INTACT IN FOREST IN FAMILY

LEGACY PLANNING

A Guide for Virginia Landowners

generation NEXT®

NINE STEPS TO SUCCESS

LANDOWNER CASE STUDIES

LANDOWNER WORKSHEETS

VALUABLE RESOURCES

VIRGINIA COOPERATIVE EXTENSION PUBLICATION CNRE-121

NINE STEPS TO SUCCESSFUL LEGACY PLANNING

1. Begin the process and commit to keep moving forward.

2. Determine your family assets.

3. Write down long-term goals for your land.

4. Hold a family meeting.

5. Gather or create essential documents.

6. Establish your legacy planning team.

7. Determine the legal, financial, and conservation tools available to help you meet your goals.

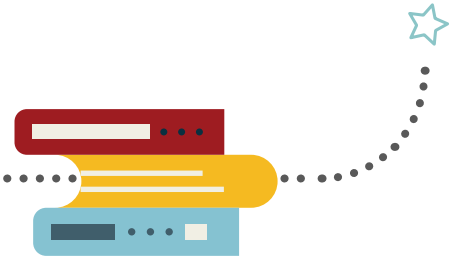
8. Provide opportunities for your family to learn about and enjoy your woodlands.

9. Revisit your plan on a regular basis and adapt as your land, assets, and family change.

SUCCESSFUL LEGACY PLANNING WILL INCREASE THE ODDS OF MOST OR ALL OF THE FOLLOWING OUTCOMES:

- More control over what happens to your woodlands
- Closer family relationships
- Better defined and respected roles of family members
- Continued investment and engagement by future generations
- Smooth transition of woodlands to heirs
- Woodlands remain intact and managed according to your wishes
- Reduced tax burden
- A long-lasting family legacy
- Peace of mind

STEP 1



Begin the process: How to use this guide

We recommend that current property owners begin the **legacy planning** process by reading through this guide. Then, work through the steps to successful legacy planning shown on the opposite page. You can start at Step 2, because by reading this guide, you've already committed to the process and have completed Step 1. Congratulations!

"Legacy Planning: A Guide for Virginia Landowners" lays out the case for legacy planning and why it's important to keep land intact, in forest, and in family. It walks you through each of the steps to successful legacy planning in detail. Important and common terms appear throughout the guide in bold type, and are defined in the Glossary (Appendix B, beginning on page 50). A list of useful resources is also included (Appendix D, page 55) to help you along the way.

Worksheets in this guide (Appendix A, beginning on page 37) are designed to help you complete these steps. You are encouraged to complete the worksheets to the best of your ability before engaging heirs in the conversation. Feel free to copy and share all worksheets with family members and your legacy planning team when the time is right. In fact, please share this guide with those who may be interested in learning how to plan for the future of their land, or encourage others to request one for their own use.

We've included a number of case studies that explore different family situations. We hope these will provide additional insights and reassure you that, while your situation is unique, you are not alone in some of the challenges you may be facing.

Finally, try not to get overwhelmed. There is a lot of information to absorb, work to be done, and some money to be spent. However, the control and peace of mind this process will give you will be worth it. Furthermore, the time you spend in planning can help ensure your desired outcomes are more likely. You and your **heirs** can even expect to save money over time.

Thank you for picking up "Legacy Planning: A Guide for Virginia Landowners," and thank you in advance for seeing the legacy planning process through. Your land is important to you, your family, and to Virginia's environment.

CONTENTS

3 STEP 1: Begin the process: How to use this guide
5 Why is This Important Now?
6 About the Authors
7 A Letter from Jennifer
8 Your Woodland Legacy
9 Virginia's Woodlands and Their Owners
12 STEP 2: Determine your family assets
15 STEP 3: Write down long-term goals for your land
17 STEP 4: Hold a family meeting
23 STEP 5: Gather or create essential documents
25 STEP 6: Establish your legacy planning team
27 STEP 7: Determine the legal, financial, and conservation tools available to help you meet your hoals
33 STEP 8: Provide opportunities for your family to learn about and enjoy your woodlands
35 STEP 9: Revisit your plan on a regular basis and adapt as your land, assets, and family change
36 Summary
37 Appendix A: Worksheets
50 Appendix B: Glossary
52 Appendix C: Family Business Entities
55 Appendix D: Resources and References

CRAFTSMAN

The Veterans Trail

Why is This Important Now?

From Bettina Ring, Virginia Secretary of Agriculture and Forestry

Growing up in Craig County, Virginia, I fell in love with my family's land. As a child embarking on woodland expeditions with my family, we would hunt for crayfish in the stream, collect leaves, and climb trees. Every year, I would watch in awe as the forest awakened each spring from its winter slumber. My grandparents lived next door to the house I grew up in, and they taught me how to garden, fish, and hunt. These memories and more, tied to my family's land, kindled a passion for forestry that still burns vividly today.

I am so thankful to have had the experience of growing up in a family with such a strong **land ethic**, and that they instilled it in me. Now, when I return home, as soon as I see the rolling hills, the beautiful farmland, and all of the mountain scenery, it reminds me why I am so passionate about agriculture and forestry and why conserving family land and protecting that way of life are so imperative to the future of our commonwealth.

As Virginia's fourth Secretary of Agriculture and Forestry, I have the great honor of representing not only the commonwealth's largest private sector industries, but also the farm and forest families who work each and every day to steward the land and protect Virginia's water and other precious natural resources. Governor Ralph Northam tasked me with prioritizing farm and forestland retention during his administration and ensuring that families have the resources to plan for the future of their land.

One of the most important paths we can take in state government to encourage land retention is to support economic development initiatives that make it profitable and economically sustainable to keep our land, while also ensuring that land will continue to be productive well into the future. With our markets strong and our rural communities thriving, families can continue to make a living working their land.

But that is only one piece of a very complex puzzle.

Another key piece is planning for the intergenerational transfer of that land. This is perhaps the most challenging conversation any family can have. Forestland is especially difficult because its successful management is truly an intergenerational proposition. Unfortunately, many families do not have the resources they need to successfully contemplate these major, hugely impactful life decisions. And now, as our commonwealth continues its rapid growth, we all see the effects of encroaching development on our rural communities and critical land resources.

The Generation NEXT program is meeting this challenge head on and has become one of the most impactful programs offered from the Virginia Department of Forestry and Virginia Cooperative Extension. This guide will give you and your family the information you need to effectively plan for how your land will transfer from one generation to another. And hopefully, those skills will become part of your family tradition, ensuring success well into the future.

I have known and worked closely with the authors of this "Legacy Planning Guide" for decades, and they are some of the most knowledgeable and passionate people I have ever had the pleasure of calling friends and colleagues. You will be in good hands throughout this entire guide, and I encourage you to dive headfirst into working through its pages. Many of your tasks will be challenging. There will be difficult conversations with attorneys, accountants, forestry professionals, and most importantly your own family members. But in the end, planning for the future success of your family's land is one of the most significant and rewarding endeavors on which you can ever embark.

I know you will find this resource helpful and that you will be able to find the best path forward for yourself and your family, so that you too will be able to retain those special places that have fed your soul and your family, so that the land can continue to feed future generations and provide hope for our world.

About the Authors

Jennifer L. Gagnon

Jennifer has coordinated the Virginia Forest Landowner Education Program at Virginia Tech since 2005. She is responsible for providing Virginia's private woodland owners with science-based information on sustainable forest management through short courses, workshops, field tours, publications, videos, webinars, websites, and social media. She is honored to work with both amazing woodland owners and colleagues, who make her job a true pleasure.

Prior to coming to Virginia, Jennifer worked as a research technician at the Jones Ecological Research Center in Georgia, studying the ecology and management of longleaf pine. She earned her Bachelor of Science in Forest Resource Management and Conversation and her Master of Science in Silviculture from the University of Florida.

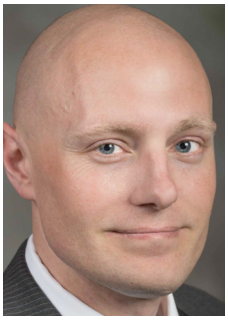
Adam K. Downing

Since 2001, Adam has worked as the Extension Forester serving Virginia Cooperative Extension's Northern District. Adam's work spans the rural and urban areas of the Northern Piedmont and the Shenandoah Valley and touches the lives of both old and young. In 2008, he partnered with the Virginia Department of Forestry to develop and deliver what has become the award-winning Generation NEXT program.

Before coming to Virginia, Adam served Northwest Pennsylvania as an Extension forester with Penn State. Prior to joining the Extension family, he volunteered with the United States Peace Corps in Kenya as an Agroforestry Extensionist. He has also worked as an Assistant Service Forester in Indiana. Adam holds a Master of Science in Forest Resources from Penn State University and a Bachelor of Science in Forestry from Purdue University.

Mike Santucci

A classically trained forester of over 30 years, Mike has worked in forestland conservation since 2007. He helped develop the Virginia Department of Forestry's working forest easement program and led the agency's statewide conservation efforts for seven years. During that time, he was directly involved in the conservation of nearly 100,000 acres of land in the commonwealth. Mike was the initiator of the early efforts that resulted in the development of the award-winning Generation NEXT program, a partnership between the Virginia Department of Forestry and Virginia Cooperative Extension that started in 2008. While Mike's passion and vision for forest management and conservation have taken him outside of Virginia, he continues to positively impact forests in the Southeast.



Travis Mountain

Travis is a Virginia Cooperative Extension specialist who concentrates on the financial and economic well-being of the households and communities of Virginia. His current research interests include life insurance adequacy, food security, and debt behavior including mortgage selection and student loans. He is also a member of the NC 2172 multistate research team focusing on "behavioral economics and financial decision-making and information management across the lifespan." The team is now working on a post-secondary education financing project and has future plans to examine Social Security and retirement.

Prior to coming to Virginia Tech, Travis earned his Ph.D. in Family Resource Management from The Ohio State University and his Master of Science in Consumer Behavior and Family Economics and Bachelor of Science in Consumer Science with a concentration in Personal Finance from the University of Wisconsin-Madison.

A Letter from Jennifer

My grandparents lived on a 10-acre farm in Massachusetts where they raised my mother and her two brothers. When I was seven, my parents purchased an acre from them and built a house. The rest of the property, called Hill Top Farm, remained intact, although no longer as a working farm.

My mother was a firm believer that children should spend their summer vacations anywhere other than inside her house. She didn't really care where we went, as long as she couldn't hear my brother and me fighting. So my friends and I spent numerous hours playing in my grandparent's backfield. This field once grew hay, but my grandfather had stopped cutting it years before. In my day, it was just an overgrown area filling in with woody vegetation that, for us, provided wonderful hiding spots, delicious blueberries on bushes gone wild, and milkweed pods full of seeds to blow in the wind.

My childhood dream, no, my plan, was to own that very same piece of land when I grew up. There was no other place I wanted to live. However, my dad was tired of shoveling snow five months out of the year. When I was 15, he had the opportunity to transfer his job to Orlando and he jumped at it. My grandparents decided they, too, would move south. The farm sold quickly to a developer – for about 10 times the price they paid for it.

I had the chance to visit Hill Top Farm once again when I was in graduate school. It had only been 10 years since we moved, but everything had changed. The backfield was a subdivision. Instead of growing trees, it had sprouted 2,000-plus square-foot homes with a few yard trees. The farmhouse still stood but had been converted into apartments. It was difficult to see such an important place in my life changed forever.

The farmhouse is still standing, according to Google Earth. But almost 35 years later, my only real connection to the property is a black-and-white photo of the house from 1945 when my grandparents bought it. The photo sits on my desk where it serves as a reminder of something that is important to me.

As an adult, I completely understand my grandparents' decision. They were able to retire in a favorable climate and achieve financial security. But my heart still hurts when I think about not having the opportunity to live on that special piece of family land.

I know I am not alone in this. We see farms and woodlands developed all the time. But for those of you who don't want to see this happen on your land, please know this outcome is not inevitable. Proper planning and communication can help protect your family's woodland legacy. My colleagues and I have developed this planning guide to help you keep your woodlands intact, in forest, and in family.

Sincerely,

Jennifer

Your Woodland Legacy

Whether it's the blue Pyrex bowl your grandfather ate his Cheerios out of for 40 years, the Stihl chainsaw you watched your dad use to cut firewood, or the colorful blanket your grandmother crocheted, we grow attached to the things we inherit from our family. While these items may have low monetary value, they have high **heirloom value.** For many people, owning woodlands is unlike owning anything else in terms of both monetary and heirloom values.

"Truly sustainable forest management is an intergenerational proposition."

Thom McEvoy, Professor Emeritus of Extension Forestry, University of Vermont

Your land is probably your greatest financial asset. It is likely your most demanding asset as well, since nature is constantly changing. You may spend countless hours working to keep your trees healthy, prevent roads from washing away, clean up waterways, and control **exotic invasive species.** You also, hopefully, take time to enjoy listening to the frogs in your pond, watch families of wild turkeys grow up, and be amazed by the varied sunrises and seasons. If you're lucky enough to raise your family there, you may be hoping that your children will love it and care for it as you do; that when the day comes, they will happily step up to assume ownership and appreciate not only the monetary value but also the heirloom value of your family land.

Some heirs may have more interest in the heirloom value of the property, while others are more interested in its monetary value. And of course, it is possible that your family may want or need a little of both.

Your love of the land, your management ethic, your desire to see the property remain intact, in forest, and in family ownership —these are the components of your woodland legacy. Most woodland owners in Virginia cite legacy as a main reason for owning land. A majority express concern over their ability to keep the land intact. This guide is designed to help you take control of this process and find the best way to pass this legacy intact to your heirs.

Virginia's Woodlands and Their Owners

Over 16 million acres in Virginia are wooded. About two-thirds of these wooded areas are dominated by hardwoods, while pine forests and mixed hardwood-pine forests make up the other one-third. These woodlands provide ecological, economic, and social benefits to all.

The ecological benefits of Virginia's woodlands include pollinator and wildlife habitat; clean water and air; carbon storage; and biodiversity. While it is difficult to place a dollar value on these benefits, **ecosystem services** such as these are estimated to be worth billions of dollars annually (Paul 2011).

"It's all about family legacy, heritage and history. I appreciate and I am grateful for what my ancestors did for our family. It was not an easy task."

Camellia Blackwell-Taffel, Ph.D., Landowner

The economic benefits woodlands provide are equally important. These benefits include jobs; income to woodland owners; and the manufacture and sale of raw materials and wood products. Over 100,000 jobs in Virginia are associated with forestry. The industry as a whole contributes tens of billions of dollars each year to the economy (Rephann 2017).

In terms of social benefits, forested land, even small patches, provide areas for physical fitness; reduce crime; shorten recovery times for hospital patients; help people form social networks; and increase property values. Woodlands provide a sense of place and contribute to a community's character.

Over ten million of Virginia's wooded acres are owned by approximately 500,000 private family landowners like you. A majority of these owners are over the age of 55, and more than 25% are over the age of 65. As a group, these older folks own nearly half of Virginia's woodlands (Butler. Miles and Hansen 2020).

This means that many of Virginia's woodland owners are thinking about what's next for their land, and millions of acres are changing, or about to change, ownership. In fact, we are at the onset of the largest transfer of woodland ownership in the history of the commonwealth. While most woodland owners want their land to remain forested, most owners are not well prepared to make this transfer. Only 18% have a woodland management plan and only 3% have a legacy plan (Butler. Miles and Hansen 2020).

The acreage of forestland in Virginia has remained relatively constant since 1977. However, parcel sizes are getting progressively smaller (a trend known as **parcelization**). In fact, just 5% of family woodland owners in Virginia own more than 100 acres, while 88% own parcels smaller than 50 acres.

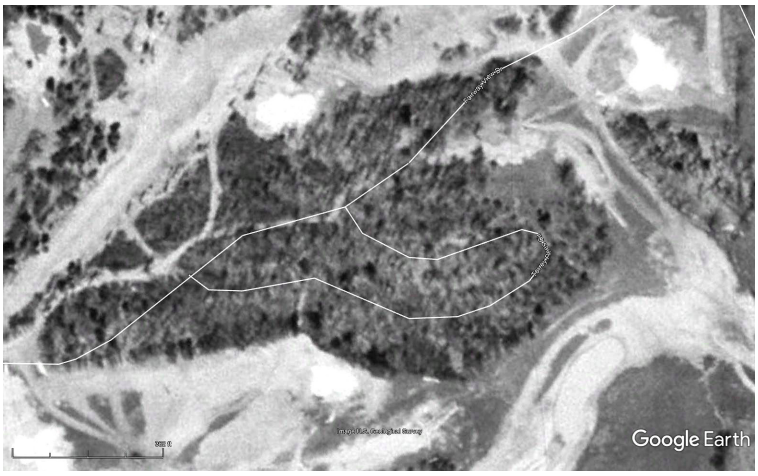
Private, family-owned woodlands are most vulnerable to parcelization and, subsequently, **fragmentation** and conversion of land to other uses. In fact, there are strong correlations between intergenerational transfer, decreasing parcel size, and conversion to non-forest uses.

Why does this matter to you?

Smaller parcels cannot offer the same ecological, economic, and social benefits of larger forests. Smaller woodland parcels typically mean higher

population densities. Having more neighbors often presents challenges to implementing many forestry and wildlife management practices.

Keeping current woodland parcels intact is important for maintaining the unique ecological, economic, and social benefits that only larger parcels can provide. While some parcelization is unavoidable, with proper legacy planning the rate may be slowed.



These images from Montgomery County, Virginia, show an intact 15-acre forested parcel in 1998 (top). By 2017, the parcel had been subdivided into 39 0.3-acre house plots (bottom). The remaining trees in the area are no longer functioning as an intact forest. (Aerial images from Google Earth. Parcel data from Montgomery County iGIS Map Portal.)

Legacy Planning and Estate Planning: Not the Same Thing

Notice that the title to this guide does not include the words **estate planning**. Instead we focus on the larger, more encompassing issue of *legacy planning*. Successful legacy planning includes estate planning, but there is more to this process than legal documents. Let's take a look at the differences between the two concepts and also see how they are related.

If you are like most landowners, you have three overarching motivations. First, you have a love of your land and associated ethic for its use, maintenance, and management. Second, you want to do the right thing and apply that ethic to the land. Third, you want this ethic and its application to outlive your tenure on the land through your heirs. Legacy planning addresses these motivations.

Estate planning is a more familiar concept for most people. Your estate is the total of all your assets, which may include your land, house, bank accounts, personal property, life insurance, stocks, and bonds. Estate planning covers the legal process of distributing all these accumulated assets to your heirs. It's a process that involves identifying, using, and coordinating legal and financial tools to attain your goals and transfer your assets. It is an important exercise for all landowners who want to do right by their heirs and their land.

Successful estate planning can also help you meet the needs of your family while minimizing expenses and increasing asset value. At a minimum, the estate planning process should result in the creation of a **last will and testament** and a **durable power of attorney** (POA). These documents are described in more detail in Step 5.

Legacy planning goes beyond estate planning.

While an estate plan is an essential component of your larger legacy plan, it may not be enough to safeguard that your values and land ethic are passed forward to future generations. Good legacy planning allows you to determine the destiny of your woodlands. It is the ongoing process of sharing with your heirs all that you treasure about your land and, ideally, including them in management and planning for future generations. Legacy planning along with estate planning can help ensure woodlands are passed on intact, in forest, and in family.

When you make the decision to begin legacy planning, you start a process today that will result in continued engagement for generations. Furthermore, legacy planning can be an efficient process that potentially reduces expenses and stress. This guide is dedicated to leading you through the steps of successful legacy planning. There are no specific timelines imposed, as the entire process can be complicated and may take several years to complete. It is most important to know what is involved and to resolve to start.

As a woodland owner who is considering the importance of legacy planning, you may suspect, or already know, that doing nothing will undoubtedly have ecological, economic, and social costs to you and your family.

You also may worry that a decision to leave equal shares to each of your children, regardless of their interest in your land and their individual situations, can hinder forest management, lead to arguments among siblings, and can even result in families going to court.

While these worries and concerns are understandable, with deliberate planning your land and legacy can just as easily be the bond that holds a family together and remain a place where families gather to spend time with one another. Strategies developed to pass the land down to heirs who are interested in managing and keeping it in the family while fairly compensating others can be a way to avoid family conflict. This leads to the concept of "unequal but fair" that is explored in Step 4.

"Good legacy planning allows you to determine the destiny of your woodlands."

Southwest Virginia Forest Landowner

Planning must also take into consideration the expenses of owning property. Expenses may include estate taxes, property taxes, insurance, and management fees (fence maintenance, invasive species control, equipment and building upkeep, etc.). If your heirs cannot afford these costs, they may have no choice but to sell.

As you use this guide to legacy planning, you will likely find that some steps are easier to complete than others. The order in which you complete these tasks may vary as well, depending on your situation.

So, take a deep breath and get started. Stay flexible and stay at it.

STEP 2

Determine your family assets

Assets are everything you own that have a monetary value, such as your home, your investments, your personal belongings, your land, and your timber. Cataloging and valuing these assets will help you with your legacy planning. Although you may think this is an exercise for the wealthy, knowing what you have and what it's worth is a key component of legacy planning. This knowledge allows you to determine who gets what and why.

Use *Worksheet 1: Wooded Property and Estate Overview* to complete this step. You will need to gather certain documents and information to complete the worksheet. Documents that may be of use include: a woodland management plan; basis value of your land (See *What is Basis and How do I Determine the Amount?* on page 13); documentation of past forest management activities such as timber harvest dates and receipts; a recent real estate appraisal; investment portfolios; and probably many others. Know how the property is titled and include property deeds and plats. Set aside some time to work on this step because an accurate accounting of your assets is important.

LANDOWNER LEGACY PLANNING CASE STUDY

The Epley Family

OWNERS: John & Norma Epley

HEIRS: David (son); Carissa (daughter-in-law); Lilly (granddaughter)

LOCATION: Hazel Mountain, Rappahannock County, Virginia

ACREAGE: 50

The Importance of Getting Started

HISTORY: John and Norma are second-generation owners of this land. John's parents purchased it in three parcels in 1965. Although John is one of three children, he became the sole heir in 2000.

LEGACY PLANNING:

- **Goals:** John's father's goal was to keep property in the family and keep it as natural as possible.
- **Tools:** John and Norma donated a conservation easement to the Virginia Department of Forestry, protecting it from development and subdivision. They set up a trust for the revenue generated from the sale of the Land Preservation Tax Credits received from this donation. The trust will be used for future expenses.

CHALLENGES FACED: Upfront cost of appraisal.

ADVICE: Decision-making as you get older gets more clouded, more emotional — start when you are clear and younger so that you have the time you need to put plans in place.

"The more people get out [to the property] for whatever excuse, the more they'll like it. The more they like it, the more they'll want to preserve it. The more people we have who want to preserve this, the more likely it will be here for future generations."

— John Epley

What is Basis and How Do I Determine the Amount?

(Adapted from Megalos, van der Hoeven, and Lambert 2016)

At the most fundamental level, basis is the cost of acquiring a capital asset; it is generally your acquisition plus improvements. For forest landowners, this is most commonly land and timber. In the case of timber basis, costs are related to the purchase price, establishment, or the fair market value of the timber received through inheritance. The importance of establishing basis cannot be overstated.

Concepts such as basis can be challenging to fully grasp. Thankfully, an in-depth understanding may not be required for every landowner. Information on basis is shared here to help you work more efficiently with your legal and financial advisors. It's more important to have knowledgeable professional advisors on your team than to have a strong grasp of concepts like basis.

Determining basis allows you or your advisor to calculate taxable gains or losses. If you purchase timber land over the course of multiple years and want or need to make a sale or a gift, you may be able to strategically choose which land to sell and when, to minimize your tax consequences. The three main ways of acquiring land and timber are by purchase, inheritance, or gift.

Purchase: There are three scenarios in which land is purchased. The first involves purchasing bare land; the second involves purchasing land with timber only; the third involves purchasing land with timber and other assets.

Purchase of bare land results in a basis that is equal to the price paid for the land, including any closing costs and fees. The timber basis will be the cost of reforestation or afforestation. It is important to keep basis separate for these two assets because you may sell the timber prior to selling the land.

The basis for land purchased with timber is commonly calculated one of two ways. A residual method is done by subtracting from the sales price a reasonable market value for the bare land, with the remaining amount being allocated to the timber. Alternatively, upon the purchase of the land and timber, a purchase contract can itemize the price paid for the land and the timber, giving you the basis for each asset.

Purchase of land with timber and other assets is a bit more complicated. For simplicity, let's assume the only other asset on the land is a barn. It is advisable that you get a qualified appraiser to assign the fair market value (FMV) of each of these assets. It is possible this will require two appraisers: one to do the timber and a second to do the other assets. The term qualified is an important one. For tax purposes you will need to make sure this is a "qualified" appraisal, which is an appraisal that meets requirements deemed necessary by the Internal Revenue Service. The FMV is the amount for which these assets would sell on the open market if up for sale. If the FMV is more than the purchase price (plus fees), then the basis of each asset will need to be calculated using both the FMV and the amount paid (plus fees). The basis can never exceed the purchase price (plus fees).

This is best shown through an example. Assume land, timber, and barn were purchased for $100,000. After an appraisal, it is determined the FMV is not $100,000, but $110,000

Asset	FMV	% of FMV	Basis
Barn	$ 10,000	9.091%	$ 9,091
Land	$ 40,000	36.364%	$ 36,364
Timber	$ 60,000	54.545%	$ 54,545
Totals	$110,000	100.000%	$100,000

In this example, the timber basis will be $54,545. This is calculated by taking the FMV of the timber ($60,000) and dividing it by the total FMV ($110,000) to get 54.545%. This means the timber represents 54.545% of the combined assets. You then take the 54.545% times the total amount paid ($100,000) to get the basis of $54,545. This process is repeated for each asset. This basis will need to be recorded.

The barn basis of $9,091 can be depreciated over a 20-year recovery period. Thus, each year for the next 20 years the basis of the barn will go down. Neither the land nor the timber are depreciable, but the basis for each should be kept separate.

Inheritance: The basis of inherited land with timber is determined either by the FMV of the property on the date of decedent's death or the alternative valuation date, which is six months after the decedent's death (step-up in basis). Two qualified appraisers may be required: one to appraise the land and any improvements to the land, and another to value the standing timber.

Gift: Due to tax law changes, it is important to note when the gift was made. If the gift was made in 1976 or prior, the recipient's basis is equal to the donor's basis plus any gift tax paid as long as it does not exceed the FMV of the gift on the date it was gifted. For gifts made in 1977 or after, the recipient's basis is the donor's basis increased by gift tax paid (if any)

attributed to the gain in asset value while the donor owned the property.

From strictly the standpoint of limiting capital gains taxes, receiving an appreciated asset through inheritance is preferred to receiving the same appreciated asset as a gift due to the former receiving a step-up in basis and the latter not.

Is your timber a business or an investment?

If operating as a business, standing timber can be considered a business asset. However, many landowners are not in the "timber business." Instead, their intention is to hold timber as a long-term investment asset. In this case, timber is not considered a business asset and is considered a capital asset where capital gains or losses can be applied for tax purposes upon the sale of timber.

One factor in determining if you are in the timber business is the frequency of your sales. Regular and frequent timber sales are often associated with a business. It is important to speak with a tax professional to understand if you are operating as a timber business or if you own timber as an investment to determine how gains, losses, and expenses can affect your income.

LANDOWNER LEGACY PLANNING CASE STUDY

Camp Camellia Tree Farm

OWNER: Camellia Blackwell-Taffel, Ph.D. and Sherman D. Taffel, Ph.D.

HEIRS: (Potentially), nieces, nephews, great-nieces and great-nephews

LOCATION: Fauquier County, Virginia

ACREAGE: 73

Art, Nature, Wildlife and Technology Center

HISTORY: CAMP CAMELLIA TREE FARM has been in this branch of the Blackwell family for five generations, since 1895 when the land was purchased by Camellia's great-grandfather's aunt, uncle, and cousin. The great-grandfather's aunt deeded her interest to Camellia's great-grandfather in 1926. And on the same day, the great-grandfather deeded his inheritance to his son, Camellia's grandfather.

Camellia has managed the property along with her parents since 1976, when she purchased her aunt's interest. Recently, the farm was recognized as one of the first Century Forests in Virginia, the first forest to receive this recognition in Fauquier County.

As educators and lovers of art, technology, and nature, the Taffels host educational tours in partnership with the Virginia Department of Forestry, Fauquier Public Schools, Future Farmers of America, Boys & Girls Club of Fauquier County, the American Forest Foundation, Virginia Forestry Association, Virginia Tech, and the Washington D.C. Veterans Affairs Office, among others.

LEGACY PLANNING

- **Goals:** For now, the goal is to keep the property intact and actively managed as a Tree Farm, and as an art, nature, wildlife and technology center. The Taffels hope to continue hosting educational tours and summer art camps for students, community groups, and visitors.
- **Tools:** Forest Stewardship Plans, USDA Conservation Grant programs, Century Forest, Certified Tree Farm, and new partnerships with other entities.

CHALLENGES: Getting appropriate and adequate funding to properly manage and maintain the tree farm as well as continuing to produce educational programming for the community.

"Outreach should start with the next generation when they are young. Invite them to visit and enjoy the farm. Train them and teach them to take care of the farm and to manage and enjoy it as much as possible. Teach them to appreciate your dream and how to support the community with educational programs about your family farm. Hopefully, there will be positive results."

— Camellia Blackwell-Taffel, Ph.D.

STEP 3

Write down long-term goals for your land

A good starting point for developing long-term **goals** for your land is provided in *Worksheet 2: The Heirloom Scale*. Your decision about whether or not to make the effort to sustain your family woodlands is one of the most elemental choices you can make. This decision must align with your environmental ethics AND make economic sense.

If the property is jointly owned, each current owner may want to complete this worksheet and then compare their answers with others. The Heirloom Scale will help you assess how you regard your land on a scale of 1 to 10. You may be more attached to the heirloom values of your land (10), or you may see it mainly as a financial asset (1). Or you may be somewhere in between. As you consider where you are on this scale, jot down your reasons why you are where you are.

Additionally, *Worksheet 3: Family Resource Inventory* helps assess your specific interests in the property and identify resources that are available to you.

Use your responses to both of these worksheets as a starting point for discussing your goals. Goals are statements of what you want your property to be and how you want your family to engage with it at some point in the future. A goal should be very general and big-picture. For example: *I want my land to provide high-quality habitat for songbirds.* You will notice there is no timeline associated with this goal. There are no specific steps listed to achieve it either.

You may have more than one goal for your property – this is not uncommon. Just be certain your goals are compatible with each other and with your land. A natural resource professional can help you with that determination if needed. (See *Setting Realistic Goals* on page 16 for further guidance.) Other

examples of common landowner goals include: *I want to create good wildlife habitat* and *My family wants a private place to for recreation.* If you have a woodland management plan, a document discussed in more detail in Step 5, you already may have stated what your ownership goals are. Review these goals to make certain they are accurate – it's okay to change them. Management plans are meant to be adaptive documents. They can be changed as your circumstances and resources change.

After determining your goals, you'll want to develop your management **objectives**. These are specific actions you can take to achieve your goals. A natural resource professional can best help you with this process. These objectives will be specified in your woodland management plan.

Setting Realistic Goals

Perhaps a landowner's greatest challenge is to formulate goals that reflect real-world constraints. Even with the best planning, some constraints are not revealed until the landowners attempt to implement their woodland management plan. In daily life, the most common constraints on what we are able to accomplish include limited time and financial resources. In forest management, we recognize three broad categories of constraints or limits to management: biological/ecological, economic, and social.

Biological/ecological constraints are the physical conditions influencing your forest. These include productivity of soils on your property; past land use practices; the direction your property faces (called aspect); average temperatures; annual rainfall and site-specific water resources (e.g., streams, ponds, and springs); and existing plant and animal species. Most biological constraints are difficult, if not impossible, to control. For example, you have no control over site direction, temperature, or rainfall. Soil productivity can be impacted to some degree with the use of fertilizers; however, this is often an expensive proposition in forest management and is generally limited to areas that are suitable for the production of high-quality sawtimber under intensive management.

Economic constraints include proximity to markets for forest products; demand for products (local, regional, and global); time; labor, skills, and knowledge; money and capital investments; and equipment. A classic example of a combined economic-biological constraint is high-quality timber in an inaccessible location. The timber may be straight, free of branches, and highly desired by local markets, but because of the steep slopes and lack of equipment needed to harvest and transport the timber to market, it has no market value. Nevertheless, while economic and physical constraints may prevent the landowner from realizing timber value, these trees undoubtedly provide many other values including wildlife habitat, aesthetic quality, shade for cooling streams, and erosion control.

Social constraints include federal laws and regulations (e.g., Endangered Species Act and the Clean Water Act); state laws and regulations (e.g., Virginia Silvicultural Water Quality Law and Chesapeake Bay Act); local ordinances (e.g., zoning); and neighboring property owners. While social constraints impact the management of all forestlands, these constraints become especially pronounced in the management of publicly owned forests, (i.e., National Forests), because the wishes and expectations of many diverse groups must be addressed on any given forest tract. On privately owned forests, the goals of the individual or family guide the management decisions.

Of these categories, landowners have more direct control over economic constraints. Labor can be hired, time can be rationed and wisely directed, skills can be gained, and capital investments in your property can be managed. Social constraints take the middle ground. We must comply with federal, state, and local laws, but these laws (and consequently, management actions) can be influenced through human effort, (i.e., the legislative and appeals process). Biological/ecological constraints are the most difficult to overcome or change. We suggest that rather than thinking about working against biological/ecological constraints on your property, it is most useful from a forest management perspective to think about working with the natural environment. That is, work with what nature provides, nudging and tinkering with the forests to reach your goals. All constraints change over time. Again, this is why successful landowners are good observers of their land and learn to become aware of changes.

Limits to management directly influence what you can do on your woodlands and, consequently, what goals you can realize through forest management. Not every forest value can be produced on every acre. Recognizing and identifying the biological, economic, and social constraints on your forest will temper your expectations on what your forests can realistically produce and will help you develop a better management plan where you wisely ration your time, money, and other resources. *Worksheet 3: Family Resource Inventory* can be used to help guide you through this step and come up with a few compatible goals shared by all current owners and future heirs.

Details of how you can achieve your goals will be spelled out in your management plan. If you don't have one, please see details in Step 5.

STEP 4

Hold a family meeting

The purpose of your first family meeting is to share with prospective heirs your hopes regarding the long-term stewardship of your woodlands. Hopefully, you will also be able to gauge their level of interest and commitment to the land.

Who will be invited to the meeting?

You need to decide who your heirs will be. This may not be as straightforward as you might think. Heirs could include not only your children and grandchildren, but also spouses, nephews, nieces, or cousins. Or you may decide not to leave it to multiple heirs, but instead to just one, while finding ways to treat others equitably. (See *Unequal but Fair* on page 18 for ideas on how to achieve this.) You may also want to consider a friend or neighbor with whom you are close. In some cases, land can be passed on to entities such as public agencies, universities, conservation organizations, or charities. If you decide to leave your land to one of these entities, be sure to talk to them first to make certain your wishes for the land will be carried out.

Be open-minded when considering the question of heirs; there is no one right answer. To help you through the process of assessing future heirs of your property, see *What to Do if You Don't Have a Likely Heir* on page 19. For each potential heir, complete the questions found in *Worksheet 4: Assessing Potential Heirs.*

After you have thought about who might be your heir(s), then consider how you might divide your estate among them. Remember, your land is just one part of your estate.

Ultimately, you will need to determine if you want to be equitable, so each heir receives the same value. Or, do you want to be fair? If you want to be fair, then it is up to you to decide what fair means.

"Families break up when people take hints you don't intend and miss hints you do intend."

Robert Frost

Unequal But Fair

Parents often assume that to be fair to their children, they must treat them equally. But is this really fair? In most cases, equal does not mean fair. Equal means everyone receives exactly the same. Fair means each one gets what's appropriate for them and for what they need to be successful. Fairness isn't about everything being equal. Instead, it is about leveling the playing field so that people get what they need when they need it. In order to treat all heirs fairly, you usually have to treat them differently.

When an "fair means equal" approach is applied to woodland succession, the result is often land being divided into equal parcels — one parcel for each heir. Unfortunately, this can lead to changes in land use or may not even be possible. For example, the Jones family owns 70 acres under a conservation easement that prohibits dividing the property. They have two daughters. The older daughter, Christine, is a forester, has a successful career, lived on the land for five years, and loves the outdoors. The younger daughter, Denise, prefers to stay inside, works part-time, and is a single mother of two. Since the parcel cannot be divided per the conservation easement, the only option available for passing the land on to both daughters equally is to give them joint ownership. But is this fair?

In reality this approach would put a financial burden on Denise, who would have a difficult time paying her share of the ownership expenses (taxes, insurance, etc.). Christine, a professional forester, might be frustrated by management options that are limited or solely financially driven. This could strain sisterly relations and ultimately result in Christine wanting to buy out Denise. But if she can't afford to do so, the land may be sold out of the family.

A different approach, one that would not be necessarily equal but could be fair, is to give Christine the land and make Denise the recipient of life insurance policies or cash. Everyone gets what they want/need, even though the inheritance is not necessarily equal.

Perhaps there is a reason why one heir would receive something specific (your land, for example), because they share your values or goals for the land. Perhaps you'd like to reward another or help one who needs additional assistance. Remember, this is your estate, and you can decide how you plan to divide it. However, you should communicate these plans with your heirs to help them understand and allow you to address any potential conflicts or issues. Having open discussions can help your heirs understand and accept your decisions. When people feel like they have been heard and their ideas considered, they are often satisfied even if they don't end up getting what they wanted initially.

Invite all family members to participate in the meeting, including grandchildren who are old enough to understand what is being discussed. Or you may want to plan for two meetings initially: An informational meeting where everyone is invited, and a second decision-making meeting to which only heirs are invited. During these meetings, heirs become prospective business partners or board members. Treat them as such.

Some financial or estate planning professionals may strongly discourage inviting in-laws to family meetings. In fact, some recommend excluding family land from marital assets so that, in the case of a divorce, in-laws have no claim on the property. This can simplify the decision-making process, but it can also harm the overall goal of engaging family members. Every family is different, so you will need to decide what is best for yours.

Some families may consider hiring a professional facilitator or family mediator to run their meetings. A mediator is a neutral third party who can assist your family to explore and find mutually acceptable arrangements. Mediators have skills to help get conversations started, manage difficult personalities, ensure all voices are heard, and help the overall process proceed smoothly. The North Carolina Agricultural Mediation Program can provide landowners with meditation resources.

Think about the different generations who will be present. Having a working understanding of generational differences helps communication. See *Communicating Effectively Among Different Generations* on page 20 for a synopsis of the different generations who may be present, how they communicate, and what they value.

After you've selected your heir(s), you will need to choose someone who can assume the management of your property based on their interest, ability, and availability. Your choice may be obvious if one heir has been actively involved in management activities or if someone shows particular interest.

What to Do if You Don't Have a Likely Heir

What if you don't have any children? What if there is no one you want to leave your land to? What if none of your potential heirs is interested in the land? Fortunately, there are quite a few options available to woodland owners who find themselves in these situations.

Keep in mind, for all these options, talk to the potential heirs before you finalize your decision. Make certain your goals are in alignment, that they are interested in becoming owners of your woodlands, and that they have the means necessary to manage them in the way you desire. These alternative heirs should take the place of your children in your planning meetings. Otherwise, there could be unintended consequences of donating your land — such as it being sold for cash. Your options may include:

Individuals

Create a broad list of potential heirs outside your immediate family members.

- Extended family such as nieces or nephews.
- A friend. If your friends are similar in age to you, what about their children?
- A business partner.
- A neighbor who is actively managing woodlands.
- A protégé. This could be someone you know who wants to get into forestry but doesn't have land or family land. You could mentor them in preparation for them to purchase your land or receive it as an inheritance.

Organizations

- **Land trusts** are private, nonprofit organizations that actively work to conserve land by assisting in land or conservation easement acquisition or by stewarding land or easements. Keep in mind:
  - Your property needs to have high conservation/historic/ecologic values.
  - It will be protected in perpetuity.
  - Land trusts also are able to receive other types of assets. You may consider making them beneficiaries of life insurance policies or IRAs.
- Natural Resource Agencies
  - These can be state, county, or local-level agencies.
  - Land donations could be used to create new public land options.
- Charities
  - Consider what you are passionate about and find a charity that supports this passion.
- Universities *(land-grant universities in particular may have the ability to accept donations of woodlands)*
  - If a property is close to campus, it may be used for teaching and research or to generate a cash flow through timber harvesting.
  - The University Foundation will continually assess if land is adding value to the university. If it is not, they may decide to sell in the future, so your land may not be protected forever unless it is placed under a conservation easement prior to the donation.
  - Many will have conditions of acceptance. For example, an additional cash donation may be required that is used to cover management expenses.

Localities

Depending on the location of your property, you may be able to leave your land to your county, city, or town to be used as a public space. Talk to your local authorities to determine if this is a possibility.

What if you die without naming a beneficiary?

If you die without a valid last will and testament and own property in your sole name, the laws of intestate succession will determine who receives your property. In the event you have no heirs (or no heirs can be located), your property will pass (escheat) to the Commonwealth of Virginia. This process serves to ensure the property is not left in limbo without recognized ownership.

If you find yourself in a situation where no one is presently engaged, now is a good time to explore who might be interested and look for ways to get them involved. If your heirs are still rather young, have them participate in both the fun and the work of the property so that it becomes part of their story. If your heirs are far away or simply not interested in the day-to-day operations, consider retaining a professional forester to serve as your manager.

When to hold the meeting.

The holidays may seem like an ideal meeting time as family members are generally already together, but the flurry of activity, stress of preparation, and past negative experiences may make this time emotionally difficult or less productive. Instead, consider another time during the year when your family is together, such as an annual reunion or during summer vacations, when travel may be easier for family members with school-aged children. If you must meet during the holidays, try to schedule your meeting with a day or two between other family activities.

Where to hold the meeting.

Meeting in person is generally best. Some barriers to this may be overcome by offering to pay for

travel expenses or by picking a centralized location. However, in cases where this is not possible, virtual participation (via online video or phone conferencing) can be explored. For those able to meet in person, location is important. Select a location that fosters positive engagement and constructive interaction among family members. The kitchen table in the home place may work for your family, or it may be too loaded with emotional baggage. Perhaps a meeting on the woodlands is appropriate, or meeting in a neutral location may be better. You can also ask family members for input on where to meet.

The meeting process.

Good communication is key to a successful family meeting. See *Tips for Communicating Effectively With Your Family* on page 22 for more ideas. Ground rules for the meeting should be set in advance and care should be taken to make certain all heirs are aware of and understand them. Some keys to success include:

1. **Be prepared.** Ensure all current owners are on the same page. Don't let your meeting become an opportunity for family members to take sides or become a forum to bring up past quarrels.
   Know your:
   - Family and what is going on in their lives.
   - Meeting goals and clearly articulate them.
   - Professional contacts (estate planning attorney, financial advisor, forester, etc.).
   - Location of your management plan and other pertinent documents.

2. **Don't personalize issues** (us versus them).
   - Practice **reflective listening** without judgment.
   - Seek common ground and mutual benefits.
   - Have a strategy for handling disagreements.

3. **Don't let people get stuck on positions.** Instead, look for common underlying values.

Communicating Effectively Among Different Generations

Awareness of intergenerational differences, values, communication styles, and barriers faced by people of different ages can help facilitate communication during family meetings. These brief and general descriptions of different generations are offered here to help family members communicate with greater understanding.

Silent Generation. This includes members of your family born before 1946. The majority of people in this category are now retired. They tend to have traditional and conservative family values. Having lived through the Great Depression, they strive for financial security, comfort, and quality. They want to build a legacy. They currently own about 30% of family forests. When it comes to land management and legacy planning, they appreciate clear recommendations and advice.

Baby Boomers. These include family members born between 1946 and 1964. They believe in teamwork, relationship building, and loyalty. They can also be cynical, distrustful, and don't like others making decisions for them. Land ownership for them is a step towards an active retirement. In terms of land management and legacy planning, they prefer to be presented with relevant information and input and appreciate the opportunity to make their own decisions.

Generation X. Family members born between 1965 and 1980 fall into this generation. Gen X-ers value family time; however, they are the most likely to be divorced and single parents. They are independent, self-reliant, and mistrustful of institutions. For Gen X-ers, owning land is about family and establishing roots, although this group currently owns less than 10% of all family forests. They appreciate receiving information on land management and legacy planning in a direct, unfiltered way.

Millennials. Family members of this generation were born between 1981 and 1994. They have grown up with technology. They are informal, busy, have short attention spans, and are untrusting of authority. Although they tend to be financially savvy, they have high levels of student debt. This generation appreciates being coached throughout decision-making processes, such as legacy planning, in a non-condescending way.

Generation Z. The members of this generation (born after 1994) were born after the advent of the internet. As such, they are highly connected and prefer bite-sized pieces of information. They are independent (not team players) and very open with information, except when it comes to money.

How can this information be used to have a successful family meeting? Simply being aware that other generations approach issues differently and have different values, and respecting these differences, can go a long way toward effective communication. Allow each person to talk about any issues and describe how they are affected. Be appreciative of all perspectives as you share your hopes and dreams with each other and look for common ground.

4. **Have someone take written notes or consider recording or videotaping the meeting.** This will provide a record for future meetings and help prevent misunderstandings about the discussion or decisions that took place during the meeting. Use *Worksheet 5: The Family Meeting* for notes.

5. **Prepare an agenda.** Distribute it ahead of the meeting. Your agenda should provide an outline for discussion with times allocated to each topic. Stick to the agenda. Don't be too ambitious at the first meeting; less is more in the beginning.

6. **End the meeting by summarizing what was accomplished and outlining next steps.** Be sure to include responsibilities and timelines for each action or step.

Send each family member a copy of the Heirloom Scale and give them ample time to complete it prior to the meeting date. A good way to start the conversation may be to ask family members to share their answers. You may also use pictures of special places on the property to get people talking about the land, what their hopes and dreams might be for its future use, and what they like or don't like. In addition, consider asking questions such as:

- What does this property mean to you?
- What are your favorite memories of our woods?
- Do you have a favorite spot on the property?
- How do you want this land to look in 50 or 100 years?
- How do you see your children interacting with this land?
- Are you interested in participating in the management of the family woodlands? If yes, in what capacity?
- Are you prepared to assume that responsibility? If not, what will it take to prepare for that responsibility?
- Should family members who are not active in the management attain/retain an ownership interest? If no, how should ownership/assets be distributed?
- What is your biggest question or unanswered concern regarding our family's woodland legacy?

While these may be difficult questions, the answers are essential to inform the plan, minimize uncertainty, find common ground, dispel assumptions and misconceptions, and allow families significantly greater influence and ownership over the outcome of generational transfer. These meetings help everyone involved to be heard, to understand available resources, and how to best leverage these resources throughout the planning process.

Your heirs may have expectations that each one will receive an equal share of what the parents have accumulated. They may or may not be comfortable with the idea that you can make financial plans that are fair but not necessarily equal. As mentioned, deciding what constitutes fair will be up to you. It is, after all, your legacy.

"When two people stand side by side, they look in the same direction; from there, it is easier to explore what's different about their perspectives."

Farm Journal Legacy Project Workbook

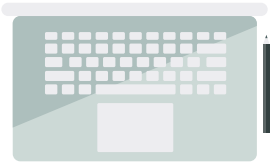
Don't become discouraged if your family meeting doesn't go as planned. It is important to keep moving forward. Don't let a rough start derail you. After your meeting, make certain your communication is open, transparent, frequent, and ongoing. Regular phone calls or even social media tools for the group can help make this easier.

Finally, create a strategy for your family's successful legacy plan. Use *Worksheet 6: Strategies for Moving Forward* to record strategies your family wants to pursue and those they reject. (You may need to return to this list after meeting with your planning team.)

Tips for Communicating Effectively With Your Family

1. **Treat the meeting as a fact-finding mission.**
   Who is interested and to what degree?
2. **Clearly define the purpose of your meeting.**
   This can be done ahead of time when the meeting is set up.
3. **Make a conscious decision to listen and to understand each family member's point of view.**
4. **Find out where everyone stands.**
   Have family members complete *Worksheet 2: The Heirloom Scale* to determine how each one values your land.
5. **Keep in mind, there are no right or wrong reasons for family members to be interested or not interested in your land.**
   Either way, you have discovered important information that will help you make better decisions.
6. **Be open to alternative solutions.**
   There may be different ways to achieve your goals.
7. **Allow yourself and others to disagree – courteously.**
8. **Your job is to identify differences and try to find consensus.**

STEP 5



Gather or create essential documents

After your family meeting you should have a better understanding of who is interested and why. Now you can take some time to assemble all the documents essential to your legacy planning process. This also will make Step 6 easier and more efficient. Here, we describe the documents you will want to have in hand when meeting with your advisory team. Some of these documents you have already completed in earlier steps.

Forest property and estate overview
The full accounting of your assets that you completed on *Worksheet 1: Wooded Property and Estate Overview* should suffice for this.

Heirloom Scale
Collect the Heirloom Scale worksheets completed by all attendees at your family meeting and date them. Be sure to include your own.

Woodland management plan
Determine your land management strategy and record it in the form of a written woodland management plan. This document is useful for family conversations and more as you move forward with legacy planning.

A woodland management plan has several key components:

1. A list of your goals as developed in Step 2. Recall, a goal is a long-term vision for how the property will look in the future.

2. Maps of the property. These should show all important features, such as boundary lines, water bodies, woodland types, acreages, cemeteries, buildings, etc.

3. A list of management objectives and associated timelines. These objectives help you reach your goals. For example, if one of your goals is to create and maintain wildlife habitat, your objectives might include:
   - Use herbicide to control invasive plants.
   - Create early successional habitat by cutting small patch clearcuts.
   - Increase tree growth rates by thinning.

Your forester can help you determine which activities are necessary to meet your goals.

Management plans may include many other elements as well. The length and detail in a plan should be in accordance with the size of your property and the intensity of your management. For small and/or less intensively managed land, a management plan can simply be a collection of the documents listed above. For large and/or more intensively managed land, a Forest Stewardship Plan, Tree Farm Plan, or Conservation Activity Plan may be more suitable. See *Woodland Management Plans* on page 30 for details about these plans.

Having a woodland management plan will provide your heirs with a good understanding of how you want the property managed. It is important that the plan be written and shared. One that is carried around in your head is of little use to your heirs, especially after your passing.

Management plans are living documents. As your resources and circumstances change, your goals may also change. It's a good idea to review your management plan every few years with family member involvement so that the plan is a product of those who are or will be the decision-makers. It is useful to include your future heirs in as many steps of this process as possible, not only to help them understand the importance of managing the resource but also to encourage their own ideas and invest their time in this family asset.

A list of responsible parties
Use *Worksheet 7: Who Does What on Your Land?* to develop a complete record of all parties responsible for your land, legal work, and accounting. This list should include the names and contact information for everyone involved in the management of your land. This may include your forester, farmers that lease acreage, and contractors that work on your property. It should also include any family members who are actively involved with the management of the land, including who currently pays property taxes and insurance premiums and who maintains buildings and equipment. Include the names and contact

information for your **lawyer,** financial advisor, and insurance company.

A list of pertinent information about your land
This may include:

- All deeds and any other recorded instruments affecting title.
- Hunting leases.
- Leases to farmers for agriculture.
- Cell tower contracts.
- Right-of-ways through your property, including the nature of each right-of-way and whether it is legally established in land records or if it is prescriptive. Also include any right-of-ways you may have through someone else's property.
- Conservation easement, including information about the terms and easement holder.
- Special permits.
- Mineral rights, including specific details and information on ownership.
- Tax assessment and land use valuation.

Having all of this information in one place will be tremendously helpful to those that will care for the land after you. Be sure that it remains up to date. And make sure others are aware of the existence and location of this information.

Last will and testament
According to a 2018 survey, only 55% of Americans age 55 and up have a will, and an estimated 23% of wills are out of date (Merrill Lynch 2019). A will is the most basic component of legacy planning. It specifies how assets "owned in your individual name" will be distributed and who will receive them when you die. Certain assets are not part of an individual's will (and thus your will doesn't control how they are distributed). These include assets held with joint owners with **survivorship** and assets with named **beneficiaries.** If you die with a will, your estate will go through probate, a legal process to review your will and determine whether it is valid. If deemed valid, the probate process then proceeds to the distribution of assets according to your will, after paying any debts and taxes that may exist. The probate process is public. If you want privacy and want to avoid probate, you may consider creating a trust.

In Virginia, if you die without a valid will, the commonwealth will distribute your assets according to **intestate** law. It is possible that intestate succession will result in asset distribution identical to your wishes. It is also possible, and more likely, that it will not. Also, additional costs are likely to be incurred by not having a will and not naming an executor to settle your estate.

Although a will alone is not sufficient for successful legacy planning, it is an integral part of the process.

Advance medical directive
An advance medical directive expresses your wishes for end-of-life care and names individuals to act on your behalf for medical decisions if you are incapacitated.

Durable power of attorney
A durable power of attorney is a legal document giving another individual the ability to manage your finances if you are unable to do so. The person is legally obligated to act with the principal's best interests in mind. This could include check writing, credit card use, loan and bill payments, purchases, and sales of assets.

Identification of heirs
Include *Worksheet 4: Assessing Potential Heirs* that you completed in Step 3.

STEP 6

Establish your legacy planning team

Assembling Your Team

One key to developing a successful legacy plan is to form a team of professional advisors who have a solid understanding of woodland management issues, the complexities of family businesses, and how these intersect with estate planning. Keep in mind, not all professionals are created equal. Your current advisors may be technically competent, but may or may not be qualified to help you with the complexities of legacy planning for forest and farmland. Be sure that your legacy planning team has specific experience with transfer of rural land. You'll also want to look for professionals who appreciate the complexity of family dynamics and attachment to the land.

Start by asking for recommendations from friends or neighbors who have gone through the legacy planning process. Get acquainted with others in your situation by attending woodland-themed workshops and field tours, or ask your local forester. The goal is to find experienced professionals who listen to you and your family and respect your wishes. There is no one-size-fits-all answer to successful legacy planning, so you should work with those who will customize and personalize your plan for your family.

Legacy planning teams will vary by family. Your team may change over time with members joining and others leaving as your circumstances change. Some professionals to consider for your team (adapted from Bentz et al. 2012) include:

1. **Lawyer** – Think of your lawyer as the team leader. Your lawyer should have significant experience creating multi-generational estate plans involving family farms and forests. This is a highly specialized area of law, and it is worth finding someone who has enough experience to know if their planning techniques work over the long term.

2. **Accountant** – Choose an accountant with significant experience in multi-generational estate planning, family business structures, estate, trust, and timber tax issues.

3. **Forester** – Look for someone who understands your goals and takes them into account when formulating a management plan. You may find help from a state service forester, industry forester, or consulting forester.

4. **Financial, investment and insurance expert** (optional) – This person should have experience with and unbiased opinions on the many financial products pertinent to legacy planning.

5. **Family business consultant** (optional) – A consultant should have experience in family business consulting, family counseling, mediation, strategic planning, meeting facilitation, and other specialized needs your family may have.

6. **Family mediator** (optional) – A trained family mediator can help families avoid major conflicts.

Be aware that some of these professionals may have ties to a particular company's products or services. Some of their interests may not necessarily coincide with yours. Use *Worksheet 8: Your Legacy Planning Team* on page 47 to record names and contact information for the professionals you select to be on your team. And of course, be sure others are aware of the existence and location of this information

LANDOWNER LEGACY PLANNING CASE STUDY

Berry Hill Farm and Mineral Springs LLC

OWNER: Geraldine Schneider

HEIRS: Cecilia Schneider-Vial, her two sisters, six grown grandchildren, and three great-grandchildren

LOCATION: Culpeper, Virginia

SIZE: 950 acres

Instilling a Love of the Land

HISTORY: After her husband died in 2008, it was evident that Geraldine Schneider, who was in her 90s, needed to begin to plan seriously for the future. In conversations, her three daughters agreed on the importance of preserving the land, but they didn't want to force future generations into easements and other restrictive agreements. The property abuts a Civil War battlefield, and the family has been active in its participation with the Brandy Station Foundation and former Culpeper Historical Society. Both organizations are devoted to the preservation of the unique history and setting of the Brandy Station area. The original farmhouse was destroyed by Union troops during the war; the house that replaced it, built in 1864, still stands today.

LEGACY PLANNING

- **Tools:** The property is a Certified Tree Farm, enrolled in the local Ag-forestal district, is actively harvested for timber, and has a Forest Stewardship Plan. Limited restrictions were put on the property to keep open the potential for future projects that would allow Berry Hill to become financially self-sustaining. The family attended Virginia Cooperative Extension's Generation NEXT program which helped them form a plan.
- **Goals:** Establish a system where future generations could enjoy the land and what it has to offer without burdening them with the expenses of upkeep.
- **Team:** Geraldine Schneider, Elizabeth S. Kitamura, and Cecilia Schneider-Vial in consultation with the next generation of six grandchildren.

CHALLENGES FACED: Differences of opinion, focus, and location among the family members. Combining the values of American, Chilean, and Japanese cultures was a challenge.

"By incorporating the younger generations in different farm projects and the appreciation of actually owning such a privileged and beautiful area of land we were hoping to instill enough love of the land and the surroundings that they [future heirs] wouldn't just sell it for development. By our parents' example we learned to treasure the importance of maintaining a peaceful, natural setting. In today's busy and technological era it is rare to be able to just walk through woods and fields without disturbance."

"It is important to get all the individuals on board and feel that they are participating in future plans. It is also important for them to know that, although they will be consulted and their ideas and comments will be considered, final decisions will be taken by our Executive Committee (Geraldine, Elizabeth and Cecilia). It is also encouraged that they bring innovative ideas forth to be discussed as possibilities for future projects. This is in order to see what their vision of the future is."

— Cecilia Schneider-Vial

STEP 7

Determine the legal, financial, and conservation tools available to help you meet your goals

Taxes paid by family woodland owners can be substantial. Various studies have shown that the financial return on family woodlands in the U.S. is reduced by 20-50%, depending on property and income tax obligations. Taxes, in conjunction with other factors, can influence family woodland owners' decisions to sell their land, harvest trees, or take other actions. Property taxes typically have the greatest effect on landowner behavior.

Current Gifting/Estate Laws

Federal estate tax: This is a tax on property (cash, real estate, stock, or other assets) transferred to heirs other than a spouse at your death. The fair market value of everything you own or have an interest in on your date of death is totaled to determine your **gross estate.** Certain deductions can be allowed, including mortgages and other debts, estate administration expenses, and property that passed to surviving spouses and qualified charities. These deductions are subtracted from your gross estate to determine your **taxable estate.** A filing is required for estates with combined gross assets and prior taxable gifts with values that exceed existing thresholds in the year of your death. While the estate tax affects a very small proportion of estates, it has the potential to disproportionately affect landowners when land values are high.

Historically, both the federal estate tax exemption (the amount on which estate taxes are not owed) and the estate tax rate have fluctuated greatly. As of 2020, the estate and gift tax exemption is $11.58 million per individual, up from $11.40 million in 2019, $11.18 million in 2018, and $5.49 million in 2017. This means that a married household would be able to shield up to $23.16 million from federal taxes in 2020. The highest federal estate tax rate in 2019 and 2020 is 40%. These rates will continue to be indexed for inflation (meaning the exemption amount should increase slightly each year) through 2025. Without congressional action this exemption will revert back to 2017 levels (adjusted for inflation) for 2026 and beyond. If this occurs, the exemption would be cut by more than half.

Annual gift exclusion: In 2020, an individual can give up to $15,000 per calendar year to any number of people with no effect to the federal estate tax exemption. For married couples, this means they could give up to $30,000 to as many individuals as they choose. For every dollar over $15,000 (or $30,000 if married) that is given to an individual in a calendar year, a dollar-for-dollar reduction in the estate tax exemption is made when the estate is ultimately transferred in the future. For example, let's say you make a one-time $20,000 gift to your neighbor on December 30, 2020. The difference between $20,000 and $15,000 ($5,000) is subtracted from your personal estate tax exemption (currently $11.58 million). If, when you passed, the value of your estate is less than $11,575,000 ($11.58 million minus $5,000), no estate tax would be owed. If the value of your estate is greater than $11,575,000, then estate taxes would be owed.

Portability: The amount of the lifetime exemption not used on a deceased spouse may be transferred to the surviving spouse. Portability is not automatic and must be elected. An unlimited marital deduction allows a surviving spouse to receive all of the deceased spouse's (let's call him/her Spouse One) assets, free of federal estate tax, which is automatic. The estate tax exemption would not come into play until the surviving spouse (let's call him/her Spouse Two) dies. In order for the estate of Spouse Two to qualify for the $23.16 million exemption, when Spouse One dies, "portability" must be elected on the estate tax return. This estate tax return must be filed to claim portability, even though no estate taxes will be paid at this time. If the portability option is not selected, upon the death of Spouse Two, the exemption amount would be $11.58 million. This is likely only consequential if the estate is valued at more than the individual exemption amount at time of death of Spouse Two.

Financial/Legal Tools

There are financial and legal tools available to help you reduce the tax burden on your heirs. The tools that are best for your family will depend on your unique situation. Fortunately, you now have a team of trusted advisors to help you choose. Keep in mind, gifting and estate planning laws and tax codes change periodically. Professional advisors should be aware of these changes and be able to advise you accordingly.

Buy-sell agreement: This is a contract that creates the option for one owner of a business to buy all or part of a business including the assets of the business upon retirement, divorce, disability, or death of another business owner. The agreement specifically states who can buy the ownership interest and how the purchase price will be determined and paid.

Life insurance policy: This type of insurance pays out a sum of money to named beneficiaries upon the death of the insured person. Beneficiaries can use this money to cover expenses associated with inheriting land (i.e., taxes, liability insurance, and maintenance costs). Alternatively, life insurance benefits can be given to heirs not inheriting land. (See *Unequal But Fair,* page 18.)

Trust: A trust is a legal entity that acts as a contract between the person who creates and funds the trust (grantor), and the trustee who is in charge of managing the assets in the trust on behalf of a beneficiary or beneficiaries.

- **Revocable (living) trust.** This trust can be revoked at any time by the person who created the trust. Assets can be added or removed from the trust at any time during the life of the grantor. A revocable trust would become irrevocable upon the death of the person who created it. Since the individual who created the trust retains control of the trust during his or her life, upon death, the assets in the trust remain part of that individual's federal taxable estate.

- **Irrevocable trust.** Unlike a revocable trust, the creator of this trust cannot revoke or amend the trust on their own. Once assets have been permanently placed in an irrevocable trust, these assets no longer count towards that individual's federal taxable estate. When funding the trust, this transfer may be subject to the gift tax depending on the amount of the gift. If the amount transferred into the irrevocable trust is more than the annual exemption, the transferred amount will be deducted against one's lifetime exemption. Because of this, people who believe they may have estates valued over the federal lifetime gift exemption amount upon their death may want to place high growth assets in the irrevocable trust. For example, if land valued at $500,000 is placed in an irrevocable trust, any amount over the annual exemption ($15,000 in 2020) would count against the federal lifetime exemption ($485,000 in this example). If, many years later upon the death of the person who funded the trust, the land is worth $2.4 million, the growth of $1.9 million does not count against the deceased's estate.

- **A life insurance trust** is a type of irrevocable trust where a life insurance policy is placed in the trust. A primary reason for this is related to federal estate taxes as described in the irrevocable trust section.

Example: Gifting to Reduce Tax Burden

Mr. and Mrs. Smith, married, have an estate valued at $23.50 million. Let's assume Mr. Smith died in 2019.

Upon Mr. Smith's death, Mrs. Smith would receive all of Mr. Smith's assets (for simplicity, we are assuming there are no trusts in place). At this point estate taxes do not come into play because Mrs. Smith is still alive. However, let's further assume that Mrs. Smith dies in 2020.

At this point, with the estate valued at $23.50 million, only $340,000 of this estate would be taxable ($23.50 million minus the $23.16 million exemption). Mrs. Smith receives the $23.168 million exemption due to portability, even though Mr. Smith died in 2019.

This also assumes neither Mr. or Mrs. Smith ever exceeded the annual gift tax amount. If they had, that cumulative amount would be deducted from their exemption amount.

The only gift they gave was in 2017: $50,000 to their daughter. In 2017, the annual, individual, gift tax exclusion amount was $14,000. The fact that the current annual gift exclusion amount is $15,000 does not come in to play here because the gift was not made in 2020.

Because the Smiths were married, $28,000 is exempt ($14,000 per married individual) leaving them $22,000 over the exclusion amount ($50,000-$28,000). This $22,000 is then subtracted from their lifetime exemption amount. In this case, lowering the exemption by $22,000 and resulting in an exemption of $23,138,000.

The result is that $362,000 of the estate is taxable.

Had the Smiths instead elected to gift $25,000 in 2016 and $25,000 in 2017, they would have been below the annual gift exemption and their estate tax exemption would not have been reduced by $22,000.

With a life insurance policy, the value of the policy may be quite low (or zero) when transferred into the trust, but upon death may be worth a substantial dollar amount. This life insurance value, realized upon death of the person who funded the trust, would not be subject to estate taxes. The policy cannot be owned by the insured; instead, the trustee can purchase a life insurance policy with the grantor as the named insured and the trust as the owner.

Life estate is a type of joint ownership between two people who are called a life tenant and a remainderman. The life estate allows the life tenant to possess and use the property for the life of a specified person, usually the tenant but not always. Upon the death of the life tenant, the property passes to the remainderman, who then has the same rights. Life estates are often used to avoid probate and allow another person, often a family member, to live in a house or use property without the life tenant giving up the ability to do the same.

Limited development in the context of land conservation may occur if someone wants to purchase a plot of land but does not have the necessary capital to do so. In order to raise capital, a portion of land is allowed to be developed to raise funds to help finance the land purchase, and the remaining land is placed in conservation easement.

Bargain sale typically refers to the sale of land or property to a 501(c)(3) charitable organization for a price less than its fair market value. The difference between the sale price and the fair market value represents a gift to the charity which may result in tax benefits for the seller.

A **bequest** is the act of giving a specific asset to an individual, charity, or institution through a will or estate plan.

Business entities: In addition to these financial tools, multiple business entities exist as options for you to use if you decide to structure or restructure your woodland property as a timber business. There are pros and cons for each business type, and there

LANDOWNER LEGACY PLANNING CASE STUDY

Ches Goodall

OWNERS: Ches, his two brothers, and mother

HEIRS: Ches' son and nephew will inherit jointly. His nephew spends a lot of time on the property, and Ches is working to increase his son's interest. These future heirs are not currently part of the decision-making process but are informed about what is happening.

LOCATION: Highland County, Virginia

ACREAGE: 1,700

Land Management & Conservation

HISTORY: Father acquired property in 1949. Ches and his brothers are second-generation owners.

LEGACY PLANNING:

- **Goals:** Preserve unique ecosystems (red spruce), protect native trout stream, pay ownership costs, sustain land for recreation use such as hiking.
- **Tools:** A conservation easement was donated to The Nature Conservancy (TNC) that also owns 200 acres adjacent to the property. The family sold a piece of the original property to TNC to raise money to buy out one sister's interest. They sold timber to buy out another sister. Land Preservation Tax Credits from the easement donation were sold to create an endowment to pay annual expenses.
- **Team:** Four current owners, estate lawyer, accountant, facilitator for family meetings, and an easement expert.

CHALLENGES FACED: Ches' dad passed away while the heirs were still teenagers and prior to formalizing a legacy plan. The family had to decide how he would want his legacy to continue and how to make that happen. Future challenges include decisions about timber harvesting and whether it should be restricted to only certain portions of the property.

ADVICE: Regular communication is vital. Working with your siblings can be more difficult than you expect. Start now and keep looking forward. If you don't get ahead of that stuff, you're just asking for a train wreck down the road.

"This farm was the place we always had. It was really, truly our home away from home — kind of a place of security we could always come back to. It's who we are."

"We all loved the property and believed it would bring us together — well not necessarily. It can divide people when people have competing interests."

— Ches Goodall

Woodland Management Plans

In Virginia, there are three main types of woodland management plans.

1. **Forest Stewardship Plan**
   This is the most common type of plan and is usually written by a forester with the Virginia Department of Forestry, although any professional forester can write the plan. There will be a modest cost associated with the plan regardless of who writes it.

2. **Conservation Activity Plan (CAP 106 Plan)**
   A consulting or industry forester registered as a Technical Service Provider can write a CAP 106 Plan for your property. Although the cost will vary by forester, there is cost share available that can cover up to 75%.

3. **Tree Farm Plan**
   Written by either a consulting forester or an industry forester, the cost will vary depending on whom you hire.

In Virginia, these types of plans are considered equal and interchangeable. In other words, when you create any one of these plans (Tree Farm Plan, CAP 106, or Forest Stewardship Plan), you will qualify to participate in all of the programs available to woodland owners.

is no universally accepted best option for everyone. It is recommended that you carefully decide which business type is best for you after consulting with professional advisors who understand your business and transition goals. As mentioned earlier, do not assume that as a timber owner that you are a timber business. You may be a timber investor. More information on woodland owner tax issues is available from the National Timber Tax website: https://timbertax.org.

What's best for your family?

If you decide to form a family business, some of the most common types include:

- Sole Proprietorship/Sole Ownership
- General Partnership/Joint Ownership/Tenants in Common
- Limited Partnership (LP)
- Family Limited Partnership (FLP)
- Limited Liability Company (LLC)
- S Corporation
- C Corporation

The best business structure for your family depends on your family circumstances and business goals. If simplicity is your primary concern, a sole proprietorship or partnership may be best. If protection against liability or taxes is your primary concern, an LLC, S corporation, or C corporation may be the best. Details on these types of business structures can be found in Family Business Entities (Appendix C) on page 52.

Conservation Tools

In addition to financial and legal tools, there are also conservation tools available to help you achieve your family's goals.

Woodland management plan

A good conservation strategy starts with a written woodland management plan developed by a professional forester. Such a plan is a visual aid and guide for forestry activities on your property and can help you plan income streams. As discussed in Step 3, each plan is unique to your goals and objectives, your land, and your available resources.

A woodland management plan is also a tool to engage your family, especially your heirs, in your woodland ethic and subsequent activities. It is an opportunity for family members to observe, participate in, and reflect upon goal-setting, decision-making, and implementation of those recommendations related to your natural resource. In addition, a woodland management plan can provide valuable information to your family and your advisors who may help you in other aspects of your legacy planning.

Land use-value assessment

Land use-value assessment, often referred to as land use, is a program authorized in the Virginia State Code whereby localities can assess rural land for property taxes based on current use rather than highest and best use or development potential. It has the effect of lowering the property taxes on land kept in rural uses and is the most basic incentive a locality can offer to landowners to keep their property undeveloped.

The Virginia State Code recognizes four categories of land use: Agriculture, Forestal, Horticulture, and Open Space. Localities can designate any or all of the four categories for their program. Each category has minimum criteria that must be met to enroll in land use. Localities require landowners to revalidate their eligibility on a regular basis, and heirs may have to recertify when land is inherited. Localities may charge rollback taxes and interest if land, including inherited property, fails to meet the minimum criteria or changes to a more intensive use, or if a landowner fails to revalidate.

Land use makes land ownership more affordable for present and future generations by directly addressing one of the major concerns of forest landowners; that is, high taxes. Land use is often enough of an incentive for family woodland landowners to keep their forests as forests.

Agriculture and Forestal Districts

Agriculture and Forestal Districts (AFDs) are areas where landowners join together to encourage and protect rural land uses. AFDs are rural conservation zones, initiated by landowners and authorized by the locality, reserved for the production of agricultural and timber products and the maintenance of open space land as an important environmental and economic resource. AFDs also benefit the locality by maintaining a critical land mass necessary to support the economic infrastructure associated with rural land uses.

AFDs offer some protection from rezoning to a more intensive use and eminent domain by the locality and must be considered during special use permit requests. They also offer some protection from nuisance ordinances that might limit traditional land uses like farming and forestry. Landowners who are part of an AFD are automatically eligible for land use if their property would have qualified anyway, and they are not required to recertify as long as their land remains part of the district.

AFDs are voluntary and initiated by a landowner or group of landowners who request the locality to form the district. The initial district, or "core," must contain at least 200 contiguous acres. Once established, any property within a mile of the core can be added to the AFD. Landowners in the AFD agree not to develop their properties for a period ranging from four to ten years. At the end of this term, districts have a 180-day review period in which the term can be renewed, land can be added or withdrawn, or the district dissolved by the locality. Once the review period is over, land can only be added to the district except in extenuating circumstances.

Conservation easements

A **conservation easement** is an agreement in the form of a deed between a landowner and a government agency or nonprofit land trust. The purpose of the agreement is to ensure that conservation values such as productive farm and forestland, clean water, natural habitat, or scenic views are protected in perpetuity for the benefit of future generations. The agreement does this primarily by limiting future parcelization and development on the property. A conservation easement will help ensure that the land is not developed and the conservation value is protected, even if the family sells the property. Except for the rights specifically given up in the deed, you still retain the ability to own, use, and control the land.

Easement donations may be eligible for federal income tax deductions and Virginia Land Preservation Tax Credits. From an estate tax perspective, land in a conservation easement will have a lower value in the taxable estate; therefore, heirs will not have to pay taxes on the forgone development rights. In those localities that do not have land use-value assessment programs, local property taxes on land subject to a conservation

easement may be reduced with respect to the land, but not dwellings, farm buildings, or other improvements located there. The details on these tax benefits can be complicated and often change, so it is always a good idea to consult with a tax and financial advisor familiar with easements before making this choice.

Century Forests

Virginia's Century Forest Program honors individuals or families who have made a long-term commitment to enhance the environment and protect the quality of life for their fellow Virginians through woodland ownership. Qualifying families receive a certificate signed by the governor of Virginia and a sign to post on their property. The recognition, along with the sense of history and environmental stewardship it acknowledges, may motivate families to take active conservation and legal steps to protect their family woodland legacy.

To be designated a **Century Forest,** a property must have been in the same family for 100 years or more, include at least 20 contiguous acres of managed forests, be lived on or managed by a descendant of the original owners, and have a documented history of timber harvests or other forest management activities. If you think your woodlands qualify, contact the Virginia Department of Forestry.

As you can see, there are numerous tools that can help you reduce the tax burden to your heirs. These tools can also increase the chances of your land remaining intact, in forest, and in family. While the tools are generally uniform, their application, combination, and timing are unique to each family's goals and situation. *Worksheet 9: Legal, Financial and Conservation Instruments,* can help you keep track of the tools employed in your legacy plan.

LANDOWNER LEGACY PLANNING CASE STUDY

Charles Hague

OWNER: Charles Hague

HEIR: Anne Hague, sister

LOCATION: Brunswick County, Virginia

ACREAGE: 123

Healing a Relationship with the Land

HISTORY: This property has been in the Hague family since Charles' great-grandmother inherited it in 1876 from her father, Wiley Short. Unfortunately, over the years, owners died intestate resulting in heirs filing partition lawsuits. The lawsuits resulted in the property going up for auction twice. Fortunately, family members were able to win both auctions, allowing them to keep the land in the family. However, all of this caused a lot of bad feelings among family members. It has been a long road, but now Charles is the sole owner of this parcel.

Charles actively manages 100 acres of loblolly pine forest on the property. The land will pass to his sister, Anne, who is also actively involved in the property.

LEGACY PLANNING:

- **Goals:** Conserve the property and keep it in the family.
- **Tools:** Charles donated a conservation easement to the Virginia Department of Forestry, created a revocable living trust, received Century Forest recognition, and certified the property as a Tree Farm.

ADVICE: Always have a will or some instrument that you specify what's going to happen with your asset. Always have that. It's not going to make you pass away any sooner to have a will or some other instrument.

"I'd only been around this property once prior to the early 2000s when my uncle brought me here before it had been timbered. Because there had been so much bad blood, the property had a taint about it, a negative feeling about it ... the property wasn't talked about that much. We never came over here."

— Charles Hague

"The choices and the decisions that Charles has made with the land I applaud wholly. He's kept me in the loop, kept me abreast of all of the decisions, and asked my input and different opinions. And it's been a great thing."

— Anne Hague

STEP 8

Provide opportunities for your family to learn about and enjoy your woodlands

Now for the fun part! It's never too early to start building your family's bond with your woodlands. Perhaps it's something simple, such as letting your children or grandchildren feed the chickens or pick blueberries. Perhaps it's something more structured, like an annual family reunion on the land. For family members with a strong interest in the land, perhaps it's involving them in management decisions and activities.

Building these bonds strengthens support for your legacy plan and helps to ensure that at least one of your family members is willing to take responsibility to see that your wishes are carried out.

Here are some ideas for engaging your family:

1. Maintain a guest book. This builds a sense of history.
2. Create family traditions. These may be annual picnics or campouts.
3. Share stories about the land.
4. Involve family members in fun activities. These can include exploring, orienteering, hiking, fishing, hunting, boating, camping, or bird watching.
5. Collect wild foods like berries and mushrooms, and make a dish together.
6. Involve family members in management. Family members can choose tasks that build on their current skills.
7. Invite interested family members to meetings with your forester.
8. Go to educational workshops together to learn more about land and business management and meet other landowners.
9. Host an annual family reunion on the property.
10. Engage youth with social media posts about the property.

Family members of all ages who are involved in these activities learn to work and play together around a common goal. It not only helps to build engagement with the property but may also improve family interactions overall. If you have young children or grandchildren, the American Tree Farm System has a list of activities designed to capture their imagination and increase their interest in the natural world. If you'd like to take a more structured approach to engaging your family with your land, read *Leopold's Model: Observe-Practice-Reflect* on page 34.

Leopold's Model: Observe-Practice-Reflect

Many people are familiar with Aldo Leopold's seminal book, *A Sand County Almanac*. This collection of essays formed the foundation of what is called a land conservation ethic and is largely based on Leopold's "Observe-Practice-Reflect" model of nature study. Leopold engaged his children and grandchildren in the natural world using this model. His legacy, through his heirs, has been continued with their establishment of the Aldo Leopold Foundation.

Leopold's model provides a framework to help you develop a deeper appreciation of your family members' environmental views and values by inspiring a caring, ethical relationship with and for the land. This can be a formal or informal process, depending on your family dynamics.

Observation: Visit the family land with your heirs. Observe the trees, wildflowers, topography, and wildlife. Share the details of past management activities and how those altered the landscape.

Practice: Involve your family in a management activity – perhaps planting trees or removing invasive species. Or this component could be something recreational like having a family picnic.

Reflect: After the visit, take time to have everyone reflect on their experiences. You may want to designate a moderator for this activity to help keep everyone on track, especially if you have a large number of people participating. Some may not be comfortable with this sort of exercise, particularly in front of a group. So ease them into the conversation with a short opening activity. You can ask family members to pair up and share a story about the family land or discuss a photo of the property.

Once your family gets comfortable with this approach, ask deeper questions. Make sure everyone has a chance to participate. Ask questions of clarification, such as: *Who is interested in taking on a management role for this property? Who sees themselves interacting with this land on a regular basis after the current owners are gone?* Ask questions of interpretation, such as: *What do you think should happen to this land? How do you think this land should be managed?* And finally, consider asking questions of application, such as: *How could we work together as a family to maintain this property? What resources (financial, technical, or other) would be needed to maintain this land intact, in forest, and in the family?*

There is no right or wrong set of questions or answers. Allow the conversation to breathe and ebb and flow as your family considers what they are seeing and experiencing and what it means to each one of them.

Discussions like this can help families get at deeper levels of understanding family members' interests in the property.

STEP 9

Revisit your plan on a regular basis and adapt as your land, assets, and family change

Like families, your legacy plan may change and grow over time. Review your plan on a regular basis to ensure it continues to reflect your goals, your assets, the condition of your land, and your family's interests. Schedule family meetings annually to keep everyone on the same page, and make them aware of any changes in circumstances or feelings about the land and your legacy plan. Most importantly, keep your family actively engaged in the property.

LANDOWNER LEGACY PLANNING CASE STUDY

Grampian Hills

OWNER: Tommy Terry

HEIR: When I die, it's going out of the family because I'm not married, and I don't have any children. I do have a very dear friend who was my student during my first year of teaching in 1981-82. He was 15 at the time, and he came and helped us here on the farm a lot — oh heavens, more work than you can imagine. He's stayed active with the farm, so he's going to be the one that inherits it.

LOCATION: Prince Edward County, Virginia

ACREAGE: 684

Intact Again and Forever

HISTORY: Established in 1812 by Richard Booker (Tommy's great-great-grandfather), the property originally was thousands of acres, but over the years it was subdivided many times. Tommy's dad, and now Tommy and his brother, have been working for over 50 years to reassemble the pieces. Tommy became engaged in the property when he was a kid and helped a tenant bring in tobacco, an activity he did not care for. After the tobacco was gone, Tommy worked with his dad to fix up the home and manage the forests. And that's what sparked his interest and truly engaged him in the land.

LEGACY PLANNING:

- **Goals:** We decided the farm is not worth anything [monetarily] to us because we're not going to sell it. Therefore, it has no monetary value for us, it's just our heritage, and we want to keep it together. That's our main goal, so that it never gets broken up again, and it can go down to the next generation.
- **Tools:** Revocable trust and conservation easement donated to Virginia Department of Forestry.

"I'm so glad to have met people that got me into this conservation easement, teaching me about trusts and things. I'm positive now I've got to the point where it'll never be separated again."

— Tommy Terry

Summary

While there is no single path to successful legacy planning, there is a way forward for you and your family. Modify the steps presented in this guide to fit your family and your land. Legacy planning can be complex and may be wrought with potential pitfalls. Being aware of these pitfalls may help you avoid them.

Don't get stymied by:

- Chaotic family relationships.
- Frustration in not finding the right advisors to be part of your team.
- Legal costs.
- Fear of losing control over decision-making.
- Challenge of overcoming inertia (from slow progress or unresponsive family members, for example).
- Trying to figure out fairness.

Your efforts will be rewarded with the satisfaction of a well-developed legacy plan. Anticipating some or all of the following benefits can keep you focused on positive outcomes and boost your momentum through tough times.

Look forward to:

- Peace of mind.
- Closer family relationships.
- Better defined and respected roles of family members.
- Long-lasting investments in future generations.
- Smooth transition of woodlands to heirs.
- Intact woodlands managed according to your wishes.
- Reduced tax burden.
- A long-lasting family legacy.

> "To die well is to do so in consideration of the ones you leave behind."
>
> **Thom McAvoy, Professor Emeritus of Extension Forestry, University of Vermont**

You play a key role in keeping Virginia's natural resources healthy and productive to ensure that citizens of the commonwealth continue to reap its ecological, economic, and social benefits. We all need trees and woodlands. A few are fortunate enough to own a part of this valuable resource, and it is a big responsibility to help steward it.

If you follow the nine steps for successful legacy planning, you can protect your family's assets and ensure an orderly, informed, and intentional transfer of your woodlands to your heirs, thus keeping it intact, in forest, and in your family. A strong legacy plan can also help ensure the land is sustained and managed according to your wishes. The overall results of this planning process should help minimize future disputes among your family members and likely decrease their tax burden. Although the process will cost you some time and money, the result of having a strong legacy plan in place will be something priceless: peace of mind. It may even strengthen your family's bonds and enrich their lives in lasting ways.

WORKSHEET 1

Wooded Property and Estate Overview

PROPERTY INFORMATION

ADDRESS/LOCATION				COUNTY
TOTAL ACRES	WOODED ACRES	DATE OF LAST APPRAISAL	LAST APPRAISED VALUE OF PROPERTY	ESTIMATED CURRENT VALUE
HOLDER(S) OF TITLE				
AMOUNT OWED		VALUE OF STANDING TIMBER	DATE OF MOST RECENT TIMBER CRUISE	DISTANCE FROM NEAREST INCORPORATED CITY
IS THERE A MANAGEMENT PLAN?	GENERAL PROPERTY MANAGER	EMPLOYEES	CONTRACTORS	
NEIGHBORING USES				

ACREAGE TOTAL

PARCEL ID	TAX MAP ID	ACRES	ZONING	DATE ACQUIRED	CURRENT VALUE	BASIS

WOODLAND (ACRES)

MERCHANTABLE TIMBER	PRE-MERCHANTABLE TIMBER	PLANTATIONS (<10 YEARS OLD)	UNDERSTOCKED	OTHER

Adapted with permission from *Ties to the Land* (Bentz et al. 2012)

HARVEST HISTORY

YEAR	STUMPAGE VALUE ($/MBF*)	VOLUME (MBF)	VALUE

*MBF = THOUSAND BOARD FEET EITHER IN DOYLE OR INTERNATIONAL ¼ INCH

TREE PLANTING HISTORY

YEAR	PARCEL	ACRES	# SEEDLINGS/ACRE	SPECIES

ROADS

YEAR	PARCEL	LENGTH	COST	CONTRACTOR

LAND RENTAL

PARCEL	TENANT (NAME & CONTACT)	RENT	DUE DATE

BUILDINGS / MACHINERY / EQUIPMENT

ITEM	MAKE/MODEL	YEAR PURCHASED	PURCHASE PRICE	OWED	APPRAISED VALUE

BANK ACCOUNTS

ASSET	BANK OR COMPANY	ACCOUNT NUMBER	AMOUNT
SAVINGS			
CHECKING			
CERTIFICATES OF DEPOSIT			
OTHER _____			

RETIREMENT

ASSET	COMPANY POLICY NUMBER	BENEFICIARY	VALUE
MUTUAL FUNDS			
LIFE INSURANCE			
EMPLOYEE BENEFITS			
OTHER _____			

MOTOR AND RECREATIONAL VEHICLES

ITEM	MAKE/MODEL	YEAR PURCHASED	PURCHASE PRICE	OWED	APPRAISED VALUE

JEWELRY / GEMS / PRECIOUS METALS

ITEM	DESCRIPTION	YEAR PURCHASED	PURCHASE PRICE	OWED	APPRAISED VALUE

TOTAL ESTATE VALUE	

WORKSHEET 2

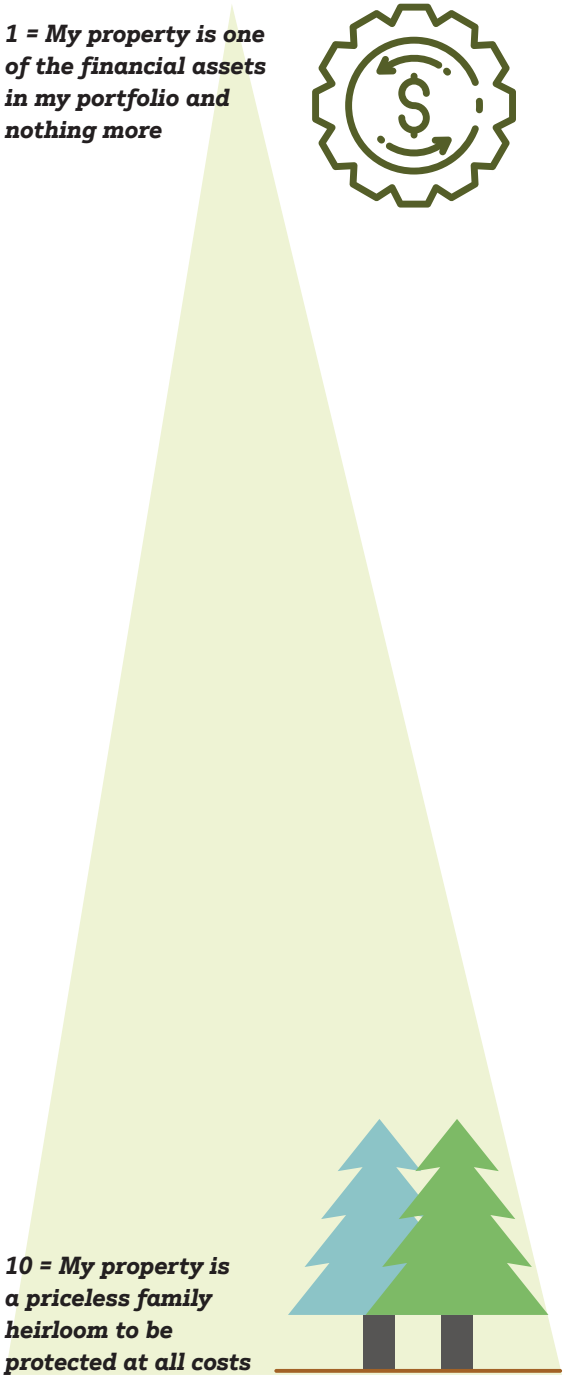
The Heirloom Scale

Where are you on the heirloom scale? Select which number, from 1 to 10, that best reflects your feelings about your land. Include your thoughts as to why this is where you are on the scale. What would move you up or down the scale? And have everyone involved revisit the scale every five years. As people age, their place on the scale may change.

NAME

1	THOUGHTS
2	THOUGHTS
3	THOUGHTS
4	THOUGHTS
5	THOUGHTS
6	THOUGHTS
7	THOUGHTS
8	THOUGHTS
9	THOUGHTS
10	THOUGHTS

1 = My property is one of the financial assets in my portfolio and nothing more



10 = My property is a priceless family heirloom to be protected at all costs

WORKSHEET 3

Family Resource Inventory

COMPLETED BY	DATE

BASIC PROPERTY INFORMATION

PROPERTY LOCATION (ADDRESS / COUNTY / STATE)		
DATE FOREST PROPERTY ACQUIRED OR INHERITED	FORESTED ACREAGE	OPEN FIELD / AGRICULTURAL ACREAGE

FAMILY RESOURCE INVENTORY. Complete for each family member or stakeholder in your property.

		PHYSICAL CAPABILITY (CHECK ONE)					CURRENT LAND MANAGEMENT SKILLS												OUTDOOR HOBBIES/INTERESTS																
NAME	AGE	STRENUOUS	MODERATE	LIGHT	DISTANCE TO PROPERTY (MILES)	INCOME FROM FOREST PRODUCTS NEEDED OR DESIRED? (Y / N)	FARMING	FIRE CONTROL	FORESTRY	LEGACY PLANNING	LEGAL SKILLS	LOGGING	ORIENTEERING	PLANT ID	SURVEYING	TIMBER CRUISING	TREE ID	TIMBER SALES	WILDLIFE MANAGEMENT	AESTHETICS	ATV RECREATION	BIRD WATCHING	BOATING	CAVING	FISHING	GARDENING	HIKING/CAMPING	HORSE RIDING	HUNTING	MEDITATION	MOUNTAIN BIKING	NATURE STUDY	PHOTOGRAPHY	SAWMILLING	SURVIVAL SKILLS	WALKING

OTHER/NOTES:

GOALS. Using your family resource inventory and conversations with your family, write one to four goals for your forest property.	**VISION STATEMENT.** Using your goals, try to write an overall vision statement for your property.
1)	
2)	
3)	
4)	

WORKSHEET 4

Assessing Potential Heirs

NAME		
LOCATION	PROXIMITY TO LAND	COULD THIS POTENTIALLY CHANGE IN THE FUTURE?
HOW ENGAGED ARE THEY WITH YOUR LAND?	WHERE ARE THEY ON THE HEIRLOOM SCALE WITH RESPECT TO YOUR LAND?	WHAT ARE THEY INTERESTED IN?
IS THERE A WAY TO ENGAGE THEM WITH YOUR LAND AROUND THOSE INTERESTS?		

NAME		
LOCATION	PROXIMITY TO LAND	COULD THIS POTENTIALLY CHANGE IN THE FUTURE?
HOW ENGAGED ARE THEY WITH YOUR LAND?	WHERE ARE THEY ON THE HEIRLOOM SCALE WITH RESPECT TO YOUR LAND?	WHAT ARE THEY INTERESTED IN?
IS THERE A WAY TO ENGAGE THEM WITH YOUR LAND AROUND THOSE INTERESTS?		

NAME		
LOCATION	PROXIMITY TO LAND	COULD THIS POTENTIALLY CHANGE IN THE FUTURE?
HOW ENGAGED ARE THEY WITH YOUR LAND?	WHERE ARE THEY ON THE HEIRLOOM SCALE WITH RESPECT TO YOUR LAND?	WHAT ARE THEY INTERESTED IN?
IS THERE A WAY TO ENGAGE THEM WITH YOUR LAND AROUND THOSE INTERESTS?		

NAME		
LOCATION	PROXIMITY TO LAND	COULD THIS POTENTIALLY CHANGE IN THE FUTURE?
HOW ENGAGED ARE THEY WITH YOUR LAND?	WHERE ARE THEY ON THE HEIRLOOM SCALE WITH RESPECT TO YOUR LAND?	WHAT ARE THEY INTERESTED IN?
IS THERE A WAY TO ENGAGE THEM WITH YOUR LAND AROUND THOSE INTERESTS?		

WORKSHEET 5

The Family Meeting

MEETING DETAILS

LOCATION		HOST
DATE	TIME	CHAIRPERSON

INVITEES

NAME	DATE OF PRELIMINARY PHONE CALL	DATE INVITATION SENT	DATE OF FOLLOW-UP PHONE CALL	RSVP
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO
				____ YES ____ NO

INVITATION WORDING:

MEETING AGENDA:

MEETING RECORD:

WORKSHEET 6

Strategies for Moving Forward

LEGACY PLAN

KEY STRATEGIES

STRATEGIES REJECTED

WORKSHEET 7

Who Does What on Your Land

JOBS ON YOUR LAND

JOB TITLE	NAME	JOB DESCRIPTION	COMPENSATION	MAKES DECISIONS ABOUT THE PROPERTY	WHEN/HOW OFTEN
MANAGER				____ YES ____ NO	
BOOKKEEPER				____ YES ____ NO	
MAINTENANCE				____ YES ____ NO	
				____ YES ____ NO	
				____ YES ____ NO	

THE PROFESSIONALS YOU WORK WITH

TYPE	ROLE	NAME	ADDRESS	PHONE	EMAIL
FORESTER					
WILDLIFE BIOLOGIST					
LAWYER					
ACCOUNTANT					

ANNUAL/RECURRING ACTIVITIES

MONTH	ACTIVITY DESCRIPTION	WHO DOES IT	WHEN	WHAT TO DO
	Pay property taxes			
	Pay bills			
	Maintain equipment			

PERMITS

TYPE OF PERMIT	PROVIDER	WHY NECESSARY	WHEN

Adapted with permission from *Ties to the Land* (Bentz et al. 2012)

WORKSHEET 8

Your Legacy Planning Team

ACCOUNTANT

NAME		APPOINTMENT DATE / SCHEDULE:
MAILING ADDRESS	PHONE	EMAIL
WHY WE WANT THEM ON THE TEAM		

LAWYER

NAME		APPOINTMENT DATE / SCHEDULE:
MAILING ADDRESS	PHONE	EMAIL
WHY WE WANT THEM ON THE TEAM		

FINANCIAL / INVESTMENT EXPERT

NAME		APPOINTMENT DATE / SCHEDULE:
MAILING ADDRESS	PHONE	EMAIL
WHY WE WANT THEM ON THE TEAM		

FAMILY BUSINESS CONSULTANT

NAME		APPOINTMENT DATE / SCHEDULE:
MAILING ADDRESS	PHONE	EMAIL
WHY WE WANT THEM ON THE TEAM		

CONSULTING FORESTER

NAME		APPOINTMENT DATE / SCHEDULE:
MAILING ADDRESS	PHONE	EMAIL
WHY WE WANT THEM ON THE TEAM		

OTHER

NAME		APPOINTMENT DATE / SCHEDULE:
MAILING ADDRESS	PHONE	EMAIL
WHY WE WANT THEM ON THE TEAM		

Adapted with permission from *Ties to the Land* (Bentz et al. 2012)

WORKSHEET 9

Legal, Financial, and Conservation Instruments

WILL

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

OWNERSHIP STRUCTURE

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

OPERATING AGREEMENT

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

BUY-SELL AGREEMENT

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

CONSERVATION EASEMENT

DATE COMPLETED	GRANTEE
LOCATION OF ORIGINAL DOCUMENT	

LIFE INSURANCE POLICY

COMPANY	AGENT	POLICY NUMBER
LOCATION OF ORIGINAL DOCUMENT		DATE

LONG-TERM CARE INSURANCE POLICY

COMPANY	AGENT	POLICY NUMBER
LOCATION OF ORIGINAL DOCUMENT		DATE

OTHER LEGAL DOCUMENTS

DOCUMENT: _____

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

DOCUMENT: _____

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

Adapted with permission from *Ties to the Land* (Bentz et al. 2012)

DOCUMENT: _____

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

DOCUMENT: _____

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

DOCUMENT: _____

DATE COMPLETED	LOCATION OF ORIGINAL DOCUMENT

LAND USE-VALUE ASSESSMENT

COUNTY	TAX MAP PARCEL	ACRES	CATEGORY	DATE ENROLLED	REVALIDATION DATE

AGRICULTURE / FORESTAL DISTRICT

COUNTY	TAX MAP PARCEL	ACRES	AFD NAME	DATE ENROLLED	TERM LENGTH

Glossary of Terms

Accountant: A person who professionally prepares, maintains, analyzes, or inspects financial accounts, especially within the context of a business; a bookkeeper.

Advance medical directive: A general term that refers to various documents that could include a living will, healthcare proxy, or healthcare power of attorney.

Agriculture and Forestal Districts (AFDs): Rural conservation zones, initiated by landowners and authorized by the locality, reserved for the production of agricultural and timber products and the maintenance of open-space land as an important environmental and economic resource. In Virginia, AFDs created under the statewide act must contain a contiguous core of at least 200 acres. Additional parcels within a certain distance of the core of the district may also join.

Annual gift exclusion: The amount that can be given by a donor in any one year to any one recipient without impacting the donor's lifetime gift tax exemption.

Bargain sale: Typically refers to the sale of land or property to a 501(c)(3) charitable organization for a price less than the fair market value of the land or property. The difference between the sale price and the fair market value represents a gift to the charity which may result in tax benefits.

Bequest: The act of giving a specific asset to an individual, charity, or institution through a will or estate plan.

Beneficiary: a person or thing that receives help or an advantage from something; one that benefits from something.

Buy-sell agreement: A contract creating the option for one owner of a business to buy all or part of a business, including the assets of the business, upon retirement, divorce, disability, or death of another business owner. This agreement specifically states who can buy the ownership interest, how the purchase price will be determined and paid, and over what period of time.

Century Forest: A property that has been in the same family for 100 years or more, includes at least 20 contiguous acres of managed forests, is lived on or managed by a descendant of the original owners, and has a documented history of timber harvests or other forest management activities.

Conservation easement: An agreement in the form of a deed between a landowner and a government agency or nonprofit land trust. The purpose of the agreement is to ensure that conservation values such as productive farm and forestland, clean water, natural habitat, or scenic views are protected in perpetuity for the benefit of future generations. The agreement does this primarily by limiting future parcelization and development on the property.

Durable power of attorney: A legal document giving another individual the ability to manage someone else's finances if they are unable to do so. The person is legally obligated to act with the principal's best interests in mind. This could include check writing, credit card use, loan and bill payments, and purchases and sales of assets.

Ecosystem services: Ecological benefits the public derives from woodlands, such as wildlife habitat, clean air and water, and soil protection.

Estate planning: The legal process of distributing an individual's assets, including land, house, bank accounts, and bonds, to their heirs. It is a key component of legacy planning.

Executor: A person appointed to administer the estate of a person who has died leaving a will which nominates that person.

Exotic invasive species: Any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Family mediator: A neutral third party who promotes discussion and negotiation that allows the participants involved in a conflict or dispute the opportunity to exchange divergent views, ask questions, discuss difficult topics, and find solutions.

Federal estate tax: A tax on property (cash, real estate, stock or other assets) transferred to heirs other than a spouse at time of death.

Forester: A degreed professional trained in forest management. May be employed by forest industry, a state agency, or privately.

Fragmentation: Conversion of forest to other uses such as urban and suburban development, resulting in degradation of ecosystem functions such as wildlife habitat, timber production, and runoff mitigation.

Goal: A general, big-picture statement of what landowners want their property to be at some point in the future.

Gross estate: Total monetary value of an individual's property and assets at the time of their death.

Heirloom value: Nonmonetary values assigned to family possessions.

Heir: A person inheriting and continuing the legacy of a successor.

Intestate: Dying without a valid will.

Irrevocable trust: The creator of this trust cannot revoke the trust on his or her own. Once the assets have been permanently placed in an irrevocable trust, the assets in this trust no longer count towards that individual's federal taxable estate.

Land ethic: A moral responsibility to the natural world; a respect for people, the land, and their relationship to one another.

Land trust: A private, nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition or by its stewardship of such land or easements.

Land use-value assessment: A program authorized in Virginia State Code whereby localities can assess rural land for property taxes based on current use rather than highest and best use or development potential. The result is a reduction in property taxes collected on land kept in rural uses and is the most basic incentive a locality can offer to landowners to keep their property undeveloped.

Last will and testament: A legal declaration of a person's wishes regarding the disposal of his or her property or estate after death.

Lawyer: A person who practices or studies law; an attorney or counselor.

Life insurance: Insurance that pays out a sum of money either on the death of the insured person or after a set period.

Legacy planning: The ongoing process of including your heirs in the planning for the future of your woodlands. Along with estate planning, it can ensure your woodlands are passed on intact, in forest, and in family.

Life insurance trust: A type of irrevocable trust where a life insurance policy is placed in the trust.

Limited development: A method to finance a land purchase that entails a portion of the land being placed in a conservation easement.

Objectives: Specific management actions landowners take to reach their goals; often associated with a specific timeline.

Parcelization: The division of large tracts of forestland into small tracts with more landowners.

Portability: The amount of the lifetime exemption not used on a deceased spouse that may be transferred to a surviving spouse.

Reflective listening: A communication strategy involving two key steps: seeking to understand a speaker's idea, then offering the idea back to the speaker to confirm the idea has been understood correctly. It attempts to reconstruct what a person is thinking and feeling and to relay this understanding back.

Revocable (living) trust: This trust can be revoked at any time by the person who created the trust (the grantor). Assets can be added or removed from the trust at any time during the life of the grantor.

Survivorship: The legal right of the survivor of persons having joint interests in property to take the interest of the person who has died.

Taxable estate: Total value of a deceased person's assets that is subject to taxation. The net assets subject to taxation equal the person's total assets minus liabilities and minus the prescribed tax-deductible portion of assets left behind by the deceased that cross a minimum threshold, below which no estate tax is levied.

Trust: A trust is a legal entity that acts as a contract between the person who creates and funds the trust (the grantor), and the trustee who is in charge of managing the assets in the trust on behalf of a beneficiary or beneficiaries.

Family Business Entities

SOLE PROPRIETORSHIP / SOLE OWNERSHIP

A profit-motivated business of one — the owner is the company. This is the most common structure for a small family business.

TAXATION: The income and losses of the business are reported directly on the owner's tax return.

PROS: It is simple to establish, and startup costs are low. Relatively speaking, accounting is easy and taxes are simple to prepare. It is also fairly simple if you decide to sell the business. Only one person makes decisions for the business.

CONS: Personal and business assets are treated the same. This may sound ideal for simplicity, but it means that personal assets are not protected against liability resulting from your business. This results in unlimited personal liability risk. Because one person owns the business, the business typically ends when the owner dies; land passes outright to a successor the owner names on the deed or in the owner's will.

ESTATE AND GIFT ISSUES: The value of the business or land is the fair market value of the assets at the date of death. It is not possible to transfer ownership prior to death because of the one-owner structure; however, the business can always be sold prior to death.

GENERAL PARTNERSHIP (GP) / JOINT OWNERSHIP / TENANTS IN COMMON

Very similar to a sole proprietorship except there is more than one owner conducting business for profit. Under the Uniform Partnership Act that Virginia has adopted, each partner has equal management authority and equal share of the profits and losses. Similarly, each partner is individually financially liable for

the debts of the business. A general partnership may be oral or written; however, having written contracts is typically recommended. Joint tenancy (spouse) or tenancy in common (in land operated as a business) creates a general partnership among the joint tenants.

TAXATION: The partnership pays no tax, but it files a tax return (Form 1065) to report the income or loss of the business. Schedule K-1 is issued by the partnership to each partner indicating the individual partner's share of income. The partners then report their respective share of the partnership income on their individual tax returns. Owners/partners are not considered employees, and thus no payroll tax reporting is required for owner salaries.

PROS: Partners can pool finances and share the creativity and the workload. Taxes and accounting are relatively simple. Partners can organize the affairs and structure of the partnership as they see fit, with few statutory restrictions.

CONS: Similar to a sole proprietorship, each partner has unlimited personal liability risk. Partners share liability and responsibility for one another's actions. Potential for disagreement and conflict is greater than in a sole proprietorship. General partnerships terminate at the death or bankruptcy of any partner. Written buy-sell agreements are important to determine what happens to the business and the land when an owner dies. Individual owners (tenants in common or joint tenants) in the land (and their creditors, including divorcing spouses) can demand their share of the fair market value of the property at any time and force the sale of the property to get their share (a partition action). This creates an unstable and unpredictable situation for the property and the remaining owners.

ESTATE/GIFT ISSUES: In joint tenancy, the ownership passes to the joint tenant(s) automatically at death. Tenancy in common and partnership interests pass to the heirs of the tenant/partner if there is no written buy-sell agreement between the partners. The value is based on the value of the individual's ownership interest, reduced by any transaction costs that may be necessary for the owner to get his/her cash out of the business or file a partition action.

LIMITED PARTNERSHIP (LP)

A partnership where certain partners have limited liability. Per the Uniform Limited Partnership Act adopted by Virginia, an LP must have at least one general partner and one or more limited partners. Typically, the limited partner(s) supply cash or other property, such as forestland. The general partner(s) is the partner who manages the business.

TAXATION: As with a general partnership, taxes are paid at the individual level with a partnership tax return prepared annually.

PROS: The liability of a limited partner is limited to the amount of his/her investment in the business. It is possible to have only one partner, which means, like a sole proprietorship, business decisions may be made by only one person.

CONS: A general partner has unlimited personal liability risk. A limited partner has no control over business decisions. Unlike a GP, an LP must be created by filing with the Secretary of State. In Virginia an LP must file an annual report to be recognized under Virginia law.

ESTATE/GIFT ISSUES: Same as a general partnership.

FAMILY LIMITED PARTNERSHIP (FLP)

A limited partnership made up of family members. Just as with an LP, one or more general partners have unlimited personal liability risk for the business and operate the business for the benefit of the limited partners. The limited partners are investors in the business, are not active in management, and have limited liability for the debts of the partnership up to the amount of their investment.

TAXATION: Same as GP and LP.

PROS: A widely used form of business for family businesses, farms, and forests because it allows the general partners (generally tne parents) to begin sharing ownership of the property with their children while retaining control of the property and to create an ongoing management structure.

CONS: General partners have unlimited liability. Limited partners risk losing their liability protection when they get involved in management. FLPs may be required to terminate at the death of a general partner, and/or within 50 years of formation, so they lack unlimited life. Often the complexity of an FLP is greater than that of an otherwise similar GP or LP.

ESTATE/GIFT ISSUES: Both the general and limited partnership interests are easily transferred. Buy-sell provisions written into the general agreement control how these transfers are made and what restrictions exist on transfer, including how interests are to be valued. The value of a partner's interest is based on the assets and cash flow of the business, reduced by any restrictive provisions in the agreement. Ownership transfer typically happens within the FLP by transferring ownership in annual incremental amounts under the annual gift tax exemption to maintain the full estate exclusion amount.

LIMITED LIABILITY COMPANY (LLC)

A business structure combining some of the best features of corporations and partnerships. Owners are called members; those with decision-making authority are called managers.

TAXATION: Same as a GP.

PROS: All members of an LLC have the liability protection of a corporation but are taxed as a partnership (or a sole proprietorship if only one member). The agreements have wide flexibility in how they are drafted, giving families the ability to craft the special provisions that will protect the property and create an intergenerational management structure. The managing member of the LLC functions in the same role as the general partner of an FLP or LP, but enjoys limited liability protection. Non-managing members do not lose their liability protection when they get more involved in the business. Profit distribution is flexible, and there's no legal requirement to keep meeting minutes (though it is highly recommended). Like corporations, LLCs can be drafted to have unlimited life. This form of ownership is becoming the preferred method for ownership and transfer of land between generations because of its flexibility and liability protection.

CONS: If the business has debt, many lending institutions won't lend to it unless all the members sign personal guarantees. In such a case, an FLP or LP, in which only the general partner has to guarantee the debt, may be the better choice.

ESTATE/GIFT ISSUES: Same as FLP.

S CORPORATION

An IRS designation for corporations that allows taxation similar to that of a partnership or sole proprietorship, but provides corporate liability protection to all shareholders.

TAXATION: Special rules give shareholders tax treatment similar to that of partnerships, with exceptions. Shareholder employees are considered to be employees, and payroll reporting is required for the shareholder salaries. Reasonable salaries are required to be paid to all shareholders working in the business.

PROS: An S Corporation avoids the double tax burden placed on corporate profits. All shareholders have protection from liability. Self-employment tax may be less than under a partnership.

CONS: Only one class of stock is permitted. The form, language, and structure of the corporation is defined by state law, giving owners little flexibility in drafting agreements. Distributions to owners are required to be exactly equal. An S corporation requires annual corporate meetings with minutes. All appreciation in the value of assets, including land, is taxed if land is transferred out of the corporation or if the corporation is dissolved. This makes S corporations (and C corporations) unsuitable for owning and holding real estate.

ESTATE/GIFT ISSUES: Transfers of stock are controlled by corporate statute and limited by any buy-sell agreements that may exist between the shareholders. There are limitations on transfers of interests to charities. No transfers are allowed to corporate shareholders.

C CORPORATION

A legal entity formed by one or more shareholders under state laws. It offers both liability protection for owners and favorable tax treatment for the accumulation of capital inside the corporation.

TAXATION: Corporations pay taxes on their income at corporate tax rates. Distributions (dividends) from corporations are not deductible to the corporation but are taxable to the shareholder (the double tax burden).

PROS: Corporate tax levels, while variable, may be lower than those for sole proprietorships or partnerships. A corporation can issue common and preferred shares with different rights for each shareholder class. Shareholders are protected from liability. Corporations easily allow unrelated individuals to pool capital and resources to conduct business.

CONS: Corporations are creatures of statute and thus offer limited flexibility for drafting special provisions required for intergenerational planning. The only way to get money out of a C Corporation is through salaries or dividends, creating a double tax burden for family ownerships. Appreciation on property is taxed the same as in an S Corporation when property is transferred out of the corporation or when the corporation dissolves. Corporations do not have the benefit of reduced capital gains tax rates, making them unattractive tax-wise for timber-owning businesses.

ESTATE/GIFT ISSUES: Transfer of stock is controlled by corporate statute, limited by any buy-sell agreements that many exist between the shareholders.

Online Resources

- **Association of Professional Family Mediators:** https://apfmnet.org/find-mediator-map/
- **The Aldo Leopold Foundation:** https://www.aldoleopold.org/
- **Charity Navigator:** https://www.charitynavigator.org/
- **Charity Ratings:** https://www.today.com/money/you-give-check-out-charitys-ratings-1D80330057
- **Charity Watch:** https://www.charitywatch.org/home
- **2018 USDA Farm Bill:** https://www.usda.gov/farmbill
- **Find a Virginia Land Trust:** https://vaunitedlandtrusts.org/who-we-are/vault-members/
- **GuideStar:** https://www.guidestar.org/
- **Land Trust Alliance:** https://www.landtrustalliance.org/
- **National Timber Tax:** https://timbertax.org
- **North Carolina Agricultural Mediation Program:** https://www.ncamediation.org/
- **Piedmont Environmental Council:** https://www.pecva.org/
- **Virginia Cooperative Extension:** https://ext.vt.edu
- **Virginia Department of Forestry:** http://dof.virginia.gov
- **Virginia Department of Wildlife Resources:** https://dwr.virginia.gov
- **Virginia's Land Use-Value Assessment Program:** https://aaec.vt.edu/extension/use-value.html
- **Your Land Your Legacy American Tree Farm System Webinar Series:** https://mylandplan.org/content/february-25-creating-overview-your-estate

References and Print Resources

Achenbach, R., G. Bouchard, J.C. Hobbs, C.R. Holcomb, A. Kantrovich, L. Miller, K.Tidgren, G. van der Hoeven. 2019. "Agricultural Tax Issues." Land Grant University Tax Education Foundation. https://taxworkbook.com/about-the-tax-workbook/.

Bentz, C.J., M. Green, R. Irvin, C. Ladgren, C.P. Lynch, M. Sisock, S. Watkins, and B. Withrow-Robinson. 2012. "Ties to the Land: Your Family Forest Heritage. Your Guide to Succession Planning for an Orderly Transition." Corvallis: Oregon State University and Clinton J. Bentz, CPA.

Branan, R.A. 2017. "Planning the Future of Your Farm: A Workbook Supporting Farm Transfer Decisions." Publication No. 446-610. Virginia Cooperative Extension. https://www.pubs.ext.vt.edu/content/dam/pubs_ext_vt_edu/446/446-610/446-610v8.pdf.

Brandeis, T.J., A.J. Hartsell, K.C. Randolph, and C.M. Oswalt. 2016. "Virginia's Forests, 2016." USDA Forest Service Resource Bulletin SRS-223.

Butler, B.J., P.D. Miles and M.H. Hansen. 2020. National Woodland Owner Survey table maker web-application version 2.0. Amherst, MA. U.S. Department of Agriculture, Forest Service, Northern Research Station. https://apps.fs.usda.gov/nwos/tablemaker.jsp.

Butler, B.J., J.H. Hewes, B.J. Dickinson, K. Andrejczyk, S.M. Butler, and M. Markowski-Lindsay. 2016. "Family Forest Owners of the United States, 2013: Findings From the USDA Forest Service's National Woodland Owner Survey." *Journal of Forestry.* 114(6): 638-647. http://dx.doi.org/10.5849/jof.15-099.

Cantazaro, P., J. Raski, and W. Sweetser. "Your Land, Your Legacy. Deciding the Future of Your Land to Meet the Needs of You and Your Family." University of Massachusetts, Amherst.

McEvoy, T.J. 2004. *Positive Impact Forestry: A Sustainable Approach to Managing Woodlands.* Washington, DC: Island Press.

McEvoy, T.J. 2005. *Owning and Managing Forests: A Guide to Legal, Financial, and Practical Matters.* Washington, DC: Island Press.

McEvoy, T.J. 2013. *Planning Family Forests: How to Keep Woodlands Intact and in the Family.* Mount Juliet, TN: Forestry Press, Inc.

Megalos, M., G. van der Hoeven, and C. Lambert. 2016. "Understanding your Timber Basis. Your Timber and Land Basis: What is it? Why is it Important? How is it Calculated?" NC State Extension Eastern Forestry Notes. https://content.ces.ncsu.edu/understanding-your-timber-basis.

Merrill Lynch. 2019. "Life Stage Series: End of Life/Legacy. Leaving a legacy: A lasting gift to loved ones." https://mlaem.fs.ml.com/content/dam/ML/Articles/pdf/ml_LegacyStudy_Final.pdf.

Paul, A. 2011. "The Economic Benefits of Natural Goods and Services." Piedmont Environmental Council. https://www.pecva.org/wp-content/uploads/library/documents/Resources-Publications/Reports/Land-Conservation/2011-the-economic-benefit-of-natural-services-report.pdf.

Rephann, T.J. 2017. "The Economic Impact of Virginia's Agriculture and Forest Industries." Charlottesville: Weldon Cooper Center for Public Service, University of Virginia.

Small, S.J. 1997. *Preserving Family Lands: Book II. More Planning Strategies for the Future.* Cambridge: Landowner Planning Press.

Small, S.J. 1998. *Preserving Family Lands: Book I. Essential Tax Strategies for the Landowner.* Cambridge: Landowner Planning Center.

Spafford, K. 2010. "Farm Journal Legacy Project Workbook." Mexico, MO: Farm Journal Media. https://farmlandinfo.org/publications/farm-legacy-workbook/.

Stein, S.M., R.E. McRoberts, R.J. Alig, M.D. Nelson, D.M. Theobald, M. Eley, M. Dechter, and M. Carr. 2005. "Forests on the Edge. Housing Development on America's Private Forests." USDA Forest Service GTR PNW-GTR-636. https://www.fs.fed.us/openspace/fote/housing.html.

Virginia Department of Forestry. 2019. "2018 State of the Forest. Virginia Department of Forestry." https://rga.lis.virginia.gov/Published/2019/RD6/PDF.

Virginia Department of Forestry. 2019. "2019 State of the Forest. Virginia Department of Forestry." http://www.dof.virginia.gov/infopubs/_sof/SOF-2019_pub.pdf.

Special thanks to the landowners who shared their personal stories for our case studies: Camellia Blackwell-Taffel, John and Norma Epley, Ches Goodall, Charles and Anne Hague, Cecilia Schneider-Vial, and Tommy Terry.

Photographs in this publication are used with permission from the following individuals or organizations: Jim Kuykendall; Taylor Huffman, Shooting Memories Photography; Pryia Jaishanker, Video Media Specialist, BluePearl Veterinary Partners; V.J. Mayor; Cecilia Schneider-Vial; Virginia Cooperative Extension; Virginia Department of Forestry.

Virginia Cooperative Extension programs and employment are open to all, regardless of age, color, disability, gender, gender identity, gender expression, national origin, political affiliation, race, religion, sexual orientation, genetic information, veteran status, or any other basis protected by law. An equal opportunity/affirmative action employer. Issued in furtherance of Cooperative Extension work, Virginia Polytechnic Institute and State University, Virginia State University, and the U.S. Department of Agriculture cooperating. Edwin J. Jones, Director, Virginia Cooperative Extension, Virginia Tech, Blacksburg, VA 24061, United States; M. Ray McKinnie, Administrator, 1890 Extension Program, Virginia State University, Petersburg, VA, United States.

For information, contact Jennifer Gagnon
228 Cheatham Hall 0324
Blacksburg, VA 24061
540-231-6391
jgagnon@vt.edu

ISBN 978-1-949373-30-1
SEPTEMBER 2020