Trust Ownership: Farm Land and Conservation

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Trust Ownership: Farm Land and Conservation

Abstract
This offers an overview of Iowa law related to trusts for ownership of farm land, and how to promote conservation and sustainability when the trust is set up.

Disciplines
Agriculture Law
provisions of a trust make it less likely that a court will remove that trustee. The court will rather view the management of the assets by that particular trustee as an intention of the settlor. (Schildberg v. Schildberg, 461 N.W.2d 186, 191 (Iowa 1990)).

What other limitations are placed on trustees? The Iowa Trust Code establishes that a trustee owes several duties to the trust and to the beneficiaries. Duties include administering the trust in accordance with the terms of the trust and managing it with loyalty, impartiality, and confidentiality. This means that within the confines of the terms of the trust, as discussed above, the trustee manages the property exclusively for the benefit of the beneficiaries. Significantly, this includes both present beneficiaries and future beneficiaries, which supports an argument for conservation of the long-term productivity of the soil. It also provides an argument for placing marginal or sensitive land in land retirement programs and using practices such as filter strips and buffers along waterways.

The trustee is also required to utilize any special skills or expertise they possess. If the trustee is a particularly skilled farm manager or conservation expert, they may be held to a higher standard in relation to the management of the farmland.

Trustees have a duty to exercise care, skill, and caution if they choose to delegate certain responsibilities to a third party. If they hire a farm manager, they must choose them carefully and ensure they are able to manage the property in compliance with the terms of the trust and the other duties discussed here.

Trustees must also keep the beneficiaries informed of important transactions and provide them with an accounting. The accounting must inform the beneficiaries of the condition of the trust and any changes. It is required at least yearly and upon the termination of the trust or change of trustee.

Trustees are also to manage investments as a reasonably prudent investor. This, in essence, means maximizing returns while minimizing risk. It is important to again point out that they owe this duty to present and future beneficiaries, including the “remainder” interests held by those who will receive the trust property at the termination of the trust. This provides an argument that farmland resources should not be managed exclusively for short-term productivity. Thus, if a trustee is leasing the farmland, they should not focus exclusively on obtaining the highest rent but also sound management practices from the tenant farming the land.

In order to minimize risk trustees are expected to diversify the assets of the trust. This may come into conflict with the management of a trust comprised primarily of farmland, particularly where the trust terms prohibit its sale. Professional institutions managing trusts may be reluctant to take on a trust that with such a high value property that dominates the assets of the trust, limiting the trustee’s ability to diversify and, therefore, exposing them to liability. It is important to point out that Iowa’s Supreme Court has recognized limitations on the sale of farmland placed in a trust. If farmland is the principle asset of a trust, limitations to liability in relation to diversification, to the extent available, may be beneficial for inclusion.

How are the terms of a trust and the legal duties of a trustee enforced? In order for a court to rule on a lawsuit it must make sure the parties bringing the lawsuit have standing. In the context of a trust, this means they must have some interest in the trust, whether current or future. (In re Will of Frye, 764 N.W.2d 783 (2009)). If the trustee takes an action that contradicts the terms of the trust or violates one their duties, a party with standing may bring a suit against the trustee for damages, enforcement of the trust terms, or removal of the trustee.

This makes it important for the beneficiaries to have some understanding of the trust and how it should be managed. As stated above, they have right to receive an accounting of the trust assets and can ask questions about how it is managed. Trustees may have an interest in providing the terms of the lease that may enter into with the tenant farming the trust land in order to show provisions requiring conservation practices or monitoring and reporting of soil health. This may help the trustee establish that they are indeed managing the trust property in accordance with the trust terms and the interests of both present and future beneficiaries.

This publication is the result of a collaborative project between the Drake University Agricultural Law Center and Iowa State University Extension.

This project was funded in part by the Leopold Center for Sustainable Agriculture. Learn more at www.leopold.iastate.edu.
What is a trust? 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 that creates the trust, or transfers the property to the trustee is referred to as the settlor (also often called the grantor, trustor, or transferor).

How is a trust created? Trusts are usually created through the deliberate transfer of property to a trustee to allow the trustee to manage it for the beneficiaries. To be enforceable the transfer must be in writing. The document referred to as the Trust Instrument. Trust instruments are typically drafted by an attorney and dictate who the trustee will be, who the beneficiaries are, and how the trust is to be managed. The manner in which a trust is constructed can have substantial impacts on a number of legal issues, and a licensed attorney should be consulted.

Should I put my land in a trust? It depends on your own priorities. There are a variety of reasons people put land and other property into a trust, including estate planning and avoidance of probate proceedings, tax implications, long-term care planning, maintaining family ownership of land, and protecting assets from creditors to name a few. This decision should ultimately be made with in consultation with a licensed attorney.

What is the difference in an irrevocable and revocable trust? 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 but only in very limited circumstances and 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.

What is an inter vivos or living trust and a testamentary trust? An inter vivos or living trust is established and implemented while the settlor is alive. It is often referred to synonymously with a revocable trust, though it is not necessarily revocable.

A testamentary trust, on the other hand, is one that does not come into effect until the settlor passes away. A testamentary trust is created as part of the settlor’s will and irrevocable.

How can I promote conservation and sustainability within the trust? This can be done in a couple of ways. The most direct way is to simply include terms within the trust instrument that requires certain conservation management practices or establishes conservation as a priority for the trustee to consider when making management decisions. The Iowa Trust Code provides, “The terms of a trust shall always control and take precedence over any section of this trust code to the contrary.” (Iowa Code § 633A.1105 (2013)). This is significant. It means the person creating a trust can dictate how those assets, including farmland, are to be managed.

As we’ll see below, a trustee has certain legally mandated duties that they must fulfill when managing a trust. Providing terms in the trust instrument that give conservation a priority allows the trustee to deviate from what might normally be considered the most appropriate decisions in order to fulfill the settlor’s intentions that extend beyond financial productivity.

What types of trust terms will promote conservation? A survey of Iowa trustees that manage farmland shows that few trust provisions address conservation, providing little guidance on how settlers can ensure conservation within the terms of the trust. This makes it essential to explain conservation concerns as a priority to the attorney drafting the trust instrument.

Farm leases provide some guidance on contract provisions that are used to control management of land assets. It is important to keep in mind that the provisions of a lease most often control management of the leased farmland for only a year or two, while the terms of a trust can dictate management for a generation or more. As trusts may last for several years or decades, general terms that establish conservation concerns as a management priority may be more appropriate than mandates of specific conservation practices. This will provide guidance to the trustee as well as standards that are enforceable by the trust’s beneficiaries.

Are there limits on the types of things trust provisions can require? There are limits on the ability of the terms of a trust to dictate trustee management. The terms may not authorize the trustee to act in bad faith, disregard the purpose of the trust, or disregard the interests of the beneficiaries. (Iowa Code § 633.4201(2) (2013)). This exposes significant considerations when drafting a trust with the intent to conserve soil assets or otherwise authorize the trustee to manage the trust with conservation as a priority.

The terms of the trust should make clear the benefits of conservation to the beneficiaries, which, at least in relation to prevention of erosion and maintenance of soil health, can easily be framed as protecting the long-term productivity of the trust assets. It may be more difficult to frame off-farm conservation, such as improving water quality or requiring practices that mitigate climate change, as benefiting the trust’s beneficiaries. Below are a few questions that may help address these concerns.

1. How is the overall purpose of the trust expressed in the trust instrument?
2. Does it balance the settlor’s intention for conservation minded management with economic benefits to beneficiaries?
3. Does it recognize the long-term economic value of the soil assets?
4. How does it justify an express purpose to take off-farm conservation considerations into account, such as water quality or wildlife diversity?

These are all questions that can be posed to the attorney drafting the trust instrument. The answers will depend on the specific circumstances and priorities of the settlor and the legal consequences that may be identified by the attorney.

How else can I, as the settlor, promote conservation-oriented management of the trust? Another method for helping ensure the sustainable management of land in a trust is by naming a trustee that is particularly trusted by the settlor. This may be an individual that has farming experience and a conservation ethic or it may be the local bank’s trust department that has experience managing farmland in trust.

As mentioned previously, the trustee does have some discretion in management, so long as it does not violate the trust terms or the trustee’s statutory duties, and may administer the trust in accordance with their own convictions relating to sustainability and stewardship. Further, the naming of a specific trustee within the...