



# **Agriculture and Foodsecurity Network: "Inclusive Land Governance – Road to Better Life"**

**Field Days September 7, 2016:  
Land Governance in Switzerland**

## **Visit **1**: Inheritance law and farm transfer**

compiled by **AGRIDEA**

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**agridea**

ENTWICKLUNG DER LANDWIRTSCHAFT UND DES LÄNDLICHEN RAUMS  
DÉVELOPPEMENT DE L'AGRICULTURE ET DE L'ESPACE RURAL  
SVILUPPO DELL'AGRICOLTURA E DELLE AREE RURALI  
DEVELOPING AGRICULTURE AND RURAL AREAS

# 1 Agricultural inheritance law – “keeping the farm in the family”

Field day example: **Transfer of the family farm of Remo Annen in Unterägeri canton of Zoug**

## 1.1 General Background

Since the abolition of feudalism in Switzerland early in the 19<sup>th</sup> century and the transition to a new democratic governance including a liberal system of property with widely spread private land ownership, a variety of inheritance regulations and succession rules have been applied in different regions of the country. Land property was traditionally not divided among the heirs, but was passed on to the oldest (or youngest) male successor, in order to keep the family farm together. But there have been exceptions in some communities, where the estates were split and distributed by way of inheritance to a selection of heirs (e.g. all children, male children...). These differences had a formative effect on the development of landownership, economy and society, which are partly still visible today (example: small-scale parcelling in the canton Wallis).

With the instauration of the civil code in Switzerland 1912 the property and inheritance rules were nationalised. Over the past 100 years the Swiss inheritance law has undergone a number of changes (concerning inheritance of farmland in particular), but the general principles have remained the same.

## 1.2 Who is entitled to inherit?

The civil code differs between legal heirs and heirs designated by the decedent via testament or contract of inheritance. Legal heirs are relatives, surviving spouses or registered partners and, if none of the former legal heirs are present – the community. If the decedent decides to favour some of the legal heirs or a third party, he can do so only in the limits of his “free quota”, because the legitimate portions of the legal heirs (children, spouse, partner and parents, but not siblings and grandparents) are protected.

## 1.3 What shares of the legacy will the heirs get?

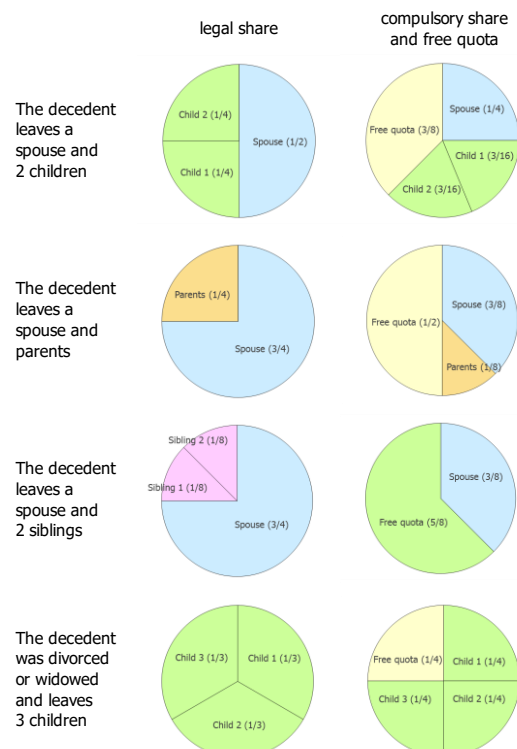
After the death of a decedent his heirs form by law a community of heirs. But any heir can at any time demand the dissolution of the community and in consequence the distribution of the estate the decedent left behind.

The legal heirs will inherit according to their defined quota and their hierarchic position in the parental order (Stammesordnung). For example: When a decedent dies without testament or contract of inheritance, his legacy is distributed, depending on what heirs he or she leaves behind, as follows:

1. Descendants (1/2 in equal parts) and spouse (1/2)
2. Spouse (3/4) and parents (1/4)
3. Spouse (3/4) and siblings (1/4 in equal parts)
4. Parents (1/1)
5. Descendants (1/1 in equal parts)

The legitimate portions of the legal heirs are the following:

1. Descendants (3/8 in equal parts) and spouse (1/4)
2. Spouse (3/8) and parents (1/8)
3. Spouse (3/8) and siblings (0)
4. Parents (1/2)
5. Descendants (3/4 in equal parts)



### 1.3.1 Distribution of the legacy:

The heirs are in principle free to take the final partitioning of the estate in their own hands – as long as they all agree with the solution and respect the legal quota. In case of dissent, any heir can demand the participation of the responsible authority which will organise a just drawing of lots.

When the inheritance contains assets that can't be randomly portioned (like houses, machines, land etc.), they will be assigned to one of the heirs under obligation of compensation in order to comply with the legal quota. The inheritance law prescribes to assess such components of the legacy at market value.

If one of the heirs has received important donations from the decedent before the latter's death, they will have to be brought into account during the testamentary partition as well. The other heirs are entitled to plead for appropriate reduction of the hereditary portion of the donee ("Herabsetzungsklage").

## 1.4 Special legislation on agricultural inheritance

Under these general inheritance regulations, the take-over of the family farm at market value was a huge investment. Consequently, during the economic depression of the thirties of the last century, Swiss farmers suffered a debt crisis. An alarming number of peasant families were unable to pay the increasing interest rates and went bankrupt.

The strong agricultural lobby convinced the parliament to discuss measures to protect farmer's property of their estates. Corresponding legal modifications were decreed during World War II and in the early fifties: The federal law on debt relief for rural homesteads in 1947 ("Bundesgesetz über die Entschuldung landwirtschaftlicher Heimwesen") and the federal law for the maintenance of peasant landholding in 1951 ("Bundesgesetz über die Erhaltung des bäuerlichen Grundbesitzes"). They introduced, among other things, the capitalised earnings value as the relevant price for agricultural businesses in a testamentary partition as well as a debt limit for agricultural real estate.

In the seventies and eighties, the continuing constructing boom reached an alarming level: although the law on spatial planning slowly got the spreading of the rampant building areas under control, investors speculating on growing construction zones bought agricultural land for horrendous sums, thus forcing farmers out of the market. An initiative against land speculation ("Stadt-Land-Initiative gegen die Bodenspekulation") was clearly rejected by the people in 1988, but the discussions of the preceding campaign made an impact: the law on peasants' land rights ("Bundesgesetz über das Bäuerliche Bodenrecht") was enacted in 1991, unifying the badly coordinated existing laws on related topics and at the same time intensifying the protective impact for agriculture and farmland.

## 1.5 The Law on Peasants' Land Rights (LPLR) today

The LPLR embeds a few exceptions into the general framework of inheritance law and land-market regulations. It was passed with the general aim to forward the land ownership of competitive family farms, to strengthen the position of the self-managing user or tenant as a buyer of agricultural land as well as to fight overcharged prices.

It strives to protect the structure of Swiss agriculture by way of a ban on fragmentation of parcels and de facto splitting of whole estates. These measures are clarified with the following definitions:

- **Agricultural parcel** ("landwirtschaftliches Grundstück") – any parcel that can be used for agriculture and does not belong into a building zone
- **Agricultural business** ("landwirtschaftliches Gewerbe") – an ensemble of agricultural parcels, buildings and facilities that serve for agricultural production and whose management needs at least one standard manpower SMP (standard manpower being a normalized measure for the size of an agricultural business based on surface and type of land and on number and type of animal keeping facilities multiplied with a set of factors provided by the ministry of agriculture – see example in chapter 3.4.9)

*Note: The definition of the "agricultural business" and the standard manpower are decisive for a number of other agricultural measures and subsidies too: Investment loans and business relief credits are issued only to farms with 1.0 SMP, with an exception for marginal regions at 0.6 SMP. Direct payments ("Direktzahlungen"), the most important way of subsidising Swiss farmers, are only granted for farms that require at least 0.2 SMP. The law on spatial planning allows the construction of residential buildings or structures for subsidiary enterprises in the agricultural zone only in case the request comes from an approved agricultural business with more than 1.0 SMP. The SMP-number of a farm is also crucial in of land rental matters: the law prescribes a maximum permissible rent for agricultural parcels and whole farms, which is calculated on the basis of the capitalised earnings value (see below). That's why the rent for an independent parcel of agricultural land is considerably higher than the rent for the same parcel being part of an "agricultural business". Thus the decision whether a farm is considered being an "agricultural parcel" or an "agricultural business" is important for landlord as well as tenant. The same dependence on the decision "agricultural business" yes or no is holds good for the agricultural land market: whether a parcel can be sold independently or has to be included in the package of an agricultural business makes a huge difference because the demand for a single parcel will be a lot higher than the demand for a whole farm.*

*→ In short: it's hardly surprising that each modification of the basic SMP-factors triggers a chain of changes for the administrative framework for farms and is observed with much suspicion and dread.*

- **Ban on fragmentation** ("Zerstückelungsverbot") – Agricultural parcel may not be partitioned into segments smaller than 25 ares

- Ban on de facto splitting ("Realteilungsverbot") – single parcels may not be cut off from agricultural businesses

Furthermore, the LPLR promotes the user of agricultural land by way of restricting the purchase of agricultural parcels or agricultural businesses to self-managers only and by granting preference to family members:

- Self-manager ("Selbstbewirtschafter") – somebody who works the agricultural soil with his own hands and manages personally the agricultural business. The law regards persons with approved competence (by formation or experience) to work the soil and manage a farm as qualified for self-management
- Claim of allocation ("Zuweisungsanspruch") – every heir can in the process of testamentary partition claim the allocation of an agricultural business being part of the legacy, if he is willing to manage the land himself and seems able to do so. He can furthermore claim the allocation of the businesses inventory too.  
If the land in question is an agricultural parcel, the self-managing heir can claim its allocation, provided is in command of an agricultural business already.

Then – very important point – the LPLR guarantees affordable conditions for the successor of an agricultural parcel or business by fixing a preferential price for transfers within the family:

- Capitalised earnings value CEV ("Ertragswert") – the capitalised earnings value corresponds to the capital who's interests (at an average mortgage rate) can be paid with the earnings of an agricultural business or parcel which is managed according to local standards. The agricultural ministry publishes an official guide for the estimation of the CEV, which is regularly updated. As a general rule, the CEV reaches only about one third to one quarter of the market value.
- Preferential price for heirs ("Anrechnungswert für Erben") – an agricultural business shall be taken into account of the self-managing heir by its CEV, an agricultural parcel by double its CEV. The CEV can be increased under certain conditions (like recently made important investments etc.)
- Profit participation right ("Gewinnanteilsrecht") – to protect the interests of the coheirs, they have the right to a share of the profit in case an agricultural business or parcel that has been transferred for a price below market value, is sold later on for market value
- Right of residence ("Wohnrecht") – the parents selling their estate (by law at a low price) to a descendant can demand a beneficial use of an apartment or a right of residence on the family estate

The LPLR should moreover prevent the over indebtedness of family farms by setting a limit to mortgage loans on agricultural land:

- Debt limit ("Belastungsgrenze") – Agricultural parcels may only be mortgaged up to a defined debt limit. This limit is established at 135% of the agricultural capitalised earnings value. Exception: Mortgages to secure agricultural investment loans or business relief credits officially issued under agricultural law for agricultural purposes can surpass the debt limit

In addition, the LPLR slows down the rise of agricultural land prices in general by setting a dynamic price limit:

- Overcharged price ("übersetzter Preis") – the purchase price in the free agricultural land market is considered overcharged when it surpasses the average price for comparable agricultural parcels or businesses in the concerned area in the past five years by more than 5 percent (can be heightened to 15% by the cantons). The cantonal administration is responsible for control and approval of agricultural land sales

## 1.6 The transfer of the family farm – a process with many facets

The transfer of the family farm unites different spheres in a decisive process which has an important impact on all persons involved. The ceding generation will try to secure the continuity as well as their own livelihood for the old age. The young generation taking over the family business will try to have an advantageous start and to establish living and working conditions according to their own visions. The coheirs want to be sure that their renunciation of an important part of the expected inheritance (capitalised earnings value instead of market price for the family estate) will be appreciated with a successful continuance of the family farm and their interests safeguarded by sufficient profit participation rights, should the family farm or parts of it be sold to market value later on.

Moreover, the role and interests of the women in the family are at stake at this decisive transition too. The influence of patriarchal tradition in Swiss rural society remains strong, the patrilineal transmission of the family farm still prevails. And on many farms, two or even three generations live together, often under the same roof. The continued existence of the family farm is a very important objective, a powerful mission from the past generations to be handed down to coming offspring. Women's interests are often considered marginal under the exigencies of this ancient instruction.

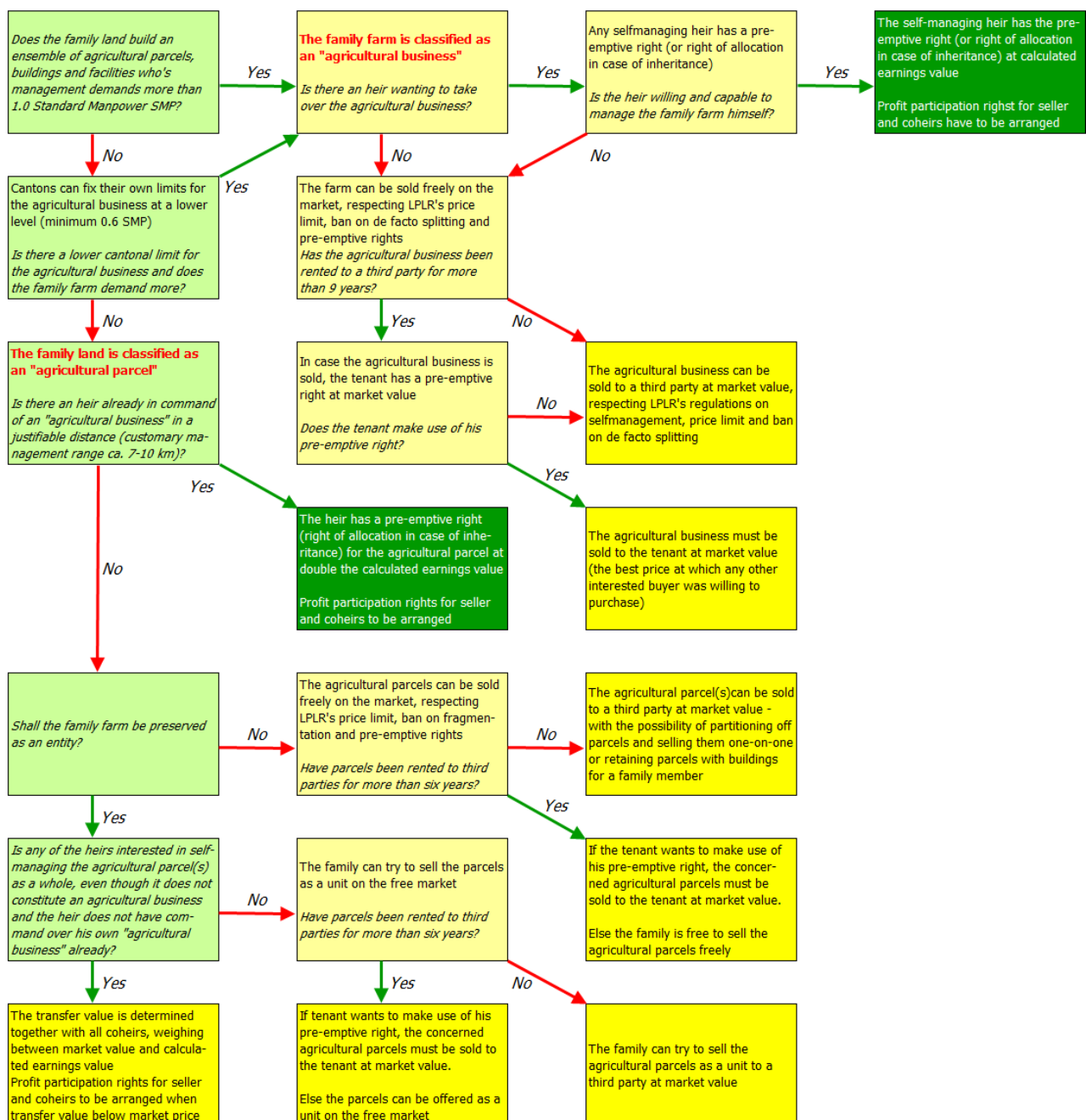
Questions arising under these circumstances are: Who is going to be the owner/the manager of the family farm – the son of the old manager, or the young couple together? What about the investments of the mother (financial and workwise) into the family estate – is she going to receive her fair share in the transfer process? How is the ceding couple positioned concerning their pension plan – can the mother maintain her standard of living in old age? How are the generations going to live and work together – have mother-in-law and young farmer’s wife discussed and organised the coordination of their domestic tasks and how they will communicate in times of stress?

Changing traditional behaviour takes time – and these outdated role-models are still present among agricultural advisors. Therefore, the Swiss Consultancy Forum (“Beratungsforum Schweiz BFS”), the national umbrella association of agricultural advisory services, has accepted in 2014 a “Charter of holistic consultancy”, which recommends always to congregate and include the whole family for advisory meetings concerning strategic decisions for the family farm. The impact of this initiative remains yet to be seen...

### 1.7 Process of transfer and inheritance of a family farm

The challenge of how to organise the social and financial details of the family farm’s transfer notwithstanding – at the end its hard legal facts that set the frame for the individual solutions of each farmer family. The Swiss inheritance law and the law on peasants’ land rights set the following decision-making pattern:

Determination of who is going to take over the family farm and at what price (Law on Peasant's Land Rights LPLR):



## 1.8 Field visit: Transfer of the Annen family farm in Unterägeri

### Basic operational data of the Annen family farm:

#### Farm location:

Altitude above sea level: 750 m

Production zone: Mountain zone 1

Average precipitation: 1500 mm/year

#### Farm size:

Area: 34.22 ha utilised agricultural area

Animals: 75.0 livestock units

Milk delivery contract: 256'606 kg/year

Workload: 3.1 standard manpower

#### Plant production:

Total utilised agricultural area	34.22 ha	
Permanent grassland (w/out pastures)		28.86 ha
Permanent pastures		1.98 ha
Low-intensity permanent grassland		1.29 ha
Extensive permanent grassland		0.20 ha
Litter meadows		1.82 ha
Hedgerows		0.07 ha
Old standard fruit trees		94 Pcs
Forest	4.02 ha	

#### Animal production:

Animal category	Average number
Milking cows	43
Cattle rearing > 2 year	4
Cattle rearing < 1 year	25
Fattening calves	120
Fattening pigs	150

### Standard manpower (SMP) calculation for the Annen family farm:

#### Standard manpower (2016)

Activity sector	Quantity Ares/LU*	SMP factor	Total SMP
Utilised agricultural area			
Remaining area <sup>1</sup>	3'422.00 *	0.000220 =	0.752840
Vineyards on slopes or on terraces	0.00 *	0.010770 =	0.000000
Other special cultures <sup>1</sup>	0.00 *	0.003230 =	0.000000
Livestock			
Milked animals	41.5589 *	0.039000 =	1.620797
Fattening pigs, young pigs, weaned piglets	23.8000 *	0.008000 =	0.190400
Breeding pigs	0.0000 *	0.032000 =	0.000000
Remaining Livestock	8.4838 *	0.027000 =	0.229063
Supplements			
Supplement sloped terrain 18-35%	963.00 *	0.000150 =	0.144450
Supplement sloped terrain >35%	228.00 *	0.000300 =	0.068400
Supplement organic farming	0.00 *	20% von <sup>1</sup> =	0.000000
Supplement trees	94.00 *	0.001000 =	0.094000
<b>SMP</b>			<b>3.099950</b>