

Five considerations before you sell farmland

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Land prices are strong, and it may seem like a good time to sell all or part of your farmland. Before you do, we hope the list below helps you prepare for a sale:

1. Get legal advice. Just a quick consult with your lawyer can prevent costly errors in the sale process. An initial review of your land title can confirm whether you own minerals rights with your land. This gives you the opportunity to consider whether you wish to include, or more commonly, to specifically exclude these from the sale. Also, your title will show what encumbrances affect the title, like mortgages, to allow you to contact your mortgage lender to determine if there are any early payoff penalties.

A second consideration is whether there are any unregistered claims or encroachments that affect your property that may need to be addressed in the negotiation process. Are there any leases, with first rights of refusal to a tenant that may affect the sale process? Does your property comply with legislation, such as sewage ejector requirements to be satisfied by Manitoba Conservation prior to the sale? This process can take about a month. Are there water rights to assign, or water drainage issues, or informal neighbor agreements? In considering all of this, your lawyer can advise as to whether your sale should include any special conditions particular to your property, and advise as to what, if any, representations and warranties should be made in the sale process.

2. Get tax advice. All sales of farmland are considered a taxable disposition and can be subject to significant capital gains tax. Your accountant can advise on the timing of the sales, whether it's preferable to sell over a number of tax years, and whether you are eligible to claim the capital gains tax exemption and/or defer taxes on to qualified purchasers. Before you meet with the accountant, gather the information that they will need, such as the land value at the time you obtained it, and the history of your use of the land.

3. Research land values. It's crucially important to educate yourself on land value trends in your area. Realtors can provide letters of opinion on value based on market trends (without requiring that you list the land with them), and certified appraisers can give you a specific opinion as to your land's value.

4. Research your sale process options. Selling farmland can be expensive. It's important to research your options and know ahead of time what you can expect for costs. Realtors and auctioneers will often charge 3 to 5 percent of your gross sale price (note the percentage is negotiable). These options are expensive, but will give your sale national, even international, exposure to ensure top prices are garnered.

Less expensive options are land tenders, where the sale is advertised locally / provincially, and a deadline set for you to accept tenders by. Private offers, if you have a buyer close at hand, has the lowest transaction fees, as generally lawyers will not charge extra to review or prepare a purchase agreement.

5. Before you sign, see your lawyer again! Once you've signed a purchase agreement, errors or omissions can only be fixed if the buyers agree (or you get a court order). The final step, before you sign, is to take a bit of time to review any offers to purchase with your lawyer. Our lawyers do not charge extra to do this, and it can be really helpful to ensure your position is properly and fairly protected in the agreement.

Selling farmland is a big decision but with a bit of research in advance, you will feel confident in your negotiation process.

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