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FACING CRITICAL DECISIONS

by

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## OPTIONS FOR FARM FAMILIES FACING CRITICAL DECISIONS

by John Brake and Tom Shephard

Economic problems in New York State agriculture, while perhaps not currently as severe as in several midwest states, are nevertheless of a serious nature. Declining commodity prices along with decreasing farm personal property (livestock and machinery) and farm real estate values have been the rule for many sectors of the State's agriculture. The result for many farm families has been a dramatic decrease in equity (net worth). In addition the outlook is for continued weakness in commodity prices. There is simply too much production capacity for enterprises already in surplus production.

All of this means that New York farm families are, and will be, facing some difficult and critical decisions about the future of their farms and their way of life. This paper outlines some of the options, key considerations and perhaps necessary thought processes for farm families facing such a situation.

Each farm family facing these hard real life decisions is different and needs to be treated so. Each brings to the decision process a unique and special set of values, goals and expectations as well as a unique farm business and family situation. In working toward a resolution of the family's problem, a person outside the business and family, such as an Extension agent, may be of great help. By serving as a sounding board, such a non-directional advisor can often help a family sort out their values, goals, expectations, and relevant courses of action.

### What does the family value most?

Perhaps one of the first questions that needs to be faced concerns what is most important. Tradeoffs may have to be made; priorities chosen.

- Is farming most important, or is family more important?
- Is self employment more important than being employed and productive?
- How important is it to stay in the same rural area?
- Could a scaled down farming enterprise satisfy the farming goal?
- Is an association with agriculture important?  
(Even though operating a farm may be impossible?)
- Other important considerations?

### What can realistically be accomplished?

Another critical issue that must be faced immediately concerns the realities of the present situation. A farm

with others to fit a unique situation. There is no cure-all or simple solution because circumstances are different. Most situations will take a lot of hard work and time to turn things around.

Production Practices--Obtain a specialist's help in assessing the alternative practices, and how these might help in the current situation. Strategies include:

- \*diversification
- \*alternative land uses
- \*alternative production strategies
- \*new technologies
- \*others

Business Management Practices--Work with experts to brainstorm new approaches and analyze current practices.

- \*better cost control
- \*better marketing
- \*better capital purchasing decisions
- \*lower level of living
- \*others

Financial Management Practices--Work with the lender to avoid misunderstandings or legal troubles and to develop the best approach for each situation.

- \*scale back--"Can assets be sold off to reduce debt without hurting the operation? By scaling back, is an off-farm job possible? Can machinery be shared with a neighbor so some of present machinery can be sold?" Be sure to clear all sales with the lender to avoid lien problems on collateral.
- \*restructure debt to reduce payments--Again, work with the lender to examine the possibilities.
- \*lender writes off some of the debt and/or reduces interest--Work with the lender after establishing a plan (both financial and production) to turn things around. Point out the advantages to the lender of continued payments at a reduced rate over foreclosure and possible nonrecovery.

Other Possible Options--Brainstorm with an impartial third party.

- \*do custom work
- \*rent out land or equipment
- \*increase hired labor and get off-farm job
- \*others

In all cases where sales of assets or debt forgiveness is concerned, be sure to examine income and/or business tax implications.

-When working with the lender, an impartial third party may help put both the farmer and lender at ease and help in negotiations that need to be made.

- Lender policies and the specific situation may preclude some of the options, so be realistic in expectations.
- Accurate records become of extreme importance in all the options.
- Some of the options may seem inappropriate in certain situations, but there is great diversity in situations; therefore great diversity in solutions. Brainstorming becomes a very helpful tool.

### LEAVE FARMING:

Leaving farming is often a painful process. While some modes of exiting may be less difficult than others, each involves giving up something that has been a part of the family's life. Families need to realize that things will not be the same, and the difficulties do not end with the decision to leave. The fear, grieving and stress which are a part of the exiting process can be dealt with, and there is "life" after farming. Families are not alone in their feelings and experiences. Others have experienced the same feelings, but they have worked through it and have made it. Families should realize that it is within their power to deal with these difficult times and move on.

Examining the "side affects" of each means for exit is important so that each family can make the best move for its situation. Some of the considerations are listed below in general terms, but it is important to consider how each may apply in any specific instance. Consulting with an attorney and lender is very important from both an information and legal standpoint.

Obtaining an Attorney is a critical step in preparing to leave farming. This point came through very clearly in our studies of farm families who have left farming for financial reasons. Some suggestions based on experiences of others who have left farming follow:

- get names of attorneys from others who have been through the experience or from extension agents who may be familiar with farm attorneys.
- use a lawyer who specializes in farm bankruptcies for advice or help on bankruptcy. Be sure tax consequences are carefully considered by the attorney. A local farm income tax attorney may not be an expert on bankruptcy or tax consequences of leaving farming
- become informed about the basics of foreclosure, bankruptcy options, and voluntary liquidation--the decision power can then stay in the client's hands where it belongs.
- the lawyer is an advisor not the decision maker--only the farm family can know what is best for them and decide accordingly.

-getting a good attorney is extremely important--the extra time and money put into this is well worth it.

VOLUNTARY LIQUIDATION--Sell the farm rather than face foreclosure or using bankruptcy options.

- What are your assets currently worth?
- Remember that a sale usually brings a lower price than assets are worth on the balance sheet.
- Could debt be completely paid off from the sale?
- Could the house be kept?
- Remember that releases must be obtained from the lender for sale of any assets held as collateral.
- Income taxes may be incurred from sale of assets.

VOLUNTARY CONVEYANCE--Sign-over property to reduce debts. In some instances property signed over to the lender can be leased back.

- Be sure to get an appraisal of asset worth and likely costs associated with sale (auctioneer's commission).
- Be clear on the debt forgiven-have it in writing.
- Be aware of income taxes. Taxes may be due on property signed over; check with an attorney or accountant.
- If the debtor subsequently files a bankruptcy petition, conveyances made within 90 days of filing are voidable if considered preferential transfer.

FORECLOSURE--The lender may initiate foreclosure proceedings when a farmer defaults on the loan. The lender files suit, and if the court approves, a mortgage foreclosure sale results. At such a sale the property is sold to the highest bidder (usually the lender). After the sale, there is a redemption period during which the farmer can regain the property by paying the costs of sale, amounts in default and amounts due the purchaser from the foreclosure sale. Unless redeemed within this time period, the farmer surrenders title to the property. (Foreclosure proceedings can be stopped by filing bankruptcy--see below.)

BANKRUPTCY--Not all types of bankruptcy mean leaving farming, but all are discussed under this heading. This paper can not deal with the specifics and the intricacies that occur in specific situations. Our purpose, rather, is to present a general overview of some very complex procedures. Therefore this section should not be relied upon for legal or tax advice. Other publications may provide further information, but because of the complexity of bankruptcy law, all matters should be discussed with an attorney and tax advisor.

A Chapter 7 Bankruptcy filing is designed for liquidation of the business and distribution of proceeds among creditors (and the owner). Chapter 7 Liquidation is designed to wind up the

- affairs of a failed enterprise, and give the operator a fresh start. This choice should be used only by those wanting to get out of farming.
- Filing will halt all actions by creditors.
  - Certain property may be exempt, and the debtor can keep these from creditors. Check with an attorney.
  - A trustee appointed by the Bankruptcy Court will take control of the property.
  - Debts remaining unpaid after exemptions and distribution of the debtor's property are discharged. There are exceptions to this, such as income taxes, lawyer's fees, etc. Check with an attorney.
  - There are costs to bankruptcy proceedings.
  - Release of debts comes at a cost to the unsecured creditors. That is, unsecured creditors often get little out of a bankruptcy proceeding. Hence, bankruptcy may be a difficult thing for some families to do to the people they have worked with.

A Chapter 11 or Chapter 13 bankruptcy filing attempts to preserve the business by reorganizing with protection from creditors. "Can the farm make it with reorganization if the creditors are kept away?" The reality is that the majority of farms can not. But these forms of bankruptcy provide the means to attempt that reorganization. However, Chapter 11 or Chapter 13 should not be used to stall the inevitable. Such a stall will further erode the family's position.

Both Chapter 11 & 13 provide an automatic stay which stops lenders from actions of foreclosure, repossession, auctions, etc. Chapter 7 may be filed after a failed reorganization under either chapter.

Chapter 13 is limited to debtors with less than \$100,000 in unsecured debt and less than \$350,000 in secured debt. (Congress may consider raising these limits in 1986.)

- The business must also have a "regular" income.
- Corporations and partnerships are not eligible.
- Chapter 13 is generally less expensive (less court costs, attorney's fees, no trustee fees) and faster if one can qualify for it.
- Under Chapter 13, the farmer files a plan with the bankruptcy court showing how and when debts are going to be paid. Secured debts must be paid in full and unsecured debts can be paid on a less-than-full basis. (This may vary so check with an attorney.)
- The plan will be reviewed and confirmed or not confirmed by the bankruptcy court.
- If the plan is confirmed, both the debtor and creditors are bound by it.

-A farm with substantial cash flow problems is not a likely candidate for a successful Chapter 13 reorganization.

Chapter 11 may be useful for larger operations with substantial equity in property, but with cash flow problems.

- After filing, the debtor has a 120-day period during which he/she/they must file a plan for reorganization. Legal assistance is needed when developing this plan.
- The plan is reviewed by creditors and must be accepted by the bankruptcy court.
- If confirmed, both the debtor and the creditors are bound by the terms of the plan.

There is a certain stigma attached to any form of bankruptcy. Farmers may find people treating them differently in their everyday meetings. This is something all concerned should be aware of and ready to face.

As in any proceedings to leave farming, bankruptcy is a stressful process. Business and personal affairs will be reviewed by strangers. Feelings of guilt may accompany the relief of debt forgiveness. One can declare bankruptcy only once every 6 years, but the bankruptcy remains on a family's credit record for 14 years and may affect their future life. Bankruptcy can and does allow a business to clear its obligations and start again, but it also may carry certain difficulties for the family.

If the decision is made to exit farming, there are some questions about the future that should be looked at before the day of the sale or time of walking away from the farm.

- What would I like to do in the future?
- What are my skills?
- What is the job market?
- Do I want to, and can I, remain in this area?
- Do I want to, or should I, relocate?
- Others....

Again these decisions can only be made by the farm family, but help is needed to think about and work through the complexities of the new environment the family will be facing. Agencies and people are available to help. Their skills and services should be utilized.

**SUMMARY:**

Many farm families today are facing some critical and difficult decisions. There are choices to be made at every level. To best make these choices farm families must be knowledgeable of their options. Cooperative Extension and others can provide help in this area to enable these people to remain a productive part of our society.