transferred until the new titles are in place.

Phase 4 – Proceeding to sale

Now that you have committed to selling and have a better idea on value, there are several options available to you. It's important to determine which one fits your situation best but to also understand what buyers prefer:

Private Treaty / Do It Yourself:

- Advantage -
 - Works well if a seller is comfortable in meeting one on one with prospective buyers and conducting direct negotiations.
- Disadvantages -
 - Not all buyers want to negotiate “face to face” with a seller.
 - Buyers often expect to expect a discounted purchase price to what may be considered fair market value “because you don’t have to pay commission”.

Personal Brokerage:

- An independent third party, such as Realtor, is asked to facilitate a private sale between the seller and an identified buyer, often a loyal tenant. There is a distinct advantage to both parties in having someone neutral, and knowledgeable, lead the discussion.
- While most agreements are straightforward, some may be “buy this quarter now, lease the remaining ones for three years, then you will be offered the opportunity to purchase the rest” or “lease the land for a year to allow time to arrange a down payment, but secure the future sale at an agreed upon price and a non-refundable deposit in place, held by the brokerage or lawyer.”

Auction:

- Advantages -
 - Provides an opportunity for all prospective buyers to participate.
 - Creates a competitive environment.
 - Achieves a sale by the date set by the seller in conjunction with the auctioneer.
- Disadvantages -
 - Sellers can't select who gets the land.
 - Commission is often payable on the highest bid in a reserved auction even if the land doesn't sell. Many auction companies also charge the buyers a commission as well.
 - With an unreserved auction, the seller is required to accept the highest bid, regardless of the market value for the land is considered to be.
 - Buyers don't like being pressured to bid or they may feel excited during the auction, then regret their actions later and try to back out. Some become so stressed or intimidated by other bidders, they withdraw even before their target price is met.
 - Land auctions are sometimes held concurrently with an equipment auction, which is usually in the spring; not the best time of year for buyer optimism on land purchases, especially if weather conditions have not been favorable.
 - Buyers far prefer to make major commitments after the year's crop is in the bin and they have time to research a property plus consult with their lender.

Multiple Listing Service (MLS):

- Advantages -
 - Seller establishes the asking price.
 - Allows the seller to engage in negotiations with a buyer with the support of a licensed real estate professional.
 - Buyers will also use an agent in developing and negotiating an offer.
 - Listing information automatically goes online to the national website owned by all Canadian Realtors.
- Disadvantages -
 - Stating an asking price has its risks; ask too much and buyers may pass it by, ask too little and money could be left “on the table”.
 - Offers come in one at a time, unless otherwise specified. Buyers work on their schedule, not the sellers.
 - Offers usually come with conditions – financing, appraised value equal to or greater than sale price, review of surface lease contracts, etc.

Sealed Bid Tender:

- Advantages -
 - Sellers retain a high degree of control on the outcome and do not have to accept any bid.
 - Tenders administered by a trusted, independent third party, either a Realtor or lawyer, are more likely to be trusted by buyers than those run privately.
 - The open period prior to bids closing, usually six to eight weeks, gives buyers time to study the attributes of the property, organize financing, then make an informed offer.
 - Most bids received are unconditional.
 - Sale date is usually within a range of 30 to 45 days after the close of the bids unless otherwise agreed.
 - The tender process gives everyone with an interest in acquiring a property time to participate so no one can say afterwards that the seller didn't give them a chance. This is particularly important when the seller wishes to maintain relationships within a district after the sale.
 - Bids are accompanied by a cash deposit (bank draft, certified cheque), which becomes non-refundable once the offer is accepted unless the seller agrees in advance to conditions.
 - Sellers can privately select who they wish to work with from a pool of buyers, and not just the highest bidder.
- Disadvantages –
 - Buyers dislike the one-time nature of the sealed bid process.
 - From the seller's perspective there are very few disadvantages. If the tender doesn't meet expectations, the land can be put on the MLS system with an asking price stated by the seller.

Progressive Tender:

- How it works –
 - In the first, and successive rounds, prospective buyers are advised by telephone the amount of the top bid submitted for each parcel or block.
 - Bidders have until noon the following business day to consult with family and lenders and decide if they wish to revise their offer.
 - Bidding continues until each buyer declares their final offer.

- Where more than one parcel is available, bidders interested in only purchasing the “package” will be advised of the cumulative value after all final offers on the individual parcels or blocks are received, at which time they will need to participate in their own roundtable until declaring a final offer.
 - If there is a holder of Right of First Refusal, at this point they will be given the opportunity to match the highest bid or declare their final offer.
 - All final offers are presented to the seller for review and decision on who to award to, if at all.
 - Bidder names remain confidential, known only to the broker and seller.
- Advantages -
 - There is a lower cost of entry for the bidders. As with Sealed Bid Tender this “earnest money” becomes non-refundable and part of the purchase price once a bid is accepted, at which time the successful bidder is asked to increase their deposit to 3% to 5% of the sale price.
 - Cash, unconditional offers are required unless otherwise allowed by the seller.
 - Buyers appreciate the transparency of the process and can see what their peers believe the property to be worth, then compare it to their own research.
 - Sellers like the fact they are achieving the highest market price at that point in time, but still retain the right to accept or reject any or all of the bids.

There are two distinct age groups of agricultural operators of today’s family farms; those who get their information from print media, primarily 50 and above, and the generation below them, who rely on digital media. Advertising placed only in newspapers runs the risk of not reaching highly motivated younger farm families in expansion mode.

A “best of class” tender marketing system reaches out to both generations using a website custom designed with maps, land profiles, satellite imagery, photos, bid documents, and any other information pertinent to the campaign.

Traffic is then driven to it using flyers to farm post office boxholders in an appropriate radius of the subject property (usually 20 miles for cropland, 100 miles for pasture), plus featured classifieds in both the local newspaper and Western Producer (including their online editions)

Weekly social media “boosts” outlining the campaign is delivered to area Facebook subscribers. An advantage to using online advertising is our ability to monitor exactly how many households it reaches, the “click through” traffic to the tender website, or the sharing between subscribers.

Analysis tells us the exposure generated by these methods to each generation is about equal.

Final Words

The best way to start planning is to have a family conference with both me and your lawyer present. There have been times when we have included the tax accountant in the conversation as well. Not only does this put a good foundation under the transition process, it makes efficient use of everyone's time.

Once the family agrees on an action plan, the supporting professionals can go to work, then report back to the group. At this point, the decision can be made if to proceed, when, and using what path.

The attributes of the land, its history of stewardship, and dynamics within the district will determine the best approach to selling - all have merit; all have drawbacks.

In my opinion, equally important as achieving a fair sale price is for the family to remain united through the transition. Buyers will sniff out dissension and when they do, the train quickly goes off the tracks.

To summarize:

- Build consensus amongst the owners about the desire to sell before anything else.
- Appoint a spokesperson who will act as a "pivot point" for all future decisions and whose responsibility it is to keep everyone informed.
- "No secrets and no surprises" are still the best communication strategies when working with family.
- Build a team to support the transition process.
- If going to the open market, the "reach" of the advertising should be well thought out to attract both local buyers and those living at a distance. It is not uncommon for people who have moved away from a district to purchase land and then rent it back to a local family member or childhood friend. It can be a solid investment plus makes them feel connected to where they grew up.
- Think like a buyer and go to the market at the appropriate time. Stay away from the busy on-farm seasons.

Vern McClelland, Associate Broker

RE/MAX of Lloydminster

Office: (780) 808-2700

Direct: (306) 821-0611

Email: vernmcclelland@remax.net

Member of the Canadian Association of Farm Advisors

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