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# The extent and impact of trust ownership on the sustainability and resiliency of Iowa's agricultural landscape

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# The extent and impact of trust ownership on the sustainability and resiliency of Iowa's agricultural landscape

## **Abstract**

The popularity of trusts as a land management tactic has been increasing. Using survey results, an attorney and economics professor examined the kinds of trust arrangements that exist in Iowa and how they might be used to encourage conservation practices and sustainable agricultural management.

## **Keywords**

Economics, Policy

## **Disciplines**

Agricultural Economics | Natural Resources Management and Policy | Sustainability



# The extent and impact of trust ownership on the sustainability and resiliency of Iowa’s agricultural landscape

**Abstract:** The popularity of trusts as a land management tactic has been increasing. Using survey results, an attorney and economics professor examined the kinds of trust arrangements that exist in Iowa and how they might be used to encourage conservation practices and sustainable agricultural management.

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**Co-investigator:**  
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 Iowa State University  
 Economics

**Budget:**  
 \$27,163 for year one  
 \$16,163 for year two

**Q** What is the impact of trust ownership on the sustainability and resilience of Iowa’s agricultural landscape? Given the increasing use of trusts to own farmland, how can trust arrangements be used to promote sustainability and resilience?



**P O L I C Y**

**A** Trust ownership continues to increase, though the majority of trusts are revocable trusts that exist with the owner creating the trust as the trustee, thus not providing a significant change in decision-making authority. However, irrevocable trusts, while constituting a minority of those in place, also are expected to increase with greater likelihood of dispersed management and fractionated ownership. In order to address conservation concerns raised by this fractionation, the project investigators researched trust provisions as well as legal rights and remedies of the various parties to a trust.

**Background**

Trusts are the fastest growing form of ownership of Iowa farmland. In 1982 trusts owned 1 percent of Iowa’s farmland and by 2012 17 percent of Iowa’s farmland was owned by a trust. This significant increase called for further investigation of trust ownership of farmland and its impact on the sustainability of Iowa agriculture.

A trust is essentially an arrangement in which one person or entity (the trustee) holds property and manages it for the benefit of another (the beneficiary). The person who creates the trust or transfers the property to the trustee is referred to as the settlor (also often called the grantor, trustor or transferor). Trusts usually are created through the deliberate transfer of property to a trustee to allow the trustee to manage it for the beneficiaries. The transfer must be in writing to be enforceable, and the document is referred to as the Trust Instrument. Trust instruments typically are drafted by an attorney and dictate who the trustee will be, who the beneficiaries are, and how the trust is to be managed. The way in which a trust is constructed can have substantial impacts on a number of legal issues, and a licensed attorney should be consulted.

**Approach and methods**

- The project had three primary components:
1. An online survey of Iowa Trust Association (ITA) members, an organization of the professional trustees in the state of Iowa. The ITA distributed the online survey to its members.
  2. A series of questions related to trusts was added to the Iowa Farm Land Ownership survey. This telephone survey attempts to contact all owners on a selected 40-acre plot. By surveying the unit of land, the survey can more accurately describe what is happening on land as opposed to the landowners.

3. Legal research of Iowa trust statutes and case law establishing the trustee's fiduciary duties as well as the settlor's ability to control sustainable trust asset management. This included examination of legal precedents in Iowa and comparison with those in other states for monitoring and enforcing a trustee's compliance with legal duties and trust provisions by settlors and beneficiaries, specifically in relation to ensuring sustainable and resilient land management practices.

## Results and discussion

It is necessary to understand the different types of trusts in order to analyze the research results. The primary distinction is between revocable and irrevocable trusts. With an irrevocable trust the settlor no longer exercises control over the property. This means that ownership and control of the property has passed from the individual owner to the trust and will be managed by the trustee. The beneficiaries or the trustee may be able to modify or terminate the trust in very limited circumstances but only with court approval.

In a revocable trust, the settlor retains the right to amend or revoke the trust at any time. This is the most common type of trust, and is primarily used as a substitute for a will in order to avoid probate. Because control of the property is often retained by the settlor, the management decisions, including those about conservation and sustainability, are not really different than if the individual retained ownership instead of transferring it to the trust. For this reason, the focus here is on irrevocable trusts.

With an understanding of the general growth of trust ownership and a basic knowledge of how trusts work, it is possible to examine the impact of trusts on conservation by determining the types of trusts used, the specific provisions within the trusts, the characteristics of the trustees, the reasons people place farmland into a trust, the legal duties owed by trustees and the legal remedies available for violations of a trustee's duties, all of which will be discussed. It also was then possible to design outreach materials that help policy-makers, landowners, trustees and trust beneficiaries understand the duties and remedies and help leverage additional actors that can promote conservation and sustainability for Iowa's agricultural land.

## Conclusions

Most trusts are created to indicate separation of ownership of the land and the operational management of the farm. However, trust ownership may result in less dispersion of ownership. As Iowa land is passed to lineal descendants, there is a natural tendency for the number of owners to grow over each succeeding generation, which disperses the ownership. When land is managed under a trust, the beneficial ownership may continue to be dispersed to many beneficiaries while a limited number of trustees retain control of the asset.

Another issue related to separation of ownership and farm management is the tendency for non-farming landowners, over succeeding generations, to lack a connection to the community and the agricultural community. This is not necessarily the case for trustees. Many of them may be family members who continue to be closely tied to agriculture or trust departments at rural banks that routinely manage trusts with farmland. This is a topic that requires additional research in order to confirm the knowl-

edge, experience and relationship of trustees with the agricultural sector.

Trust ownership also offers opportunities for increased sustainability as a result of the essential legalization of a conservation ethic among trustees through their fiduciary duties established by state law. The high number of trustees recognizing soil conservation as part of their charge indicates it is a consideration at least for professional trustees.

However, challenges may exist in establishing what the standard for soil conservation is without specific legal precedent. It also remains unlikely that off-farm conservation concerns such as water quality would be recognized as a matter relating to fiduciary duties as it does not necessarily diminish the long-term production value of the trust assets.

It is worth noting that both on- and off-farm conservation concerns may be made a subject of trustee consideration through the provisions of the trust document. Again, the trustee also has a duty to administer the trust in accordance with the terms of the trust. While there is opportunity here, according to the ITA survey, it thus far appears to be a missed opportunity with few trust instruments addressing such topics.

The positive and negative consequences of trust management are largely dependent on the construction of the trust and the terms set forth for the trustee to follow, a recognition of a legal duty to protect the soil as part of a trustee's fiduciary duties, legal standards to guide trustees in executing their duties, and knowledge of the legal remedies available to trustors and beneficiaries to ensure land in trusts is cared for properly.

## **Impact of results**

Thanks to the various resources prepared as part of this project's findings, there is increased awareness of the challenges and opportunities for sustaining the land placed in a trust. Landowners considering trusts; the various parties to a trust, including the trustor, trustee, and beneficiaries; and advisors who help draft trust instruments will have a better understanding of the potential negative impacts of trust ownership on sustainability. However, these parties also will have an improved understanding of the positive role trust provisions and statutory fiduciary duties can play in developing sustainable and resilient farm operations. This will eventually lead to the incorporation of provisions specifically addressing conservation and sustainability concerns within trust instruments, similar to their increasing inclusion in other land tenure arrangements, such as lease contracts. Trustees will find they have greater discretion to implement practices in accord with good resource management.

With a clearer understanding of why land is placed within a trust and under what conditions, sustainability and resilience can be enhanced. This will help guide policy decisions regarding Iowa's Trust Code and court decisions. Recognition of land and soil as a trust asset that is subject to the duties that are mandatory for all trustees encourages redress for waste of soil assets and creates resources for advisors and courts to rely upon when addressing such situations.

## Education and outreach

### Publications:

Michael Duffy, *Farmland Ownership and Tenure in Iowa 2012*, Iowa State University Extension and Outreach (February 2014), available on the Leopold Center website: <http://www.leopold.iastate.edu/pubs-and-papers/2014-01-farmland-ownership-and-tenure-iowa>

A Mixed Bag: Iowa Farmland Held in Trust and Its Potential Impact on Agricultural Sustainability (2014). <http://sustainablefarmlease.org/wp-content/uploads/2014/08/June-19-short-trust-presentation-2.pdf>

Trust Ownership, Farmland, and Conservation, A Drake Ag Law Primer, Drake Agricultural Law Center (2013). <http://sustainablefarmlease.org/wp-content/uploads/2014/08/Trust-FAQ-ag-law.pdf>

### Outreach:

Duffy and Cox presented findings and analysis to more than 100 attorneys and other advisors in June 2013 at the Iowa Bar Association Annual Conference. Duffy also delivered a presentation to more than 200 attorneys at the American Agricultural Law Association Annual Conference in October 2013 in Madison, Wisconsin.

Much of the information included in the above publications also will be made available through the SALT website, SustainableFarmLease.org.

## Leveraged funds

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