



ESTATE PLANNING FOR OWNING AND PASSING LAND

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WHY PLAN?

- Old Model
 - Hold land until you die, then divide in “equal” shares among your children or other heirs
 - Multi-generational farming/timber management
- Today’s Model
 - Less than 10% of the generation raised on the farmland return to the farm
 - Senior generation is seeking slow-down or retirement, but may still rely on farm income

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The High Cost of Dying Unprepared

Do you have an estate plan? YES, everyone does.

EITHER:

(1) You exercise your right to specify how your assets pass at death and you take steps during your lifetime to start the transition process

OR

(2) The Commonwealth of Virginia has a plan for you.

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What Happens to My Virginia Property if I Die Without a Will?

The Virginia legislature has implemented default rules that apply if you die intestate:

1. Unmarried, no children: Assets go to your parents. If no parents, assets go to your siblings.
2. Unmarried, children: Assets go to your children.
3. Married**, no children: Assets go to your spouse.
4. Married**, all children are also children of your spouse: All assets go to your spouse.
5. Married**, at least one child is not also a child of your spouse: 1/3 to spouse, and 2/3 divided among children.

**Until there is an official divorce decree, you are still considered married.

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Additional costs if no estate planning

- Probate and administration expenses
- Personal administrator required to obtain a surety bond (insurance)
- If timber or farm assets must be untimely sold to pay taxes and/or administrative expenses or to retire debt, the assets are reduced or depleted

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Estate Planning Issues Specific to Landowners

- Illiquidity of land and timber assets
- Irregularity of income
- Need for non-interruptive management
- When properly formed and administered, LLCs provide limited liability to shield owners against liability for the LLC debts/judgments

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Specific Estate Planning Objectives

- Priority: Pre and Post retirement income
- Limited liability
- Security for family members
- Fair/equitable treatment of children or other heirs
- Continuity of the Forest
- Minimize tax and transfer costs
- Flexibility and Durability

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What is a Will?

- A legal document in which you specify:
 - Who receives your assets when you die.
 - Who you wish to look after your minor children.
 - Who will be charged with the responsibility of administering your estate.
 - Who will be charged with administering any trusts.

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Why Execute a Will?

CONTROL

- You determine who will receive your assets.
- You name the executor to settle your estate.
- You choose whether to compensate the executor and whether to waive surety on executor's bond.
- You name a guardian for minor children.

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What Assets Does a Will Control?

- Assets titled in your name alone (that do not pass by survivorship or beneficiary designation) including bank accounts, stocks, bonds, real estate, and tangible personal property.
- Assets owned by others where you or your estate are named beneficiaries, which may include insurance and retirement accounts.

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What Assets Are NOT Controlled By a Will?

- Assets titled jointly with someone else, which may include bank accounts, real estate, etc.: TOD, POD, survivorship, tenants by the entirety
- Assets having a completed beneficiary form naming a third party as the beneficiary, which may include insurance, retirement plans, and IRAs.

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Selecting an Executor

- The person who carries out the instructions in your will is your Executor.
- This is not an honorary role. There are many financial and administrative tasks involved with being Executor.
- The person you select as executor should be trustworthy and responsible, with good business sense, which may include your spouse or a child.
- Your executor will be able to hire professional advisors (accountants, lawyers, financial advisors) if necessary to assist in the administration of your estate.

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Duties of Your Executor

- Gather and secure your assets.
- Title your assets in the name of your estate.
- Make reports to the Clerk of Court and Commissioner of Accounts.
- Pay your debts.
- Prepare and file tax returns and pay taxes for you and your estate, if necessary.
- Defend your estate against any lawsuits or other difficulties.
- Distribute your assets as you direct in your will.

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Selecting a Guardian

- If your children are minors at the time of your death, the courts require that a guardian be appointed.
- If the natural parent of your children survives you, that parent will likely be guardian of your children.
- If the natural parent of your children does not survive you, then someone must be appointed to care for your children.

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Revocable (Living) Trusts

- A trust agreement established by you
- Easy to amend or even revoke
- You can serve as your own Trustee and retain total control
- For tax purposes, considered a disregarded entity during your lifetime. No need for separate tax ID or returns during your lifetime.
- Not recorded at death like a will
- Probate avoidance for assets properly titled in your revocable trust at death

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If I establish a revocable trust, do I still need a will?

- Still need a will in case any assets were not held in trust at death
- "Pour over" will
- Executor may need to be appointed even if no assets to probate

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Key Provisions of Revocable Trust

- Decide how and when spouse and/or children (or other heirs) inherit assets
- Assets can be held in trust for children's lifetimes: creditor/divorce protection & potential removal from estate/GST tax in future generations
- Provisions for when and how forest assets are to be managed/sold
- Revocable – easy to change/revoke

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Selecting a Trustee

- The Trustee is the person who will manage any assets held in trust for your spouse or children or other descendants.
- Like your Executor, your Trustee should be a trustworthy, responsible person with good business sense, which may include your spouse or an adult child. They should have the ability to carry out financial and administrative tasks.
- The Trustee and Executor may be one person serving alone, or two people serving together.
- While an Executor's role will terminate within 1-2 years, a Trustee's role may continue for a long period of time (esp. if there are very young children).

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Legal Documents That Benefit You During Your Lifetime

- Power of Attorney
- Advanced Medical Directive

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What is a Power of Attorney?

- A legal document which enables someone else to conduct your financial affairs.
- This document is intended to be used in case you become incapacitated and unable to handle your own financial affairs for a period of time.
- If you do not name someone in advance, the Court will appoint someone to conduct your financial affairs for you.
- The Power of Attorney terminates on your death.

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Selecting a Power of Attorney

- Must be very careful.
- By definition, you will not have the capacity to supervise your agent.
- Better than the alternative of having a conservator appointed by court.
- "Live" versus "Springing" POA

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What is an Advance Medical Directive?

- A document in which you appoint someone to make decisions about your health care when you are unable to do so.
- Often it is used to refuse or consent to life-sustaining procedures, but there are other decisions which may be necessary.

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Selecting an Agent

- This is an individual who should be familiar with your personal wishes.
- Your agent is not a medical doctor.
- Your agent will act as your advocate in dealing with health care problems.

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Structure of your Land

- One of the most important issues to be address is the organizational structure of your property.
- Ideally, your forestland should be operated as a separate, legal entity with "limited liability"
- Many landowners operate as a sole proprietorship or state law partnership
 - Neither of these provide liability limitations
 - Establishing and maintaining a forest business that affords limited liability is a foundation for succession planning
 - Liability insurance policy often isn't enough

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Limited Liability Company (LLC)

- Created under state law.
- Assets (land/equipment) can be transferred to the entity, thus providing limited liability for the members/owners
- Multiple LLCs may be appropriate (one for equipment and one for the land)
- When properly formed and administered, LLCs provide limited liability to shield owners against liability for the LLC debts/judgments

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LLCs

- Operating Agreement is the controlling document and can be amended/updated
- Members (similar to stockholders)
- Managers (control day to day operations)

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LLCs

- Ability to restrict who can be future members (only descendants is common)
- Transfer land, liquid assets and take back membership interests
- Cannot include primary residence (survey to "carve out")
- Buy out provisions (e.g. 10 years, low interest note)

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LLC versus Revocable Trust to hold farmland

- LLC:
 - Ability to gift assets to next generation during your lifetime
 - Discount planning for wealth transfer
 - Ability to separate management/control from equity
 - Flexibility for future generations to change terms of Operating Agreement

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LLC versus Revocable Trust to hold forest land

- Revocable Trust:
 - Becomes irrevocable at death
 - GST/estate tax benefits at death
 - In many circumstances, an LLC and a Revocable Trust (to hold your LLC interest and thus avoid probate and obtain tax advantages) are both implemented
 - If homeplace cannot be surveyed off, revocable trust better option

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LLC or Revocable Trust

- Also consider income tax consequences and deductions (e.g. is a conservation easement being considered)

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Questions?

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