

Northwest Woodlands

A Publication of the Oregon Small Woodlands, Washington Farm Forestry, Idaho Forest Owners & Montana Forest Owners Associations

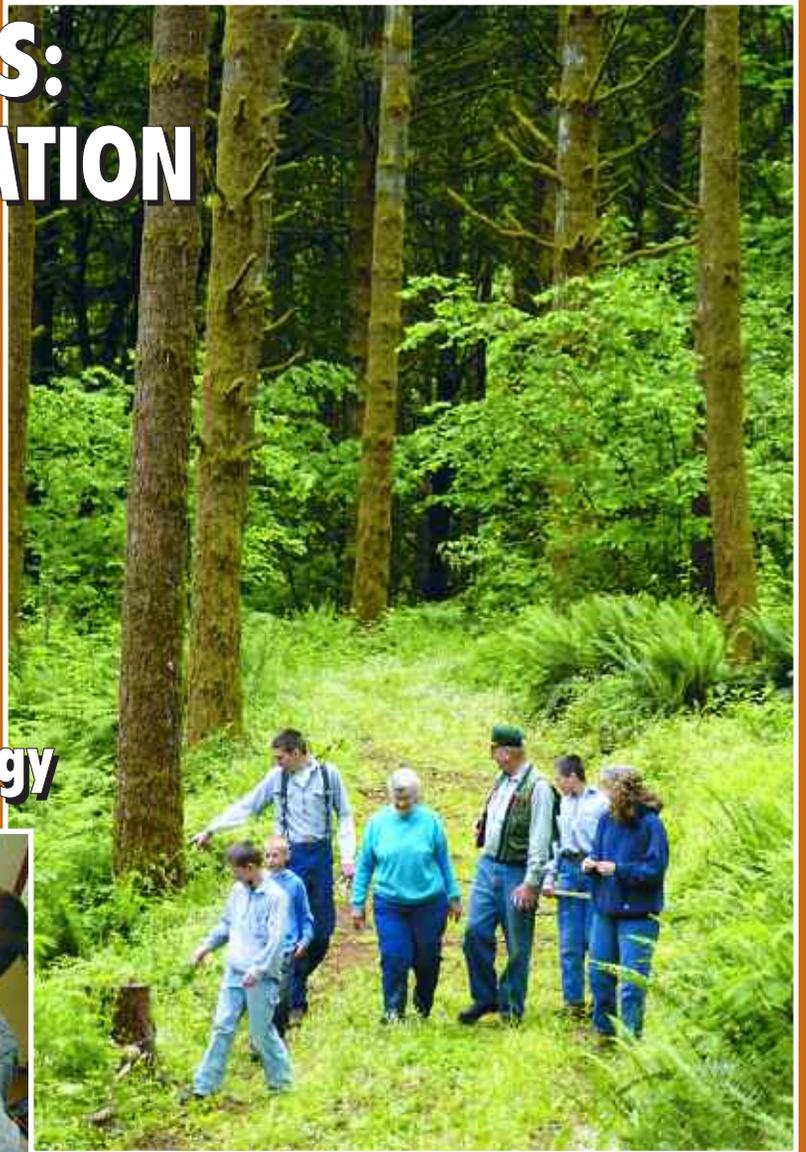
OUR WOODLANDS: THE NEXT GENERATION

Your Land, Your Legacy

Generational Influences

**Estate Planning in
Today's Economy**

**Google Earth:
Next-generation Technology**



**NEXT ISSUE . . .
Planting**

**This magazine is a benefit of membership in
your family forestry association**

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Whether looking for wildlife or identifying plant species, taking the entire family for a walk in the forest can build interest in the family property and be a fun time for all.

Inset: Regular family meetings are at the heart of any successful family business and are the meat and potatoes of a successful family transition plan.

Photos courtesy of Dennis Wolverton

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Your Land, Your Legacy

By **MARY SISOCK**

Most of us know the importance of planning for the distribution of our possessions when we're gone, yet many don't get around to it. More than half of Americans don't have a will. Failing to plan often has serious consequences. Time, money, family unity and family heritage can all be lost. When there is no estate plan, heirs need to make financial and legal decisions while dealing with an emotional loss. This is a very stressful burden. These outcomes are not what most of us want, yet many of us procrastinate. We hope there will be time in the future to tend to it. But hope is no substitute for a plan. Planning for the future of your land can provide current and future tax benefits, address current and future generations' financial needs, provide continuity of management, preserve family heritage, and reduce the risk of conflict over your estate. Planning increases the likelihood that your wishes and goals will be realized. Some people use uncertainty as a reason for waiting to plan. It's true that everything changes, but with careful planning you will have strategies in place to address evolving circumstances and needs.

To plan or not to plan: That is not the question

At this point, some of you may be thinking, "I don't have much; do I even need a plan?" The answer is a resounding "yes." If you die without a written plan, your assets will be distributed according to the law



rather than your wishes. Thus, the real question is, "What kind of plan do I need?" Since situations vary widely, there is no standard one-size-fits-all template. That is why it is important that you work with an estate planning professional. During this process, you can save time and money, and ensure that you get the outcome you want by understanding your choices and being clear about your goals.

Estate vs. Succession Planning

An *estate plan* provides for the distribution of your possessions after your death in a manner that prevents legal and financial complications and minimizes estate taxes. A *succession plan* goes one step further by adding strategies for creating a multi-generational legacy. A succession plan is a way to bequeath values and vision, as well as possessions. Succession planning is long-term planning. It involves creating a structure that will be strong and flexible enough to last 60 to 100 years—a structure that can



Keeping good records and photographs as part of a management plan are keys to a successful transfer of management to the next generation.

PHOTO COURTESY OF DENNIS WOLVERTON

evolve to meet the unforeseen circumstances and needs of future generations. Estate plan or succession plan, how do you choose? If you just want to distribute your assets according to your wishes with minimum taxes, then an estate plan will meet your needs. If, however, you want to leave a legacy for future generations, then you need a succession plan.

Moving from good intentions to a realistic plan

Step 1: Creating a Vision—Yours and Ours

Like all large tasks, it is best to break planning down into a series of smaller steps. The first step is to be clear about your values and goals. Ask yourself: In a perfect world, what vision would your legacy fulfill? For now, envision your ideal future. There will be plenty of opportunity to incorporate practicality and feedback from others later. The clarity you create now will help you keep your legacy congruent with your values and beliefs as you consult with your heirs and your advisors later in the planning process. Your vision may have multiple parts. For example, you may want to retain financial control while you are alive,



Don't miss opportunities to teach skills to your children and grandchildren. Here future tree farmers examine the health of a young tree.

PHOTO COURTESY OF DENNIS WOLVERTON

have the land remain in family ownership, and have income from the land used to fund heirs' education. Which parts of your vision are most important to you? Rate each component of your vision as very important, important or less important. Once you are clear about what you want to achieve, write it down. Next, set a date for completing your plan. Thirty months is a reasonable target. Depending on the complexity of your situation, it may take you more or less time, but setting deadlines will help keep the process moving.

Next, you want to create a shared vision. Successful multi-generational legacies are created when partners and heirs share the vision for the legacy. This shared vision is most likely to be achieved when others are engaged early in the planning process. If you approach this phase properly, you will find yourself doing a lot of careful listening. The conversation about "our" legacy should begin with your spouse and anyone else who shares ownership of the property. Tell them what you are working on and ask whether they are willing to work on it with you. They should answer the same questions you did. What would their ideal future look like? What is important to them? Ask them to put their thoughts in writing, and compare their answers to yours. Where is there overlap? Where are differences that need to be worked out? When you find points that require negotiation, decide how to proceed. You may say, "What you want is not what I'd prefer, but I can live with it," or "I'm not ready to make a decision, so let's revisit this in the future (set date)," or "That part of my vision is very important to me; can we work on finding a creative way to both get what we need?" Write down your joint vision.

Ask your heirs to join the conversation. It is not uncommon for heirs to be uncomfortable discussing their thoughts about what should happen after you die. They might say, "You

should do whatever you want." Assure your heirs that you will do what you want, but that you are interested in their input and perspective. What are their hopes, needs and goals for the future? How important is it to them that the property stay in the family? What concerns would they have if they were to inherit the property either in part or jointly with the other heirs? You can have this conversation with each heir individually or start with a family meeting. Whatever you do, don't talk to one heir without talking to all of them. If these conversations make

you uncomfortable, you may want to consider bringing in a neutral party to facilitate. A facilitator's job is to help two or more people get from point A to point B as smoothly as possible.

Undoubtedly, reaching a shared vision will be challenging and may take a while. Why bother involving others now, rather than letting the heirs sort it out after you are gone? According to Lee Hausner and Doug Freeman, experts in multi-generational planning who have helped many families establish legacies, suc-

—Continued on next page—

Tips for Finding Succession Planning Advisors

By Mary Sisock and Clint Bentz

You will need the help of one or more competent professional advisors to create a plan that will support your vision for the future. Ideally, you and your advisors will all meet together at least once to gather critical input and establish communication lines. By working as a team, your advisors can watch out for unexpected consequences of their recommendations. Your team may include an estate planning attorney, Certified Public Accountant, financial planner/life insurance advisor, forester and facilitator to help with family communication or conflict resolution needs.

1. Ask others for referrals. Friends, neighbors, your forester, other advisors—all of these people may be able to provide names of people who you can then interview.

2. Look for someone who has experience working with multi-generational family businesses.

3. Look for someone who devotes a large percentage of their practice to the area of expertise you need.

4. Look for someone who comes from a family farm or forestry background. This is not essential, but it certainly helps when your advisor can understand the complex emotions involved in planning for a land legacy.

5. Look for someone who not only asks about your goals, but also is interested in learning about the rest of the family.

6. Look for someone who has a history of collaborating with advisors in other areas of expertise.

7. Look for someone who is willing to advise you without consideration of their own personal status or financial consideration. Status issues can arise if advisors are unwilling to refer you to others when needed or when they always want to be the individual driving your advisory team process. Financial conflicts of interest arise when your advisor sells products such as insurance policies as well as offer services.

8. Look for someone who is a good listener and can communicate effectively.

9. Look for someone who you can trust and be comfortable with because you need to be honest and candid with your advisors.

10. Look for someone who will clearly tell you and put in writing how they will be compensated.

CLINT BENTZ is a CPA living in Oregon with his wife and six children. His practice is centered on helping family forest owners deal with intergenerational succession issues. He is the principal author of "Ties to the Land: Your Family Forest Heritage." Clint's family was recognized as the 2002 National Outstanding Tree Farmers of the Year. He is chair of the American Forest Foundation's Board of Trustees. He can be reached at 503-769-2186 or cbentz@bcslc.com. **MARY SISOCK** is the director of the Ties to the Land Initiative.

The Next Generation



Jim Le Tourneau and his son Matthew spent the summer working on the family's Tripletree LLC property in Sheridan, Ore. Matthew just returned to Oregon having been away for military service and college the past 10 years. He is now 28 years old and his interest in the timber farm is greater than it has been while growing up on the farm. Jim said, "I enjoyed his help and company while working together and it was nice to have some young legs help pull line, set chokers, bump knots and buck logs—I fall the timber and ride on the dozer."

According to Jim, both Matthew, who is enrolled at Portland State University to continue his education in elementary education, and his brother, Alan, 30, who works for UPS, seem to have more interest in the farm now than at any other time. However, ruminates Jim, "The hard work for often little reward financially is daunting, unless you have an obsession for silviculture like me."

Successful legacy families are connected to their heritage, have positive family relationships, and communicate effectively, for generations.

Step 2: Ownership

Once you have arrived at a shared vision, you and your heirs can identify an ownership structure that best supports your vision (see the matrix on page 12 that explains the different forms of ownership). If you have not already done so, begin addressing legacy business in regular family meetings. When creating a legacy, more than one heir means shared assets. How will those assets be shared? A good estate planning advisor excels in facilitating these decisions. There is no one best ownership structure, so there are some questions you will want to consider before talking with your advisor:

- Who will be allowed to own the property? Blood relatives only? Will spouses be included? What are the consequences of excluding them? Of including them?
- When will ownership be transferred? Prior to your death? After? Some now, some later?
- Are assets ever allowed to pass to non-family members? What about step or adopted children?

Some questions to discuss with your advisor are:

- How will ownership be transferred?
- What are the owners' liabilities under different ownership arrangements?
- What are the consequences of divorce, or death and remarriage?
- What are the tax implications of different ownership arrangements for you and your heirs?

Step 3: Governance

You and your heirs will need to establish a process for making decisions regarding the legacy. The individual or group in charge will make decisions on how taxes get paid, who gets to use the property, how income from the property gets dis-

bursed, and when maintenance and renovation occurs, for example. The questions you need to answer when forming the governance structure include: How will decisions be made? Who gets to be involved in making the decisions? By what process will the individual(s) be chosen? How long will they serve?

It is advisable to put a process in place for handling deadlocks. Also consider if the system you have chosen will work as well in the future when the number of your descendants with rights in the legacy has increased. Your estate planning advisor can inform you of the legal considerations and long-term ramifications of different decision-making processes. Finally, good governance involves a process for dispute resolution that is considered fair and binding by all the parties involved.

Step 4: Management

If your land is actively being managed, and will continue to be managed, someone needs to be in charge of day-to-day decisions. The governing body should not, and generally cannot, meet for every decision that needs to be made. This is the manager's job. Sometimes one of your heirs will be interested in assuming this role. As with every other step, there are questions to consider. Does the interested party have the knowledge and skills to do the job? If not, are they willing to learn? Is there more than one interested party? If so, are they willing to work together? Will vesting authority in one heir lead to jealousy and resentment among the others? When does the manager need to consult with the governing body before acting? Will the other heirs trust the manager? Whoever assumes the management role should be paid at market rates for their work. Sometimes heirs want ownership to stay in the family but are unable or uninterested in assuming responsibility for the management. In this case, hiring a

professional manager may be an option.

Step 5: Finances

For most people, taxes are the primary financial consideration in succession planning. Competent advisors will help you understand the fiscal implications of asset distribution. There are, however, other important financial issues that should be considered. Do your heirs have the financial skills to competently implement your legacy? How will the maintenance and management of the property be funded? How can exposure to financial risk (liability, creditors, divorce settlements) be minimized? Will there be provisions for buy-out from the legacy? To develop the financial component of your succession plan you may need to consult with a range of professional advisors such as financial planners, tax and legal advisors, and consulting foresters. Minimizing risk and taxes is important, but the financial components of your plan should be vision driven not tax driven.

Don't Wait

You now have a map for your succession planning journey. Don't wait to get started. There are countless tragic stories about what happened when a landowner didn't plan—income from harvests going to the government rather than a grandchild's college fund, siblings in court for years as they fight for what they believe should have been theirs, century farms lost to the heirs because of death or divorce. Don't let the phrase "if only..." be your legacy. ■

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Tips for Involving the Next Generation

It's never too soon or too late to help your family develop ties to the lands.

Encourage exploring

Youth are naturally curious. Help them discover the diversity and wonder of being in the woods. Teach them how to find their way using a compass. Spend time turning over rocks or looking for signs of bird and animal presence. The possibilities truly are endless.

Unsupervised play

The idea of letting kids disappear on their own for hours at a time can raise all kinds of fears for parents. Sure, there are risks and you certainly want children to be aware of, and prepared for, real dangerous situations. But letting kids play and explore in the natural world has proven psychological and cognitive benefits.

Share your knowledge

The very young are like sponges when it comes to soaking up knowledge. Keep it casual and fun and they will be delighted to learn from you. As we get a bit older, certainly by the time we are teenagers, we have developed interest areas. Respect the uniqueness of older children and heirs by letting them know you'd like to share something with them and asking if they would like to learn about it.

Collect wild food together and prepare a dish

While hunting, fishing and gathering food together we create place specific memories that are an important part of ties to the land.

Treasure hunts

This can be fun for all ages. Set up your own treasure hunt with maps, clues and hidden treasure. Geocaching combines the ancient past time of treasure hunting with modern technology—GPS devices. For more information, go to www.geocaching.com.

Share stories

The simple act of sharing stories about our experiences on the land can create a sense of increased connection to our heritage, our families and the land. Tell your stories and ask others to share their experiences.

Share photos

If your heir has spent time on the land ask them to take photos of their favorite spots and talk about why that place is important to them.

Encourage diverse activities

Not everyone has the same interests. It is unlikely that all of your heirs will be interested in the activities you engage in on the property. Encourage others to use the land to participate in activities that interest them. For example, you may construct a rustic artist's retreat where people could go to write or draw. It is especially helpful if your heirs participate in creating the areas that they will use.

Invite participation in decision making

Participation in decision making is important. People are more supportive of decisions they have been involved in making. It is also a tremendous opportunity for individuals to learn about what is involved in managing and owning the property.

Invite participation in management

You can help your heirs develop management capabilities by inviting them to make meaningful contributions to the management of the property. Making meaningful contributions also means the risk of making meaningful mistakes. It is hard to stand back and watch others make a mistake. Learning, however, involves making mistakes. Remember, mistakes are usually outweighed by the opportunity to develop the skills and confidence. Hopefully, by the time your heirs assume all of the management responsibilities they will have developed the experience and judgment to avoid catastrophic mistakes.

Share ownership

There is nothing like ownership to really get people invested. Forming a corporation allows for the gradual transfer of ownership through the use of stocks without giving up control. You can invest young heirs with 'ownership' rights by giving them permission to make decisions about the management of a small plot of land.

Forms of Ownership

Ownership Type	What it is	Taxation	Pros	Cons	Estate & Gift Issues
Sole Proprietorship/ Sole Ownership	<p>A business of one—the owner is the company. It is the most common structure for small family businesses.</p>	<p>The income and losses of the business are reported directly on the owner's tax return.</p>	<p>It's simple. Start-up costs are low, accounting is easy, taxes are relatively simple and quick to prepare, and one person makes the decisions. No written documents describing the organization or management of the company are required.</p>	<p>Personal assets are regarded as business assets, so the owner is not protected against liability. Because one person owns the business, it can be difficult to pass it on to a successor. The business ends when the owner dies; land passes outright to successor owners named on the deed or in owner's will.</p>	<p>The value of the business or land is the fair value of the assets at the date of death. It is not possible to transfer ownership prior to death because of the one-owner requirement.</p>
General Partnership/ Joint Ownership/ Tenants in Common	<p>More than one individual owns the business, and each partner is individually financially liable for the debts of the business. A general partnership may be oral or written. Joint tenancy (husband and wife) or tenancy in common in land operated as a business creates a general partnership among the joint tenants.</p>	<p>The partnership pays no tax, but it files a tax return to report the income or loss of the business. The partners report their respective share of the partnership income on their individual tax returns. Owners/partners are not considered employees, and thus pay no payroll tax reporting is required for owner salaries. If the only partners are husband and wife, they may be able to file a joint schedule on their individual tax returns in lieu of a partnership return.</p>	<p>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.</p>	<p>Partners share liability and thus responsibility for one another's actions. Potential for disagreement and hence conflict is greater than in a sole proprietorship. General partners 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 value of the property at any time, and force the sale of the property to get their value out (a partition action). This creates an unstable and unpredictable situation for the property and the remaining owners.</p>	<p>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 or her cash out of the business or file a partition action.</p>
Family Limited Partnership (FLP)	<p>A partnership made up of family members. One or more general partners have personal liability for the debts of 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 no liability for the debts of the partnership.</p>	<p>Same as general partnership.</p>	<p>A widely used form of business for family businesses, farms and forests because it allows the general partners (generally Mom and Dad) to begin sharing ownership of the property with their children while retaining control of the property, and to create an ongoing management structure.</p>	<p>General partners have general 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.</p>	<p>Both the general and limited partnerships interests are easily transferred. Buy-sell provisions written into the agreement control how these transfers are made and what restrictions exist on transfer, including how interests are to be valued. The value of the partner's interests is based on the assets and cash flow of the business, reduced by any restrictive provisions in the agreement.</p>

Ownership Type	What it is	Taxation	Pros	Cons	Estate & Gift Issues
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.	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).	Corporate level taxes, while variable, may be lower than those for sole proprietorship 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.	Corporations are creatures of statute and thus offer limited flexibility for drafting the special provisions required for intergenerational planning. The only way to get money out of a C corporation is through salaries and dividends, creating double tax burdens for family ownerships. Appreciation on property is taxed the same as in S corporations 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.	Transfer of stock is controlled by corporate statute, limited by any buy-sell agreements that may exist between the shareholders. There are exceptions to the liability protection offered by FLPs, LLCs and corporations. When an owner personally guarantees the debt of the business, is personally negligent for harm caused, or fails to respect the rules requiring separation between personal and business affairs, the liability protection does not apply.
S-Corporation	An IRS designation for small corporations that allows taxation similar to that of a partnership or sole proprietorship, but provides corporate liability protection to all shareholders.	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 shareholder salaries. "Reasonable" salaries are required to be paid to all shareholders working in the business.	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.	Only one class of stock is permitted. The form, language and structure of corporations are defined by state law, giving owners little flexibility in drafting the agreements. Distributions to owners are required to be exactly equal. An S corporation requires annual corporate meetings with minutes. Full payroll tax reporting is required for all owners/employees. All appreciation in the value of assets, including land, is taxed if land is transferred out of the corporation if the corporation is dissolved. This makes S corporations (and C corporations) unsuitable for owning and holding real estate.	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 allowed to corporate shareholders.
Limited Liability Company (LLC)	A relatively new business structure combining the best features of corporations and partnerships. Owners are called members.	Same as general partnership.	All members of an LLC have the liability protection of a corporation, but are taxed as a partnership. 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 roles as the general partner of an FLP, 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 of ownership and transfer of land between the generations because of its flexibility and liability protection.	LLCs are relatively new, and the laws governing their creation vary from state to state. Many planners are unfamiliar with this structure and how to use it effectively for multi-generational planning. 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, in which only the general partner has to guarantee the debt, may be the better choice.	Same as FLPs.