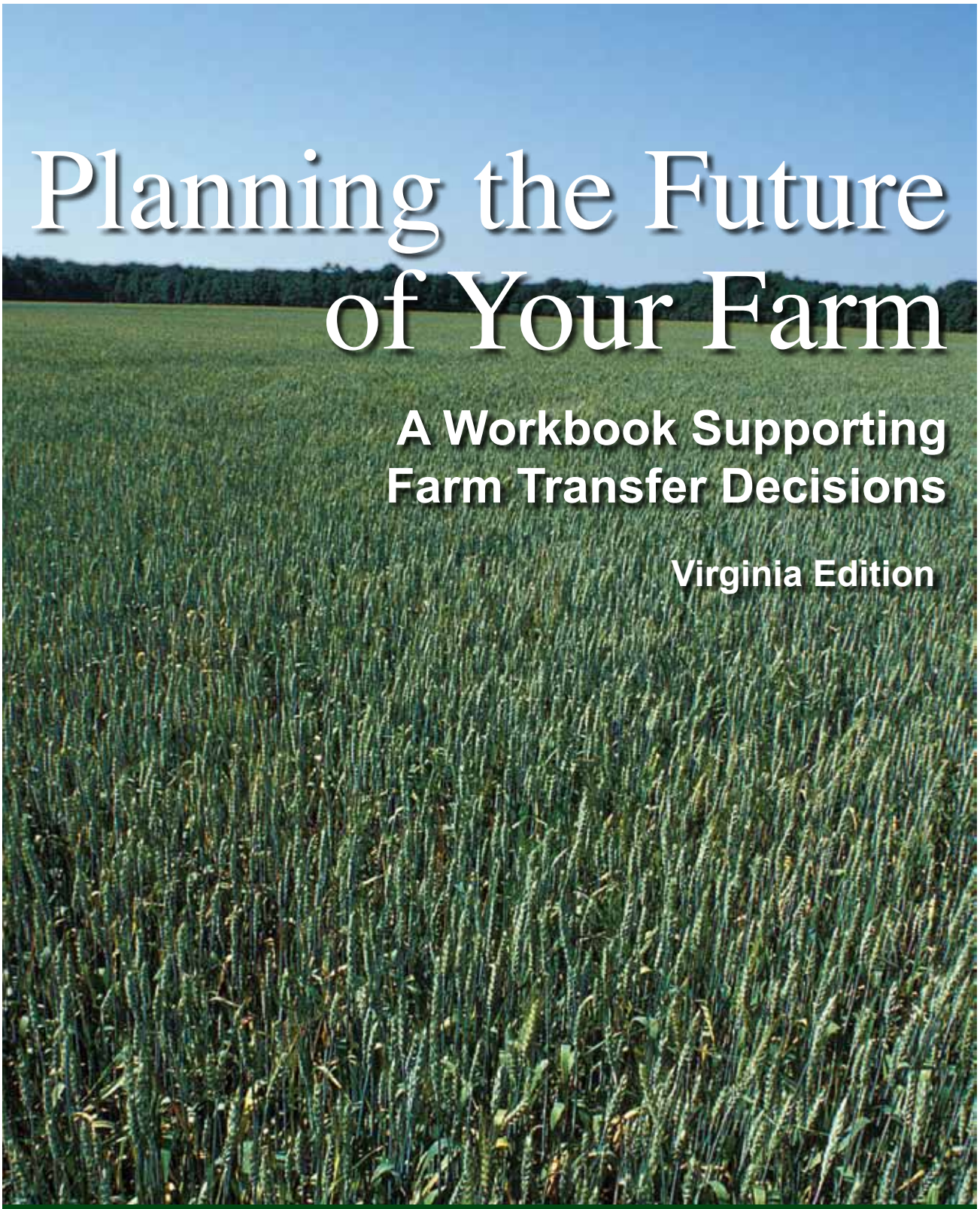

Planning the Future of Your Farm

A Workbook Supporting Farm Transfer Decisions

Virginia Edition

Created and edited by Robert Andrew Branan, Attorney

Virginia Cooperative Extension

VirginiaTech
Invent the Future

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VIRGINIA STATE

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About The Virginia Edition

This workbook is an adaptation and update of earlier editions published in North Carolina in 2006 and 2009 for the families that own farm, forest and horticultural land. It is specifically for those who *want* to find a way to keep their farm in production and/or in the family as it passes to the next generation, and are willing to commit the work necessary to achieve that goal.

For many landowners, their farm is or has been their business. For many, it is also a home, security, and a mix of tangibles and intangibles that will affect decisions about what to do with this land. This workbook was developed to help families harness these tangibles and intangibles into an orderly and productive process of planning. Hopefully, this process will produce the legal tools necessary to manage the risks of farm transfer.

Like the farm transfer process itself, the development of the *Planning the Future of Your Farm* workbook has been a continuing project. The workbook is built from materials first used in an education campaign - begun in 2004 in Virginia and North Carolina - meant to help aging farmers and landowners understand farm succession principles. This campaign was extended into South Carolina in 2006, and to Georgia in 2010.

One key question stands out everywhere: Who will farm the land?

The earliest workshop agendas of this education campaign focused squarely on transferring a family farm business. However, it became apparent that many workshop participants were winding down an existing farm business, and didn't have someone in their family who would farm the ground after they stepped back. The emphasis expanded to encompass non-farming landowners, ultimately responsible for making available the resources -- mostly land and water -- needed for farming.

Many questions asked in these workshops focused on specific tax and legal issues of estate planning, others about farm production and conservation income options, still others about the roles of and whom to trust as a professional adviser. Most often, these are all bundled together, with different emphasis depending on the generation asking the question. Every farm and land owning family faces unique circumstances when it comes to making decisions on the future of their farm assets.

Though the materials in this workbook were largely developed in North Carolina and Virginia, the issues families face - and the laws that govern those decisions - are largely similar throughout the Southeast. This edition benefits from more hours of sitting at the farm kitchen table, helping families make sense of the seemingly overwhelming array of issues — retirement, health care, taxes, family harmony — surrounding a desire to "keep the farm in the family" while being *fair* to the family. Through my education work in the field (and now as a practicing attorney), I have learned from families which parts of the workbook needed improvement and what materials - based on frequency of questions - should be added to this edition.

But one question stands out everywhere, persistent and perplexing: Who will farm the land? This workbook has evolved to help address this question for landowners fortunate to be closing in on an answer. It is my hope that any educational efforts this workbook supports will also seek to develop opportunities for those landowners who haven't yet met someone to farm their land. The opportunity afforded by having an ownership generation in the room and thinking about the future will as much as practicable be utilized to expose multiple generations to new transitions in farming. Where the landowners gather for education, those seeking a farming opportunity can meet them there.

Hopefully, in such forums, younger farmers looking for land will understand the needs of older generations, and thus modify their own search. Likewise, the older generation will undoubtedly be reminded that agriculture is always changing and will remember a time when they too were young and eager to take the reins. In some cases, working relationships and supporting agreements might develop.

In the meantime, use this workbook for you and your family. At the very least it should help you address issues that must be addressed regardless of what you ultimately do with your farm.

Andrew Branan, Editor, Hillsborough, NC
April 2012

How to Use This Workbook

The *Planning the Future of Your Farm* workbook is laid out in four sections, each with narratives supported by worksheets. The workbook is primarily for use by farm families (i.e., families that actively farm or that simply own farm or forest land). Families can use it themselves or under the guidance of a trusted outside party. The workbook is also designed to support curricula in workshops for farmers and landowners on farm transfer.

The sections are meant to correspond to a basic process for planning. The first section, **Developing Your Vision for the Future**, discusses what we call the 'soft issues' — those that are the most difficult to discuss in daily discourse or over long distances, and can often be ignored absent a forum for their discussion. The articles in this section are meant to offer some perspective on the process you are undertaking, stressing the nature of risk management and what you are accomplishing by protecting your wealth and the relationships within your family. Several worksheets in this section of note are as follows:

1. "Rating Life Values" includes a set of questions meant to get you thinking, or at least affirm what you are already thinking, about the planning process and distribution of the farm assets to the next generation, in an exercise format where your family can lay their values on the table in a forum where everyone's feelings are respected.

2. "Rating Your Comfort Level" is another set of statements to gauge where you are currently in your thinking on the transfer process. This is a measure of your risk tolerance, which will of course govern decisions related to transferring farm assets. This worksheet will be most applicable to those looking to pass and take over a farm operation, and less relevant for off-farm heirs, but should be reviewed by off-farm heirs to familiarize them with the issues and risks faced by those in a farm business transfer.

3. "Setting Goals and Objectives," another worksheet for the entire family, is self-explanatory. The following worksheet, "Reconciling Priorities," is designed to help put different family members' goals in one place and identify where some goals may conflict as they relate to a transfer of the farm.

4. "Sketching Your Retirement Lifestyle" is a place to write thoughts on how you would like to allocate your time later in life with an eye toward what your disposable income needs will be and whether farm assets will be needed for this purpose.

5. "Quick Risk Assessment: the 5 D's" is a place to jot down perceived risks to your vision of keeping the farm in the family, transferring a business, etc. based on the input from family members on previous worksheets, and what steps you believe you've taken to alleviate these risks.

Section Two, **Evaluating Your Farm Resources** includes a primer on property ownership, one of the first steps in the evaluation of your resources. How you own property ultimately determines what decision-making ability you have over the resource. The series of worksheets offer space and suggestions for you to rate the features of your farm, community, and family resources and skills. Use the worksheets to identify features that need improvement to support your business model for farm resources. The extensive "Farm Net Worth" worksheet is for current operations to determine their financial health for expansion and transfer, and realistic orientation on current asset liabilities.

Section Three, **Farm Transfer Tools**, discusses different types of business entities for agriculture, forestry and horticulture ventures, and some of the tools and agreements you will encounter in the estate planning process. The worksheets are designed to help you organize the information you will need to construct these agreements.

The final section, **Preparing to Meet with Professional Advisers**, contains worksheets similar to those a professional adviser (financial planner or attorney) will have you complete as part of their service to you. These will let you start the process earlier, and will save you time and money. And it will show your advisers that you are on your toes about this planning process.

The workbook closes with the definitions of common legal terms relating to land ownership, business entities and estate planning.

Section One:
Developing a Vision for the Future

Farm Transfer Planning: A Suggested Definition

Farm Transfer Planning. *n.* A process of decision-making that protects your land's agricultural and forest production while preserving family relationships and enhancing community development.

If you are to really tackle developing a plan for your farm's future, the above definition covers the essential bases. The concepts explored in this workbook go beyond simple estate planning, which is merely the distribution of what you own when you die. Most folks do not like to think of their own death, and are often less interested in discussing it. Therefore, better to use the word "transfer" (as in farm transfer, or even wealth transfer), mostly for the fact that transfer is about change in who farms, who owns, and who manages your land. Your and your family's ability to manage this transfer during your life is what the future of your farm is ultimately about.

First, farm transfer planning is indeed a ***process***. As Dwight Eisenhower once said, "The Plan is nothing, but Planning is everything." What he surely meant was: things will change, but if we put in the work to gather and evaluate information, this will enable us to make better decisions as matters change. Farm transfer planning is the same idea. It is not a passive event, and there is no magic tool or silver bullet that will make it easy or issues go away without addressing those issues. It is the act of planning that makes the future you want more likely.

The planning process supports your true legacy: preserving your family.

Your process supports better ***decision-making***. The process you employ to methodically gather information about what you and your family wants for the farm and your own lives, what your farm is good for (if you need income from it), and what you own and the extent of its value empowers you to choose among the tools available to you. Legal tools can be executed to minimize foreseeable risks and accomplish articulated goals, but as things change in life, the outcome those tools were designed to produce may no longer fit the situation. In other words, it does not end with the execution of a will, no matter how good you think that will expresses your desire at the time your attorney writes it. If a will distribution scheme needlessly risks a farming heir's long term tenure on needed ground, the will cannot change itself.

Your decisions should ***reduce risks to productivity*** of the farm. If it is important to you and your family that your farm remain in the family and/or in production as it passes to the next generation, your decisions should allow for a smooth transition in the use and management of that land. If a family member is farming it, he or she will need to know their use of the land is a secure resource for their farm enterprises. At the least, your heirs will need to know who is in charge of renting it, or paying taxes on it, or harvesting timber, all basic land management decisions and tasks.

This planning process supports your true legacy: ***preserving your family***. How well your children get along after you are gone, and how they remember the example you (Mom and Dad) set for them are a true legacy. Keeping land in a family where the family relationships are deteriorating defeats the purpose of keeping wealth in the family, and often this leads to loss of land and wealth. It certainly leads to stress on the farmer or manager of the land. In my experience, nothing leads faster to a damaged family than a piece of land and differing ideas on what to do with it.

Finally, how a family plans for the future use of their land depends in some measure on the ***community development*** around them. Not just in terms of development pressure, but what programs and resources (such as marketing infrastructure) are available to them ultimately depends on how many farms avail themselves of these resources. For example, the cash provided by a purchase of development rights (conservation easement) program will greatly influence the direction a family takes with its farm. Local agricultural economic development initiatives, farmers markets and other local distribution channels all depend on farmer and landowner participation. In a word, the relationship is symbiotic. Community development around agriculture depends ultimately on the aggregate of decisions individual families make about their farms.

Farm Transfer Planning: How to Begin

Editor's note: Throughout this workbook, emphasis is placed on issues surrounding the transfer of a farm to the next generation. Many of the narratives and worksheets in this book are tilted to assist with that goal. As noted elsewhere, transferring a farm to keep it in production may not be your goal or you may find it otherwise impracticable. So for now, we will simplify the focus to "estate planning," an integral and basic part of farm transfer.

The narrative below is an edited piece originally published as a pamphlet titled *Estate Planning: Where to Begin,* under the direction of Theodore A. Feitshans, J.D., Extension Specialist, Department of Agricultural and Resource Economics, College of Agriculture and Life Sciences, N.C. State University, and is reproduced here with permission.

We usually take life for granted. Few of us choose to think about the cold reality of death. Nevertheless, you owe it to yourself and your family to plan how your property will be used after your death for the benefit of your loved ones, charitable interests, and other beneficiaries.

The farm transfer process begins with a series of questions that must be considered.

- Who will care for your minor children or aging parents?
- Will the family business be continued?
- If you own family land as farm or forest, does your family wish to keep it?
- Will they be able to do so?
- Will your spouse be able to live comfortably on what you leave behind?
- Will estate taxes consume your family's wealth?
- Are there other federal, state, or local taxes, or other expenses, that should concern you?

All of the concerns raised above can be addressed with your plan. Each plan is unique to family needs and resources. Estate planning is for everyone, not just the elderly or rich. The topic of death is not pleasant. But if you avoid planning your estate, you have unconsciously made some important choices. Your family will have to live with them.
Couples with young children who fail to plan their estates have chosen to have a court decide who will raise their children. Parents in a family business who fail to plan their estates may impair the likelihood that their children will succeed in the business. Virginia law provides for the distribution of estates if you die without an estate plan. It is quite likely that the plan set out in state law is not what you want for your family, nor what they would likely choose.

People neglect their estates because "they don't have time" or they think it's "too expensive." But there is no time better spent than planning to protect your family's future. Moderate expense invested in professional assistance is insignificant next to the expense your estate could incur in litigation, taxation and red tape. It's not all about money—family quarreling, confusion and hardship can and does occur when loved ones die without an estate plan. Many families fight and become estranged, even for generations, over the assets of poorly planned or unplanned estates.

What Is Estate Planning?
Estate planning is a set of steps for effective management, enjoyment, and disposition of your property at the least possible cost, both in life and at death. Making a will is a crucial part, but planning doesn't stop there. Estate planning involves a review of your property ownership, insurance needs and your family business structure. This task is simplified into four basic steps:

1. Develop your vision for the future.
2. Determine needed future income.
3. Gather information on your resources.
4. Execute the instruments and agreements needed to fulfill your vision.

People often complain that seeking professional advice costs too much. Expense can be minimized if you take the initiative on the first three steps in this process prior to the first meeting with your chosen professional(s). Time is valuable for attorneys, tax professionals, and other experts who are needed in successfully planning your estate. Take the initiative to conduct family discussions, set clear objectives,

and compile the information that these professionals will need before you employ key professionals. This will save money. Most of the money spent on estate planning often represents charges for resolving these initial issues. These are things you can handle before your first meeting with a professional. If your family finds that its members cannot agree on key issues, you may wish to hire a mediator or other professional counselor.

Moderate expense invested in professional assistance is insignificant next to the expense your estate could incur in litigation, taxation and red tape.

Begin the dialogue

Many estate plans never get written because death is a sensitive subject. Adult children don't want their parents to think they are greedy or controlling. Husbands and wives don't want to give the impression that they don't trust their spouses to look after them. And elderly parents often prefer not to think of old age and death at all. As one woman put it, "My father thinks that to make a will is calling it quits. After he draws it up, he may as well crawl away and die."

There is no easy way to begin a discussion on estate planning. One approach is to use this workbook as a springboard. Estate planning books, magazine articles, and seminars in your community also offer natural icebreakers. Often the bad experiences of a family in which someone died without a good plan will start the family thinking. Once the topic of planning your estate has been broached, it should be easier to discuss concerns and goals. Tough choices often must be made. If you don't actively make decisions now, you abandon your right to decide. No one else can plan for your family like you can. Take a deep breath and begin.

Each person's estate is his or her own, and there is no legal requirement that you discuss your plans with anyone else. It is prudent, however, to have these discussions with those most affected by your estate plan. If one of your objectives is maintaining the family farm or business and you do not have these discussions with all family members and other business associates, the farm or business could fail after your death. Successful discussions do not begin over the dinner table or over the holidays because these times can be highly emotionally charged. Gather family members together in a neutral location at another time of year for the specific purpose of having this discussion. Consider the use of a professional counselor to help facilitate the discussion. Some state extension services are associated with farm transition networks or other nonprofit groups who can help with this process, often without charge or for only a modest fee.

Revisit Your Old Plan

Suppose you drew up your will and "put things in order" several years ago? How often should you update your estate plan? Although you may change your will whenever you wish, there are three basic reasons to consider updating your will.

- There has been a change in your life.
- There has been a change in law.
- You have changed your mind.

You should review your will periodically to see if it needs updating. Events that may trigger the need to update your will include the following:

- Marriage or divorce.
- Birth of children or grandchildren.
- Death of a loved one.
- Move to a new state.
- Major change in financial circumstances.
- Changes in the law (taxes, probate, trusts, etc.)
- Beginning or concluding a business.

Your professional team will be glad to help you review and modify your estate plan periodically to keep it current.

Planning for your children and family members after your death can be stressful, but it may be one of the most important decisions you will make. Planning your estate requires your time and willingness to seek essential guidance and help from professionals. Estate planning requires time to gather essential information and coordinate with different professionals. It is in your best interest to begin outlining your objectives and planning how to follow through as soon as you can. If you have currently decided to initiate this process, consider scheduling a family meeting and getting some feedback to begin

Starting with What You Want

A farm owner's personal values will ultimately drive farm transfer decisions, and whether another – often younger – farmer will have the opportunity to farm that land. Therefore, the first question you should ask yourself "What do you want to see happen to your farm?" This question comes before considering the situation through any lens of critical analysis of goals, resource evaluation, and the laws that govern the transfer of wealth.

This question – what do you want? – like the farm transfer process itself, touches on a lot of seemingly different things that one may find important: keeping family harmony, passing on a farming tradition, retaining hard-earned wealth for heirs, and sometimes, simply not paying taxes to the government. Sometimes families find that their collective wants for the future of the farm, while not necessarily conflicting with each other, will nonetheless require modification and compromise.

To develop their vision for the future, it's important that all family members share what they want to happen to the farm.

For example, you may simply *want* the farm to "stay in the family." What do you mean by this statement, and more importantly, *why* is this important to you? Often that "why" is simple family heritage. Many families in the Southeast can trace their lineal ownership back to a grant from King George III, and perhaps this bestows an obligation on each generation holding title to the land throughout the years to pass title to a family member, and the desire to pass on the land to lineal heirs to continue a tradition will drive many owners in their decision-making. Will it satisfy this obligation if one lineal heir gains title to the land? Or a non-lineal family member (i.e., a nephew or niece) If this is done, what wealth will be transferred to the other heirs?

There may be another value that drives your decisions: wanting your children to get along with each other after your decisions on the farm have been made, and ultimately carried through either by sale, gift or inheritance. To accomplish the desire that the farm land stay in the family, it may be impossible to divide it equally among heirs. Indeed, as noted in Section Two *How Do You Own Your Property?*, creating ownership interests among multiple heirs may endanger the ability of an heir to effectively manage and earn income from the land. But with land as the highest value asset in most families, there are often few other assets to balance the overall estate equally among all the heirs.

When transferring a farm intact across generations, heirs are more often treated fairly than equally. "Equal" normally means an equal distribution of dollar value of the parents' wealth. "Fair," on the other hand, considers the totality of the circumstances in making distribution decisions where the heirs' absolute right to the wealth is modified in pursuit of certain goals (such as securing a farming heir's access to the land).

To develop a vision for the future of the farm, it is important that all family members share what they want to happen to the farm. Sometimes the response to such an exercise is apathy. If the apathy about the future of the farm comes from both Mom and Dad -- "You kids figure it out" -- it is probably best that their estate plan divides up the assets -- including the landholdings -- equally. Nonetheless, your goals for the farm - perhaps that it remain in production - may cause you to consider transferring it outside the family.

The worksheet *Rating Family Values* consists of a number of statements to get you thinking about what is really important to you, and more importantly, why it is important. Each statement has a number value attached, to rank importance, to provide a framework to prioritize your values. What will make tough decisions easier for family members to process will be openness in the process, where there will be no surprises that lead to distrust and ill-will among heirs. Your answers and comments to the questions will form the basis for shaping and sharing your decisions with the family. It will also help your advisers understand which planning tools are appropriate for you. Two additional worksheets offer an opportunity to assess your comfort level with certain decisions, and a chance for Mom and Dad to sketch their vision of retirement.

The underlying theme of this workbook is that there are no easy answers. Fortunately, there are legal tools available - such as business entities and other agreements - where access to income can be assured, along with a stake in the value of the land. Fairness will lie in how decisions balance the abilities of all heirs to access that wealth in the future. Fairness is also built into your family's understanding of the distribution decisions in your farm transfer plan.

The sooner the family can gain common understanding of each other's views of "fair," the stronger the process will be. What will make tough decisions easier for family members to understand will be openness in the process, where there will be no surprises that will lead to distrust and ill-will among potential heirs and successors.

Ultimately, whatever the various motivations, all heirs must recognize that these decisions have been tackled by generations before them, and now ultimately it is the title holders - Mom and/or Dad - who must decide. In the event they cannot recognize this, you may find that the best course of action is to keep your plans to yourselves.

Managing Risk with Farm Business Transfer: The Five D's

Editor's note: At its core, farm transfer planning is about managing risk. Events that we think of as unforeseeable can occur often through no fault of our own. When they do, they alter our ability to achieve the goals we set out for ourselves. However, though we don't expect them to occur, they certainly can, and are therefore *foreseeable*. Management training of the next generation helps the next generation overcome challenges to production; legal agreements - considered long and wordy - are designed to address as many contingencies professional advisers can identify. The following is adapted with permission from an article originally published by University of Wisconsin Center for Dairy Profitability, University of Wisconsin-Madison.

Evaluating risks associated with the continuation of the farm business is the first step in developing a plan to address and/or reduce these risks. The worksheet *Quick Risk Assessment: The 5 D's* (pg. 17) is a way to identify the risks that your proposed business arrangement will face.

The following discussion about planning for these risks will provide information for you to consider in evaluating your risks and developing a plan to reduce these risks. Developing a risk management plan should begin with developing family, business, and personal goals. If you have identified these goals in the worksheets section, then you can begin the process of developing a plan to reduce the risks associated with accomplishing these goals.

There are five major events that can severely impact a farm family or a family business: death, disability, disaster, divorce and disagreements--the five D's.

Planning for the 5 D's

Sometimes in the enthusiasm, hope and excitement that accompany the establishment, expansion or transfer of a business to the next generation, we forget that even the best laid plans sometimes do not work out. Therefore, even though we may be reluctant to discuss negative issues, it is critical to discuss the cons as well as the pros of any business venture. While we cannot control the future or plan for every eventuality, exiting or entering farming is a major life decision that requires us to make provisions for events that could impede or even destroy the farm transfer or the farm business.

There are five major events that can severely impact a farm family or a family business: death, disability, disaster, divorce and disagreements--the five D's. Planning a farm transfer without providing protection against the possibility of any one of these major events is gambling with your future and your family's future, whether you are entering or exiting or modifying the farming business. Most people don't like to talk about these issues, or develop and put in writing contingency plans for addressing them.

How a family deals with foreseeable risks will likely affect the farm transfer process. For example, the operation may be able to continue if the spouse that does not provide labor to the farm business dies, but what if the person providing the major labor and/or management dies or is disabled or incapacitated for a long period of time? How long of a period of disability can the operation survive? Should there be life insurance?

Should there be disability or income continuation insurance to cover the major contributors? How can we prevent the assets from being sold off or divided in the event of a divorce? How much crop insurance, liability insurance, casualty coverage should there be? How will a major illness or injury affect the operation? Do we have enough health insurance to avoid an impact on the business finances in the event of a major illness or injury? What happens if a major disagreement results in one or more of the farm operators leaving the farm business and withdrawing farm assets?

Death

Life insurance can provide protection for families and/or the business in the event of death of one of its members. For young families who generally have higher debt and less cash to work with, term life insurance may offer an attractive and low

cost alternative to whole life or other investment protection. Term policies do not have a value except upon the death of the insured.

Younger farm members may want to carry life insurance on older members who own most of the farm assets in order to be able to continue farming in the event of an untimely death.

The premium cost may be very expensive but this may need to be one of the costs to insure the continuation of the farm business. Other options need to be discussed and planned for, so the younger generation is able to gain control of assets in the case of a premature death of older members who own most of the farm assets.

It is also important to understand that when a person dies, their assets are distributed according to their estate plan, or in the absence of one, by state law. The distribution plan may create ownership interests in the assets that make them unavailable for continued use by the farm business.

Disability

Providing for income protection will also be important in the farm business. Disability or income continuation insurance can provide the dollars to cover extra family living or hired labor expenses during the period of disability. Farming is not only a risky business, it is a dangerous occupation. Farm accidents and farm related illnesses affect thousands of farm families annually. Farming is categorized as the single most dangerous occupation in the United States. Given these facts, it is important to take appropriate action to minimize risks to the family and the farm business.

Insurance coverage can be purchased to cover people in the event of a disability. But another kind of precaution should be part of your farming operation. Prevention should be a key plan of any farm business. Prevention of farm accidents and farm-related illnesses begins with a thorough review of the farming operations, farm tasks, farm machinery and equipment, farm buildings, electrical service, watering systems, well, septic system, and farm topography. Even routine tasks should be analyzed to ensure that safety is built into every aspect of the operation.

Disaster

When we hear the word "disaster," we generally think of natural disasters like a tornado, drought, or flood. A broader definition could include any major event or circumstance which has a severe impact on the farming operation. These might include stray voltage, contaminated feed or water supply, a manure or pesticide spill, or a tort liability claim or judgment (think agritourism accident) or the call-in of a debt that cannot immediately be paid. All of which can put the operation in financial jeopardy.

Because a disaster can have such a sudden and severe impact on a farming business, it is important to consider both the insurance and prevention avenues available for your farming operation. Additionally, when at all possible, you should set aside savings or other non-farm investments which can be available to you in the event of a disaster.

Divorce

We know that death in inevitable. But divorce is something most people prefer not to talk about, or plan for. Yet, we know that as many as one out of two marriages ends in divorce. Coupled with other risks involved in farming, the potential for a divorce cannot be ignored. Facing the possibility up front can alleviate some of the uncertainty in the farming business in the event of a divorce.

When developing a business arrangement it is important to consider how to take it apart if it is not working.

It is important to have a marital property agreement which lists all assets and debts as well as all ownership and management responsibilities. You should be aware, however, that even with a marital property agreement, divorce property division rules may mean that the court will find the agreement inequitable or unenforceable. Therefore, the provisions of any marital property agreement should be thoroughly discussed between the parties and be reviewed by each with their own separate attorney prior to signing.

Furthermore, in most farming situations, at least one spouse has an off-farm job. The disruption of a marriage will necessarily remove this income stream from the farming operation.

Disagreements (Conflict Resolution)

Major disagreements may emerge over time with multiple farm families involved in a farm business arrangement. Persons and their circumstances change overtime. As younger farm personnel get married and have children, their circumstances, values and goals may become quite different than when they entered into a joint farming operation with their parents or other unrelated persons.

The hours involved in most farm operations are long which leaves little time for family. This can easily cause friction in the farm business. The management viewpoint of one member may become more divergent from other managers in the business.

Disagreements over capital allocations can cause friction between farm families. The speed at which farm assets are transferred to the younger generation can cause tension between the differing generations. The level of debt in the farm can cause difficulties. The older generation generally wants to reduce debts as they near retirement. Any number of personal difficulties may develop between persons or families involved in the joint farm business. At times this may mean some families will leave the farm business and pursue other employment opportunities. This may be disruptive to the farm business arrangement, especially when the departed member has substantial ownership of farm business assets.

All parties should know in advance what the financial implications will be when a future separation occurs. This is every bit as important as the arrangement for entering the farm business arrangement.

A plan needs to be developed at the time of commencing the business arrangement as to how multiple farm business families will sever their joint farming operation. Generally a plan is needed where departing members receive only part of their investment at the time of severing the joint farming operations. When developing a business arrangement it is important to consider how to take it apart if it is not working. If it is organized in a way that makes it difficult to take apart, it may be best to consider alternative arrangements.

Worksheet 1.1

Quick Risk Assessment: the 5 D's

Each family member should use this worksheet to preliminarily assess the 5 D's and how they could affect your *current plan* - or simple goals - for your future and the future of your farm. Start by keeping in mind the business, family, and personal goals of your family members. List the present plan in the column titled "Current Risk Management Plan", for example, a document you currently have in place like a will. Next list the risks not addressed in the next column. Rank the possibility of this risk occurring in the next column. Then consider the impact on meeting the identified goals if this event were to occur. After completing these columns the 5 D's rank the risks in priority from 1 to 5 or as high, medium, or low. The last step is to identify steps to take to manage these risks. These steps become the building blocks of your farm transfer plan. The plan should be reviewed and updated as changes occur in the business or the people involved, and as goals change.

Risk	Current Risk Management Plan	Risks not currently addressed	Probability of risk at present	Impact of event on current plans	Steps needed to manage risk
Death					
Disability					
Disaster					
Divorce					
Disagreement					

Adapted from The Center for Dairy Profitability

Improving Farm Family Communication

We advise users of this workbook - particularly Mom and Dad - to seek input from family members in order to develop a shared vision for the future of the farm. At the end of the day, Mom and Dad must decide what to do with the farm assets. Many times these decisions cannot be reached without input from other family members. Indeed, as we say throughout this workbook, keeping a farm in the family requires agreement between generations, which cannot be achieved from one side of the generational equation.

Often where there is open discussion about the future of a family business - and more specifically, the value of its land asset - there will be differing opinions on how it should be used or otherwise treated. Rather than hope that everyone will be in agreement with what is proposed for the farm, you should accept that differing opinions will be part of this process. If you do, perhaps when decisions are ultimately reached and documents executed, everyone will know where those decisions came from and be more likely to support them.

Keeping a farm in the family requires agreement between generations, which cannot be achieved from one side of the generational equation.

If one can suppose that conflict leads to stronger agreement, communication is the fire that forges the end product. It may be helpful to think of communication as a loop, from sender to receiver and back again, encompassing six elements: sender, message, receiver, channels, feedback, and effect. The sender sends a message through a channel -- verbal, written, or non-verbal -- to a receiver, who will then respond through the same or another channel (or not respond, itself a response). When received, the sender can determine if the message was understood, or otherwise process the effect of the response. The loop requires diligence among participants to avoid its breakdown or otherwise misperceived communication throughout, which of course entrenches disagreement (the biggest of the Five D's when it comes to farm transfer).

Therefore, a few common sense ground rules should be adhered to by all parties so that the process does not break down. Here are a few items to keep in mind:

1. **Every message can be misinterpreted.** This is the situation where a sender has sent the message, but the receiver is unclear as to its meaning. If the receiver does not respond, the sender may either get the message that their position is understood, or that they are being ignored. At the get go, all parties should agree that non-response to their position is not an affirmation that their position is correct, or otherwise agreed to. Even a non-response can be interpreted wrongly, or a non-verbal response (if in person) such as a furrowed-brow will create its own message. All parties should adopt a stance of prompt feedback, even if it is to simply acknowledge receipt of the message and let the sending party know if they need time to consider or gather more information.

2. **Never utter the word "non-negotiable"**. Sometimes, this is the first thing someone will say to draw their "line in the sand." It is a bullying technique that by its very nature destroys trust, and carries with it no information useful in developing mutual agreement. It sends the message that what anyone else has to say is valueless. Try to avoid using it at any point in a family discussion.

3. **Be honest about your motives.** Nothing can be more frustrating than flowery language or idealistic imagery in a discussion about land and money. One reason I encourage family members to explore their own personal values about conservation and farming is to help folks be honest with *themselves* about what they want to see happen to the farm. Until this happens, explaining why you want something will be very difficult if that explanation is needed to educate other family members about your own position.

4. **Pay attention to listening skills.** Good listening skills can be improved by 1) simply making the decision that you will listen, 2) refraining from interrupting or immediately reacting (verbally or with body-language) to what is said by the speaker, 3) providing some form of positive feedback that you understand what the speaker is saying, maybe even to the point that you understand why they have their position. All of this requires self-discipline.

5. **Communicate in an environment without distractions.** People are busy, and it is difficult to set aside time away from everyday tasks and deadlines. However, distractions that interrupt the back and forth flow of communication leave important questions unresolved, and often these are hard to revisit if progress was indeed being made between the parties. Family meetings, meetings between business partners, meetings between landlord and tenant should all be held in an environment where foreseeable distraction is minimized (i.e., young children, a busy farm shop, etc.)

6. **Try to speak the same language.** This can be particularly challenging in farm planning situations, where not all parties to the discussion are farmers. Farm issues and terminology can get very technical, particularly when discussing yield conditions, input requirements and costs, equipment depreciations, commodity markets, etc. This can equally apply to non-farm participants that have their own professional expertise, perhaps in law or investing. As best as possible all parties should realize that each does not necessarily possess the same expertise and be prepared to explain the rationale that forms the basis for their opinions or positions.

With those tips in mind, it has been suggested by Larry Hoover, professor of Washington & Lee Law School and known as the "Father of Mediation" in Virginia, that there are three dimensions where disagreement can develop. First there is the **substantive**. This is the nuts and bolts, the detailed outcomes of decisions, such as ownership, management, organizational structure, timing, taxes, division of income and wealth (often the details relating to right to income from, authority to manage, and division of equity in that wealth). The second dimension is **relational**: people's feelings, emotions and differing perceptions of themselves and family members, that often cloud rational decision-making on the substantive issues. The third dimension can be summarized as **process**. Often disagreement can flow from perceptions of fairness in the decision-making process, whether there is adequate gathering and sharing of information and alternate viewpoint, perhaps where certain relationships create a perception of inequity.

Mr. Hoover has written: "The dynamics of disagreement is often predictable. What can start as a disagreement in any of the three dimensions described above can quickly turn to antagonism. Built into such disagreement are questions and suspicions about the other's character, intentions and motives." As suspicions are shared among the like-minded, and not those we are suspicious of, silence broadens the gap and the ultimate cost of resolution. As noted earlier in this workbook, in the complex discussion about the future ownership of land, it is ultimately counterproductive to outsmart your siblings by being less than forthcoming about your motives.

Often the relational may be damaged by decades of sibling rivalry. The substantive may equally prove elusive due to differing fortunes throughout the lives of children reaching adulthood and having families of their own. In this instance, perhaps it is the process through which family can find common ground. Indeed that is the focus of this section of the workbook, since rarely we can do little to alter the history that underscores the other two elements (i.e., relationships and wealth needs).

In closing, a workshop held in Albemarle County, Virginia a few years back offered an interesting visual demonstration about communication. Mr. Hoover was presenting on this subject before an audience of farm families. On a whiteboard, he drew a table with a stick figure on either side, noting that this is how we often view discussions over an issue, with two sides of negotiation. He then redrew the picture with the stick figures on the same side, looking at the problem on the table. To paraphrase Mr. Hoover:

> *Negotiation is the predominant conflict resolution process, but unfortunately the adversarial, win/lose model imported from the legal system is too often adopted. What's needed is an interest-based, collaborative process, the important component of which is mutual empathetic listening to understand the interests, needs and priorities of others, while gaining clarity about our own. We must also search for creative additional value to bring to the table, which may depend on differing needs, valuations or time preferences, and use this information to feed a brainstorming of possible solutions and evaluating of options.*

His point: the more effort invested in addressing the issue of farm transfer as a shared family interest, the less energy (and expense) will be expended on negotiating the outcome from identified positions.

WHEN FAMILY BUSINESS TRANSITION MAKES NO SENSE

***Editor's note*:** Dr. David Kohl, this article's author, is one of the pioneers of working with and educating farm families on succession issues in the southeast and nationwide. The article below was originally published in Virginia Tech's *Horizons* magazine.

Some time ago, while addressing a group on modernization and expansion of the farm business, I was asked, "How successful have you been at steering students away from unprogressive operations?" My initial response was that I had not been very successful, but further thought shed a different light.

Planning the future of the family business is not simply a one-time event. The world is too complex and the family's goals and philosophies change over the business and personal life cycle. When a young person or partner is considering entering a business, the following are some key considerations. If your response to many of these points is "no," there is a higher probability of possible problems out of the gate and down the road.

Planning the future of the family business is not simply a one-time event. The world is too complex and the family's goals and philosophies change over the business and personal life cycle.

Specific Responsibility and Accountability
One of the first signs of transition challenges is when the partners or older generation fail to define roles and responsibilities in the business. Often the young person is lured into the business and becomes a "Jack of all trades." However, they stay in that employment development path forever. A general rule is that the new partner or younger generation should be making some management decisions within a six-year period.

Lack of Outside Experience
I frequently have the opportunity to observe a young person just out of high school who loves agriculture and the area, then goes away to school, becomes disenchanted and quickly returns to the farm and family nest. Usually within two or three years, this person gets married. The business is generally not sufficient size in cash flow and the daughter or son-in-law becomes upset. The results are predictable. The younger generation usually leaves the farm or gets divorced, and family blow-up ensues. Solution: get experience away from the business for 3 to 5 years.

Size and Efficiency Counts
Before a partner returns to a business, determine the additional or incremental earnings required for entry. If it is insufficient, the spouse must be willing to make up the difference in non-farm earnings to maintain a standard of living. Here are some interesting perspectives. If a young person desires a family withdrawal of $40,000 annually, including benefits, the following productive units may be required: For a dairy with an average net income of $500 per cow, the increase would be 80 cows. Deviations in net income per cow increases the range to 200 cows for inefficient operations to as low as 50 additional cow units for highly efficient dairymen. Shifting to crops if the net income per acre was $100, the additional productive acres would be 400. Lower it to $50 per acre, and then an additional 800 acres would be required.

In a cow-calf operation, if the cow unit nets $125 per herd, a full-time partner without additional off-farm earnings would require another 300 to 350 cows. These are just a few of the scenarios that illustrate how the dollars and cents relate back to production numbers. You do the math on your operation.

Grandma's and Grandpa's Estate Plans
Often in the agricultural community with tight knit extended families, grandparents of the Great Depression generation are very tight-lipped about provisions in their estate plans. To compound this problem, you perceive that Uncle Jim and Aunt Betty who have nothing to do with the farm will share in the estate. Failure to have open and clear discussions of family business estates is a sign of potential problems. The old saying is, "Either pay now or pay later!" To carry on the family legacy, open communication is the key.

Decisions Made on the Run
Are the partners too busy with the everyday $100 decisions and overlook the $10,000 a day aspects such as transition planning? Is your spouse, who is not immediate family, not invited to family discussions? If this sounds like your family, you're not alone. The above scenario gets caught in "episodic" transition planning, i.e. a major event such as death of a key partner, leads to an emotional and traumatic fix to a neglected business practice. This usually results in the loss of money, family harmony, and time. "Life cycle" or disciplined planning is critical in any family business. Periodic time-outs or short sabbaticals from the daily grind are essential to maintain continuity and energy in the business.

Guilt Trip
You go away to college. Mom and Dad call to tell you the farm is going down fast. They can't get away for vacation or time off. Your best cow is sick. This scenario has played itself out numerous times in my teaching career. My best advice is to stay in school. If Mom and Dad are good managers, they will work the problems out.

21st Century Business
Is the business and location you are returning to an opportunity to establish productive roots for an extended period of time? Does it have the soil, water, and markets that make it viable? Are you near a locale that has the infrastructure, schools, hospitals, and shopping areas that make it appealing to the early 21st Century family? The old rule is that young people like to be located within a 45-minute drive of the mall. A newer rule may depend more on availability of high speed internet in the area where you want to live and farm.

Developing Goals and meeting Objectives

***Editor's note*:** A key challenge faced by farmers and landowners is clearly articulating their goals and objectives to their professional advisers. Busy practitioners are challenged to spend the time with clients helping them - and their families - explore their goals and objectives, and identifying often hidden and potentially conflicting goals. The more work that can be done to articulate goals and objectives before meeting with advisers, the better they will be able to help you. Indeed, the many decisions of farm transfer are built on a clear understanding of a shared vision. This can only be achieved by the exercise of writing down goals and objectives. Generally, you should think of goals as long term (5 to 10 years) and objectives as those shorter-term achievements that take you to your goals. Tasks are your specific "things to do," and though you may not know exactly the tool you need to accomplish the objective, your professional advisers will help you with those tasks. The worksheets following should provide a platform to get you and your family started. The following list has been edited and reformatted from *Estate Planning: Where to Begin* by Ted Feitshans, et al, NCSU.

Your goals and objectives for your estate are unique. Likewise the objectives of your family members may be different from yours. You, the owner of the farm, will ultimately create the will and make the estate decisions. Nevertheless, discussion of your goals and the desires of family members and business associates can reduce the likelihood of strife during the transfer.

Talk with your family, and list their goals, objectives, concerns, and desires. Does your child expect to take over the family business? Do the other children feel apprehensive about being nudged out of the estate? Do your relatives feel comfortable being named guardians of your minor children? Does your spouse agree that your assets should be distributed to your children from your current or previous marriage? Does your spouse feel confident that he or she can manage the property after your death?

After you have a feel for your family's goals, sit down and list your individual objectives. Rank your objectives in order of importance. Consider the bullet list below as a guide. Once your objectives are clear, your estate plan can be tailored to meet your particular needs.

The list below reflects common goals followed by objectives to reach those goals associated with farm transfer and estate planning. This is not a complete list. You and your family's goals and objectives are as varied as the individuals who have estates to plan. Not mentioned are the less laudable objectives that can include using one's estate plan to manipulate friends, relatives and business associates, or to take revenge. Be careful while planning your estate to avoid unforeseen consequences that may result in litigation over your estate after your death. If you fear your estate will be embroiled in controversy, be sure to alert your financial counselor or legal adviser.

A sampling of suggested goals, objectives and associated tasks:

GOAL: Provide security for your surviving spouse.

OBJECTIVE: Relieve your surviving spouse of management responsibilities.

OBJECTIVE: Retire at a specified age (for example, 50, 60, or 70).

OBJECTIVE: Provide security for both spouses after retirement.

TASK: Provide management flexibility for your surviving spouse.

TASK: Make advance decisions about end-of-life issues including whether to terminate life support, whether to use alternatives such as hospice care, and whether to use certain medical technologies.

GOAL: Assure continuity of a farm, ranch, or other businesses.

OBJECTIVE: Protect business associates and the business from adverse consequences of your death.

OBJECTIVE: Minimize estate and probate taxes on the estate of spouse who dies first.

TASK: Review the current operation and ownership of the farm, ranch or other business, and restructure as needed to promote sound business management.

TASK: Purchase investments and insurance that minimize the financial consequences of your incapacity or disability.

TASK: Transfer property during your lifetime by means of an installment sale.

TASK: Provide for the payment of the estate's taxes, debts, and expenses.

TASK: Transfer specific property to specific heirs or others.

TASK: Nominate a health care agent to make health care decisions in the event of your incapacity.

GOAL: Transfer as much of your wealth as possible to your chosen heirs.

OBJECTIVE: Minimize other taxes, including income, property, and gift taxes that may adversely affect you, your business or your heirs.

OBJECTIVE: Provide for coordination between federal and state taxes to minimize the overall tax burden.

OBJECTIVE: Provide financial and physical security for an incapacitated heir.

TASK: Provide for charitable bequests to your favorite charities or other organizations.

TASK: Reduce income taxes through disposal of income producing property during your lifetime.
Minimize expenses associated with settling an estate.

TASK: Use trusts to prevent financially irresponsible children from dissipating their inheritance.

TASK: Nominate guardians or designate trustees for minor children, or both.

TASK: Nominate a guardian or draw up a durable power of attorney and nominate an agent in the event of your own disability.

TASK: Nominate executor(s) of your estate.

GOAL: Provide equitable (although not necessarily equal) treatment of children.

OBJECTIVE: Make gifts to heirs and others during your lifetime.

TASK: Transfer nontitled personal property of significant emotional value but little monetary value in a cost-effective manner that satisfies heirs.

Worksheet 1.2

Planning the Family meeting

Meeting with family to discuss important issues relating to the farm is crucial to meeting your goals for its use. This worksheet is to help you get everyone to the kitchen table, with an agenda to guide the discussion in a business-like fashion.

Target meeting date: _____ Place: _____

Time start: _____

Persons needed to attend:	Date contacted:	Best dates to attend:

Proposed agenda:

_____

_____

_____

_____

_____

_____

_____

Suggested preparation tasks	Person(s) responsible	Target completion date
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Worksheet 1.3

Rating Family Values

To start your family discussion, read and rate the questions below. Rate the importance of each item below, with 1= not important, 2 = somewhat important, and 3 = very important. Use these ratings as a basis for your family discussion. Copy and have each family member complete to help get a clearer picture of what is most important to each in the farm transfer process. Conflicting values will need to be addressed at some point.

I want the farm to remain in our family's possession. *Why is this important/not important to you?*	1	2	3
I want the farm to continue to be farmed after I/we retire. *By who?*	1	2	3
I would like to remain physically involved in the farm after I/we retire. *Why is this important/not important to you?*	1	2	3
I want our children to have the opportunity to continue management of the family farm. *In what capacity?*	1	2	3
I would like the division of farm property to be equal in dollar value among our children.	1	2	3
I want the division of property among our children to be fair (not necessarily equal).	1	2	3
I want to give financial help to our children who choose a farm career.	1	2	3
I want to have the financial resources to do new things after farming. *What do you want to do? (see Sketch Your Lifestyle Plan)*	1	2	3
It is important that our children agree with our plans for the farm's future. *Why is this important/not important?*	1	2	3
I would like to maintain some measure of financial control over the farm while I am alive. *Reason:*	1	2	3
I would like to be involved in the decision-making of the farm throughout my life. *Reason:*	1	2	3
I want to receive what the farm is worth when it is transferred. *What is your farm worth to you? (E.g. full market value?)*	1	2	3
I want our children to play a part in the decision-making for the farm's future. *Why is this important/not important?*	1	2	3
I would like everyone in the family to be satisfied with the plan for the future of the farm.	1	2	3
It is important to me that our children's requests regarding the farm transfer be honored.	1	2	3

Worksheet 1.4

Rating Your comfort level

It is a given that risk tolerance differs between generations. The senior members of the farm family are quite justified in their concern about protecting what they have, and confidence in their own ability to manage resources to meet their own needs sometimes eclipses their ability to transfer management to the next generation. Likewise, the younger members can see the necessity that their ideas and energy be put to work earlier to grow and secure their income interests. Agreement is not easy, but exposing risk tolerance levels can help each generation understand the other and identify strategies to manage risk. The table below contains a list of possible actions for your farm during/after the farm transition process starts. Please rate your personal level of comfort for each of these actions on a scale of 0-10 (Zero indicates you are very uncomfortable with taking that action; 10 indicates you are extremely comfortable with taking that action). Each member of the family that is interested in managing the farm should fill out this form and compare. Add your numerical responses, and divide by eleven (11), the resulting figure is your "risk basis" of how far each of you have to go in reaching a consensus. Use each statement above as a platform to discuss your ideas on changes you would make in management of the farm resources.

Expanding the size of the current operation	1	2	3	4	5	6	7	8	9	10
Reducing the size of the current operation	1	2	3	4	5	6	7	8	9	10
Taking on added debt to expand	1	2	3	4	5	6	7	8	9	10
Adding new enterprises	1	2	3	4	5	6	7	8	9	10
Eliminating one or more enterprises	1	2	3	4	5	6	7	8	9	10
Making dramatic changes to the operation	1	2	3	4	5	6	7	8	9	10
Taking more time away from the operation	1	2	3	4	5	6	7	8	9	10
Increasing the amount of labor you provide to the operation	1	2	3	4	5	6	7	8	9	10
Increasing your managerial responsibilities	1	2	3	4	5	6	7	8	9	10
Relinquishing managerial responsibilities	1	2	3	4	5	6	7	8	9	10

Worksheet 1.5

Sketching Your Lifestyle Plan

As the family discusses the long term future, it will be helpful for both generations to sketch out what they would like to do as their working lives wind down or responsibilies increase. In farming, retirement can be a vague concept, as it often simply means transitioning to less labor, management, and risk intensive activity. Nevertheless, this exercise may serve to help in situations where parents are looking to articulate how they would like to spend their time away from farm work and management to make room for use of the land by another family member or tenant. Likewise, the younger generation can use this excercise to think about time they want to spend "off the farm." Though space is limited, jot down a few ideas in the grids provided, and use other paper to further explore your ideas.

Activities	What will you do and where will you do it?	How much time per week? (or which months)	Related expenses (dues, clothing, travel, material)	How will your health affect your planned activities?
Farm work				
Involvement in organizations (church, Farm Bureau, etc.)				
Second career				
Special interests and hobbies				
Travel				
Visiting with friends and family				

(Adapted from *Business Planning for Farmers: Planning the Late-career, Retirement-mode Years*, Midwest Plan Service, 2003)

Worksheet 1.6

Estimating Income and Expenses

Use this worksheet to estimate your annual living expenses. This is useful to get a real grasp of your retirement income and expenses, or if not nearing retirement, your annual living and income needs.

Part I: Income	Current	Expected
Wages (Annual)		
Social Security		
Pension/IRA/401K		
Social Security		
Net Farm Income		
Other Business Income		
Rent/Lease Income		
Conservation Program Income		
Forestry Income		
Taxable Interest		
Tax-Exempt Interest		
Stock Dividends		
Annuity Payments		
Other (e.g. alimony)		
Total Gross Income		
Estimated Taxes		
Federal		
State		
Medicare/Social Security		
Total Taxes		
TOTAL NET INCOME		

Part II: Expenses	Current	Expected
A. Housing		
Gas/Oil/LP		
Electric		
Real Estate Taxes		
Mortgage Payments (P+I)		
Home Equity Line		
Home-Owners Insurance		
Rent		

Expenses Cont'd	Current	Expected
Homeowner dues		
Water/Sewer/Garbage		
Telephone		
Maintenance and Repairs		
Lawn Care/Cleaning		
Miscellaneous Household		
B. Food/Clothing/ Transportation		
Food/Groceries/Supplies		
Clothing		
Laundry/Dry-cleaning		
Auto Loan/Lease		
Auto Insurance		
Gasoline		
Auto Maintenance/Taxes		
Public Transportation		
C. Discretionary		
Charitable Contributions		
Movies/Concerts/Dining		
Recreation/Vacation		
Gifts (birthdays/holidays)		
Children sports/lessons		
Pet Veterinary		
Cable Television/Internet		
Total Expenses		
TOTAL NET INCOME		
(less)		
TOTAL EXPENSES		
(equals)		
TOTAL DISCRETIONARY INCOME		

Worksheet 1.7

Setting Goals and Objectives

Use this worksheet to write down your long-term goals, what you want to do over the next ten years. Then take a shot at drafting shorter term objectives you think are necessary to achieve these goals. Try as best you are able to separate your personal goals and your goals for the management of the farm (ie. your involvement in the income the farm produces, passively or as a family farm business). Make copies of this sheet and have each family member fill it out for discussion at your family meeting.

Long Run Goals (5 to 10 years)	
A. Personal	
1	
2	
3	
4	
5	
B. Farm, other business or career	
1	
2	
3	
4	
5	
Shorter Term Objectives (12 months to 2 years)	
A. Personal	
1	
2	
3	
4	
5	
B. Farm, other business or career	
1	
2	
3	
4	
5	

Worksheet 1.8

Reconciling Priorities

Use this worksheet for summarizing the discussions and agreements reached in a family conference that reviews and discusses the objectives and goals from the "Setting Goals and Objectives" worksheet filled out by each family member. Try to focus in on the most important goals and objectives for each family member, and identify the common ground and where potential conflicts exist. These of course will need working out.

Have each family member rank their top 2 longer-run goals	
Name	Brief description of goals
	1.
	2.
	1.
	2.
	1.
	2.
	1.
	2.
	1.
	2.

List the SHARED goals and note whom they are shared by

List the potential CONFLICTING goals identified above

Worksheet 1.9

Turning Goals and Objectives into Action

Now that you have identified longer term business and personal goals in the previous worksheets, and hopefully met to reconcile priorities among each family member's goals, use this worksheet to further identify the actions steps for each goal and objective, followed by a person responsible and when the tasks should be completed. Task deadlines should be set in advance of a next scheduled meeting.

Goal	Objective	Action Steps	Person(s) Responsible	Deadline

This layout was adapted from Wise, D.K. and Sneed, C.T. Retirement Planning: Realities and Resources. Chapter in Planning Today for Tomorrow's Farms. The University of Tennessee.

Notes

Section Two:
Evaluating Your Farm Resources

Evaluating Your Farm and Community Resources

As noted earlier, this workbook is built on the premise that your family wants to retain ownership of your farm in the next generation, or otherwise wishes to see it continue in agriculture or forest use. In developing plans for the future of your farm, it is important to determine what type of production enterprise - if any - the farm, family, and the community surrounding it will support. Alternatively, if you will not actively manage an enterprise on your land, your decisions will nonetheless depend on the opportunities for its use by someone else.

In many cases, the next generation - someone in the family perhaps - has plans for what they want to do with the land, whether they will own it outright or with other family members. They may already be farming the land, with their parents or by themselves, and will likely continue to follow the current business model which must expand to support more than one family. In other cases, the next generation will have new ideas, be looking for new markets, or may even be coming back to the farm from another career to make use of the land for income. In either case, an important part of the succession discussion will be an assessment of whether land and community resources will support present or alternative land uses in the future.

An important part of the succession discussion will be an assessment of whether land and community resources will support present or alternative land uses in the future.

The Quantity and Quality of Land
Land can be looked at from two perspectives, the quality and quantity. First, if you are planning an enterprise, the soil quality, the water quality, drainage, etc. all impact what type of operation you will be able to develop. Different soils are good for different production, same with need for water. Second, the availability of open land - what you own or what is available for rent - will influence your plans for scale of operation.

Working infrastructure and capital position
What is the state of your current working assets, such as machinery, buildings, fencing? In most farm production, there is a need for storage for equipment, livestock, feed, fertilizer, fuel, and crops. Likewise, for livestock operations, are the current fencing arrangements adequate? Also, particularly for existing enterprises, what is the capital position of the business in terms of liquidity and solvency? Important also is the availability of credit, which is dependent on the borrower's - whether the business or individual - present financial position, the profitability of business alternatives, and credit rating. Financing is also of course dependent on one's ability and willingness to manage debt.

Personal Management Capacity
Management capacity is not a given, and will probably be one of the most sensitive discussions the family will undergo. Mom and Dad are making decisions based on love, but even those should take into account whether potential heirs or business successors have the personal wherewithal to manage land and/or a business responsibly (particularly if sharing ownership with siblings). Indeed, many estate plans create a trusteeship over property in one of the heirs, a position of great responsibility.

Where families are looking to gradually transfer a business between generations, an assessment should be made of both generations' abilities, to look for complementing skills and productively identify areas of improvement. Where a family will keep but not actively farm the land, someone still will need to manage tenancies and payment of taxes. Management capacity should be assessed of family members for this purpose.

The Quantity and Quality of Labor and Tenants
If someone in your family plans to operate an enterprise on the land, what will be the labor supply? Any enterprise will necessarily depend on family labor, or hired outside labor. Questions to consider include how much time family members will be able

to devote to the enterprise, particularly if working an off-farm job, and is there an affordable labor pool in the area, one that the enterprise model can support. If you are looking at working with another producer - as a tenant or a potential partner - how will you meet like-minded individuals in your area?

In many farming areas, the competition for land is competitive and fairly straightforward, built on relationships and who will pay the highest rent supported by commodity prices. In other areas, finding a suitable producer tenant can be more of a challenge, depending on their business model and experience, and the factors they require in building an enterprise on your land. At some point, you will need to develop your criteria for who you will want farming your land, based on your financial needs and personal values.

Local and Community Support for Farming
It has been said that no one has ever farmed alone. Commercial food production has always relied on community support. Many of the qualities that make farming attractive - rural quiet, professional independence - are nonetheless built on numerous variables that require community support. If someone in your family has a goal to expand production into new markets, an assessment of the infrastructure to support that business is needed. Examples include proximity of processing, slaughter facilities, and direct market outlets (farmers markets, restaurants, individual consumers) should become part of their plan. Additionally, there may be developing distribution enterprises in the area in which the farm might participate.

As noted above, if your family wishes to keep land under family ownership but not actively farm it, you will need someone else to farm it. Does your land lie in an area where there is an active tenant market? Is there enough local support to help a tenant grow a business on your land?

The factors identified in the proceeding worksheets are designed to get your family thinking about what is available and what is needed. Ultimately, this assessment will support plans for transfer of the farm.

How Do You Own Your Property?

Editor's note: One crucial part of assessing your resources for succession planning is understanding who has ownership rights in the property - both real and personal - that you have had at your disposal for personal and farm use. Ownership interests impact how property is passed to heirs, what their rights in it will be, and what decision-making authority you and other potential owners have in property. The following narrative was excerpted from a circular by the same title above, authored by Theodore A. Feitshans, J.D., *et al*, and published by North Carolina Cooperative Extension Service. It has been edited to comply with the laws of Virginia.

Property is divided into two classes: real property and personal property. Real property consists of land and certain kinds of interests in land. Real property includes structures erected on the land, such as a house, fence or garage. Personal property is everything that is not real property, such as cash, household items, goods, cars, jewelry, bank accounts, stocks and bonds.

Making an Inventory

Before you see an attorney about writing your will, you may want to list the property that you intend to give away at your death. To help make your list, you need to know what property can pass under the terms of your will. You may own interests in property that you cannot give away under your will because the law has already determined who will own the property at your death. Whether you can give away property under the terms of your will depends upon the answers to two questions. Do you hold title to the property alone or with someone else? What rights do you and any co-owner have in the property?

Who holds title to the property?

Holding title means you have rights of ownership. Ownership or title is shown on the deed, certificate, bill of sale, contract, will or other document. For Real Property, a properly executed deed describing the property must be recorded by the Clerk of Court in the county or city the property is located. Ownership of personal property may be shown by automobile titles, receipts, contracts, bills of sale, bank records, stock certificates, etc. Without these documents, ownership of personal property may be difficult to prove. In some cases, possession of personal property may be proof of ownership.

You may hold title to property by yourself or with other people. If your name is the only name on the document of title, you are the sole owner of the property. If your name and someone else's name appear on the document of title, your ownership rights may be limited by the rights of the other owner. The document of title normally determines the ownership rights of each owner, though a business entity structure such as a limited liability company can alter these rights by contract.

The document of title may create consecutive interests in the same property. This means the rights of an owner begin after the rights of another owner have ended. Or, the document of title may create concurrent interests, where the rights of each owner occur at the same time. Consecutive interests and concurrent interests may take various forms giving different property rights to the owners.

What are your property rights?

Sole ownership

Sole ownership is the simplest form of property ownership. One person has all present and future power to use, control, sell or otherwise dispose of the property. If you are sole owner, you may transfer the entire property under the terms of your will. If you do not have a will, your property will be transferred to the people who are entitled to take your property under intestate laws of your state.

Consecutive interests

You may own a consecutive interest in property. This means your interest either arises before or after the interest of someone else. A life estate and a remainder are examples of consecutive interests. If you own a life estate, you are called the life tenant. You have the right to possess and use the property for the life of a specified person. Usually, a life estate is measured by the life of the life tenant, but it may be measured by the life of someone else. If so, the life tenant's interest ends upon the death of that person. Upon your death (or the death of a specified person), ownership passes to the person or persons who own the remainder. They are called remaindermen.

Usually, the life tenant has the following rights and

duties, unless the document creating the life estate shows a contrary intent.

- A life tenant may sell his estate for life. The purchaser buys, not the underlying property, but the right to use and possess it for the lifetime of the specified person.

- The life tenant has the right to plant, harvest and sell annual crops.

- The life tenant is entitled to cut and use a reasonable amount of timber needed for fuel or to repair buildings or fences and the like. The life tenant may not cut timber from the land merely for his own profit. There is an exception to this rule for land with a history of use for commercial timber production; however, this may be difficult to prove since production cycles for some types of commercial timber are very long.

- If the property produces income, such as a farm or an apartment building, the life tenant may collect the rents and profits from the property.

- The life tenant is responsible for taking care of the property and for making ordinary repairs.

- The life tenant must pay property taxes and local assessments. If the property is mortgaged when it comes to the life tenant, the life tenant is responsible for paying the annual interest on the debt, but not the principal.

- Fee title to the land itself may not be sold unless the life tenant and all the remaindermen join in the sale (though a remainderman may sell his or her interest subject to the life estate). If the property is unproductive, the life tenant may get permission from the court to sell the land. However, he must reinvest the funds for the benefit of the life tenant and the remaindermen.

- The life tenant may not give away the property under the terms of his or her will if his or her life was the measuring life.

The following words in a will or deed create a life estate: "to my wife for so long as she lives, remainder to my sister, Jane." The wife has the right to possess and use the property for her lifetime, and upon her death, the property passes to Jane as the sole owner.

Although it is easy to create a life estate, it has serious legal consequences. Carefully consider the burdens and restrictions you may be placing on the life tenant. Have your attorney or tax adviser explain the tax consequences of conveying a life estate, particularly if you plan to convey a life estate to your spouse.

Concurrent interests

You and others may own concurrent interests in the same property. Concurrent joint ownership means your rights and the rights of other owners occur at the same time. Your rights in the property depend upon the form of joint ownership. Concurrent joint ownership of property in Virginia may take three forms: tenancy in common, joint tenancy with a right of survivorship, or tenancy by the entireties. Of the three forms, only tenancy in common permits your interest in the property to pass under the terms of your will.

Tenancy in common: A tenancy in common means that two or more people own undivided fractional interests in the same property. For example, if three people own the property equally as tenants in common, each owns an undivided one-third interest in the property. Each co-owner has the right to use and possess the whole property, as long as other co-owners are not excluded. None of the co- owners may take any action with respect to the whole property without the written permission of the others. Together, they may sell, lease, mortgage, manage or collect income from the entire property. Ownership shares in a tenancy in common may be unequal. In the example above, one person could have a one-half interest in the property, another could have one-eighth interest while the third owner could have a three-eighth interest.

Generally, each may sell his or her undivided interest in the property without the permission of the other co-owners. The purchaser buys an undivided interest in the property, and the remaining tenants in common have a new co-owner. One owner may also use his or her share as security for a debt, although that owner may not mortgage the whole property without all other co-owners joining him or her. A judgment creditor of a co-owner may execute on the judgment forcing the sale of the co-owner's share.

Each co-owner may ask the court to order a partition and sale. The court may divide the property and give each co-owner his or her proportionate interest. Or,

the court may order a sale of the whole property and divide the money between the co-owners.

When a co-owner dies, ownership of his interest is controlled by his will or by the laws that determine who gets his property if he dies without a will. His beneficiaries or heirs inherit undivided interests in his share of the property. Without proper planning, family property handed down through the generations may become unmarketable because there are too many owners.

Example: *Brothers, Bob and Jim, own a farm as tenants in common. Each owns a fifty percent undivided interest. Jim dies, leaving his share equally to his five children. Bob still owns a fifty percent undivided interest, but his nieces and nephews are his new co- owners. Each owns a ten percent undivided interest in the property. Bob dies, leaving his undivided interest to his ten children. Each of his children owns a five percent undivided interest. There are now fifteen owners to the farm. To sell the entire farm, the fifteen cousins must agree to the sale. Any cousin may choose to sell his or her individual interest. What happens if the fifteen cousins pass the property on to their children? If each has five children, the number of co-owners increases to 75. It may become difficult to sell the entire farm with clear title.*

The value of each co-owner's undivided interest is included in his gross estate for federal estate tax purposes and may be subject to federal estate taxes. One method of determining the value of the interest is to divide the fair market value of the entire property by the co-owner's fractional interest.

***Example*:** *Jane owns a 25 percent undivided interest in property with a fair market value of $100,000, the value of her interest for estate tax purposes may be $25,000. However, Jane's estate may make a strong argument that the value of her interest is less than $25,000. A fractional interest in property is less marketable and less desirable than an entire interest.*

Joint tenancy with right of survivorship: Two or more persons may own property as joint tenants with right of survivorship. Bank accounts, certificates of deposit and stock certificates are the most common types of personal property owned in this manner. Real property may also be owned jointly with a right of survivorship.

This form of ownership arises only by express agreement. The document creating the joint tenancy must expressly provide for the right of survivorship. For example, if you and your spouse open a joint bank account, you must choose whether you will own the account with or without a right of survivorship. If you agree to a joint tenancy in either real or personal property but neglect to indicate whether it is owned with or without a right of survivorship, then under the law it is presumed to be without right of survivorship.

Upon the death of a joint tenant, in a joint tenancy with right of survivorship, the entire property automatically passes to the surviving joint tenant or tenants. The deceased joint tenant's will does not control who gets the property.

Example: *Mary is a widow with three children. Mary is afraid she may become ill and forget to pay her bills. She wants to give her youngest child, Jane, legal authority to write checks and make deposits on her account. She and Jane open a joint account, the signature card for which states that it is 'with a right of survivorship'. Mary sells her house and her farm and deposits the sale proceeds in her bank account. In her will, Jane leaves her property equally to her three children. When Mary dies, Jane becomes sole owner of the funds. Jane likely has no legal obligation to share the money with her brother and sister; however, this is the type of situation that often leads to litigation, raising such issues as overreaching by Jane and Mary's competence to enter the joint tenancy agreement. Mary's will does not control who owns the money in the account.*

If the co-owners are husband and wife, one half of the value of the property is included in a deceased spouse's gross estate for tax purposes. No tax results because property passing to the surviving spouse is exempt from federal estate tax and any state inheritance tax. Note: If the property was acquired before 1977, the amount included in the deceased spouse's gross estate may be the amount of the spouse's contributions. Ask your attorney or tax advisor for details.

If the co-owners are not husband and wife, the value of the entire property is included in the deceased co-owner's gross estate except to the extent of the surviving owner's contributions.

Example: *Joe and Mike open a joint bank account with a right of survivorship. Joe deposits $500, and Mike deposits $1,000. Joe dies. The entire $1,500 will be included in Joe's gross estate for tax purposes if his executor fails to prove that Mike contributed $1,000. If Joe's executor can prove Mike's $1,000 contribution, only $500 will be included in Joe's gross estate.*

Tenancy by the entirety: Generally, a husband and wife own real property as tenants by the entirety. If the document of title conveys the land to a husband and wife, Virginia law presumes that a tenancy by the entirety is created, unless a contrary intention is shown. In most circumstances, the deed does not need to state that a tenancy by the entirety is created. However, if you plan to give your spouse an interest in property that you own as tenants in common with someone else, check with your attorney. If you and your co-owner are partitioning the property, and you plan to give your spouse an interest in your share of the property, you need specific language in the deed to create a tenancy by the entirety.

Only a husband and wife may own real property as tenants by the entirety. Under the law, each spouse owns the entire interest in the property. However, neither spouse may sell, lease or mortgage the property without the written consent of the other. This rule is based on the common law legal fiction that a husband and a wife are the same person. Divorce automatically ends a tenancy by the entirety, converting it to tenancy in common in which each ex-spouse owns a one-half, undivided interest. Property acquired by a couple prior to marriage will generally be held as a tenancy in common. A subsequent marriage does not convert the ownership to a tenancy by the entireties.

In Virginia, a husband and wife have equal rights to the control, use, possession, rents and profits of real property that they own as tenants by the entirety. If they file separate income tax returns, each spouse must report one half of the income or loss from the property. Creditors generally cannot take property held as tenants by the entirety for payment of a debt that is owed by only one spouse.

Upon the death of one spouse, the surviving spouse automatically owns the property. The property is not transferred by the will of the deceased spouse and is not probated in the deceased spouse's estate. If both spouses die at the same time the property is split equally and half of the property probated in the estate of each spouse.

One half the fair market value of the property is included in the deceased spouse's gross estate for estate tax purposes. No tax liability results because property passing to the surviving spouse is exempt from federal and state estate taxes. Note: If the property was acquired before 1977, the amount included in the deceased spouse's gross estate may be the amount the spouse contributed toward acquiring the property. Ask your attorney or tax advisor for details.

Tenancy by the entirety is a popular way for husbands and wives to co-own real property. It simplifies the transfer of ownership at death. However, some husbands and wives may find there are tax advantages to owning the property differently. To find out which form of ownership is right for your family, consult an accountant or attorney.

Conclusion

The way you own your property will affect how it is distributed after your death. Automatic survivorship rules take precedence over what you have written in your will. A carefully designed estate plan can be defeated by failing to consider the forms of property ownership. It is often advisable to change the form of ownership to achieve your estate planning goals. To help your attorney and tax advisor develop your estate plan, make a list of your property. Provide copies of titles and deeds to help your attorney determine the form of ownership. Knowing how you own your property is necessary to develop an appropriate estate plan for you and your family.

Worksheet 2.1

Evaluating Farm Resources

Earlier in this workbook, you worked on gathering information for what you want to see happen to the farm in the future. It is now important to look at what natural resources and farm infrastructure you have at your disposal. Use this worksheet to rate the overall condition of your farm resources, including the state of buildings, local agriculture support infrastructure, and the potential to expand and/or develop new markets.

Part I: Natural Resources

Resource	Poor	Adequate	Strong
Water availability			
Water quality			
Soils - quality			
Pasture land presently available			
Crop land presently available			
Timber quality			
Wildlife habitat			
Erosion control			
Other:			
Other:			
Other:			
Other:			
Other:			

Notes:

Part II: On-Farm Buildings and Infrastructure

Building 1:	Poor	Adequate	Strong
Current Condition			
Capacity			
Layout/Design			
Building 2:	Poor	Adequate	Strong
Current Condition			
Capacity			
Layout/Design			
Building 3:	Poor	Adequate	Strong
Current Condition			
Capacity			
Layout/Design			
Building 4:	Poor	Adequate	Strong
Current Condition			
Capacity			
Layout/Design			
Fencing			
Fuel Storage (tanks)			
Feed Storage:			
Crop Storage:			
Other:			

Notes:

Part III: Local and Community Infrastructure

Take some time and think about the community where your farm is located. Does it have the elements needed to support the type of use you envision for your land, or the type of enterprise you would like to operate on your land? Your assessment of local services and support is important to identifying gaps that with community attention could be improved.

Resource	Poor	Adequate	Strong
Availability of farm supplies			
Repair services			
Availability of financing			
Availability of business support (training, tax professionals, etc.)			
Competitive tenant market			
Availability of processing			
Competitive labor market			
Road system			
Local zoning policies			
County and Municipal government support of agriculture			
Community support of agriculture			
Local Farmers Market			
Urban pressure			
County economic development			
Agricultural and Forestal Districts			
Land Use Value Assesssment			
Availability of health services			
Timber Markets			

Notes:

Part IV: Farm Asset Net Worth Statement

Use this worksheet to sketch your farm's net worth. Later worksheets will help you estimate the value of your overall estate. Supply the information to the page below by completing the schedules [noted in parentheses] following. Note that not all schedules will apply to all situations and operations.

Farm Assets	Cost Basis	Market Value	Farm Liabilities	Market Value
Farm checking (M)			Accounts payable (N)	
Crops held for sale or feed (A)			Farm taxes due	
Investment in growing crops (B)			Current notes and credit lines (O)	
Commercial feed on hand (C)			Accrued interest - short (P)	
Prepaid Expenses (D)				
Market livestock (E)			Accrued interest - fixed (P)	
Supplies on hand (F)				
Accounts receivable (G)			Other current liabilities	
Other current assets				
Total Current Assets			Total Current Liabilities	
Unpaid cooperative distributions (H)			Notes and contracts, remainder	
Breeding livestock (I)				
Machinery and equipment (J)				
buildings and improvements (K)				
Farmland (L)				
Timberland (L.1)				
Merchantable Timber (L.2)				
Pre-Merchantable Timber (L.3)				
Other fixed assets			Total Fixed Liabilities	
Total Fixed Assets				
a. Total Farm Assets			b. Total Farm Liabilities	
			Current Assets (market) / Current Liabilities = _____ Ratio	
c. Farm Net Worth (a - b)				
			Current Assets (market) / Current Liabilities = _____ Debt to Asset Ratio	

Part IV: Supporting Schedules

Schedule A: Crops Held for Sale or Feed				
Description	Unit	Price per Unit	Quantity	Value
			Total	

Schedule B: Investment in Growing Crops			
Description	Acres	$/acre	Value
		Total	

Schedule C: Commercial Feed on Hand				
Description	Unit	Price per Unit	Quantity	Value
			Total	

Schedule D. Prepaid Expenses				
Description	Unit	Price per Unit	Quantity	Value
			Total	

Part IV: Supporting Schedules (cont'd)

Schedule E: Market Livestock				
Description	Number	Average weight	Price per head	Value
			Total	

Schedule F: Supplies on Hand				
Description	Unit	Price per Unit	Quantity	Value
			Total	

Schedule G. Accounts Receivable		**Schedule H. Unpaid Cooperative Distributions**	
Description	Value	Source	Value
Total		Total	

Schedule I. Breeding Livestock				
Description	Number	Average weight	Price per head	Value
			Total	

Part IV: Supporting Schedules (cont'd)

Schedule J: Machinery and Equipment						
Description	(a) Previous Cost Basis	(b) Cost of Purchases/ Trades	(c) Deprecia-tion	(d) Cost Basis of items sold	New Cost Basis (a+b-c-d)	Current market value
					Total	

Schedule K: Buildings and Improvements						
Description	(a) Previous Cost Basis	(b) Cost of Purchases/ Trades	(c) Deprecia-tion	(d) Cost Basis of items sold	New Cost Basis (a+b-c-d)	Current market value
					Total	

Schedule L: Farmland						
Description and number of acres	(a) Previous Cost Basis	(b) Cost of Purchases/ Trades	(c) Cost basis of land sold	(d) Cost Basis of items sold	New Cost Basis (a+b-c)	Current market value
					Total	

Part IV: Supporting Schedules (cont'd)

Schedule L.1: Timberland						
Description and number of acres	(a) Previous Cost Basis	(b) Cost of Purchases/ Trades	(c) Cost basis of land sold	(d) Cost Basis of items sold	New Cost Basis (a+b-c)	Current market value
					Total	

Schedule L.2: Marketable Timber						
Description and number of acres	(a) Previous Cost Basis	(b) Cost of Purchases/ Trades	(c) Cost basis of land sold	(d) Cost Basis of items sold	New Cost Basis (a+b-c)	Current market value
					Total	

Schedule L.3: Premarketable Timber						
Description and number of acres	(a) Previous Cost Basis	(b) Cost of Purchases/ Trades	(c) Cost basis of land sold	(d) Cost Basis of items sold	New Cost Basis (a+b-c)	Current market value
					Total	

Part IV: Supporting Schedules (cont'd)

Schedule M: Farm Cash on hand, Checking Account Balances, Savings, Securities, and Certificates			
Description	Bank/Institution	Number	Value
Farm Cash			
Checking Account			
Checking Account			
Savings Account			
Farm Securities			
Farm Certificates			
		Total	

Schedule N: Farm Accounts Payable	
Description	Value
Total	

Schedule O: Current Farm Notes and Lines of Credit			
Description/Purpose	Institution	Balance-owed	Accrued interest
		Total	

Schedule P: Fixed Farm Notes and Contracts						
Description	Interest rate	Date Due	Balance Owed	Due in 12 months	Remainder	Accrued interest
		Total				

Part V: Management (Human Resource) Assessment

This worksheet could certainly challenge your objectivity, particularly where family members are involved. Please duplicate for multiple relevant individuals, particularly if you are looking at business succession issues. This sheet is also useful for deciding who is best suited to handle important tasks like land management, entity management, etc. Duplicate, complete, and discuss steps that can be taken to improve challenging areas.

Skill/Trait	Comments
Farm production management	
Financial management	
Marketing management	
Personnel/Labor management	
Organization	
Scheduling	
Creativity	
Innovation	
Decision-making ability	
Ability to listen	
Logical thinking ability	
Work ethic	
Other:	
Other:	
Other:	
Other:	

Notes:

Section Three:
Farm Transfer Tools

The Tools of Farm Transfer

In Section One of this workbook, we emphasized the importance of exploring core values and developing a long term vision for the family's relationship to the farm. Also in that section, we discussed inherent risks to that vision: death, disability, divorce, disaster, and disagreement (the "5 D's"). If you consider these two concepts together, they demonstrate how the tools of farm transfer work.

Consider your life as a timeline, and identify two points: the "here and now" and the "there and then." If you have taken steps advised earlier in this workbook, both can somewhat be identified in your mind. Now, imagine one or more of the Five D's between those two points, and you can picture the essence of the decisions involved in farm transfer tools. The development and execution of estate planning and farm transfer tools are what lawyers and other advisers prescribe to address the 5 D's, the challenges to the future you envision. Because such events are foreseeable, legal agreements are meant to keep your wealth and your farm fairly intact as it is visited by a D risk event.

If your goal is to pass your farm intact and in use across to the next generation, you will likely have to have some sort of agreement with that generation.

The timeline image is useful to illustrate another point about transfer tools. Picture each half of the line (with the D risk event still in the middle!) to identify a generation. As you plan to pass an asset to the next generation, consider what affect the D has on the recipients' rights to that asset. Without a clear distribution plan, and in many cases an actual agreement between both generational sides of the equation on how those rights are protected, many of those D risks will be poorly addressed.

When it comes to agreements in farm transfer, it is helpful to consider that you are transferring three rights in an asset: Income, Management, and Control of Equity (ownership). The agreement you form with the person or persons to whom you are transferring the asset - say a farm - will govern all parties' rights to these three things.

For example, when you transfer land, you transfer the right to earn income from it. If you sell it outright or make a gift of it, you completely relinquish your right to earn income from it. If you form a lease agreement with a farmer to use the property, you can retain income from the property in the form of rent, while the farmer receives the return on the sale of his or her crops. With a lease, you also allocate management while retaining control of the equity.

As outlined in this section, there are a number of legal instruments - wills, trusts, partnerships, limited liability companies, leases - that can transfer rights to assets. For some tools such as wills and trusts, one generation can decide what is going to be done with the assets without the consent (often without the input) of the successor generation, and that generation simply lives with the result.

Again for example, when you transfer land in your will, you often transfer the rights to income, management and equity to several people in equal shares. However, the rights in the income and management, while legally defined as equal rights, are nonetheless ambiguous between the new owners. Three people may have the right to manage the property, but what if they disagree? All have the right to income, but can all agree (and contribute equally) to the production of that income?

Often to keep a farm intact, there must be a set of instructions, say in a trust or an agreement between owners. Sometimes this can be a lease, sometimes a business entity such as a limited liability company, whose operating agreement clearly defines all the owners' rights to income, management and equity. It is helpful to remember that regardless of the differing tax treatments, management and reporting of business entities, all are essentially a contract between owners that describes, often in great detail, the rights of all owners in the income, the management, and the equity of the property that is owned by the entity. The agreement also prescribes the reaction or options in the event of a risk event occurring. Care must be taken to make sure your advisers fully understand your desires, values and risks.

In sum, to give your vision for the future of your farm its best shot, you will likely have to form an agreement with those to whom you entrust that future.

Basic Estate Planning Documents: Wills, Trusts, and Gifting

Editor's note: The following narrative is edited from part of a series produced by John Baker, Esq. of the Iowa Beginning Farmer Center. It has been edited to account for the recent changes in the Federal Estate Tax that became law on January 1, 2011. Note the current law is set to expire December 31, 2012.

A **Will** is a legal document that directs the court how to distribute your assets after death. In order to create a will you must be competent enough to know the nature and extent of your estate, be able to formulate a plan of distribution, know the natural objects of your bounty and understand the relationship of the above.

A will must also be signed by the testator (person for whom the will is written) and signed by two competent and disinterested witnesses - who will not benefit under the will - in the presence of the testator and each other. Wills must be revoked and/or amended with the same formality with which they are made. Any handwritten modifications to a will have no effect, absent certain legal formalities.

What happens to my property if I don't have a will?

It is often said that there is no such thing as no estate plan. If you do not have a properly executed - and therefore valid - will, there is a plan for the distribution of your property and farm business assets in the general statutes. Dying without a will is known as intestacy. The intestate distribution scheme under state law covers exhaustive scenarios based on who is living and not living at the time of your death. Suffice it to say, if you plan to keep land interests in the family or pass a farm business within the family or to someone else, the ownership diffusion of intestate succession on the farm assets makes it highly unlikely that your farm will pass intact.

Can I disinherit my family in my will?

If a surviving spouse is not happy with property given by will, the spouse can elect to take against the will and take the statutory amount instead. In Virgnia, this is known as the Augmented Estate, and the surviving spouse can elect to receive a share of the decedent's total net assets. In Virginia there is no statutory provision protecting disinherited children. However, if fraud, undue influence, or improper execution of the will can be proven, children may be able to assert inheritance rights.

What will happen to my estate after I die?

The probate process is the legal process for proving the validity of a will and distributing your assets according to that will. The person who is named in the will as executor will be in charge of the probate process. The process can be lengthy and costly and usually lasts several months. With the supervision of the county clerk of court or probate clerk, the executor must identify and inventory property of the deceased, have the property appraised, pay all debts and taxes and finally distribute the remaining property as the will directs. If you die intestate (without a will), the same process will take place except the court will appoint an administrator of its choosing to carry out the probate process and the remaining property will be distributed according to state law instead of as directed by a will.

Probate is a public process and the proceedings will be available in public records. The property may also be tied up in the process for several months and will not be readily available to the heirs. For these reasons, many people try to avoid extensive probate proceedings. Property held in living trusts, joint bank accounts or pay on death accounts, real estate held in joint tenancy, and some life insurance proceeds are not subject to probate. However, it is strongly advised you not take probate-avoidance manoevers without the advice of a legal professional. Also, probate may be necessary to get real property titled in the name(s) of the proper successor(s).

Trusts

A trust is a legal entity that separates the management of property from the enjoyment of property. A settlor, the creator of a trust, transfers title of his or her assets into the name of the trust; this is called funding the trust. This property, which is held in trust, is called corpus, principal or the trust estate. A trust instrument is the set of documents creating and detailing the terms of the trust. The instrument names a trustee to manage the trust property and one or more backup trustees. It

also names the beneficiaries who will receive proceeds from the trust during the life of the trust and the beneficiaries who will receive the trust assets when the trust is dissolved.

Reasons for establishing trusts include: avoiding or minimizing probate costs, guard against will contests, protect privacy in property transfers, protecting assets from risks associated with beneficiaries, allow for someone else to manage your property when you no long wish to or in the case you are no longer able to, allow someone else to manage property for minors, and in some cases to save estate tax. Trust options today are only limited by the creativity of the settlors and may serve different purposes depending on the terms. Outlined below are several of the more common types of trusts.

Living Trusts

A revocable living trust is created by the settlor during their lifetime and the settlor retains the power to destroy (revoke) the trust at any time during their life. Only at the death of the settlor does the trust become permanent (irrevocable).

A revocable living trust is sometimes referred to as a substitute for a will because its main purpose is to avoid probate of trust assets. Probate is avoided because the assets are no longer property of the deceased, but are owned by the trust – even though the deceased may have been both the trustee and the beneficiary. These trusts are particularly useful when property is held in several states and therefore would have to be probated in each respective state. Although probate costs are avoided, trusts cost more to create than a will because trusts are much more complicated to draft and fees may be associated with changing the title of assets if placed in the trust. In addition to avoiding probate, trusts are less susceptible to attack than a will, because the trust has been in existence for some time before death. The court accepts the fact that the settlor could have changed the terms of the trust during their lifetime as proof that the trust will operate in accordance to their wishes.

Because the settlor retains control of the assets during life (settlor retains the power to revoke the trust and have the property returned), the property remains part of the taxable estate. Revocable living trusts are not useful for reducing the value of the estate for estate tax planning purposes, except for enabling spouses to split their estates to keep the value of their separate estates under their applicable exemptions.

Revocable living trusts should be used in conjunction with a "pour over will". Since a will directs the court how to dispose of your assets at death, this provision will act as a catch-all and direct property still titled under your name to "pour" into the trust, normally to take advantage of an estate tax exemption of the first spouse to die.

Irrevocable Trusts

An irrevocable intervivos trust is a trust created during life that cannot be terminated once created. If created and managed correctly, these trusts can reduce the value of the taxable estate. The property will not be included in the value of the settlor's estate only if the settlor has permanently forfeited the property. Therefore, the settlor must not retain any interest in the income or corpus of the trust; it must benefit others. Additionally, the settlor cannot retain the power to change or transfer the property or the property will be included in the settlor's taxable estate. These trusts are often used to own life insurance policies, as insurance proceeds are normally part of your taxable estate.

Transferring property into an irrevocable trust is essentially a gift to the beneficiaries and transfers may be subject to gift tax. Annual amounts over the current annual gift exemption transferred into the trust will be subject to gift tax. Under current law, an election can be made to transfer up to $5 million into the trust without paying gift tax; however, the transfer will reduce the unified credit and increase the amount of your estate that will be subject to estate tax. (as noted above, this amount is only in place until December 31, 2012) For very large estates, it may be valuable to make the election so that property appreciates in the trust instead of in the estate. Since the property must be forfeited by the settlor, the beneficiaries must have a present interest in the trust property.

Other types of trusts include testamentary or pour over trusts which are established by will. Spendthrift trusts protect assets which may be recklessly spent by beneficiaries, by limiting the rights of the beneficiary to sell or spend the trust corpus or principal. A Qualified Terminable Interest Trust (QTIP) provides a surviving spouse income during his or her lifetime.

Charitable remainder trusts allows the settlor to contribute their property to charity and receive the income from the property over their lifetime. Special Needs Trusts can protect a disabled or elderly

individual's qualification for supplemental security income or medicaid.

Consequences of creating a trust including managerial capabilities, tax advantages and disadvantages, and revocability will vary greatly depending your specific circumstances. Consult with your attorney for more details.

Gifting

Giving assets to the next generation before death may be useful to decrease the size of very large taxable estates or to pass farm assets to cash poor successors. Gifting may seem simple at first, but there are several potential problem areas.

In order to make a gift you must have intent to give the property and there must be actual or constructive receipt of the gift. If property to be given cannot actually be moved into the possession of the recipient, there must be constructive delivery. Constructive delivery is some action or transfer that is symbolic of the actual transfer; for example, giving the keys to a car if the car is not in the same vicinity as you. Other examples of constructive delivery include handing over (or recording) the deed to land or a photo of the object to be transferred. Additionally, delivery must take place at the same time as intent to give is expressed. For example, Dad says, "I want you to have my John Deere A when I die." This statement does not satisfy the requirements of a gift because the tractor was not actually handed over at the same time Dad expressed his intent to give. The tractor will become part of Dad's estate and be distributed according to his will. Some one else may end up with the tractor.

Gifts must be given free of any restrictions and are not revocable. The donor (giver) must be ready to completely part with the property. For example, Dad gives Son five cows and the cows are moved to the Son's pasture. However, Dad still checks them every day, decides which bull to breed them to, and continues to make all managerial decisions regarding the five cows; anyone challenging the gift could argue it was not a gift but a loan or a lease, and the cows will still be part of Dad's estate. Additionally, if Dad reserves the right to take the cows back or receive proceeds from use or sale, no gift was made. It is a good practice to execute a gift declaration describing the property, and to have the gift recipient sign the declaration acknowledging receipt of the gift.

Tax Implications of Gifting

In 2012, the annual exclusion amount remains $13,000. This means that any one donor can make a gift of $13,000 to each recipient without filing a gift tax return, being subject to gift tax or affecting the unified credit (amount of your estate excluded from estate tax) of the donor. Husbands and wives can combine their annual exclusion and give any recipient an annual tax-free gift of $26,000. Any gifted amount in excess of $13,000 per donor/donee will result in a corresponding reduction in their federal estate exclusion and thus affect the size of the donor's taxable estate at death. Gifts for payment of educational and medical expenses are tax exempt. In 2013, the annual exclusion is scheduled to increase to $14,000. (See "About the Estate Tax" pg 57 for more information on the lifetime gift tax exemption).

Gifts in any amount are excluded from the recipient's gross income for tax purposes. However, if the recipient decides to sell gifted property there may be significant capital gains taxes. Generally, "basis" is your cost of acquiring property plus the cost of improvements less cumulative depreciation. Capital gain is the sale price of the property minus your basis. When property is transferred by gift, the recipient must take the donor's basis in the property which may be much less than the current fair market value and may result in large capital gains if sold. If an heir receives an asset at death by will or living revocable trust instead of during the life of the donor, they will receive a "stepped up basis" which is equal to the fair market value at the time of death. Time of death transfers will significantly reduce capital gains tax if the recipient decides to sell the property.

About the Federal Estate Tax: A 2012 (and 2013) Update

Editor's Note: A major issue in farm transfer, due to high land values, is the federal estate tax. The law, however, is changed often due to a series of political compromises. The following summary was prepared with the assistance of Paige Gentry, JD Candidate, Duke University, 2013.

A fact of life in farm transfer planning is that Congress continues to change estate and gift tax laws. Addressing possible future changes is near impossible, so what follows is a simple summary of the key components of the law for 2012 and how the current law applies to estates opened in 2013.

2012 Estate and Gift Tax, Key Components:

1. Estates worth $5,120,000 or less are excluded from the estate tax. Thus, if your estate is worth less than $5,120,000, it will not be taxed.

2. Estates worth over $5,120,000 will be taxed at a rate of 35%. The 35% tax rate only applies to the amount of the estate that is greater than $5,120,000. For example, if your estate is worth $6,120,000, the estate would only be taxed on $1,000,000 ($6,120,000- $5,120,000), for a tax of $350,000.

3. Using the "portability of exclusion" rule, married couples are allowed to exclude up to $10,240,000 from the estate tax. Under this rule, each spouse can exclude up to $5,120,000. If the first spouse does not use all of his or her exclusion, the surviving spouse can add the remainder to his or her estate (estate must file Form 706).

4. The lifetime gift exemption is $5,120,000, which is equal to the estate tax exemption. Any gift that is made within an individual's lifetime in excess of the annual gift exclusion ($13,000) is deducted from his or her estate tax exemption. Thus, if you gift $1,000,000 in 2012, your estate tax exemption will then be $4,133,000 ($5,120,000 - $987,000). (Note the $1,000,000 in this example is reduced by the allowable annual tax-free gift exclusion of $13,000 [$1,000,000 - $13,000 = $987,000])

5. Individuals who distribute assets to a generation beyond their children will be exempt from the generation skipping tax (GST) if the transfer is less than $5,120,000. The tax rate on amounts that exceed $5,120,000 is 35%.

6. Appreciated property in an estate can receive a step up in basis.

2013 Estate and Gift Tax, Key Components:

1. Estates worth $1,000,000 or less are excluded and will not be taxed.

2. Estates worth over $1,000,000 will be taxed at a rate of 55%. The 55% tax rate only applies to the amount of the estate that is greater than $1,000,000.

3. The "portability of exclusion" rule is extinguished. Any unused exclusion amount cannot be passed to the surviving spouse.

4) The lifetime gift tax exclusion will be $1,000,000. The same unification rules apply as in 2012. However, the annual gift tax exclusion increases to $14,000.

5. The generation skipping tax exemption will be reduced to $1,360,000, with amounts in excess taxed at 55%.

6. The step-up in basis remains in place.

7. As a way to reduce estate tax exposure, under Section 2032A, executors in 2013 can elect to have land in an estate be valued at "use value." Subject to strictly enforced requirements, the value of farmland in an estate may be reduced up to $1,070,000.

Common Methods to Manage Estate Taxes

Regardless of future tax law uncertainty, there are several methods to reduce or eliminate estate tax exposure. Below are several possible strategies:

1. Reducing the valuation of assets at death: Several sections of the tax code allow estates to claim a lower valuation of certain assets. Claiming a reduction in land value with qualified conservation easements (see pg 84) and/or use of Section 2032A (see above) are two possibilities. Placing land in a limited liability company may allow for valuation discounts due to transfer of interest restrictions governing those interests by agreement.

2. Splitting estates: In years past, spouses divided joint property by deed to capture individual exemptions. This can still be done, as can a proper disclaimer of 1/2 property interest by the surviving spouse. Without a trust, however, both distribute property interests directly to heirs as tenants in common, which may not be ideal for continuation of a farm. Jointly owned land placed in a limited liability company can also split land interests.

3. Use of Trusts: In addition to managing efficient distribution of assets, revocable trusts can also be used to maximize marital, individual and GST estate tax exemptions that are no longer portable. Irrevocable trusts can remove property from individual ownership and thus reduce the estate for taxable purposes (see pg 55).

Entity Choice for Agricultural, Forestry, or Horticultural Ventures

***Editor's note*:** One of the most common questions encountered when engaging farmers on transfer planning is about business entities, and their effectiveness in limiting operating liability (i.e. protecting assets from lawsuits and creditors). Placing land and operating assets into business entities is also an effective tool in transferring income, management and ownership/control of those assets to ensure they remain productive or under ownership of the family. The following narrative is an overview of the different business entity choices, written by Theodore Feitshans and Guido van der Hoeven of North Carolina State University for the *Rural Lands Update* professional credit series, held in North Carolina in 2008. It has been edited to reflect Virginia law and the changes to estate tax law that went into effect in 2011.

Land owners engaged in agriculture, forestry, and horticulture have a wide variety of entities available to them to manage working assets and capital. This wide variety of entities reflects the diversity of interests of those involved in agriculture, forestry, and horticulture. Choosing an entity is an important task that requires research reflection and, typically, expert assistance. Concerns about choice of entity are often prompted by concerns about tax or tort liability. While these issues are important they are generally not the most important issue driving the choice of entity. Issues such as management of the business, whether the activity is even a business (i.e., motivated by a profit motive), business continuity, transfer of land interests, and the need to attract outside capital often override tax and liability issues.

Decisions made solely upon the consideration of tax and tort liability fears often result in a business structure unsuitable to the activity or to succession planning. The failure to make a decision about business structure is indeed a choice. Some of the entities discussed below are created by the operation of law.

Entity types

Sole proprietorship

The sole proprietorship is the simplest type of entity. Nothing is needed to create one although there may be a need in some cities and counties to apply for a business license (generally not true for agricultural, forestry, and horticultural operations). The owner of a sole proprietorship has the widest latitude to operate the business possible. Indeed a sole proprietor may do anything that is not prohibited by law. Any business engaged in by an individual without the formalities of creating a separate entity is a sole proprietorship. The sole proprietor retains unlimited personal liability.

Partnership

General partnership

A partnership is an association of two or more persons to conduct a business for profit. The relationship is consensual and usually contractual. A partnership is treated as an entity for litigation, holding title to property, and bankruptcy proceedings. Many states have adopted the Uniform Partnership Act (UPA), which Virginia adopted in 1997. Under the UPA, the partners must have equal management authority and share equally in profits and losses. They have an equal obligation to contribute their time, energy and skill without compensation to the partnership business. Each partner has unlimited personal liability to the creditors of the partnership, and all partners are liable for wrongful acts and breaches of trust by any partner.

A partnership files a federal information tax return (Form 1065) annually. However, all income flows through and is taxed to the individual partners. A partnership interest is personal to the partner. The partnership is dissolved by the death of a partner or by the sale of a partnership share. Most provisions of the UPA can be modified in a written partnership agreement (e.g., capital contributions, management, sharing of profits and losses, rights and obligations, terms of property ownership, termination and dissolution, and buy/sell agreements).

A general partnership agreement may be oral. If there is never any attempt to make an agreement but two or more people begin conducting business together then a partnership agreement is created by

operation of law. Its terms are the default terms in the UPA. Courts (particularly bankruptcy courts) have imposed a partnership relationship upon parties who did not think that they were partners. Examples of relationships that may, in actuality, be partnerships include employer/employee relationships, particularly where the employee has received a share of the crop and has shared in the risk of production; and landlord/ tenant relationships, particularly those involving share-lease arrangements. Likewise some poorly constructed partnerships may be recharacterized by the Internal Revenue Service (IRS) employer/employee relationships. In such a situation the relationship could remain a partnership for state law purposes but not for purposes of federal tax law. Farmers are particularly prone to these types of costly mistakes because they often proceed without professional advice. Correcting such a problem is much more difficult than avoiding it in the first place.

Limited partnership
A limited partnership has the characteristics of both a partnership and a corporation. It is used when some partners want neither management responsibility nor unlimited liability for the business venture. Most states (including Virginia) have adopted the Revised Uniform Limited Partnership Act (RULPA). Under statutes modeled on RULPA, a limited partnership is formed by at least one general partner and one or more limited partners. A general partner manages the partnership and has full personal liability for the debts of the partnership. A limited partner contributes cash or other property. His liability for partnership debts is limited to the amount of his investment in the partnership. Limited partners do not participate in the management of the partnership. A limited partnership also files an information tax return, but income is taxed to the individual partners. Limited partnerships are required to file with the department of the secretary of state and pay the required filing fee. An annual report and fee are often required.

A family limited partnership is a special type of limited partnership that is used to promote efficient management of family businesses, business succession, and avoidance of estate taxes, as well as other purposes. Family limited partnerships are created under RULPA and have the same filing requirements as any other limited partnership.

Limited liability partnerships
A limited liability partnership (LLP) is a general partnership used by professionals such as attorneys and is not an appropriate entity for an agricultural, forestry, and horticultural operation.

Limited Liability Company (LLC)
The LLC is a distinct entity that is a hybrid of a partnership and a corporation. All states have authorized this type of business entity. It can be treated like a partnership, an S corporation or a C corporation for tax purposes. Like a corporation, the members have limited liability for debts of the LLC. This business entity offers more flexibility because of its hybrid nature. The LLC is technically not allowed to have an unlimited life, as a corporation is, but it may have orderly transfer provisions. Membership interests are not freely transferable without consent of all other members according to the operating agreement, but a member may assign his economic rights, but not his voting rights. Many state LLC statutes require only one member to create the entity. This business entity is often used in estate planning because it can be an efficient way to manage and transfer assets over time to the next generation as a valued percentage of the entity as opposed to re-titling of individual assets.

Corporations
A corporation is a legal entity, created under state law, that has rights and liabilities separate from its shareholders. A shareholder of a corporation is only liable for the debts of the corporation to the extent of his investment in the corporation. Shareholders elect a board of directors who set policy and appoint officers to manage the company on a daily basis. Shareholders do not participate directly in management decisions (unless they are also directors or officers). A corporation has a potentially unlimited life, and it is not dissolved by the death of a shareholder, director or officer.

Generally, shares of stock are freely transferable by the stockholder. However, state law permits the creation of restrictions on stock transfers under the articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation. Such restrictions must be authorized by statute and not unconscionable under the circumstances, and there must be a conspicuous notice of the restriction on the certificate or in the information statement required by the statute. One type of restriction would be a buy-sell agreement between a stockholder and the corporation or other

stockholders requiring the selling stockholder to offer his stock first to the other party to the agreement. The agreement would set a price to be paid for the shares, which would be particularly useful if the shares were not publicly traded. (see *What is a Buy Sell Agreement?* following this article)

Shares in a corporation can be defined as common or preferred, based on the rights and privileges that belong to the owner. Common stock represents a fractional proprietary interest in the property and assets of a corporation. Therefore, the common shareholder participates on a pro rata basis in the distribution of corporate assets upon dissolution, participation in corporate profits (dividends) and management of corporate activities (right to vote). Traditionally, holders of preferred stock are not creditors of the corporation and therefore do not share in corporate assets upon dissolution. Instead, they have a right to a fixed dividend, due and payable before any dividends to common shareholders. However, the articles of incorporation can grant rights to preferred shareholders to receive preference over common shareholders with regard to distributions of dividends and corporate dissolution proceeds.

The shareholders are the actual owners of the corporation, and ultimately they choose the people who will manage the company. The shareholders must elect a board of directors to whom they delegate the power of management. The board is responsible for all of the business affairs of the corporation, such as issuing shares of stock and the rights of the shares issued, the sale of corporate assets, mortgaging corporate assets, declaring dividends, and the election of corporate officers. The senior management of the company, represented by the Chief Executive Officer (CEO) and the senior management team, are responsible for the day-to-day operations of the corporation. Their authority and duties are prescribed by the bylaws and the directors.

The articles of incorporation must be filed with the secretary of state, and depending on state law must contain the following information: (1) a corporate name, (2) the number of shares that may be issued, (3) the street address and mailing address, including county, of the initial registered office and the name of the initial registered agent, and (4) the name and address of each incorporator. This document may also provide: (1) the names and addresses of the initial board of directors, (2) provisions regarding the business purpose and par value of shares, etc., and (3) limitations on personal liability of directors. At the organizational meeting of the corporation, bylaws should be adopted. This document may contain any provisions for managing the company and regulating the affairs of the company that are legal and consistent with the articles of incorporation. The bylaws are the continuing set of governing rules under which the corporation, its officers, directors and shareholders exercise management powers, transfer shares, hold meetings and all other activities related to the corporate objective.

There are two ways to dissolve and terminate a corporation: voluntary dissolution and involuntary dissolution. The directors and shareholders may voluntarily dissolve a corporation by passage of a resolution of dissolution and filing of articles of dissolution with the Secretary of State. In addition, a corporation may be dissolved without its consent by court action or administrative action of the Secretary of State. If the directors are not acting in the best interest of the company, any shareholder may obtain judicial dissolution. If the corporation fails to file annual reports or pay the franchise tax, for example, the Secretary of State may administratively dissolve the corporation.

Subchapter C corporations
A corporation formed under Subchapter C of the Internal Revenue Code is an ordinary corporation subject to double taxation, which means that profits are taxed as they are earned by the corporation and then when those profits are distributed to the shareholders as dividends, they are taxed again to the individual.

Subchapter S corporations
A corporation formed under Subchapter S is a close corporation that has elected to be taxed like a partnership. Instead of being taxed at the corporation level, the income is deemed to flow through to the shareholders and is only taxed once, at the individual level (whether the profits are distributed or not).

Professional corporations
Professional corporations are another type of corporation used by professionals such as attorneys for their practice. Such an entity is not appropriate for agricultural, forestry, and horticultural operations.

Nonprofit corporations
These entities are corporations organized for charitable purposes including education. These entities are expected to fulfill a charitable purpose and are not designed to make a profit. These entities include family foundations that are often used by wealth families to carry forward the family's charitable activities.

Family foundations have only rarely been employed by landowners who are engage in agricultural, forestry, and horticultural operations. However, such an entity might be appropriate for a family's charitable activities. An example would include land that is used by local educational institutions in their educational programs. Property donated to such a family foundation would be excluded from the estates of family members but family members could be appointed to the board of directors to ensure that the family's charitable goals are realized.

Cooperatives
Cooperatives are another type of entity that may be used both by groups of farmers and for individual farm businesses. Most cooperatives are organized as corporations; however, ownership of shares is restricted to the customers of the business. Profits of a cooperative are all eventually distributed to the members, as a cooperative is not designed to make a profit. The U.S. Department of Agricultural provides both technical and financial assistance to farmers who wish to form cooperatives.

Trusts
Agricultural, forestry, and horticultural operations may also be operated through trusts. The most common type of trust employed for this purpose is a revocable living trust that also functions as a will substitute.

Estates
Estates may be created either as the result of the death of the owner or the bankruptcy of the owner. Although the former is under the jurisdiction of the state probate court and the latter is under the jurisdiction of a federal bankruptcy court there are similarities. Both involve a great deal of judicial control over the business, and both are generally in existence for a limited period of time.

TAXATION OF ENTITIES
Business entities become subject to various taxes over the course of entity existence. The sole proprietorship is subject to several taxing authorities during the life of the proprietor, but upon death, the proprietorship terminates, an estate is created and the estate of the decedent proprietor may be subject to estate taxes. In contrast, unless specified in the articles of incorporation a corporation does not "die" and can continue into perpetuity.

It is important for business operators to not let the "tax tail wag the business dog". Fundamentally, sound business decisions made using good business principles should be the focus of the business's management team. Once a business decision is made and the course of action implemented use of appropriate tax rules to optimally minimize the tax burden naturally follows.

Income Tax
Individuals and business entities generate income tax liabilities when business activities create a profit. Individuals acting as sole proprietors calculate and pay taxes on personal income tax returns using Schedule F (for farming activities) and Form 1040 to report all sources of income. Partnerships (general and limited), Sub-S corporations, LLCs, Estates and simple Trusts are "flow-through" business entities; meaning that business profits (or losses) are passed through on a pro rata basis to owners or beneficiaries of these entities. The individual recognizes the tax consequence on his or her own personal tax return (Form 1040).

C corporations are taxpaying entities and use Form 1120 to report gains and losses from business activities. Likewise, a complex trust operating a business will pay income taxes; the trust uses Form 1041. Furthermore, if a business is held, temporarily, in a bankruptcy estate positive income can be created and income taxes are due by the bankruptcy estate. Cooperatives and non-profit organizations are generally exempt from paying income taxes. However, circumstances may arise where income tax is paid by these entities. One such example is non-related business income in the case of a non-profit organization.

Gift Tax

Gift taxes federal and state, are imposed on natural person donors. However, some states (including Virginia) do not have a gift tax. Generally business entities do not make gifts. However, under certain circumstances a closely held corporation may transfer property without consideration to an individual donee (natural person) where the shareholders are deemed to make the gift [Treas. Reg. 25.2511-1(h)(1)]. The federal annual gift tax exclusion amount is currently $13,000 per donee and the lifetime gift exclusion amount is $5,000,000 until the end of 2012. Generally the donor is responsible for payment of gift taxes. However, if the donor does not make payment, the obligation falls to the recipient of the gift.

For donors of closely held business interests (corporate stock, LLC membership or partnership interests) a discount may be used to reduce the value of the gift. The IRS has allowed a 20 percent discount for lack of control (minority interest) and a second 20 percent discount for lack of marketability, though care should be given not to become too greedy with the use of discounts.

Estate Tax

A natural person's (decedent) estate may become subject to estate tax. This is dependent upon the size of the taxable estate. On December 17, 2010, Congress enacted a $5,000,000 estate tax exemption effective from January 1, 2011 to December 31, 2012. This means that a person's estate below this amount is free from estate tax.

The sole proprietor estate will have the business assets included in his/her estate. By definition the business ceases as the proprietor is deceased. Other business entities may be indirectly affected by the death of a shareholder, member or partner. Corporations, LLCs, partnerships and other formal business structures are not subject to estate taxes in a direct fashion since upon dissolution an estate is not created. It is the ownership interests of these entities that belong to the decedent that are included in the decedent's estate. Therefore, depending upon the size and liquidity (cash available) estate taxes may become indirectly important to the continuing success of the business. Without continuity plans for these entities a forced or fire sale of the business assets may occur to provide the funds needed to pay the estate taxes of the decedent.

Practical tips

It is quite common for a family to prepare documents, file papers and then never fund the entities created. Surveys show that very few attorneys follow up with their clients to ensure that plans are properly executed. More follow up would likely result in a greater degree of service and client satisfaction. Transferring property to the entities created must be done with care to ensure that the transfers are effective and that only the assets intended to be transferred are actually transferred. Married couples who own property as tenants by the entireties should understand that they give up the protections afforded by that form of ownership when property is transferred to an entity. In general the landowners' residences should not be transferred to the entity for this reason and for other business and tax reasons. Entities should be created in conjunction with the estate plans of the owners to avoid foreclosing estate planning opportunities. For example, it may be desirable, in restricting the transfer of ownership interests, to permit transfer to a living trust.

Observation of formalities such as holding necessary meetings and keeping minutes of those meetings must be strictly followed if the benefits of forming the entity that were hoped for are to be actually achieved. All required filings must be made and fees and taxes paid to avoid involuntary dissolution of the entity. The consequences of involuntary dissolution are often disastrous.

Although most landowners will want to create their entity under laws of their respective states, there may be valid reasons to create the entity under the law of another state. If that is done the foreign entity must be domesticated by filing with the secretary of state. It is also possible to make certain determinations about how disputes among the owners will be resolved. Among the issues that may be resolved in advance are valuation of assets upon dissolution, choice of the state law applicable to the dispute, the forum for resolving the dispute, the admission and rights of successor owners, and whether to employ alternative dispute resolution tools such as arbitration or mediation.

What is a buy-sell agreement?

Editor's note: The operative clause of any business entity agreement is the buy-sell agreement, which can restrict ownership to family members, and protect the farm manager from the sudden pressure of a buy-out. The following is part of a series produced by John Baker, Esq. of the Iowa Beginning Farmer Center.

A **buy-sell agreement** is a contract obligating one business owner to buy all or a portion of the business upon the retirement, death or disability of another business owner. Such agreements are often found in the governing documents of business entities such as partnerships and limited liability companies to restrict ownership of business interests. The contract specifies who will buy the ownership interest, what price will be paid and the interest rate. A well-drafted agreemenet will also include whether any discounts apply as well as terms of sale. Funding is an important aspect of this planning technique and is usually accomplished with current cash flow, loans, life insurance proceeds or through the sale of other assets.

A buy-sell agreement allows the business owners to agree on a process to value the company at a future date and the ownership interests therein in a mutually beneficial agreement for all owners and their families. The agreement also avoids or reduces disruptions to the business operations after one owner leaves the business because the event has been planned for and management will continue. Planning for the future in this way helps assure the business's stability and continuity and provides job stability for the buying owner and other key employees. A buy-sell agreement also can prevent off-farm heirs or unqualified shareholders from obtaining an ownership interest, or selling an interest to an outsider. Below are several variations of buy-sell agreeemnts that may be alternated within one agreement.

Cross Purchase Agreement – Each business owner buys a life insurance policy on the lives of the other owners. Under the agreement, the owners are obligated to use the proceeds from the insurance at the death of an owner to purchase the business interests from the deceased's estate.

Entity Purchase Agreement – The business itself is obligated to purchase the business interests of the deceased using life insurance policies that the business has purchased on each of its owners. The company incurs the cost of the life insurance and also retains the cash value instead of the individual owners.

Wait and See Buy-Sell Plan – The business itself has a first right of refusal and therefore has the first right to buy the deceased owner's shares. The business can wait to decide whether to purchase the share or let the remaining owners purchase the shares personally. If the business elects to let the remaining owners purchase shares, it is required to buy any remaining shares that remaining owners do not purchase.

Option Agreements

One of the most common option agreements is a "right of first refusal." This is an option contract between a future seller and a potential buyer that allows the buyer the first chance to purchase property by matching other bids. This type of agreement may be useful when current property owners wish to retain the property but ensure that it will first be offered for sale to a specific individual or group of individuals.

The agreement will always be triggered by the sellers and not the potential buyer. The potential buyer has no right to force the sellers to give up their property, only the right to be the first in line to buy the property if the sellers decide to put the property on the market. There is no guarantee that the property will ever be put up for sale or even that it will be put up for sale at a time where the option holder is able to cash flow the sale.

A right of first refusal does not shelter sales from any kind of taxes or gift implications if the price is artificially low. It only ensures that the option holder will have the option to purchase the land above anyone else.

Options to buy may also be easily written into a trust. This is a slightly different situation than a right of first refusal because the option is triggered at death of the property owner instead of during life when the owner wishes to sell. A specific person may be given the first option to purchase property from the estate of the deceased with the specified heirs receiving the proceeds from the sale. Fair market value, a discounted price or a specific below market value price may be set as the sale price by the will. Gift tax will not be an issue if the price is set artificially

Table 3.1

Quick Comparison of Business Entities

	Sole Proprietorship	General Partnership	Limited Partnership	Corporation	Limited Liability Company
Ownership	Single individual	2 or more general partners	1 or more general partners and 1 or more limited partners	1 or more shareholders	1 or more members
Direction and Control	Single individual	All partners	1 or more general partners and 1 or more limited partners	1 or more directors	1 or more members
Management	Single individual	Managing partner or all partners	1 or more general partners	1 or more officers	1 or more members
Liability	Owner has unlimited liability	Partners have unlimited personal liability	Limited for limited partners, unlimited personal liability for general partner	Limited	Limited or unlimited
Transferability	Not applicable	May be assigned, but assignee not a partner	May be assigned, but assignee not a partner	Corporate stock freely transferable, "S" corporation restrictions must be met	May be assigned, but assignee may or may not be a member
Continuity of Life	Terminates on owner's death	Dissolves upon death or withdrawal, unless continued by partners	Generally dissolves upon death or withdrawal, unless otherwise specified in agreement	Perpetual	Operating agreement determines continuity
Federal Taxation	Individual taxed	Pass-through entity (each partner taxed individually)	Pass-through entity (each partner taxed individually)	"C" corporation and shareholders taxed; "S" pass-through entity, shareholders taxed	Pass-through entity (members taxed individually)
Legal and Administrative Costs	No initial or annual filings or fees or legal costs	No initial or annual filings or fees but may need legal service to draft partnership agreement	Initial and annual filings and fees, legal fees for drafting limited partnership agreement	Initial and annual filings and fees, legal fees for drafting documents, annual meetings	Initial and annual filings and fees, legal fees for structuring entity

Worksheet 3.1

Checklist for Business Agreements

As you will note from the preceding article on business entities, a lot of decisions are required for constructing an agreement to meet your needs. The worksheet below identifies some of these decisions and provides space for you to jot down answers for discussion with your business partners, family members and professional advisers. This list includes many of the items that should be covered in a well-drafted entity agreement.

General	
Under what state law will the business be formed?	
What is the name of the business?	
Has the name been checked with the Secretary of State?	
What is the purpose of the business? (very important for farm LLCs)	
What is the term of the business?	
Is the business member managed or manager managed?	
Who is the manager if manager managed?	
Who is the agent for service of process?	
Capital Contributions	
What is the initial capital contribution of the managing member?	
What is the initial capital contribution of the other members?	
Will members be required to make additional contributions if necessary?	
What happens if a member fails to make a required capital contribution?	
What approvals are required to add new members?	
Are members allowed to withdraw their capital contributions? If so, under what circumstances?	
Is a member entitled to interest on his or her capital contributions?	
Does any member have any priority on distributions over any other members?	
Allocations	
How are profits and losses to be divided among the members?	
How are tax allocations made?	
When are distributions to be made?	

Should the agreement require special distributions to be made to at least pay for tax on each member's pro rata income from the business?	
Compensation to the Manager	
What fees is the manager entitled to?	
What reimbursements is the manager entitled to?	
Is the manager entitled to incentive compensation?	
Books, Records, Accounts and Reports	
What books and records are to be maintained by the business?	
What access rights will the members have to books and records?	
What reports will the members be required to receive?	
Who will be the tax matters partner?	
Voting Rights	
What voting rights will the members have?	
What major actions can the manager take without other members' approval?	
Will a supermajority be required for some actions of the business?	
Meetings	
Where will meetings be held?	
How often will meetings be held?	
How can meetings (regular and special) be called?	
What notices for meetings must be given?	
What quorum is necessary for meetings?	
Can actions be taken by written consent of the members?	
Assignment and Transfer of Interests	
Do the members have the right to assign their interests in distributions?	
What rights does an assignee of a member's interest get?	
In what situations will assignment be prohibited?	
What are the procedures for substitution of members?	
What happens on the death, incompetency or bankruptcy of a member?	

Is there a right of first offer or first refusal on transfers of interests?	
Are there restrictions on transfer of ownership interests? (i.e., owners can only be direct lineal descendents of grandma or grandpa)?	
Should a buy/sell agreement be included, setting out a formula to value ownership interests upon divorce, withdrawal of an owner, etc.?	
If included, should the buy/sell agreement include terms of payment for such business interests, allowing installment payments at a modest interest rate?	
Should key person life insurance provisions be included to fund purchases of a deceased owner's interest in the business?	
Should there be a prohibition on sale of ownership without permission of the other owners?	
Termination of a Manager	
Under what circumstances can the manager voluntarily withdraw as the manager of the business?	
What are the events that will result in the manager ceasing to be the manager of the business?	
Under what circumstances can the members remove the manager?	
What happens to the manager's interest when it has ceased to be the manager?	
Dissolution and Termination of the Business.	
Under what circumstances will the business be dissolved?	
Under what circumstances can the business continue notwithstanding a technical dissolution?	
How are distributions to be made on liquidation of the business?	
Miscellaneous	
How can the business agreement be amended?	

Notes

Developing a Lease for the Farm

Editor's note: A review of published literature in the Southeast found little on developing lease agreements, so we have turned to other sources from regions with issues similar to those we face here in the Southeast. The piece below draws heavily from several sources: *A Lease Agreements Guide for Landowners and Farmers*, from the University of Vermont, written by Deb Heleba, David Major and Bill Snow, and *Managing Landlord-Tenant Relationships: A Strategic Perspective*, published by Ohio State University and authored by LeeAnn E. Moss and Bernie Erven. Other observations are those of the author based on experience working with traditional and non-traditional leasing arrangements.

If you want to keep your land in farming, you will need someone to farm it. For most landowners, that will mean developing an agreement with a farmer for how the land will be farmed.

Traditionally in the Southeast, landlord and tenant arrangements have been based on family or neighbor relationships, and rarely in writing. In areas where farmers utilize fairly large tracts of land, rotating a limited number of commodity crops through the years, land is changing hands between generations which will likely change the way farmers and landowners have been doing business together. As more and more parents pass on, adult children inheriting rights in farms may want to hold on to them but are seeking a more formalized agreement with the farmer who has been tending the land. Closer to urban areas, some landowners who wish to hold on to the land for the foreseeable future may find opportunity in working with a farmer whose farming practices require a stronger tenure relationship than the traditional handshake. Even within families, a successor must often become a tenant before he or she becomes an owner of the land.

Guidelines for Landowners

There are several issues to consider before you enter into an agreement to create a successful working relationship with a farmer. For those landowners without experience renting or leasing land to a farmer, this narrative is meant to provide you with some of the basics involved with putting together an effective farmland lease agreement that will serve your needs. For those with experience, changes in agriculture practices and markets will likely bring up new issues you must address.

First, as emphasized in the previous section, you need to take stock of your land and take a look at what you have to offer and your goals for the property. For landowners, determining the amount and quality of land you have available is an obvious place to start. Keep in mind that not all land is created equal, particularly in the Southeast. Land usually slopes in one or more directions, it can be rolling and hard to see from all points. The key is knowing exactly how much land you have to work with.

Poor land, very small parcels, or land with poor accessibility and/or obstructions may not even be worth considering, as these may be too difficult to farm. Parcels too small to accommodate ever larger planting and harvesting equipment, yet remote from direct market opportunities may not be marketable for farming use. However, if the land is fertile, accessible, and of a decent size, you may find farmers interested in farming it. Indeed, in some areas you may be blessed with a healthy competition for leasing your land.

Landowners can turn to several sources to "discover" their land if indeed they do not already have a recent relationship with it. Many will have recreational relationships with their parents' land (e.g. hunting, fishing or horseback riding), but may be less familiar with how it is managed for income production through farming or forestry. Landowners can inquire for their records through the county Farm Service Agency (FSA) office, which may include crop production history, aerial photos, NRCS program participation. Landowners can also request assistance from their county Cooperative Extension service who may have a working knowledge of how their particular parcel has been managed over the years, or the county Soil & Water Conservation District office, who might be available to walk the land and point out important soil and hydrological features, as well as certain restrictions pertaining to environmentally sensitive tracts of land.

Probably your best *first* person to help educate you

about your land is the farmer who has farmed it. In many cases, this will help lay the foundation for a continuing, if more formalized, legal relationship.

As emphasized in Section One of this workbook, a clear statement of your values, goals and needs - as well as your desired role in decision-making - for your farm will form the foundation of your work on agreement with someone who will farm it, whether that person is related to you by blood or not. Below are a few points to consider from your side of the agreement:

1. **The written lease**: Lease agreements for farmland or other real property assets should be in writing. The limited advantage of an oral, annual agreement is that the agreement ends at the close of the season. However, such arrangements create instability for both landowners and farmers. For landowners who will be providing more than just passive use of their land, such as providing lime, providing cash for custom tillage work from a neighboring farmer, or other inputs, you must protect your own liability by ensuring that the relationship with your tenant cannot be construed as a legal business partnership. Furthermore, you may wish to limit your own liability from practices of the farmer that may give rise to liability, such as misapplication of chemicals, environmental degradation, etc., and be sure that you are indemnified for any liabilities you may incur due to these actions.

2. **Ask questions**: Increase your understanding of how land is used. Understand that the language used by the farmer is that of his or her profession, terms that have everyday meaning to him or her will be unfamiliar to you. Do not be afraid that asking even a basic question will somehow expose ignorance and put you at a disadvantage in your discussions about a rental agreement.

3. **Be flexible (and clear) on your role**: In some cases, personal values that the land be farmed and well-taken care of will drive a landowner's desire to rent the land to a farmer. For those landowners particularly enthusiastic about emerging local food systems and environmental stewardship, you should be prepared that a farmer may have challenges with sharing daily operational decisions if you have no farming experience to offer. It may be best to consider your investment of land into this equation as your contribution, and defer to the skills of the producer in managing that contribution (again, subject to your goals, etc.). Even in share-lease situations, understand that a lease is not a partnership and should not give you the go ahead to weigh in on day to day decisions (unless you both have so agreed), this is a breeding ground for frustration and disagreement.

4. **Stay informed of market conditions**: This applies to both the market for land rents, as well as what is going on with either commodity prices or other product market conditions. Depending on the flexibility in your lease, or how you otherwise handle changed agricultural market conditions that affect the viability of your farmer tenant, you will need to be prepared to respond to the situation where the current rental rate agreement is jeopardizing the farmer's operational abilities.

5. **Schedule annual meetings**: Your ownership of your property should be considered a business, so you should have business-like meetings with your farm tenant to overview the season that has ended, issues that you want to bring up about the condition of the land, important changes in your life that will have an impact on the next year, particularly as they relate to your already stated goals for the farm. If there was something you saw that you were not happy with when you visited the farm, ask about it.

6. **Weigh new offers rationally**: Smooth working relationships between farmers and landowners often span generations. A stable farm tenant, when you consider your management options for the land, should be considered an asset. Be reasonable when offered a higher rental payment by a new and untested tenant, and allow your current tenant to address any issues where their work may appear deficient compared to what someone new is offering. In some areas, competition for land can be fierce, and though you may strive for a higher monetary return from the land, a revolving door of tenants may have its costs as well. Landowners should consider that, if not for this farmer and their stewardship of the land and relationship with their parents (which may have extended beyond mere payment of annual rent), they might have otherwise found the land in poor condition, eroded or grown up in "volunteers" (unintentional trees of no commercial value).

General Guidelines for Tenants

For farmers, take a look at what *you* have to offer. Be clear about what type of farming you want to

do on the land. You should be prepared to answer basic farming questions. Landowners - especially new purchasers or inheritors - may be extremely inquisitive about your farming practices simply because they may not be familiar with agriculture. Indeed, if you have been farming the land for a time, you may have had a fairly straightforward verbal rental arrangement with an elderly couple, perhaps a retired farmer, and then his widow, now only to find that those who have inherited the land are raising new questions about production practices and rent. Farmers may consider that the inquiry may bring changes to how they have operated the land, and should be prepared to offer a basic and open education in farming practices. Remember that a little education will go a long way in creating a satisfying longer-term relationship with a supportive landowner.

The end goal for most farmers is a delicate combination of stability, affordability and flexibility. Many of the suggestions below for farmers are soft approaches, but experience has shown that solid relationships can sometimes transcend economic and competitive issues normally associated with how much rent you can pay for use of the property.

The following points should be included in the farmer/tenant's landholding strategy:

1. **Ask for a written lease**: Oral leases - long a tradition in Southeastern agriculture - can provide opportunities for disagreement, even based on innocent misunderstandings, which once crops are planted become more difficult to resolve. Further, your investments in the land - such as a three-year lime application - are not protected under an annual oral lease, only your right to harvest planted crops is protected by state statute.

Clear language will resolve many issues, but a lease can also provide a dispute resolution scheme for when disagreements occur due to actions of either party during the lease. Further, should the land change hands during the term of the lease - due to death of the landlord or sale or gift of the property - a written lease offers protection to the farmer. Southeastern states require leases of certain length to be recorded with the county Register of Deeds in order to warn purchasers of the land that there is a tenant with farming rights on the land. For example, Virginia requires leases in excess of five years to be recorded. (Note: in order to protect the confidentiality of elements of the agreement, such as the rental rate, a Memorandum of Lease can be recorded to satisfy this requirement).

2. **Provide a resume**: When approaching landlords that you have not worked with before, you should provide an overview of your farming operation and experience, including philosophies on production practices, business objectives, education, tillage practices, equipment use, financial strength and other land tenure relationships. Some prospective landlords might not agree with your philosophies and practices, so it is good to know earlier as this will only cause problems in the arrangement as time moves forward, causing stress on the success of the operation.

3. **Agree on a cropping plan**: Open dialogue early on a cropping plan, which should include input and field operation specifics. For new and/or younger farmers interested in smaller-scale, high intensity production for direct market, be prepared to have your business plan ready for review. You must build this landowner's confidence in your ability to continue a business on their land.

4. **Keep communication open**: Providing regular updates on crop conditions, markets, and planned activities such as cropping and harvesting, conservation implementation (if authorized), general cattle rotations, etc. will help visiting landowners (who will sometimes visit the property in the farmer's absence) understand changes they are seeing on their property. A report can give you a baseline to refer to when asked later about something they have seen happening on their property. Consider including cost information in these communications, as this will help the landowner understand certain issues that may become relevant regarding rent amounts, landowner contributions (if applicable), etc. When on-farm problems occur, notify the landowner.

5. **Educate the landowner**: As noted above, just by virtue of time and rural demographic changes, more farmers will be working with more non-farmer and absentee landowners. Ohio State's Moss and Erven suggest regular mailings of farm journal articles and even developing a website which can both educate the landowners and their potential heirs while demonstrating the farmer's interest in their knowledge. In some cases, particularly

nearer to urban direct markets, it may be helpful to educate the landowner in how their land is part of a larger farming and food system, one in which they are a key player. Some inheritors of land, themselves urban dwellers with an interest in "local foods," express the interest that their land be farmed "organically" without understanding the technical nature of the term. Your ability to provide them with a bigger picture, while helping them understand the "technical" nature of organic production may serve you well.

6. **Improve the farm**: Experienced farmers often state a goal of leaving a farm in better shape than when they got it. The farm's appearance - maintenance of roadways, fences, clearing brush around old houses and structures - is usually the first impression other landowners get of the farmer's reputation in the neighborhood, which will correlate directly to the perception formed on that farmer's abilities and value as a tenant. Consider this a visual resume of your abilities.

7. **Pay attention to the current owner**: Acknowledging life events - holidays, birthdays, the passing of close relatives - of landlords improves a farm tenants' longer term access to the ground. When receiving honors for conservation or other practices, it sends a strong message - if the venue is right - to also invite and recognize the landowners you work with.

8. **Don't forget about the future owners**: Land is going to change hands, in many cases sooner rather than later. This workbook encourages owners of land to engage their families (i.e., children or other potential heirs) if planning needs to be done for the future of the land. Farmers should look for ways to include the "next generation" owners where possible in their passive communications with the landowner while being sensitive to established lines of communication within the family.

Types of Leases

Cash Rent

Most rental arrangements are for a set price per acre for a set time, normally per year. The farmer pays the landowner the total of the rate per acre multiplied by the number of acres farmed. Under this arrangement the tenant bears most of the costs - and thus most of the risks - of preparing the land for production and growing and harvesting the crop. Thus, the tenant still owes rent in the event of crop or market failure. Some cash leases provide for an amount paid tied to the price of the crop, actual yields, or a combination of both, and can offer a lower base rent to protect the farmer in bad years while rewarding the landowner in better years.

Crop Share

A crop share risk allocates risk between landowner and tenant, splitting the costs and the proceeds of production according to agreement. Crop (or livestock) share leases allow landowners in strong financial position to contribute to costs of production, which can be of great help to a newer farmer shorter on early season operating capital. Care must be taken to distinguish such an arrangement from a legal partnership. Share leases can also give the landowner a specified share of the crop (which the farmer can buy for a set price or the landowner can sell on the open market), so when the farmer does well the landowner does well. (See sidebar *Comparison of Cash Rent and Crop Share Leases* next page)

Basic Elements of an Agreement

Below are the basic elements of a lease agreement. As alluded to earlier in this narrative, there are many variations of the themes below.

1. **Identity of the parties**. The lease must be signed by the actual owner(s) of the property or those with proper authority to bind the property to the terms of the lease. Keep in mind that property that has been inherited may have more than one owner. If property is held in a trust, the trustee must sign. If land is held in a limited liability company, the person with management authority must sign. Failure to secure the signatures of the proper owners leaves the lease vulnerable to being voided by owners who did not consent to the agreement.

2. **Description of property**. The property description in the agreement identifies the land both parties intend to be farmed. The lease should identify the land area, buildings, equipment and animals (if applicable). Land can be described by inserting appendices to the agreement (properly referenced in the document) that contain either the deed description or a portion thereof, and/or aerial photos of the property from FSA or county Geographic Information System (GIS) websites, with fields and access marked on the photograph. Access should clearly be set out, especially where access crosses other land or to structures not in the leased premises.

3. **Term of lease**. The lease should specify when it begins and when it ends. Verbal rental agreements are normally protected by state statute for the term of one year, up through harvesting of crops on the land. In coming to an agreement, the farmer should consider the amount of time necessary to recoup his or her investments in the land. Multi-year leases can offer a set term that binds the property for that period, with a renewal clause that should be clear on how renewal takes place or notice of termination is given (i.e., time period and manner). It is reasonable to both parties to allow a minimum six-month period to announce an intent not to renew the lease.

4. Amount and terms of rent. For a cash rent lease, the amount of rent is normally paid in one payment by a particular date, traditionally near the end of harvest when the farmer has cash from the sale of crops. For more diversified operations with earlier market harvests, the parties can agree

Comparison of Cash Rent and Crop Share Leases

(from *Improving Your Farm Lease Contract*, Iowa State University)

Cash Lease

Advantages of a straight cash lease are:

- The lease is simple with relatively few chances for misunderstanding.
- The owner is relieved of making day-to-day operating decisions.
- The owner has very little financial risk.
- The tenant has maximum freedom in planning and developing the cropping and livestock programs.
- The tenant has fewer records to keep.

Disadvantages and potential problems of the straight cash lease are:

- A fair cash rental rate may have to be renegotiated each year.
- Cash rents are likely to be too low in times of rising prices and increasing yields, and too high in times of low prices or low yields.
- Tenants are required to supply more operating capital.
- Tenants bear all the risk of price and yield variability.

Crop-share Lease

The advantages of a crop-share lease are:

- Crop risks associated with price and yield variations are shared equally.
- The owner is more involved in operating decisions and marketing the crop during the year.
- Both parties share the benefits from adoption of yield-increasing technology, or unexpected high yields or prices.
- A second USDA payment limit is created.

Disadvantages or potential problem areas of a crop-share lease include:

- The landlord and tenant must determine how production expenses are shared.
- Adjustments for sharing costs for storage and drying facilities, herbicides that reduce field work, or fertilizer and pesticide application may have to be made.
- The cropping plan to be followed and whether or not the farm participates in government programs must be agreed on.
- Added cash rent for buildings and facilities may have to be negotiated.
- If the owner's and tenant's crops are stored in a common bin, marketing decisions have to be made jointly.
- The landowner may be considered a material participant, and farm income will be subject to self employment taxation.

DETERMINING A FAIR RENT

In a lease agreement, determining a fair price is often the most important factor for both parties, yet it can be difficult to establish in many farming situations. Location, soil quality, the forces of supply and demand, commodity and direct-market prices, as well as your personal goals for the land all play a part. For higher-grossing, larger acreage operations, establishing a rental rate can be more straightforward where there is a history (and reasonable forecast) of cost and price information.

Many landowners have traditionally charged just enough to cover the taxes on the land. Others don't charge, especially when the trade-off is keeping a pasture mowed (in exchange for the hay the farmer takes). Most agreements are set up on a per acre basis, where a rate per acre times total acreage used becomes the annual payment. Below are some considerations for setting the rental rate:

1. **Market rental rates**. The only practical way to determine real market rates is to ask around. As best as possible, talk with local farmers to get a feel for what they are paying for land. Call the cooperative extension office for the county: if your farm is in pasture, ask to speak with the livestock agent; if your farm is in row or field crops, ask to speak with the agent who advises farmers on those crops. If you are an "absentee landowner" (i.e., you do not currently live in that community), be sensitive to the fact that you are inquiring about issues that may economically impact the businesses of farmers that local cooperative extension agents and soil & water conservationists have worked with for years. Remember that land and the infrastructure on it can vary greatly, so what others are charging may not be appropriate for a particular farm. Make sure you compare your rate to rates for land of comparable quality, based on actual yields or productivity indices.[1]

2. **USDA Farm Service Agency (FSA) county average rental rate**. The USDA Agriculture Statistics Service surveys farmers and landowners to compile annual reports of average rents for high, medium and low productivity crop and pasture land. Note: The results of these surveys, while considered reliable, may not accurately describe conditions in certain parts of a county.

3. **Cost of land to the landowner**. Many landowners are content to simply cover their costs of "carrying" the land. These costs typically are the sum of depreciation (on certain structures), insurance, repairs, taxes, and interest. Most agricultural and horticultural land (and a fair amount of forested land) is enrolled in the state's "land use assessment" tax program whereby qualifying land is assessed at a property tax rate lower than its highest use. The program normally requires that farm and horticulture land produce a set annual gross income, which can be quite low, but nonetheless requires someone to farm the land and show income receipts.

4. **Costs of production (tenant's residual)**. Another approach is to calculate how much income the tenant has available for rent payments after subtracting all the tenant's costs associated with producing the crop on the land. This approach will require yield estimates, projected market prices, and perhaps government payments, to determine an income picture. Next, calculate the operating expenses for the year. Next, subtract the tenant's cost of machinery and equipment ownership, which includes costs such as depreciation, a return on investment, insurance, and machinery housing. Finally, a figure should be calculated and subtracted for the tenant's labor and management. The remaining amount is available for the payment of cash rent. Without the willing participation of a prospective and experienced farm tenant, this approach will be a challenge for most landowners.

1 http://www.extension.iastate.edu/agdm/wholefarm/html/c2-20.html

to an installment schedule for preparation of the land, spring crop harvest and fall crop harvest. Determining a fair rate is often a challenge, but there are several methods to consider (see sidebar *Determining a Fair Rent, next page*).

5. Allowable and prohibited uses. The lease normally limits use to agricultural production. Some landowners may want to specify prohibited uses, such as chemical application. Landowners should consider the practicalities of limiting certain activities that would otherwise reduce the productivity of the operation. Remember that all prohibited uses can be qualified by written consent if the lease so declares. Below is a partial list of issues to address:

- The lease should address protection of conservation program features, including buffers and grass waterways.

- State and federal regulations and laws should be incorporated by reference. If the landowner will allow application of chemicals (pesticides, herbicides, etc.) to be applied to the land (indeed essential to many production areas), the lease should state that only USDA approved chemicals be used and applied according to federal and state regulations. Further, the lease can restrict application of chemicals that have a residual life beyond the term of the lease.

- If the landowner intends to reserve mineral rights to the property, extraction activities such as removal of sand or gravel should also be expressly prohibited.

- It is prudent for the landowner to require the property to be left in the same condition as when the lease began, and include a redress for documented damages to the property (a photographic baseline can be made at the beginning of the lease). Though a prudent would-be tenant will have inspected the land, the soils and water availability before choosing to farm that property, the landowner should make clear that he or she offers no warranty as to the production capabilities of the land.

- Any land clearing should be discussed beforehand, and burning should be reserved to consent of the landowner upon showing of proper permits if applicable to the area.

6. **Repairs and maintenance and improvement costs.** Maintenance of property should be allocated between the parties, including responsibility for routine repairs and those caused by extreme weather events or fire. Be sure to list items such as fencing, gates, wells and pumps, etc. *See Worksheet 3.4: Repairs and Maintenance Checklist*.

7. **Rights and obligations of both parties.** Issues that can be addressed can include prohibitions on the right to sublease, payment of utilities, right of entry and inspection by landowner. A statement that the lease is not a partnership between landowner and tenant should be included, as well as a statement binding the heirs and assigns (i.e., subsequent purchasers) to the terms of the lease agreement. The lease should also contain a clear indemnity clause, requiring parties to pay for liability attributed to one party for the actions of another. It is common sense to require that both parties keep insurance policies at a designated level for just such a purpose.

8. **Termination of the lease and default**. Default means that one of the parties has not lived up to the obligations attributed to them in the lease. Numerous events can trigger default: failure to pay rent, failure to abide by any use prohibitions, maintain liability insurance, comply with laws and regulations, bankruptcy, etc. Default does not necessarily trigger termination, but should trigger a process for recognizing and curing the default if possible. If the default cannot be cured, a process should be spelled out for repossession of the property by the landowner, including reserved rights to crops by the farmer. Disagreements should be subject to a clear dispute resolution process.

As a practical matter, a lease is only as good as the parties' willingness to enforce it in court. The more thorough and open the agreement process, the less likely a disagreement will occur in the first place. Although it is likely impossible to build a lease agreement that will provide for all contingencies that might occur, both parties should try to anticipate foreseeable occurrences and identify the procedure for what the parties do should something unforeseen occur. Because both landowner and farmer benefit from a written lease agreement, both should take care in developing an agreement that supports each other's goals.

Worksheet 3.2

Short-Term Lease Checklist

Use this worksheet to ensure key areas are addressed in your discussion of a lease agreement. Each item will require discussion between both parties and legal counsel.

1. _____ Who are the parties? Make sure you have evidence of ownership and authority to act if the landowner is an entity (ie. LLC, estate, trust) other than an individual. Make sure the lease binds "heirs and assigns."

2. _____ What will be the lease term (length in years)? State law may require recording of the lease or memorandum in the register of deeds for the county where the land is located.

3. _____ Will the lease be renewable? Will both parties have the option to renew or not renew? How much notice is required for renewal, and what is the procedure?

4. _____ Do you have an adequate description of the property (real and personal) to be leased (land, boundaries, farm structures, residence, equipment, etc.) If a good written description is elusive, include an FSA aerial photo or GIS map with boundaries marked as an exhibit.

5. _____ How much and what type of rent will be paid? When must the rent be paid? (see worksheet *Determining Rent*)

6. _____ If the agreement includes a residence, will there be a separate residential lease?

7. _____ What will be the allowable and prohibited uses of the property under the lease? If chemicals are allowed, who bears liability for their misuse?

8. _____ How will the landowner and the tenant allocate responsibility for repairs and maintenance of the property? (see worksheet *Repairs and Maintenance*)

9. _____ How will the landowner and tenant allocate responsibility for capital improvements? If the tenant invests in capital improvements, how will they be compensated?

10. _____ Who will be responsible for obtaining and maintaining insurance - liability, casualty or crop insurance?

11. _____ What actions by either party will constitute default under the lease? Will the non-defaulting party have the right to terminate the lease or withhold rent until the default is cured? Will the lease include a procedure for dispute resolution?

Worksheet adapted from *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship*.

Worksheet 3.3

Estimating Costs and Estimating Rent

Use this worksheet to establish a fair rental arrangement between landowner and farmer. It will help establish a baseline of land ownership and operating costs to orient both parties toward an agreement on allocations of costs, income and establishment of a rental rate.

Item of expense	Estimated total value of asset	Interest rate %	Estimated Annual Expense		
			Whole Farm ($)	Landowner Share ($)	Farmer Share ($)
SECTION ONE. Fixed Expenses					
PART A. Fixed Investment Expenses					
1. Land					
2. Farm Buildings					
3. Farm Vehicles					
4. Machinery and Equipment					
5. Breeding Stock					
6. Dwelling					
7.					
8.					
9. TOTAL PART A					
PART B. Fixed operating expenses					
10. Labor					
a. Tenant's					
b. Unpaid family					
c. Landowner					
d. Hired					
11. Depreciation					
a. Buildings, fences and other farm structures					
b. Farm machinery and equipment					
c. Farm vehicles					
12. Repairs					
a. Buildings, fences and other farm structures					
b. Farm machinery and equipment					
13. Real estate and other taxes					
14. Insurance					
a. Liabilty					
b. Casualty					
c. Crop					
15. Soil amendments					
16. Conservation measures					
17. Timber					
18. Other:					
19. TOTAL Part B					
20. TOTAL SECTION ONE					

Variable Expenses		Estimated Annual Expense		
		Whole Farm ($)	Landowner Share ($)	Farmer Share ($)
SECTION TWO: Items of Variable Expenses				
21. Cash farm operating expenses				
a.	Livestock breeding			
b.	Hired labor			
c.	Conservation expense			
d.	Fertilizer/lime			
e.	Fuel			
f.	Seeds/plants			
g.	Utilities			
h.	Veterinary expense			
i.	Farmer training and development			
j.	Cash rent			
k.	Machinery expense			
l.	Marketing expense			
m.	Timber net expenses			
n.	Other:			
o.	Other:			
22. TOTAL VARIABLE EXPENSES				

SECTION THREE. Annual Farm Receipts					Whole Farm ($)	Landowner Share ($)	Farmer Share ($)
	Crops						
Expected yield (1) (unit per acre)							
Expected price (2) (per unit)	$	$	$	$			
Crop income (1 x 2)							
Other income (gov't, hay, other)							
	Spring		Fall				
Livestock sales	$	$	$	$			
Other							
23. TOTAL PROJECTED RECEIPTS							
SECTION FOUR. Summary Expenses							
TOTAL FIXED EXPENSES (#20)							
TOTAL VARIABLE EXPENSES (#22)							
24. TOTAL EXPENSES (#20 plus #22)							
RECEIPTS LESS TOTAL EXPENSES (#23 minus #24)							

This worksheet developed from USDA Pub. No. 836 and *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship*

Worksheet 3.4

Repairs and Maintenance Checklist

This worksheet can be used to support a clause in a lease agreement requiring that landowner and farmer will visit the issues of repair and maintenance on an annual basis. Each party should keep a copy.

Year: _____				% of Cost Contributed by Landowner and Tenant				Total Dollars Contributed Toward Repair		Value of Labor	
				Materials		Labor					
	Repair or Replacement to be Undertaken	Date to be Completed	Estimated Cost of Materials and Labor	L	T	L	T	L	T	L	T
Structures: Exterior siding/ Windows/ Roofing											
Fences											
Barn Equipment											
Water, Heating, Ventilating Systems											
Waste Management Systems											
Conservation Structures											
Total											

Landowner (signed)	Farmer (signed)

This worksheet adapted from USDA form AD 562 (Mar 1960)

Notes

About Conservation Easements

Editor's note: One question that our education collaborative has fielded consistently throughout the years is about conservation easements. Many landowners have asked, "Is it a good way to go?" The utility of the conservation easement as an effective tool in your farm transfer planning depends on your goals and financial needs, which are discussed earlier in this workbook and explored further in the narrative below.

Conservation easements are a land "protection" tool authorized by state law and recognized by the Code of Virginia and the Internal Revenue Code to protect and conserve land. Conservation easements are used to protect a variety of landscapes including farmland, forestland, ridgetops, historic structures, wetlands and beaches. They are a specific exception to the common law rule that one cannot create a permanent interest in real property.

Because conservation easements are a relatively recent legal concept, many landowners are unfamiliar with their use and particulars. At its most basic, a conservation easement allows a landowner to continue to own the land while placing certain voluntary restrictions on its current and future use. These restrictions can include limitations on subdivisions and development. In exchange for these restrictions, landowners can receive payment or tax benefits (sometimes a combination of the two).

This narrative should answer basic questions that a landowner -- particularly of farm and forest land -- might have about conservation agreements, and whether they are something to explore further. Remember that a conservation easement is a real estate transfer of certain rights and interests, and should be seriously considered with the help of a legal and tax adviser experienced with such transactions.

What is a conservation easement?
A conservation easement is a voluntary written agreement between a landowner and a qualified private non-profit organization, such as a land trust or conservancy, or a public body authorized to hold easements.

The conservation easement has two essential elements:

1. The landowner (grantor or donor) agrees to protect certain conservation values on the land, such as open space, scenic and historic resources, water quality, and wildlife habitat.

2. The conservation organization or public body (grantee) is granted the right to monitor the property and enforce the covenants of the agreement in perpetuity (forever). While the landowner may sell the land, the covenants of the easements continue to apply to all future landowners.

Many folks often ask whether a simple deed restriction can protect the conservation values of land. The key challenge is that there is no permanent mechanism of enforcing the terms of a simple deed restriction. The nature of a conservation easement is to grant another party the right to ensure that the conservation (or working) values are not threatened by actions to the land, such as uses that negatively impact the conservation values of the property.

These types of restrictive easements can be called by a number of names, including deed of conservation easement, open-space easement, a sale or grant of development rights, a working forest easement, or an agricultural conservation easement.

Conservation easements are intended to protect property from residential or non-farm commercial development, thus providing a benefit to the public by conserving open space vistas, making farmland available, protecting against water pollution from runoff, or protection of scarce natural resources such as wildlife habitat or rare species.

In exchange for this public benefit, there are sometimes funds available to pay for the diminution in property value caused by such restrictions, though in recent years of fiscal tightening these funds are less available. There are however significant federal, state, and local tax incentives for a landowner if he or she donates the right to enforce restrictions to a qualified organization. To qualify for these tax incentives, the terms of the conservation easement, though flexible, must conform to the regulatory requirements of these tax deductions, as well as the standards and expectations of the recipient of the easement, and any use exceptions -- particularly for farms and forests -- must not significantly diminish the land's conservation values.

In general, a conservation easement can be a useful tool to landowners who a) have a strong desire that the land not be further developed or used more intensively than at present (i.e. in farming), and b) are able to utilize attendant tax deductions and credits.

Conservation Purposes

A key feature of a donated conservation easement to understand is that it is perpetual and does not expire or revert back to the landowner at some appointed time. You may hear people refer to this as "forever protected," which, though difficult to imagine, means that as long as an entity exists to enforce the terms of the conservation easement, it will protect the land. Some states allow non-perpetual (or "term") conservation agreements. Though landowners will often be compensated for such agreements, these generally do not qualify for tax deductions or credits.

To qualify as a charitable contribution for federal tax and state tax purposes, a transfer of a conservation easement deed must be made to a qualified grantee (generally a nonprofit organization or a public body). The deed must restrict the property to the point of meeting one or more of the following conservation purposes:

1. Protection of relatively natural habitats of fish, wildlife, or plants;

2. Preservation of open space including farm and forest land;

3. Preservation of land for public outdoor recreation or education;

4. Preservation of historically important land or buildings.

These conservation values must be documented through a resource inventory that may include aerial and topographic maps, photographs of improvements and attributes, descriptions or surveys of specific resources and land features such as prime soils, historic buildings, wildlife habitats, or wetlands.. The inventory is known as the "baseline," and will be the reference point of the condition of the property at the time the easement is granted and the values that will be protected by the conservation easement. The owner can decide with the agency or organization receiving the easement which conservation purpose is met by which part of the property, and can distinguish ecologically sensitive areas from other areas that might be appropriate for other uses.

Rights, Restrictions and Allowable Uses

A conservation easement's restrictions should be tailored to the particular conservation values of the land and interests of the landowner and grantee. Examples of activities that may be prohibited or restricted in a conservation easement include industrial use, mineral exploration or soil excavation, subdivision into smaller tracts, residential development, road and infrastructure expansion, and extensive timbering.

Depending on the size and character of the land, conservation easements may allow limited subdivision of the land into parcels, and typically allow timbering, forest management and agricultural use. The conservation easement also usually allows wildlife management, hunting and fishing, or the construction and maintenance of a limited number of new homes or other infrastructure necessary to produce income from the property. Such improvements will often be limited

to construction within certain delineated areas called "envelopes," or conversely may be prohibited from being constructed in identified "no-build" areas.

The grantor retains ownership along with the right to manage, care for, and derive income from the property. Conservation easements are not generally effective in imposing affirmative duties or obligations on the landowner. In special cases, as in the case of sensitive wildlife habitat, a conservation easement holder with a particular expertise may have the right to undertake certain management activities on the land. A conservation easement qualifies the property for Use Value (or Land Use) Taxation if the locality has such a program. Production standards may still be required for certain categories of land use assessment.

As noted, a core function of a conservation easement is to limit subdivision or otherwise prescribe how land can be subdivided into smaller tracts. Even so, the owner can still sell, encumber (mortgage) or otherwise convey the rights in the land through lease, will, trust, or to a management entity such as a limited liability company. However, despite the type of transaction, the land remains subject to the conservation easement. The rights the landowner retains pass to any heirs or assigns (by gift or sale).

With regard to using the land for security on a loan, the value of the land as collateral will be its restricted value subject to the easement. Normally the fair-market value of the land is lowered due to the easement and its restrictions. The lower value primarily reflects its subdivision restriction, since smaller parcels are more marketable and can sell at higher prices. If there is an existing deed of trust securing a loan on the land, the lender will be required to consent to, and join in the grant of the easement. The loan will be subordinated to the conservation easement.

In order for the grantor to realize tax benefits for the easement, the holder of the conservation easement is required by the Internal Revenue Service to monitor and enforce the obligations contained in the conservation easement. Therefore, the conservation easement must provide, or allow, for monitoring visits by the conservation easement holder; these visits typically occur every one to three years. The grantor and the grantee can agree on more visits, particularly if the conservation easement has provisions for activities such as habitat research.

Where the grantor reserves rights, such as the right to timber or to subdivide, the conservation easement may require review and approval prior to the exercise of such rights by the grantee of the easement.

In most cases, a conservation easement does not require or allow entry by the public. The landowner retains the right to control or prevent public access. However, sometimes scenic and open-space easements require visual access from public roads, trails, or waterways to qualify for deductions under the Internal Revenue Code. These conservation easements are designed to protect the scenic character of the land, and thus the requirement that the land can be viewed by the public is critical to its conservation value.

Conservation Easement Tax Advantages

As noted above, there are tax advantages for the donor of a conservation easement. The tax implication is generally related to the value of what the donor is giving up: usually the right to subdivide and further develop the property.

Federal Income Tax

If the conservation agreement gift is made during the donor's lifetime and the land is considered long-term capital gain property, the donor may claim a federal income tax deduction for the full fair market value of the gift of the conservation easement. The value of the easement is the difference between the "before" value of the land (unrestricted) and the "after" value of the land (restricted). The diminution or difference in the land value due to the easement is the gift value eligible for use as a deduction.

However, to prevent a donor from using the deduction to avoid paying taxes completely, the Internal Revenue Service (IRS) places a cap on the amount of the deduction that can be claimed in any given year. For tax year 2011, the cap is set at 50% of the adjusted gross income for individuals. Individuals may carry over any unused portion of the donation for the next fifteen years subject to the 50% AGI cap each year.

For individuals who qualify as farmers by earning more than 50 percent of his or her income from "the trade or business of farming," the tax deduction is raised to 100% of adjusted gross income, and any unused deduction can be carried forward the next fifteen years.

For donations made after 2011 (unless there is a change in the legislation) the deduction reverts to 30% of AGI with a carryover period of five years.

Activities that count as farming for purposes of the deduction of up to 100% of AGI include:

- Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including raising, training, and management of animals) on a farm;
- Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner or operator regularly produces more than one-half of the commodity so treated; and
- Planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

The easement in these circumstances must require the land remain "available for agriculture."

State Income Tax
In Virginia, taxpayers can claim a land preservation tax credit (offsetting state income taxes) of 40% of the value of the easement for donation of qualifying open-space easements. The amount of credit claimed by any one taxpayer may not exceed $50,000 for tax year 2011 or $100,000 for tax year 2012 and tax years thereafter, but any unused amount may be carried over for a maximum of 13 consecutive years if the credit originates in tax year 2011 or for a maximum of 10 consecutive years if the credit originates in tax year 2012 or thereafter. In the event that a landowner has more credits than he or she can use against state tax liability, the credits may be sold or otherwise transferred to other persons or entities. The Department of Taxation charges a fee of 2% of the value of the donated interest (5% of value of credits) for transfer of credits. For donors claiming a Virginia tax credit of $1 million or more (gift of an easement in which the easement value is $2.5 million or more), the deed of easement must meet Virginia Department of Conservation and Recreation criteria, which may require conservation restrictions additional to those required by the easement holder.

Federal Estate Tax
Conservation easements offer estate tax benefits, in that a conservation easement will generally decrease the land's fair market value due to development and subdivision restrictions. The restrictions will stall the rapid appreciation of the property tied to residential or commercial development potential for that property. The lower land value may serve to decrease the overall estate value that might otherwise be exposed to an estate tax.

Under the Internal Revenue Code, if certain requirements are satisfied, an executor can elect to exclude up to an additional 40% of the after-easement value of the land from a landowner's estate for estate tax purposes (subject to a $500,000 maximum).

However, be aware that, even with a conservation easement, land can still appreciate, and given the location and desirability, can appreciate higher than originally anticipated when the conservation easement is donated during one's lifetime as part of a comprehensive estate planning strategy.

If the conservation easement is granted by will, the donor's estate may claim an unlimited charitable deduction for the value of the easement, which has the same effect of reducing the estate tax. In this case, the testator can have directed that an easement be donated upon his or her death, or can give the executor the power (option) to do so if it appears such donation will serve to retain wealth (ie. lower or eliminate estate tax burden). Up to $500,000 of the land's residual value may also be deducted from the value donor's estate in some special situations.

Local Property Taxes
In Virginia, counties that have adopted Land Use Taxation or agricultural tax value programs must qualify and assess conservation easement properties at use value. If the county does not have a use value property tax program, the assessed value is limited to the lands restricted value under conservation easement and therefore should result in a reduction in the fair market assessment and attendant real estate taxes.

Valuation of Conservation Easements for Tax Purposes
An appraiser uses a before-and-after test to determine the value of a conservation easement. Simply, the value of the property whose uses are restricted by the conservation easement is subtracted from the value of the property as if there were no conservation easement restrictions. The difference between the two appraisals is the value of the conservation easement.

Sometimes, the presence of a park or other conservation property can soften the reduction in value as it

is an amenity to adjacent land, and actually results in added value to the adjoining land. This also may happen when the donor or donor's family owns property adjacent to the easement property. The adjacent property may increase in value due to the now-protected easement property. The appraiser must reduce the value of the donated conservation easement by the amount which the other property increases in value. This is known as an "enhancement" value and must be accounted for when appraising the easement property.

An appraiser who understands the local real estate market and conservation easements should do the appraisal. When the motivation for donation is an income tax deduction, one would think there is an opportunity to substantially increase the deduction by dramatically lowering the value of the land under the conservation easement restrictions. However, there are substantial penalties imposed on both donors and appraisers for such overvaluations. Furthermore, the donor, appraiser, and the grantee organization must all sign a special tax form (Form 8283) in order for the donor to claim a federal income tax deduction.

The Conservation Easement Transaction

Conservation easements may be granted to public agencies, such as federal and state agencies, counties and towns, or to a nonprofit tax-exempt conservation organization. A non-profit entity will normally be called a "land trust" or "conservancy". The largest holder of conservation easements in Virginia is the Virginia Outdoors Foundation (VOF), a public entity holding approximately 80 percent of all conservation easements in Virginia.

Conservation easement transactions are complex. To ensure the conveyance of a conservation easement will qualify for a federal tax deduction or a state tax credit, certain documents must be prepared, including:

1. Deed of conservation easement. This is the document that outlines the agreement and whose language supports the public purposes that qualify for tax benefits. The agreement should be drafted by an attorney.

The easement holder/land trust will normally have a deed that they commonly use that will reflect the land trust's "protection" concept and expectations. The deed then is tailored to address the particular conservation values of the property and the present owner's needs. Landowners are advised to seek the advice of an attorney of their choosing who will ensure that the conservation easement allows for the continued use of that land (i.e. for farming) by the grantor, with enough flexibility that will not otherwise endanger tax benefits. This deed will be recorded in the county court house with the county register of deeds.

2. Inventory of the property. This document is known as the baseline report, and can be prepared by the agency or organization that will hold the easement. This document supports any declaration of conservation purposes, and will also serve to illustrate the conditions of the property at the time of the donation and the particular attributes of the property that the easement holder will not want significantly changed.

3. Appraisal. The appraisal is prepared by an independent appraiser, who is hired by the landowner/grantor. The appraiser should be competent in conservation easement transactions. The appraiser will conduct essentially two appraisals: one for the land's highest and best use, and the second for its value under the conservation easement restrictions. The difference represents the value of your donation or sale if you are to receive payment, partial payment, or tax benefits for the granting of the conservation easement.

4. Title work. There must be title work completed on the property to determine true ownership and whether any encumbrances (such as deeds of trust or easements) exist. Title work helps insure that all owners or parties with an interest in the property are party to the deed, and sign in the appropriate capacity. This work should be performed by an attorney.

5. Survey and legal description. As with any real estate transaction, there needs to be adequate and accurate legal description of the property encumbered by the easement. In some cases a survey may be necessary to properly delineate the property to be subjected to the easement.

6. Form 8283. This is an attachment to the federal tax return of all individuals claiming charitable contributions of more than $5,000, prepared by the Grantor or his accountant, and signed by the Grantor, Grantee and appraiser. If the deduction claimed is greater than $500,000, then the full appraisal must also be attached.

Note federal tax law requires the grantee organization to maintain sufficient assets to carry out its monitoring and enforcement obligations in the future. Therefore, organizations that agree to hold conservation

agreements will have a stewardship fund or endowment set aside to pay for staff costs associated with monitoring. Therefore, they generally need to raise money to add to this fund whenever they add a conservation easement to their monitoring requirements. While it is not a requirement, the grantee organization (particularly private non-profit organizations) will usually ask the grantor to contribute to the fund.

Modification and Extinguishment of Conservation Easements

Grantors of conservation easements should never make their decision based on the possibility that the conservation easement will be revoked or able to be modified. Conservation easements are designed to be permanent, so amendment can be difficult and extinguishment is almost impossible. In rare circumstances, extinguishment may be accomplished through a court proceeding. Successful extinguishment requires a convincing demonstration that, due to a change in circumstances (normally regarding the surrounding land use) use of the property for the original conservation purposes of the conservation easement are no longer practical or possible. If the conservation easement is extinguished, the interest in the land (or the proceeds from any sale) is allocated to Grantee and Grantor, respectively, in proportion to the value of the agreement and the value of the land. In addition, Virginia law provides a special process for "converting or diverting" land from its open-space use. This process is different from the extinguishment process; one of the most notable differences is that when an easement is extinguished the holder of the easement is only compensated with the cash value of the easement, whereas the process for conversion or diversion requires replacement land to be substituted for the land that is converted or diverted. This process is only available for easements and other protected lands held by public bodies, such as the Virginia Outdoors Foundation.

It is possible that a conservation easement can be amended by agreement of the owner and the holder of the easement. Such agreements can clarify an ambiguity in the easement, but cannot in any way diminish the conservation value upon which any tax deductions were calculated. Amendments also can add acreage to an easement or add further to the protection of the property. For instance, an increase in the conservation value of the easement, such as adding acres or relinquishing a parcel right that was retained in the original easement could generate an additional gift value for tax purposes.

Remember that while a conservation easement can be a valuable tool, it is not a matter of right. Landowners must understand that holding and monitoring a conservation easement is a responsibility that a land trust or county must choose to undertake. Accepting an easement will depend on a number of factors, including a) the potential holder's organizational capacity, b) their conservation priorities, and c) the conservation qualities of your land or whether its use (in farming or forestry) aligns with the priorities of the organization.

For more information:

Virginia

Virginia Outdoors Foundation
http://www.virginiaoutdoorsfoundation.org/

Office of Land Conservation
Virginia Department of Conservation and Recreation
http://www.dcr.virginia.gov/land_conservation

Office of Farmland Preservation
Virginia Department of Agriculture and Consumer Services
http://www.vdacs.virginia.gov/preservation/

National or Regional

Land Trust Alliance
http://www.landtrustalliance.org

North Carolina

Conservation Trust for North Carolina
www.ctnc.org

South Carolina

South Carolina Land Trust Network
http://www.lolt.org/lolt

Georgia

Georgia Agricultural Land Trust
www.georgiafarmland.org/

You can also inquire with your county's Soil and Water Conservation District to see if they hold conservation easements.

Section Four:

Meeting with Professional Advisers

About Your Team of Professional Advisers

Putting together a team of professionals to assist you is a necessary part of the farm transfer process. Though your family will accomplish a lot of work on your own, ultimately you will need professionals to advise you on financial matters and legal issues related to the future you want, not to mention drafting documents to get you there. If you consider what is at stake - family harmony, protecting family wealth from unnecessary taxes, protecting the productivity of farm assets, continuing the flow of uninterrupted income to a farm enterprise – the time and money you spend on coordinating the process of farm transfer planning, including the time to carefully select and monitor your professional advisers and their fees, will have a high rate of return.

Members of your team will include attorney(s), a financial planner, and accountant; and could also require the services of appraisers, insurance agents, cooperative extension agents, and agents of financial institutions, including present and future creditors. The realities of putting together a competent "team" of professionals - one that effectively compliments each other's expertise and applies that expertise in a coordinated fashion to your particular circumstances – can be daunting. A primary challenge is determining who will coordinate the communication between professionals in a manner that you remain in the loop, and how to handle differences of opinion among your advisers on your particular situation and strategy.

The time and money you spend on coordinating the process of farm transfer planning will have a very high rate of return.

Sometimes, a member of your family may volunteer for the task of coordinating the many assessments and information gathered as outlined in this workbook. This person may spend many hours reading up on subjects related to farm transfer planning, estate planning, arcane tax issues, as well as many hours on the phone with advisers, gathering information from family members, coordinating family meetings. There are other professionals that can serve in this purpose as well, either as a consultant, or as one of the members of your "team." Always remember that, unless you and the family have agreed otherwise, the relationship between you and your attorney is one of confidentiality, and much information and likely decisions will need to be kept from other family members.

Most farmers and rural landowners live in rural communities where personal relationships influence decisions. In such a community, one professional you customarily work with, perhaps a lender or insurance agent, refers you to other professionals and so on. In many cases, professionals will refer you to someone they have worked with before on other matters, and already have established mutual trust and lines of communication. Indeed, it makes little sense for one professional to refer you to someone in whom they have little confidence, as that will reflect directly on their professional credibility.

It cannot be avoided that the advice of some professionals will be tied to their effort to sell a certain product, such as insurance or financial investments. There is nothing inherently wrong with this. Someone with the proper licensing – to protect you as a consumer – has to do it. An attorney cannot take a financial interest – other than compensation for his or her time – in your farm transfer plan in the form of commissions from selling you an insurance policy or investments. Likewise, non-attorneys - such as financial planners, accountants, insurance agents - are breaking state law when giving you legal advice and drafting legal documents. If they offer, you should decline, and you should refrain from requesting them to offer such advice, thinking it will save you money. You should be able to get a satisfactory explanation from each of your professionals on the necessity of each product, not simply that it is what someone else recommended or purchased.

Attorneys

For a number of reasons, it is often practical to have the attorney serve as the central team member, often the point of first contact. One practical reason: Attorneys ethically must accept responsibility for making sure clients fully understand what rights

and opportunities they are giving up by choosing a particular course of action at the recommendation of a non-lawyer professional member of their team.

Remember that the basic legal issues involved in farm transfer are not specific to you as a landowner or farmer, but generally apply to all members of society. What differs is the landed nature of your wealth, your rural values that may govern your decisions, the unique aspects of farming as a small business owner and your role as caretaker of a land legacy. You should be confident your attorney understands this.

Selecting a good attorney can of course be a challenge. The attorney most farmers and landowners come in contact with will be someone local in their community with whom they have done business before or who has served other members of the family. However, the issues surrounding farm transfer fall into a number of areas of legal practice – estate and gift tax planning, elder law, farm business operation (itself a host of practice areas) - and it is a challenge to find all of these in one practitioner. This is not to impugn local general practitioners, but sometimes their range of services to the community (and the extended families therein), precludes expertise in certain critical areas.

A key challenge for the attorney, it must be recognized, is to effectively serve as a counselor to you and your family, not simply act as a plumber who fixes things that go wrong or executes documents at the direction of a non-attorney. You can help them and your family immensely by using the exercises in this workbook. The clearer your articulation of yours and your family's goals for the farm, the better service you will receive (i.e., you will feel as though you have been understood), and it will save you and your attorney time, which translates into money saved.

It is important to remember that most attorneys are paid for the value of their time. Estate planning attorneys, for practical reasons of time and expertise, may require services of a non-lawyer financial planner to assist in incorporating financial products such as annuities, insurance products, securities, and mutual funds into a client's estate plan. Lawyers cannot legally advise you as their client and sell you financial products at the same time. Indeed, the sale of such products, such as insurance and securities, requires separate state and/or federal licensing, which most attorneys do not have. On the other hand, financial planners may be unfamiliar with the legal rationale for utilizing certain financial products in an estate plan.

Note that a number of non-lawyers do style themselves as "estate planners." Just remember that while their training may give them a more holistic view of your wealth situation, they are not licensed to draft legal documents. If a non-lawyer estate planner simply directs you to an attorney to draft documents they recommend, be attentive to whether the attorney takes time to explain why in his or her judgement these are necessary (the tip off will be to what extent they explore your unique situation and desires with you).

Attorneys are required to use independent judgment in considering how to serve your needs (i.e., your goals), even when they have been referred to you by a non-attorney professional with whom you are doing business (e.g. a financial planner or insurance agent). Beware of any attorney who simply complies with a recommendation on a course of action without thoroughly explaining it to you. Your attorney should be someone who makes you feel confident in their skills as a counselor, not just someone who prepares documents for you to sign.

In sum, attorneys cannot sell you products such as insurance and investments, and financial planners cannot draft the documents that transfer these assets in the event of an identified occurrence (risk) such as death or divorce or disagreement. Make sure that while both communicate with each other (with your permission), they are independently communicating with you and addressing your needs.

There may be other members of your team, for example:

Life insurance agents can review your insurance coverage and help you organize information for your attorney and tax adviser. The agent will suggest ways to help you avoid liquidity (cash flow) problems upon your death. Of course, life insurance agents are usually compensated through commissions on the policies they sell, so you may need to shop around to ensure that you find the right policy at the right price. Nonetheless, price alone should not be the sole basis for purchasing life insurance; an agent with whom you are comfortable and with whom you work well will be worth the commissions paid.

Accountants or tax advisers are also knowledgeable of estate and other taxes. Accountants provide tax advice as do some attorneys. Certified Public Accountants are accountants who are licensed by a state board of accountancy. Accountants or other tax advisers will help you understand the tax consequences of various types of transfers. Accountants or other tax advisers also can advise you about business or property management, valuation of assets, and business continuation or sale. Accountants or other tax advisers are usually compensated on an hourly basis.

Trust officers offer management and investment services. Trust officers may be attached to a bank trust department, or they may be independent. Trust officers are usually compensated based upon an annual percentage of the principal in the trust. In general, the larger the trust, the lower the percentage that you can expect to pay. Most trust officers have a minimum amount of money that they are willing to manage.

Financial planners review your entire financial situation and identify strategies to achieve your financial goals. They work with other professionals to develop your insurance, investment, retirement, and estate plan. Financial planners are compensated either on a fee basis or on a commission basis. The services of commission-based financial planners may be quite valuable to you, but the scope of their advice may be limited by the products that they sell. Fee-based financial planners generally do not sell any products.

Forestry professionals can advise you on an often overlooked asset: your forest stand. The great majority of farms in the Southeast have a forestry component that should be considered an asset and managed as such. It therefore should be critical to have a registered or certified forester. A professional forester can help you a) develop a forest management plan, b) determine the volume and value of your timber, c) conduct timber harvests and sales, properly reforest your land by advising you on how to best establish a new stand of trees, d) reduce your risk of loss from fire, insects, diseases, overstocked stands, and improve tax treatment of income, and e) enhance wildlife habitat and improve hunting success or increase wildlife viewing opportunities.

Mediator
In a number of situations, you may find that communication is difficult within your family or those with interests in your farm property. A mediator is trained in consensus-building. Unlike the attorney, who ultimately represents one or more parties, a mediator is known as a "third-party neutral," one who is paid *not* to take sides. They can enforce the rules of communication, help explain positions, and keep the discussions on track. In a large family situation, this could prove helpful.

Conclusion - Finding Services in One Store
For practical reasons, your attorney should be your primary coordinator of your legal and financial decision-making. In some cases, you may find that some of your essential services, particularly tax advice and perhaps accounting, can be housed within your attorney's firm. There are strict state rules in place to protect you in this arrangement. If there are sensitive matters that must be kept confidential the attorney-client privilege offers that protection.

Ultimately, you may have to travel outside your locality or region to find the right services, particularly legal and tax. Just as you might travel across the state to a farm show to shop for new equipment to enhance your farm income, doing the same to visit an attorney will pay long-term dividends by protecting your wealth, the future of your farm, and the well-being of your family.

Gathering Information About Your Estate

Editor's note: The following discusses how to save time and money by gathering your important information prior to meeting with professional advisers. Theodore Feitshans of NC State University is the author.

Gathering information for estate planning is critical. Organization is extremely helpful. The following information categories will help you start collecting and organizing the needed estate information that an attorney or a tax adviser needs. The list is very complete; don't let it worry you. Just gather readily available information that can make your initial meeting with your professional adviser(s) more productive. Organize asset, debt, and real estate information into files for your initial professional meeting. Delays in finding and sharing information will waste time and cost you money.

Like the worksheets on the following pages, many attorneys, tax advisers, and financial advisers have their own forms that they will ask you to use when compiling this information prior to your initial meeting. Organizing and gathering information by the following categories can greatly facilitate that process.

Personal Information
List everyone who has a legal right, or may believe that they have a legal right, to any part of your estate, your retirement, or other assets under a divorce settlement, divorce decree, or a premarital agreement. Copies of any divorce settlements or decrees and any premarital agreements from your current or earlier marriages should be included with this information. Make photocopies of your original documents to bring to your first meeting with a professional unless he or she specifically asks for originals.

Make a list of all family members. Include the names of your children— adopted, natural, legitimate, and illegitimate; grandchildren; parents; your spouse; your spouse's parents, and ex-spouses. Provide contact information for everyone on your list, and include their birthdates, addresses, e-mail addresses, telephone, including cell phone numbers, occupations, and social security numbers. Any other relatives and friends who may play a role in your estate plan as an heir, executor, guardian, agent under a durable power of attorney, or health care agent under a health care power attorney should be included in this list. Though stepchildren may be excluded as beneficiaries in a will, information on them should be included in this list.

If you have illegitimate children or paramours that are unknown to your spouse, you must make your attorney aware of these individuals. This means that you cannot use the same attorney as your spouse to develop your estate plan. If you do so, that attorney must, under legal rules of ethics, reveal the names of those illegitimate children or paramours to your spouse.

Adults who cannot care for themselves represent especially challenging estate planning issues. Your personal information should include information about special needs children who may need help when they become adults. Also include information about parents or siblings who may need special provisions in your estate plan due to degenerative diseases or other conditions.

Bank Accounts
Provide information for all bank and credit union accounts. Include the account number(s), the exact name(s) on each account, and the name and location of the branch at which you do business. You should also provide the name and contact information for any beneficiary named on each account. For joint accounts, describe the form of ownership used to the extent that you know it and include a copy of the signature card or other document under which the account was created.

Stocks, Mutual Funds and Bonds
Include a description of all stocks, mutual funds and bonds, the years purchased, the number of shares or bonds, the exact name of the owner(s), the face value, the cost, and the name and contact information for the brokerage firm, if any, that holds the shares or the bonds on your behalf.

Life Insurance
List the company(ies), contact information for each company, the policy number(s), the type of life insurance (such as term, universal life, whole life),

the face amount, the cash value (if any), and the exact name(s) of owner(s), the insured(s), and the beneficiary(ies) of each policy.

Trusts
List the type, contact information for the trustee(s), by whom the trust was established and when, the exact name(s) of beneficiary (ies), the value, and the owner. You should also bring copies of supporting documents, including the trust document.

Personal or Business Loans Owed to You
Describe moneys owed to you. Include the debt description, the year acquired, the value, and the person who owes you. Include copies of documents that provide evidence of or secure the debt.

Real Estate
List the type of property and describe it. Include the acreage, its location (the town or rural road, state, and county where it is located), the year acquired, the purchase price and the cost of all improvements, the tax value, and your best estimate of current market value. Also provide the names of all owners in addition to you and their contact information. Bring copies of deeds and any survey maps that you have. Copies of deeds may be obtained from the land records office in the county where the property is located.

Personal Property
List livestock, motor vehicles, farm machinery, crop inventory, home furnishings, jewelry, art, antiques, and personal items. Describe each item's cost and value, and include the names of any co-owners and their contact information. For titled personal property such as automobiles, a copy of the title should be included with the information brought to the initial meeting.

Personal and Business Debts
Compile a list of all money that you owe to others. This list should include complete contact information for each creditor, the amount and terms of the debt, and the security, if any, for the debt. For debt secured by your real property, include a copy of the note and the mortgage or deed of trust, in addition to the name of the creditor, the contact information for the creditor, the due date of the debt (including periodic payments), and the remaining amount due. If your spouse or some other person is also liable for the debt, include that person's name and contact information.

If you have other debt attached to your real property, such as tax liens, judgment debt or workmen's liens, include all information to the extent known.

Information about all other personal liabilities, whether secured or unsecured, should be included. These may be credit card debt, unsecured notes, insurance loans, notes that you cosigned for children, unpaid real estate taxes, unpaid personal property taxes, unpaid state taxes (including income and inheritance taxes), unpaid federal taxes (including income and gift taxes), and unsettled claims (such as for automobile accidents). Include the name of each creditor and contact information, the date due (including periodic payments), and the amount remaining to be paid. Also designate which debts are insured by credit life or other insurance. Include the names of others, such as cosigners, who are also liable for payment of these debts.

Retirement Benefits
List and describe all pensions, profit sharing, deferred compensation, death benefits and social security benefits. Provide full contact information for each account, the amount, and the terms for each account. A copy of the description provided to you by both the provider of each account or your employer should be included in the package of information for your initial professional meeting. Also include the level of annual benefits, names of beneficiaries, and the age of eligibility or years of service needed. Many providers of pensions and related benefits, and some employer personnel offices, will provide a comprehensive analysis of benefits for you upon request.

Other Financial Information
Before meeting with your financial or legal advisor, summarize your income for previous year(s), your current income, including salary, retirement income, annuities, rents, interest, bonuses, dividends, trusts, and capital gains. Bring copies of income tax returns for at least the last three years to the first meeting with a lawyer or other professional.

Safe Keeping; Safety Deposit Boxes, Safes and Fireproof File Cabinets
List and describe the locations where you keep your important papers. Include the exact location of your will (and your spouse's will, if married), deeds, insurance policies, certificates for stocks and bonds, financial statements, income tax returns for last five years, gift tax returns, contracts, partnership, LLC and corporation documents, profit sharing plans, pre- and post-nuptial agreements, employment contract(s), and evidence of pension benefits.

Worksheet 4.1

Locate Important Documents

Use this worksheet for help locate the documents you will need in meeting with professional advisers. It is important to gather certain documents to assess your current financial situation, but also to determine ownership and obligations related to your real and personal property. Doing this exercise prior to meeting with professionals will save time, money, and will help them better serve your needs.

DOCUMENT	WHERE IS IT?
Birth Certificates (all family members)	
Marriage Certificates	
Divorce decrees/separation	
Medical Records	
Healthcare Power of Attorney and Living Will	
Durable Power of Attorney	
Bequest list of tangible personal property	
Wills and Trust documents	
Cemetery deeds/burial instructions	
List of special bequests (to heirs, charity, etc.)	
Insurance policies	
Stocks, mutual fund and bond certificates	
Real estate deeds	
Promissory notes, contracts, mortgages, receivables	
Partnership/corporation documents	
Checking/savings account statements	
Pension statements	
Income/gift tax returns	
Farm and other business financial statements	
Property tax statements	
Farm conservation contracts (NRCS, etc.)	
Forestry Management Plan	

Worksheet 4.2

Wills and Trusts Basics

Regardless of the size of your estate, all wills and trusts require basic decisions about who will administer the estate or trust property, whom property will go to, how it will be divided, etc. Use this worksheet to help made some decisions on key elements of your will and trust documents. Factors to consider are noted with each question.

Executor of the estate: If all or parts of your estate passes through probate, whom do you want to handle the details of paying your debts and death taxes, and distributing the remaining assets to the beneficiaries named in your will? A spouse is appropriate as well as adult children, close friend, accountant, lawyer, or a bank's trust department. The individual is generally paid. Successors (1 or 2) should be named in case the first predeceases you or is incapacitated or is otherwise unable or unwilling to serve.

Name/Address: _____

Successor(s): _____

Trustee: If you are advised to make use of a trust, whether in your will or in a separate living or insurance trust, you will need to name a trustee to manage investments, pay taxes, make distributions, and so forth. In the event he or she cannot serve, you will want to provide for one or more successor trustees. Many who establish a living trust will become the trustee, with a trusted family member or institution taking over upon death or incapacity.

Name/Address: _____

Successor(s): _____

Do you want a corporate or individual fiduciary as executor or trustee? Executors and trustees are referred to as fiduciaries because of the high standard of care required of them to manage the assets of another person.

Guardians for minor children: For younger parents using this workbook, it is important to accept the possibility that you could, through accident or illness, predecease your children. You may suggest a guardian for your children in the body of your will. A thorough discussion of who might best serve as the guardian of your children in that event should take place before drafting or updating your wills. It is important to identify secondary and tertiary guardians in the event your first choices are unable through changed circumstances to serve or otherwise care for your children. You do not want a judge to decide whom your children will live with.

Factors to consider would include: age of proposed guardians and ages of their children; ages of your children and the number of them who are still minors; and health and financial situations of all parties. If you name a couple as guardians and one of them dies, would you want the surviving co-guardian to act as sole guardian? What if they divorce? Is a brother, sister, grandparent or a close friend the better choice? Be sure to discuss the matter with your intended choices to make sure they are willing — or otherwise feel confident they are able — to serve as guardians for your children. Remember that your will is merely a suggestion to the court, but in all likelihood the suggestion of guardian will ensure your children are cared for according to your wishes.

Guardians for minor children: Who do you think is best able to cope with the raising of your minor children?

Name/Address: _____

Successor(s): _____

Distribution of assets to spouse: Should all assets be distributed outright to the spouse? Should assets be held in trust for management purposes or incapacity of spouse? Your attorney may advise the use of a testamentary trust to protect your estate tax exemption while providing care for your spouse for her lifetime.

Distribution of assets to children: If you do not want your assets distributed outright to your children in the event of your demise, assets should probably be held in a trust. A "testamentary trust" can be created in your will as contingency provisions for underage children. Or, you can use a living trust with contingency provisions. The trustee will take care of minor children's needs as instructed in the trust. At some future time you will probably want to distribute the assets to the children. At what age? What about a child with disabilities? What about grandchildren?

Many people like to distribute a portion of the estate at several different times during their children's lives. (For instance, distribute at age 21, at age 25, and at age 30; or ½ at age 30 and ½ at age 35, etc.)

Your preference: ____ % at age ____ ; % ____ at age ____; % ____ at age ____.

Key Questions:
1. Do you want the estate to pass in equal shares to children?
2. Do you want some to have more because others have had more in the past or to provide adequate opportunities to keep the business in the family?

Final heirs: In the event your children predecease you before inheriting your estate, to whom would you want your estate to pass? For example, ½ to the husband's side of the family (e.g., parents, brothers, sisters, etc.) and ½ to the wife's side? What if one child predeceases you? Should that child's share go to a spouse or to granchildren?

Charitable bequests: Would you be interested in making any charitable bequests? Such bequests may reduce your income and estate taxes.

Who are they? _____

Percent of estate? Outright gift? Restrictions?

Individual bequests: Are there special heirlooms or gifts of family treasures that you want specific individuals to have? (Attach sheets as necessary)

Item To Whom:

Name	Item	Reason

Adapted from Estate Planning for Farmers and Ranchers, University of California, Division of Agriculture and Natural Resources, Pub. 21515, and modified by L. Leon Geyer, Virginia Tech.

Worksheet 4.3

Gathering information about your estate

Use this worksheet to take stock of your personal wealth, your family situation, and your current plans and ideas, so that your professional advisors will have a good starting point from which to guide you through the farm transfer planning process.

I. PERSONAL INFORMATION Date: _____

Your Full Name: _____

Birth Date: _____

Spouse's Full Name: _____

Birth Date: _____

Date, County, and State of your marriage: _____

Home address: _____

Home telephone: _____ Email address: _____

Business Name(s) and Address(es): _____

Husband: _____

Wife: _____

Business telephone: Husband _____ Wife _____

II. PROFESSIONAL ADVISERS:

Attorney: _____

Address: _____

Telephone: _____ Email address: _____

Insurance Agent: _____

Address: _____

Telephone: _____ Email address: _____

Financial Advisor: _____

Address: _____

Telephone: _____ Email address: _____

Accountant: _____

Address: _____

Telephone: _____ Email address: _____

Lender: _____

Address: _____

Telephone: _____ Email address: _____

Other Advisors: _____

_____

III. ALL CHILDREN: (if any children are adopted or from a previous marriage, please indicate)

Name	Spouse	Date of Birth	Resides (City, State)

III.B. GRANDCHILDREN:

Name	Parent	Date of Birth	Resides (City, State)

IV. GENERAL FAMILY INFORMATION:

Does any child or grandchild have a health problem or handicap? Yes No

If yes, please explain:

Are there any persons dependent on you? Yes No

Monthly obligation: Alimony or child support $ and years to be paid:

V. CURRENT ESTATE PLANS:

Does Husband have a will/trust at the present time? Yes No

Location of original(s):

Does Wife have a will/trust at the present time? Yes No

Location of original(s):

Do you have a marital property agreement? Yes No

VI. REAL ESTATE (Personal residences, farm properties, rental properties)

Location	Ownership*	Basis**	Estimated Value	Mortgage Balance

VI.1 TIMBER REAL ESTATE (Timberland, merchantable timber, pre-merchantable timber)

Location	Ownership*	Basis**	Estimated Value	Mortgage Balance

*List the name(s) that appear as grantees on the deed for each property to the best of your knowledge. If you are certain the deed contains language such as "jointly" or "with right of survivorship," please indicate.

**Basis is the value of the property at the point you came into its ownership, less any depreciation taken, and is determined by the manner in which you acquired it. As a general matter, if you inherited it, your basis is the value placed on it during the estate settlement. If you purchased it, the purchase price is your basis. If the property was gifted to you, generally your basis is the same as the previous owner's. Basis is used to determine any capital gains you or your heirs may be exposed to by sale of the property.

VII. BANK ACCOUNTS AND CERTIFICATES OF DEPOSIT:

Institution Name	Type of Account	Ownership	Approximate Balance

VIII. STOCKS AND MUTUAL FUNDS:

Company/Fund	Number of Shares	Ownership	Cost (Basis)	Market Value

IX. BONDS (Taxable and Exempt), TREASURY INSTRUMENTS, NOTES RECEIVABLE:

Description	Due Date	Face Value	Market Value	Ownership

X. LIFE INSURANCE

Furnish the requested information for all policies on members of your family, including husband, wife and children. Be sure to include group insurance a member of your family may have through an off-farm job. Use additional sheets if necessary. Your insurance agent may be able to provide you with printouts of the information requested below.

	Policy 1	Policy 2	Policy 3
Insurance Co.			
Policy #			
Insured			
Owner			
Type Insurance			
Face Value			
Cash Surrender Value			
Loans			
Primary Beneficiary			
Contngent Beneficiary			

XI. RETIREMENT PLANS

If either spouse is entitled to any benefits under a deferred compensation, retirement or profit sharing plan, please provide the following information.

	Plan 1	Plan 2	Plan 3
Participant			
Plan Name			
Plan Nature			
Expected Payment			
Death Benefit			
Contributions...			
...Made by			
Designated Beneficiary			
Life Insurance in Plan?			

If either spouse has established an IRA account, please furnish the following information:

Contributor			
Investment			
Approximate Value			
Designated Beneficiary			

XII. INTEREST IN TRUSTS OR ESTATES:

Does any member of your family have any relationship to an existing trust as donor, trustee or beneficiary? Yes No

Has any member of your family in the past received an inheritance from an estate? Yes No

If yes, please explain:

Does any member of your family have any interest (e.g. as a beneficiary) in a pending estate? Yes No

If yes, please explain:

XIII. PERSONAL EFFECTS:

Please list all items having significant market value, such as jewelry, art, antiques, rare musical instruments, autos, boats, collections, farm equipment, etc. Please Note: Normal household furnishings need not be listed.

Description	Ownership	Estimated Value

XIV. CLOSELY HELD BUSINESS INTERESTS:

Company Name	Organization Type (Corp., LLC)	Ownership Interest (as a %)	Estimated Value

XV. LIABILITIES (other than real estate mortgage):

Creditor	Amount Due	Date Payable	Collateral Description

XVII. GIFTING:

Have you or your spouse made any gifts in any one year to any person which exceeded in value either a) $13,000 if made by you alone, or b) $26,000 if made by you and your spouse? Yes No

If yes, specify the amount of gift, date and donee:

Gift Description	Estimated Value	Date of Gift	Donee

Notes

Notes

Glossary

1031 Exchange: Also known as a "Like-Kind Exchange." A structured exchange, enabled by the Federal Internal Revenue Code, whereby taxes on capital gains realized from the sale of property can be deferred when sale proceeds are used to purchase property of like kind.

Accountant: One who is skilled in the practice of accounting; a professional with skills in accounting, auditing, financial management and/or tax law.

Acre: A measure of land equaling 160 square rods, or 4840 square yards, or 43,560 square feet.

Administrator: A person appointed by the court to manage and settle the estate of a deceased person who died intestate (without a will). Also known as a *personal representative*.

Ad valorem: Literally, "according to value", the designation of an assessment of taxes against property.

Agricultural Conservation Easement: Generally describes a voluntary agreement which restricts land to agricultural uses.

Agriculture: The science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products; farming; the use of land for growing crops, livestock or timber.

Alimony: An allowance to a spouse for support given by another spouse due to a separation or divorce.

Annexation: The process by which land outside of any incorporated municipality is taken into the legal boundaries of a municipality.

Appraisal: An estimate or opinion of quantity, quality, or value. A documented opinion as to a property's value, marketability, usefulness, or suitability for a purpose.

Appreciation: The increase in the value of property due to economic or related causes that may be temporary or permanent.

Appurtenance: A feature of a parcel of land, such as a right, privilege, improvement or fixture that passes with the land. For example, an easement is an appurtenance.

Arbitration: A process intended to settle disputed questions or law or fact, by one or more arbitrators by whose decisions the parties agree to be bound. An "arbitration clause" can be found in contracts between parties.

Assessment: A charge against real estate made by a unit of government to cover the proportionate cost of an improvement, such as a water line or sewer.

Assignment: the transfer of one's rights under a contract to another person.

Assignment of Lease: A transfer by a lessee (tenant) of all interest under a lease for the balance of the term of the lease. May be restricted by the terms of a lease.

Attorney: A person licensed to practice law in a particular state.

Attorney in Fact: one who is authorized to perform certain legal acts for another under a power of attorney. See *Power of Attorney*.

Bargain Sale: The sale of property to a charitable organization for less than its fair market value. This approach gives the landowner the opportunity to exchange the value not received in cash for a reduction in state and federal income taxes.

Basis: the price paid for property or the fair market value of property when inherited, less accumulated depreciation, used to calculate capital gains on income from the sale of the property.

Beneficiary: One for whose benefit a trust is created, for whose benefit property or funds are placed in trust or the recipient of funds from an insurance fund or annuity contract.

Boiler Plate: Language considered standard to contracts and other written agreements. Paragraphs of boiler-plate can appear identical in any number of contracts.

Glossary

Bundle of Legal Rights Concept: Establishes real estate ownership; consists of rights to sell, to mortgage, to lease, to will, to regain possession at end of a lease (reversion); to build and remove improvements, to control use within the law. Such legal rights in land can be transferred in all or in part.

Capital: Accumulated wealth used for production of additional wealth.

Capitalization: A process used by appraisers to convert a property's actual or projected net income into an estimate of property's value.

Capital Gain: Profit that results from the sale or exchange of an asset.

Caveat Emptor: "Let the buyer beware," legal term to describe the duty of a buyer of property to examine the property, and the property purchase is subject to conditions which would be readily ascertainable upon inspection.

Chain: A surveyor term for a distance measuring sixty-six (66) feet. Commonly seen in property descriptions in older deeds.

Chain of Title: A history of conveyances and encumbrances affecting the title to particular real property, found in the deed registry of the county where the property is located.

Charitable Deduction: The value of a donation to a nonprofit organization, or public agency that can be used to decrease the amount of taxes that are due from an individual. An easement or land donation must be permanent to qualify as a charitable deduction.

Charitable Gift Annuity: A method of donating assets, including land, directly to a qualified conservation organization which is then responsible for making annual payments to the donor for a specified period of time. In one variant to this option, donors can defer their annuity payments to a later date, such as at the time of retirement.

Charitable Remainder Trust: A method of donating land to a third-party trust (managed by a bank or financial institution). The trust is responsible for handling the donor's annual payments and, upon his/her death, transfers the remaining assets to the designated conservation group.

Codicil: A written supplement or amendment to an existing will.

Contingent Beneficiary: The person to whom the proceeds of a life insurance policy are payable in the event that the primary beneficiary dies before the insured.

Corporation: A complex business entity owned by shareholders who bear no liability for business debts beyond the price paid for their shares of ownership.

Conservation Easement: A restriction on particular uses of land in order to advance specific goals to protect or preserve a parcel of land.

Conservation Tax Credit: A credit against state income tax owed, available to individuals and business entities, for the donation of real property, or a perpetual conservation easement, to a qualified entity.

Conservation Values: The aspects of a tract of land, such as scenic views, cultural resources, historic structures, wildlife habitat, water features and water quality benefits, agricultural use, rare plant species, wetlands and similar features worthy of long-term conservation and/or preservation.

Contract: A legally enforceable agreement between two or more competent parties supported by legal consideration to do or refrain from doing some act. Contracts for real property or for value above a certain amount must be in writing.

Covenant: A deed or land restriction that is intended to limit the use of the land by the current owner and all future owners. It is a non-possessory interest in land, such as an agreement between adjoining landowners to do something (affirmative covenant) or to refrain from doing something (restrictive covenant) with respect to the land. Each covenant has two sides: the burden and the benefit. The burden is the promisor's duty to perform the promise and the benefit is the promisee's right to enforce the promise. Some covenants may not be perpetual.

Decedent: A deceased person.

Deed: A signed writing under which an interest in real property is transferred from a grantor to a grantee upon delivery of the writing to the grantee.

Deed Restriction: A limitation in a deed to a parcel of property that seeks to limit the use of that parcel by the subsequent owner. Some deed restrictions may not be perpetual.

Deed of Trust: A recorded deed, held in place of a mortgage, to indicate in a chain of title that there is a lien on a property. A trustee holds legal title until the lien is paid.

Development Rights: The term applied to a landowners right, subject to governmental restrictions such as zoning, to develop property for non-residential uses.

Devise: A gift of real property by the will of a decedent.

Devisee: A person to whom lands or other real property are given by a will.

Dominant Tenement: A parcel of land that carries a right to use all or a portion of a neighboring parcel of land, such as an easement providing access across another's land.

Durable Power of Attorney: The durable power of attorney is identical to the regular power of attorney except for one crucial difference. The regular power of attorney ceases to be effective if you become disabled, whereas the durable power of attorney continues to be effective despite your subsequent disability.

Easement: An implied or express agreement (written or oral) creating a right, privilege or interest by one party in another party's parcel of land.

Eminent Domain: The right of a sovereign state to take private property for public use.

Equity: The interest or value an owner has in an asset over and above the debts against that asset.

Escheat: The reverting of property to the state when there are no persons legally entitled to hold title or when there are no heirs to inherit property.

Estate Tax: A federal tax on the value of all assets owned at the time of death. This tax is paid out of the estate of the deceased, before assets are transferred to the heirs (normally within nine months of date of death). The amount of the tax is based upon the total value of the estate less any applicable deductions.

Executor: A man chosen by the maker of a will to carry out the terms of the will.

Executrix: A woman chosen by the maker of a will to carry out the terms of the will.

Extra Territorial Jurisdiction (ETJ): The legal ability of a municipality to exercise authority beyond its normal boundaries.

Fair Market Value: The price that a willing buyer would pay a willing seller at a time when neither party is under any compulsion to buy or sell and both being fully informed of the relevant facts.

Farmland Protection Program: A program that uses public monies or public authority to prevent the development of farmland for non-agricultural purposes.

Fee Simple: The largest estate or ownership in real property, free from all manner of conditions or encumbrances.

Fiduciary: A relationship based upon trust or confidence. A person having a duty to act in the best interest of another.

Right of First Refusal: An agreement between a seller and a potential buyer allowing the buyer the option to purchase the seller's property within a specific time period by matching any other offers. It protects the buyer temporarily from losing the deal to another seller until the buyer decides on what to do.

Fixture: An item of personal property affixed to a building or structure on land in such a manner that it becomes a part of the building, structure or real estate. Fixtures affixed to real estate become appurtenances of that real estate, and thus pass with the transfer of that real estate. See *Appurtenances*.

Grantee: Term used to describe the person or entity that receives a transfer of an interest in property by sale, gift or trade.

Grantor: Term used to describe the person or entity that relinquishes an interest in property by sale, gift or trade. For example, a grantor conveys land to a grantee by deed.

Ground Lease: The separation of ownership of land from ownership of buildings and improvements to the land. The lessee under a ground lease pays rent to the landowner but owns the improvements outright.

Guardian: A person appointed by a court who has custody and care of a minor child or incompetent adult. A guardian can be named in a will.

Glossary

Healthcare Power of Attorney: A written grant of authority from one individual to another to make decisions regarding significant health care decisions in the event the first individual is unable to express their wishes for care.

Heir: A person appointed by statute to succeed to the estate of a deceased person in the case of intestacy.

Heir Property: Land that is owned as tenants in common by two or more people who have inherited the land through intestacy. Heir property may have owners with varying fractional interests from several generations.

Highest and Best Use: That realistic potential use of property which will, as of the date of an appraisal, support the highest market value for the property, or that use which will produce the maximum net return on the property over the period encompassing the foreseeable useful life of the property.

Impact Fees: Fees required of a developer for land disturbing activities that are assessed by a governmental unit based upon a formula.

Improvements to Land: Any betterment to land that increases its value or use.

Income Tax Credit: A decrease in state income tax due in exchange for a permanent donation of an easement or land to a qualified land protection agency or nongovernmental organization.

Income Tax Deduction: A decrease in taxable income.

Inherit: To succeed in ownership of property by devise or law at the death of the property's owner.

Inheritance Tax: A tax paid by estate beneficiaries to the state and federal government. The percentage of tax paid is determined by the size of the inheritance, as well as the beneficiary's relationship to the deceased.

Installment Contract: Purchase of property by two or more payments over time.

Inter vivos Trust: A trust created while the creator (called a trustor or settlor) is alive, sometimes called a "living trust." The property is placed in trust with a trustee (often the trustor during his/her lifetime) and distribution will take place according to the terms of the trust — during the trustor's lifetime and/or upon the trustor's death.

Intestate: To die without a valid will. Property of the decedent is passed to heirs at law according to a statutory scheme.

Irrevocable Inter vivos Trust: A permanent trust created during a grantor's lifetime. Once it is created, it cannot be revoked, amended, or changed in any way.

Joint Tenancy: Property held by two or more persons together whereby the death of one owner transfers that interest to the other owner(s).

Land Contract: A contract for the purchase of real estate upon an installment basis, whereby the seller retains title until the last installment payment is made by the purchaser.

Landowner: An owner of land and its appurtenances.

Lawyer: A person licensed to practice law in a particular state.

Lease: A contract, written or oral, for the possession of property in return for payment of consideration, such as money (rent).

Lease-Option Agreement: An agreement to lease property that also extends to the lessee, an option to purchase the leasehold interest at a future date.

Lease-Purchase Agreement: An agreement to lease property that also binds the parties to complete a purchase and sale of the property at a future date.

Leasehold: The interest a lessee has in real estate by virtue of a lease.

Legacy: A disposition of personal property under a will.

Legatee: A person who receives personal property under a will.

Lessee: The person who leases property from the owner of the property.

Lessor: The person who owns property and leases it to a non-owner for use.

Legal Description: A description recognized by law which is sufficient to locate and identify real property.

Letter of Last Instruction: A letter of last instruction leaves basic information to survivors upon your death. Rather than forcing survivors to become

detectives and find all of your important papers, you can provide the details and instructions in one document. Always attach a copy of the instructions to your will.

Liability: In law, an obligation of one party to another, usually to compensate financially. It is an aspect of tort law that results from damage, injury, or a wrongful act.

Life Estate: An estate or interest held during the term of some certain person's life. With the creation of a life estate, there are two types of beneficiaries: a life tenant and a remainderman. When granting a life estate in a property you will also need to identify one or more remaindermen; those who will come into possession of the property at the life tenant's death by operation law.

Life Insurance Trust: A trust funded by life insurance. The grantor names the trust fund as the beneficiary of the life insurance policy. When the insured dies, the trust is funded by proceeds from the insurance.

Life Tenant: One type of beneficiary in the creation of a life estate. The life tenant has the right to use and possess the property for the life of a tenant or another person.

Limited Liability Company (LLC): A form of business entity often referred to as a "hybrid" of the corporation and partnership forms of business entity. Owners are generally referred to as members. An LLC is governed by written *Operating Agreement.*

Limited Partnership: A partnership in which at least one partner has his or her liability limited to the loss of the capital contribution that he has made to the partnership. A limited partnership requires the execution of a written partnership agreement.

Living Trust: See *inter vivos* trust.

Living Will: A notarized and witnessed document that expresses the creator's wishes that he or she not be subject to extraordinary medical procedures that prolong the dying process.

Marital Property Agreement: State laws empower and restrict the actions of married persons. Real and personal property of any married person that is acquired before the marriage, or which he or she may become entitled to after marriage, remain the sole and separate property of that married person. A marital property agreement clarifies the rights and obligations of each spouse with respect to such property.

Market Value: The highest price which a willing buyer would pay, and the lowest a willing seller would accept.

Mediation: A process whereby a third party assists two contending parties in voluntarily settling their dispute(s).

Metes and Bounds: A description in a deed of the location of a parcel of land where the boundaries are defined by directions and distances.

Mineral Deed: A deed transferring mineral rights, severed from surface rights, to a grantee.

Mineral Lease: A lease entitling the lessee to explore for minerals and mine them if discovered.

Nonconforming Use: A use of land that predates zoning, and is not in accordance with the uses prescribed for the area by a zoning ordinance. Such a use may be continued, but generally not expanded.

Nongovernmental Organization (NGO): A charitable organization that is committed to one or more causes that address and improve the world around us.

Nonprofit: An organization that operates for the purpose of assisting other individuals, groups, or causes rather then garnering profits for themselves.

Nuncupative Will: An oral will declared and dictated by a testator in his or her last illness in front of witnesses and thereafter reduced to writing.

Open Space: Public and private undeveloped land such as a park, farm and forest land

Option: The right to purchase or lease a property at a certain price for a certain designated period of time, for which right consideration is paid.

Partition: A division made of real property among those who own it. Can be voluntary or court ordered by a special proceeding.

Partnership: A voluntary contract between two or more persons combine money, labor, and/or skill for the purpose of making a profit, with the

understanding of a proportional sharing of profits and losses between or among them. Partnerships can be created under written contract or implied by law due to actions of the parties.

Partnership Agreement: A document which embodies the terms and conditions of a partnership.

Percentage Lease: A lease of commercial business property in which the rental is based upon the volume of sales made upon the leased premises.

Permanent or Perpetual Conservation Easement: A conservation easement that is written so that it does not expire. Only a permanent easement qualifies a landowner for tax breaks.

Personalty: Personal property (i.e., not real estate)

Pour Over Will: The will of a person who has already executed a trust wherein all property is designated to be distributed or managed upon the death of the person whose possessions are in trust, leaving all property to the trust. A pour over will assures that any assets that somehow were not included in the trust become assets of the trust upon the party's death.

Power of Attorney: A written instrument authorizing a person to act as the agent or attorney in fact of the person granting it; such power may be limited or general according to the terms of the instrument, and need not be given to a lawyer.

Premarital Agreement: An agreement between prospective spouses made prior to a planned marriage. The agreement becomes effective upon marriage. Agreements between people living together but not contemplating marriage, and post-nuptial or separation agreements are not included in this law. A premarital agreement must be in writing and signed by both parties -oral agreements cannot constitute premarital agreements.

Present Use Value: The term used to describe the alternate tax valuation placed on land used for farm, forest and horticultural production under certain statutory restrictions.

Preservation: Leaving a resource undisturbed and free from harm or damage, such as preserving wetlands by forbidding development on or near them. Permanently retaining land in agricultural or forest uses.

Probate: The judicial process by which the validity of a will is formally determined, and that oversees the carrying out of the testator's expressed wishes.

Property: The right or interest which an individual has in lands and chattels to the exclusion of others; land and the improvements thereon.

Purchase of Development Rights: A term that commonly describes the cash purchase of a landowner's right to develop real property for non-agricultural uses. Cash is paid for all or a portion (as negotiated) of the difference between the value of a parcel with a conservation easement and the same parcel if there were no conservation easement.

Quit Claim Deed: A deed whereby the grantor conveys any and all its rights in a parcel of land to another without any warranty that any rights are owned.

Real Property: Lands and tenements, including the earth's surface, the air above, the ground below, and all improvements and appurtenances to the land, including the rights, interests and benefits inherent in ownership (see Bundle of Rights Concept).

Remainder Interest: An estate in property created at the same time and by the same instrument as another estate and which becomes effective immediately upon the termination of the other estate.

Remainderman: The one taking title upon the expiration of a life estate.

Residuary Estate: The net estate which remains of an estate after debts, administrative expenses, legacies and devises have been satisfied.

Revocable Living Trust: A trust that may be altered as many times as desired in which income-producing property passes directly to the beneficiaries at the time of the grantor's death. Since the arrangement can be altered at any time, the assets are considered part of the grantor's estate and they are taxed as such.

Right of First Offer: A right granted by the owner of property to another whereby if the owner desires to sell the property, she must first notify the other person, who may then make an offer to purchase the property. If the owner refuses the offer to purchase, she may not sell the property to a third person

on terms less favorable to the owner than those contained in the first offer.

Right-of-Way: A right whereby the owner of land has given another the right to pass over the land, such as constructing and using a roadway, on a specific part of land without transferring ownership of the land itself.

Riparian: Pertaining to the banks of a river, stream, or other body of water.

Riparian Owner: One who owns lands bounding upon a river, stream, or other body of water.

Settlor: A person who creates a trust by a written trust declaration, called a "Trustor" in many (particularly western) states and sometimes referred to as the "Donor." The settlor usually transfers the original assets into the trust. (See Trust, Trustor)

Share Lease: A type of farm lease whereby the landlord and tenant share production expenses and divide income on an agreed basis.

Sole Proprietorship: A form of business in which one person owns all the assets of the business, and is solely liable for all the debts of the business.

Statute of Frauds: A state law that provides that certain contracts, including contacts for the sale of land and leases of more than one year, must be in writing in order to be legally enforceable.

Survey: The process by which the quantity and boundaries of a piece of land are ascertained, resulting in a statement of the courses, distances, and quantity of land. A survey can include grades, contours, structures and other physical features of the land.

Tax Credit: A dollar-for-dollar reduction in the income tax payment required of a person.

Tenancy at Will: A license to use or occupy lands at the will of the owner that can be cancelled at any time.

Tenancy for Years: The leasing of property for any fixed, definite period of time, whether such period be one week, one month, one year, ten years, or any other definite period of time.

Tenancy in Common: A form of property ownership held by two or more persons, each of whom is considered to have rights in the entire property.

Tenant: A person who holds real estate under a lease.

Testamentary Trust: A trust created by a person's will, thereby not effective until the death of the testator. Testamentary trusts are used chiefly by individuals who are concerned about their beneficiaries' ability to administer large amounts of assets.

Testate: Leaving a valid will at death.

Testator: A person who makes a will is called a testator (male) or testatrix (female).

Tort Liability: A "tort" is an injury to another person or to property, which is compensable under the law. Categories of torts include negligence, gross negligence, and intentional wrongdoing. Negligence is the most common type of tort. To give rise to a legal claim in negligence, an act (or inaction) must satisfy four elements:

1. there must be a legal duty of care to another person;
2. there must be a breach of that duty;
3. the claimant must have suffered damages, and
4. the damages must have been proximately caused by the breach of duty.

Trust: A legal arrangement, evidenced by a written instrument, whereby a grantor transfers the legal title of property to a trustee to hold and manage that property for the benefit of a third person (a beneficiary).

Trustee: An individual or corporation named by an individual, who sets aside property to be used for the benefit of another person, to manage the property as provided by the terms of the document that created the trust.

Undivided Ownership: Ownership of a fractional interest in property by sharing possesion of the whole (undivided) property with one or more co-owners (co-tenants).

Will: A written document which, when properly executed (signed and witnessed) is effective at the death of the maker to dispose of property according to the terms of the document.

Glossary

Working Lands: Term of art describing farm, forest and horticultural land that is kept in its intended use for the purpose of generating income.

Zoning: The exercise of police power of a municipality or county in regulating and controlling the character and use of property. Zoning commonly includes regulation on the kinds of activities which will be acceptable on particular lots (such as residential, agricultural, commercial or industrial) and the densities at which those activities can be performed.

Notes

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