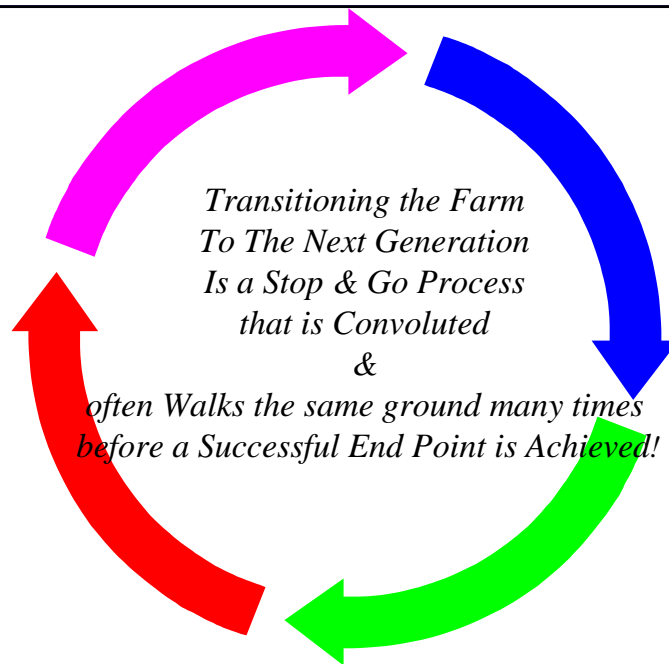


# Transferring Land to the Next Generation

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## Land Transition Planning

- Involves many topics
  - Analysis of the resources & environment
  - Goals
  - Estate planning
  - Tax management

## Operating Environment

- Soils
- Zoning
- Urban pressure

## Inheritance and/or shared wealth management

- Wealth and net worth explained
- “Three generations to shirtsleeves”
- What generation are you in story of wealth creation and depletion?
- Short, medium, and long range planning

## What will happen to the property?

- Outright sale of the property?
- Clear cut the forest and sell the property?
- Manage the woodlot and occasional timber harvest
- Use the property for recreational purposes?

## Is your family ready for the big conversation?

- Taking stock of family unity and shared values
  - What are your family's shared values and traditions?
  - How have previous generation used family resources to perpetuate the shared values?
  - How will existing family resources be used to perpetuate the shared values for future generations?

## Steps a family can take to prepare for open discussion about finances

- Must assess:
  - Family members' goals
    - Older/younger generation, spouses, heirs, etc.
    - Personal goals and business goals
  - Family members' abilities

## Steps a family can take to prepare for open discussion about finances cont.

- Net Worth Statement for older Generation
- Income requirements for older generation
  - Will timber sales and/or sale of the woodlot be needed to fund the older generation' retirement
- Who speaks to whom in your family?

## Holding a Family Meeting

- Who leads the discussion?
- How to get people to speak?
- Rules of civility
- Avoid family secrets
- Ben Cartwright rules of order
  - The “golden rules” for family meetings

## Holding a Family Meeting cont.

- Discussion of fair vs. equal
- Third parties can help or harm the discussion

## Agreement on shared values for future generations

- Makes estate planning and tax management issues easier to address
- Promotes family unity
- Perpetuates family values and traditions

## Wills

- Appoint executor
- Appoint guardian for minor children
- Instructions as to who should get your property (and how)
  - Trust for minor/disabled children
- Estate tax savings
  - Trust

## Will Formalities

- Dated
- Signed at the logical end by the testator and at least 2 witnesses in the same room in the presence of each other
- Attorney written wills include self-proving affidavit

## Holographic Wills

- Dated
- Signed at the logical end by the testator
- ENTIRELY in the testator's handwriting (WATCH OUT for form wills)
- Create lots of work for attorneys

## Effect of Will

- Will has no legal effect until death of testator (Will and power of attorney fit together perfectly)
- Can change your will at any time- best to have a new will written
- If you are incompetent, can't change or revoke will

## What if I die without a will?

- State decides who gets property
- In Virginia, surviving spouse gets 100% unless there are surviving children of the testator who are not also children of the surviving spouse
- If surviving children not of surviving spouse: 1/3 to surviving spouse; 2/3 to ALL surviving children

## What if spouse does not survive?

- Children
- Parents
- Brothers and Sisters

## Rights of Surviving Children

- Children have no right to inherit from their parents
- Three exceptions:
  - fraud
  - undue influence
  - incompetence of parent

## Rights of Surviving Spouses

- Property passed to the surviving spouse is not subject to estate tax regardless of the size of the estate

## Gifting

- \$1 million dollar lifetime gifting exemption
- In addition, \$12,000/year/donee exception
- Carryover basis
- Reduces amount in estate
- Minority and lack of marketability discounts

## What Gifting Can Do

- Up to \$12,000 can be given, gift tax free, per year per donee.
- Up to \$24,000 can be given by husband and wife jointly, gift tax free.  
(Indexed since 2000)  
2009 - \$13,000 per year per donee
- Gifts can be used to:
  - reduce taxable estate
  - provide equitable treatment of heirs
  - provide timely assistance to heirs
  - balance estates of the two spouses
  - provide security for surviving spouse
  - transfer income to another taxpayer

## Estate Tax Thresholds 2009 through 2010

- 2009
  - Estates less than \$3,500,000 are not subject to estate tax
  - Estate can be transferred tax free from one spouse regardless of size
- 2010 Estate taxes repealed
- The new Congress may change estate tax rules
  - maintain contact with your lawyer regarding how these changes may impact your estate planning

## Trusts

- Legal instrument into which you place property that you own (transfer title of property)
- Legal arrangement where one party (trustee) holds legal title of property for the benefit of another (beneficiary)
- Trust is created when another party (settlor or grantor) gives money or property to the trustee
- Intervivos or testamentary

## Trust cont.

- Inter vivos
  - Made when a person is alive
  - Property transfer made when the person is alive (can be revocable or irrevocable)
- Testamentary
  - Trust contained In your will, into which property is placed when you die by the direction of your will (can only be irrevocable)

## Reasons for creating a trust

- Remove property from your gross estate (for tax purposes) and/or
- Manage the property for the benefit who can't manage (e.g. children, special needs individuals, people who can't agree – family members)

## Revocable vs. irrevocable trusts

- Revocable: may be changed or ended by the trustor at any time
- Irrevocable: grantor relinquishes all control and power over the trust assets
- Assets of a revocable trust are included in the grantor's taxable estate

## Benefits of trusts

- Avoids probate (since probate tax is so low in Virginia, not really a benefit)
- Private
- Can provide for individuals with special needs, persons who can't manage money, or for minors
- Very flexible
- Allow spouse to receive income while keeping property out of spouse's estate
- Management expertise

## Realities of living trusts

- Do NOT reduce estate taxes (unless irrevocable, then may be taxable gift)
- Avoidance of probate in Virginia is not a big deal- cost of forming and administering trust is greater than probate tax
- Do NOT protect assets from creditors
- Watch out for the snake oil salesmen!

## Limited Liabilities Companies

- Property transferred into a business entity
- Transfer assets between business members as an estate planning tool
- May shield owners from personal liability in the event of lawsuits
- Allows for multiple owners to have different equity levels in the business
- Can be set up so that one equity owner may have management control of the business
- Fair vs. equal – allows multiple owners to share in the appreciation of business assets e.g. real estate

## Limited Liabilities Companies cont.

- Owners must have the skills necessary to operate the business
- Regular meetings must be held. Minutes must be taken to document the meetings
- **Must be run as a business!**

## Zones of Estate Taxes 2006-2008

(For Ma & Pa)

- Zone 1: < \$2,000,000
  - no estate taxes
- Zone 2: \$2,000,000 - \$4,000,000
  - no estate taxes with some planning
- Zone 3: > \$5,000,000
  - need serious planning

*With planning, an estate of up to \$10,000,000 can be passed with NO estate taxes.*

## Tools to Minimize Estate Taxes



- Minority Interest in Closely Held Business
- Special Use Valuation
- Gifts During Lifetime
- Marital Deduction
- Credit Shelter Trust
- Conservation Easements
- Installment Sales

## Property Transfer considerations

- Who wants to own the property?
  - Does the next generation want to maintain roots in the area?
- Do you want the next generation to own the property?
- Financial management capabilities of the next generation?
- Location
  - Urban encroachment ?

## Is the Property Worth Transferring?

- If “Yes”, plan accordingly
  - Communicate early and often
  - Clearly lay out managerial responsibilities
  - Develop a transition “timeframe”
    - Ownership and management responsibilities
  - Communicate regularly!!
  - Estate planning (Attorney)
  - Put the plans in writing – business plan
  - Communicate, communicate, communicate

## Resources

- Preserving Family Lands:  
<http://www.preservingfamilylands.com/bks/index.html>
- Owning and Managing Forests: A Guide to Legal, Financial, and Practical Matters:  
[http://www.islandpress.com/bookstore/details.php?prod\\_id=174](http://www.islandpress.com/bookstore/details.php?prod_id=174)

Questions?