

NATIVE AGRICULTURAL PRODUCERS SUCCESSION GUIDE



DEVELOPED BY AKIPTAN, INC.

DISCLAIMER: Akiptan has designed this guide based on information that we have compiled from materials and those in the succession planning field. These materials were not created to provide professional legal or financial advice; we cannot take responsibility for individual choices. We strongly urge you to work with qualified professionals to support your operations. If you're not already, we encourage you to work closely with a succession attorney, succession CPA, and to develop good working relationships with those who are a part of your succession planning process



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INTRODUCTION

NATIVE AGRICULTURAL PRODUCERS SUCCESSION PLANNING GUIDE

What is a succession plan?

A succession plan is the process of preparing your business for the future. When you are ready to retire, this plan can help make the transition flow easily for the entire operation. Succession planning is critical to your operation, without it, passing on all of your hard work will be left to the BIA, tribal courts, state courts to distribute. Having a solid succession plan in place ensures that all of your hard work is transitioned to the next in line successfully. When the succession planning is overlooked, uncertainty rises and can harm the operation, you NEED the plan in place for a successful transition in the operation.

Native ancestors involved in agriculture were consistently planning for the future of the food systems and next generations, we need to continue following those ways and do the same through planning. This guide gives you the steps that will provide an understanding of a succession plan and help guide you through the stages of preparing for succession. Each step will build off of the previous.

Proper succession planning ensures that the next generation of operators for your business does not have to start underwater (more debt than assets, unclear of the business, your plans, or how to move forwards). Proper planning means your debts can be paid off and the next generation can start off with generational assets not generational debt. A succession plan helps your business and your family in handling the inevitable movement forward for the future of your business and its livelihood.

SECTION 1

WHY DO I NEED TO MAKE A SUCCESSION PLAN

The following list explains why you need to make this place. Take a moment to think about these questions and concerns. In Section 2 you will write down your notes and thoughts and begin the plan process.

- No Plan = the State or the Tribe making YOUR decisions for YOU.
- The circle of life happens to us all, making it essential to have a Succession Plan in place. It is important to prepare for unexpected situations, emergencies and the future of the business you are building.
- It's important to have a plan for your business when you are ready to retire or if you were to suddenly pass away. This plan can help you and your family/team to make the transition flow easily for the entire operation. A Succession Plan will help to make arrangements for your business and family when the time comes.
- A Succession Plan helps your family and business partners know your wishes and plans to move forward.
- It ensures your assets are protected and do not get split.
- It ensures your wishes for stewardship of the land, property and business are sustainable for the next generation.
- When succession planning is overlooked, uncertainty rises and can disable the future of your operation, you NEED the plan in place for a successful transition in your operation.



THE STEPS FOR CREATING A SUCCESSION PLAN

This guide will walk you and your team through creating a Succession Plan. In this section you will write down key notes and gather documentation. We recommend placing everything into a three ring binder.

Questions and statements to think about.

- Do not assume anything of anyone.
- Communication is key.
- Someone involved might have an interest to take on a bigger role, or leave the operation, you won't know unless you ask.
- These conversations can be held as a family or separate but it is important that everyone involved understands your exact expectations and wishes.
- Sometimes it may be wise to ask a moderator to help assist in these conversations.
- Who gets what when you pass?
- Who do you want to continue your business?
- What happens if no one wants to continue your business?
- What do you want to leave the next generation? How can you leave them with a positive state of business affairs?
- Do you have life insurance?
- Do you have a retirement account?



STEP 1: FAMILY / BUSINESS TEAM CONVERSATIONS

a) Who will make decisions for me in the event I am unable to make decisions myself?

1. Who will be my Executor (person who will take care of things after you pass away)?

2. Who is my Power of Attorney for Finances (person who will take care of things while you are alive in the event you cannot)?

3. Who is my Power of Attorney for Health and Mental Health (person who will take care of things while you are alive in the event you cannot)?

4. What is my Medical Directive?* (i.e. Do I want a "Do Not Resuscitate - DNR" signed?; What level of medical intervention do I want?; What are my medical wishes in the case I cannot make my decisions?)

**Contact your Legal Team to get these documents filed.*

b) Who and what do I need to talk about in order to design my succession plan

i.e. create a list of family, friends, professionals with topic areas that need discussion

1. What do I want for my business's future?

• 1 year goals: _____

• 5 year goals: _____

• 10 year goals: _____

2. When, if ever, do I want to retire or when do I want/need to transition out of leading the business?

3. What partners/family have an interest in the business?

Is there a leader who is already working in the business?

If so, who and their contact information?

Who are key business members that you want to help mentor the next generation:

4. What family members do **not** have an interest in the business but need to be thought of in the transition time?

- How will they be incorporated into the succession plan?

I.e. not taking part in the business earnings but will receive life insurance payment as inheritance etc.

Name: _____ Plan: _____

Name: _____ Plan: _____

Name: _____ Plan: _____

Name: _____ Plan: _____

Name: _____ Plan: _____

5. How would you like to have land (both trust and fee), finances, equipment, products be transferred to the next generation? I.e. To learn more about transferring your assets please be in contact with your legal team, BIA Land Superintendent, County Courthouse, Title Company. There are particular laws regarding different types of land - trust land can only be transferred to another enrolled Native person, but fee land can be transferred to anyone.; your land may be trust, but the assets located on it are considered fee assets. See the definitions and resources list at the end of this guide?

STEP 2: PROFESSIONAL CONVERSATIONS THAT NEED TO BE HELD

a) Lawyer/Legal Planning

1. Now is the time to contact a lawyer/legal advisor to work through the legalities of estate planning ?

a. Lawyer Name/Phone/Email _____

b. Schedule Appointment to Discuss Succession/Estate Planning.

c. Things to ask about:

- i. living trust
- ii. irrevocable trust
- iii. taxes

Lawyer/Legal Planning and Next Steps:

Example: Next Meeting dates, plans, things you need to follow up on, determine type of business structure, etc.

b) Accounting/Taxation

Discuss Options to satisfy the taxes for your operations.

- 1) Contact your Tax Accountant:
 - a. Accountant Name/Phone/Email _____
 - _____
- b. Schedule Appointment to Discuss Succession Planning.
- c. Taxes to ask about:
 - Income
 - Estate
 - Inheritance
 - Step Taxes
- 2) Ask about Social Security Income and how that may affect your plans?
- 3) Do you have Social Security Income that will be coming in when you retire?

Accounting/Taxation Plans and Next Steps:

Example: Next Meeting Date, Identify all income, Determinations on plans for business, follow-ups for your accountant and plans

c. Insurance/Life Insurance Provider

What type of life insurance is best for me? Term or Whole Life?

- 1) Contact an Insurance Provider:
 - a. Name/Phone/Email _____
 - _____
- b. Schedule Appointment to Discuss Life Insurance and Succession Planning.
- c. Things to ask about:
 - What type of life insurance is best for me and my operations.
 - Term versus Whole Life Insurance
 - Credit Life Insurance - To take care of larger loan amounts in the case you pass away.
 - Sometimes your bank may offer credit life insurance, you may want to ask them.

Insurance Plans and Next Steps:

Example: Determine life insurance amount, Get appointments set up to help, Identify the type of insurance that is most effective for you and your operation.

d. Financial Advisor/Retirement Provider

1) Contact a Financial Advisor/Retirement

- Name/Phone/Email _____

- Schedule Appointment to discuss retirement planning.
- Things to ask about:
 - What is your experience in Indian Country?
 - What is my most tax beneficial way to save?
 - How aggressive should my plan be at this point in time?
 - Types of retirement savings?
 - How much do I need to save right now?
 - How can I help future generations of the business thrive?

Financial/Retirement Plans and Next Steps:

Examples: Need to set up direct deposit funds for retirement, Need to provide documents to advisor, next meeting, additional questions

STEP 3: FILE AND NOTIFY PEOPLE OF YOUR PLAN

- File a copy of your succession plan with
 - Name: _____
 - Address: _____
 - Phone: _____

- Now is the time to notify your partners, family members or heirs if you wish.
Names of those you have notified:

- Place a copy of your plan in a safe place.
i.e. a family safe; bank box; with an attorney. Make sure your executor knows where to find the information (not a game of hide and seek).
Where you placed your copy: _____

STEP 4: REVIEW YOUR PLAN

Life changes consistently and so will your plan. Review and discuss these documents and plans with all of those people involved. The key to success is to not have surprises!

- Review with those involved.
- Are you satisfied with where your operation will be during succession?
- Are those involved satisfied with the future plans?
- Revisit your plan every 3 years or as recommended by your advisor.



SECTION 5: GATHER IMPORTANT DOCUMENTS

If you do not have these in place, now is the time to do that. It is also a good time to review and get things up-to-date. Above in the definitions you will find the people who can help with these documents.

- Business information (see below in definitions)
- Business Plan (including partners, suppliers, buyers, etc.)
- Business Licenses
- Previous 3 years tax returns
- Banking information - do you have beneficiaries in place?
- Insurance information - do you have beneficiaries in place?
- Passwords for computer programs, online logins
- Retirement accounts - do you have beneficiaries in place?
- Wills, Trust, Estate information (see above for definitions)
- Funeral Arrangements
- Stocks
- Vehicle/Machinery Titles
- Infrastructure paperwork (deeds, titles, mortgages, leases)
- Federal contracts (FSA, NRCS)
- Tribal Program paperwork
- List of any tangible personal property and who should inherit.
- Any other business interest.
- All other off/on Farm/ranch assets.

List where you are keeping these documents:

RESOURCES

- Tribal land specialist in your region
- Indian Land Tenure Foundation - www.iltf.org
- Intertribal Ag Council - www.indianag.org
- Bureau of Indian Affairs, Estate Planning - <https://www.bia.gov/service/estate-planning>
- NRCS/FSA contract transfers www.usda.gov
- Akiptan's Webinars on Succession Planning - www.akiptan.org/recordings

If you need help locating resources and professionals to help with this in your area, please reach out to the Akiptan team.

DEFINITIONS AND DOCUMENTS

Advance Directive	A written statement of a person's wishes regarding medical treatment, often including a living will, made to ensure those wishes are carried out should the person be unable to communicate them to a doctor.
Beneficiaries	A person who will receive the benefit of property from an estate or trust through the right to receive a bequest or to receive income or trust principal over a period of time.
Estate	All the possessions of one who has died and are subject to probate administration supervised by the court and distribution to heirs and beneficiaries.
Estate Planning	A process by which an individual designs a strategy and executes a will, trust agreement, or other documents to provide for the administration of his or her assets upon his or her incapacity or death. Tax and liquidity planning are part of this process.
Executor	A person named in a will and appointed by the court to carry out the terms of the will and to administer the decedent's estate. May also be called a personal representative. If a female, may be referred to as the executrix.
Gifting	Process of transferring money or assets to heirs through the tax code. You can give up to the annual exclusion amount (\$16,000 in 2022) to any number of people every year, without facing any gift taxes or filing a gift tax return.
Heir	An individual entitled to a distribution of an asset or property interest under applicable state law in the absence of a will. "Heir" and "beneficiary" are not synonymous, although they may refer to the same individual in a particular case.
Living Will/Medical Directive	A written statement detailing a person's desires regarding their medical treatment in circumstances in which they are no longer able to express informed consent, especially an advance directive.
Power of Attorney	Authorization, by a written document, that one individual may act in another's place as agent or attorney-in-fact with respect to some or all legal and financial matters. The scope of authority granted is specified in the document and may be limited by statute in some states. A power of attorney terminates on the death of the person granting the power (unless "coupled with an interest") and may terminate on the subsequent disability of the person granting the power (unless the power is "durable" under the instrument or state law).
Trust	An arrangement whereby property is legally owned and managed by an individual or corporate fiduciary as trustee for the benefit of another, called a beneficiary, who is the equitable owner of the property.
Will	A writing specifying the beneficiaries who are to inherit the testator's assets and naming a representative to administer the estate and be responsible for distributing the assets to the beneficiaries.

BUSINESS DEFINITIONS

Articles of Incorporation	Set of formal documents filed with the government body to legally document the creation of a corporation. This document is only applicable to businesses that are incorporated.
ByLaws	Regulations of a corporation. Basic rules for the conduct of the corporation's businesses and affairs. This document is only applicable to businesses that are incorporated.
Business Licenses	A formal permit from the government or tribe that gives a company the right to operate the business in a geographical area.
Business Plan	<p>A written document that can act as a roadmap for a company. It generally includes an overview of the company, its finances, its products and services and an analysis of its industry and competitors. A business plan can help business owners plan for the future and may be a requirement when applying for a business loan.</p> <ul style="list-style-type: none"> • to include: <ul style="list-style-type: none"> - List of current business partners, managers, entities involved and potential successors - General Operating Plan/outline - Previous Professional resources used i.e. Accountant, Legal team, Business advisor
Balance Sheet	A snapshot of a business's finances. The balance sheet shows the business's total net worth (its assets minus liabilities with liability, defined as a company's legal financial debts or obligations during the course of operating a business,) at a specific point in time. The business's net worth is also called equity or shareholders' equity, which is the difference between total assets and total liabilities.
Cash Flow	A financial statement that can show a business's cash flow over a certain period of time. Creating and reviewing cash flow statements can help business owners manage the company's money. A cash flow statement sets out a business's cash flows from its operating activities, its financing activities, and its investment activities. An income statement provides users with a business's revenues and gains, as well as expenses and losses, over a specific period of time.
Income Statement or Profit/Loss Statement	One of the three important financial statements used for reporting a company's financial performance over a specific accounting period, along with the balance sheet and the statement of cash flows. Also known as the profit and loss statement or the statement of revenue and expense, the income statement outlines a company's revenues and expenses during a particular period.

PROFESSIONAL DEFINITIONS:

Banker	A person whose job it is to help clients and members of the banking community. Providing solid advice to customers regarding financial services.
Certified Public Accountant (CPA)	A person whose job it is to keep, inspect, and analyze financial accounts. A CPA is a member of an officially accredited professional body of accountants.
Estate Attorney	Estate Law attorneys are experienced and licensed law professionals with a thorough understanding of state and federal laws that affect your estate.
Estate Planner	Professional that provides advice regarding state planning and sometimes can prepare the legal documents.
Financial Planner	Manages financials for a person or business.
Moderator	A mediator, a person who moderates a discussion or forum.
Personal Attorney	A person who is appointed to act for you under the terms an Enduring Power of Attorney.
Succession Planning Consultant	A person or company that has expertise in succession planning.
Tax Attorney	A finance professional who specializes in the policies of tax liability in relation to income, business transactions, property and estate transfers.



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