

# Mental competence a key factor in estate planning

10 million acres of farmland to change ownership over next two decades

By **GEORGE PLAGEN**  
Capital Press

It is no secret farmers and ranchers are getting older across the West.

According to a 2016 study by Oregon State University and Portland State University, the average age of farmers and ranchers is now 60. As more baby boomers prepare for retirement, an estimated 10 million acres of farmland will change ownership over the next two decades, making farm succession and estate planning that much more important.

But what happens when the farm or ranch owner is no longer mentally capable of making those decisions?

That was the subject of a lecture May 31 at Providence Benedictine Nursing Center in Mt. Angel, Ore., dealing with mental competency in estate planning.

About 40 guests heard from Maria Schmidkofer, a Salem attorney focused on estate planning and farm succession, as well as Ho-Yann Jong, a neurologist for Providence Medical Group in Portland, and Amy Friday, a licensed clinical psychologist for the Oregon Passionate Aging and Living Institute in Portland.

Schmidkofer related a few of her experiences working with clients, and highlighted some high profile cases like wealthy New York philanthropist Brooke Astor and L'Oréal heiress Liliane Bettencourt. Both women had Alzheimer's disease before they died, and disputes erupted whether they were being taken advantage of for personal gain by friends and family.

"Mental competency affects a lot of people," Schmidkofer said. "Even if you're wealthy, it comes up quite a bit."

Statistics show that 38 percent of people 85 or older have dementia or some type of cognitive impairment, Schmidkofer said, yet attor-



George Plaven/Capital Press

Maria Schmidkofer, a Salem, Ore., attorney who specializes in estate and farm succession planning, speaks at the podium during a lecture on mental competency in estate planning at Providence Benedictine Nursing Center in Mt. Angel, Ore. Neurologist Ho-Yann Jong and clinical psychologist Amy Friday were also on hand to share their expertise.

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Maria Schmidkofer  
A Salem attorney focused on estate planning and farm succession

neys like herself must begin with the assumption that a client is competent — meaning they have legal capacity to sign a document. However, to sign a will or a trust requires just the most basic level of competency, Schmidkofer said, which opens the door to pressures like undue influence, which could invalidate the agreement.

Disability planning is key to any good estate plan, Schmidkofer said. In some cases, a court-appointed guardian or conservator may be required to step in and help manage finances.

The goal is to protect yourself and protect your assets for future generations, Schmidkofer said.

"I really think it's an expression of love for your family when you have your estate planning done," she said.

Jong went into further detail on how doctors distinguish between normal aging, mild impairment and more serious forms of dementia.

In terms of decision-making, Jong said there is a difference between mental capacity and competency. Competency, he said, is a purely legal term defined by the courts, while capacity is related to a specific decision, specific action and specific context. A person may have the capacity to make some decisions but

not others, and that capacity may change over time.

Financial capacity is the ability to manage money and assets consistent with a person's values and self-interest. It is often the first thing to slip, Jong said, indicating the onset of dementia. A physician's role is to screen for impairments, educate patients and families about their options and refer them to specialists, like Friday with the OPAL Institute.

Friday was quick to point out that because someone is physically disabled, or has a different set of values, does not mean they are not mentally capable of handling their estate plans.

"We don't want to confuse normal aging with having a problem," Friday said.

Qualified professionals can evaluate a person's basic brain functions to determine if they lack capacity, Friday said. At that point, legal representation may be required in estate planning.

Schmidkofer advised against a one-size-fits-all approach to estate plans, especially for farms and ranches.

"Every farm has a little different plan," she said. "You want to make sure you put special guidelines in the document about the farm and what's supposed to happen to it."

# Washington agriculture department discontinues strawberry commission

Growers sought end to assessments

By **DON JENKINS**  
Capital Press

The dormant Washington Strawberry Commission has been terminated by the state Department of Agriculture, a year after the commission's board asked that it be disbanded.

The commission officially will cease to function June 30, according to a department memo sent to strawberry growers. The commission did not collect assessments on the 2017 crop and won't on this year's harvest either.

The strawberry commission had struggled to fill board positions. Strawberry production has been declining, and growers said the commission's primary functions, promotion and research, provided little benefit to farmers who sell berries to processors.

Based on the industry's position, ending the commission was the right decision, the commission's interim chairman, Richard Sakuma of Sakuma Brothers Farms in Skagit County, said Monday.

He said there are no plans to form an association this year to promote fresh strawberries.

"I'm not saying it's out of



Don Jenkins/Capital Press

The state Department of Agriculture has terminated the Washington Strawberry Commission. Growers petitioned to end the assessments that supported the commission.

the question (in the future), but it would be starting from scratch and would be a little difficult," Sakuma said.

Growers were assessed one-half cent per pound to support the commission. In 2016, the commission collected from 35 growers a total of \$36,144, less than one-third the amount raised 15 years ago. Growers cited the shortage of labor and California's dominance as factors contributing to the decline.

When the commission's books are closed, there will be no money left over to return to growers, according to

the department.

Half of the positions on its eight-seat board were vacant when the commission petitioned Agriculture Director Derek Sandison last year to terminate the commission.

The agriculture department held a referendum on the request, but too few growers returned ballots to validate the election. Subsequently, three large growers petitioned to disband the commission.

The demise of the strawberry commission will leave Washington with 21 agricultural commodity commis-

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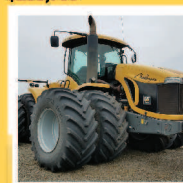
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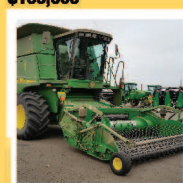
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# Appeal request denied in Oregon timber suit

Class action over logging practices will go to trial

By **MATEUSZ PERKOWSKI**  
Capital Press

A class action lawsuit that alleges insufficient logging of Oregon's forests can go to trial without first being reviewed by the Oregon Court of Appeals.

Linn County Circuit Judge Daniel Murphy has rejected a motion by the State of Oregon to allow for an "interlocutory appeal" on thorny legal questions before the Oregon Court of Appeals.

The complaint seeks more than \$1 billion in damages on behalf of 14 counties and numerous taxing districts, which claim they've received inade-

quate logging revenues from forestland they donated to the state government in the early 20th century.

Contractual agreements require those forests to be managed for maximum timber revenue, but for the past 20 years, Oregon has instead focused on environmental and recreational values, according to the plaintiffs.

Over the past two years of litigation, Murphy has ruled on several points of law in the case, such as whether "sovereign immunity" bars counties from suing the state government in this context.

In January, the judge denied a request by Oregon's attorneys to dismiss the lawsuit on that basis, but the state government had hoped to raise the matter and others in an "interlocutory appeal" before a trial.

While the state's attorneys claimed the Oregon Court of Appeals would provide a "road map to the key issues," the counties argued such an appeal would unnecessarily delay the proceedings by up to three years.

Postponing the trial would prejudice the counties' case because witnesses and experts "are already in advanced years and may not be available, or may have less clear recollection," once finally called to testify, said John DiLorenzo, the plaintiffs' attorney, in a court brief.

With the judge deciding against an appeal, a trial can be expected to take place within the first half of 2019, most likely by March, he said.

Capital Press was unable to reach an attorney for the state for a comment on the decision.

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